AGENDA
BREVARD CITY COUNCIL - REGULAR MEETING
Monday, August 21, 2023 - 5:30 PM
City Council Chambers

A. Welcome and Call to Order

B. Invocation

Rev. Shelley Webb, Sharing House

C. Pledge of Allegiance

D. Certification of Quorum

E. Approval of Agenda

F. Approval of Minutes

G. Public Comments

H. Certificates / Awards / Recognition

I. Special Presentation(s)

J. Public Hearing(s)

1. Ordinance - Voluntary Contiguous Annexation - Nielsen, 31 York Circle - Continued from April 17, 2023 Meeting
2. Proposed Amendment to City of Brevard Unified Development Ordinance Chapters 6 and 13 - Staff Determinations
3. Proposed Amendments to City of Brevard Code of Ordinances Chapters 1, 6, 10, 14, 18, 38, 42, 43 (proposed), 46, 58, 62, 66, 70, 77 and 78 - Consolidating Definitions

K. Consent and Information

1. Tax Settlement Report - July, 2023
2. Resolution Fixing a Date of Public Hearing for Annexation-Greenfield, 345 Forest Hill Road

3. Mary C Jenkins Community Center and Parking Lot Project closeout
4. Times Arcade Alley Improvements Project - Establish Capital Project Ordinance
5. Council Downtown Master Plan Committee Minutes - June 22, 2023
6. Council Parks, Trails, & Recreation Committee Minutes - July 19, 2023
7. Correspondence *(No Action. Offered as information only.)*
    a. Transylvania County Building Permit Activity Report - June and July, 2023

L. Unfinished Business

1. Proposed Amendment to Brevard Code of Ordinances Sections 42, 43, 46 and 66 - Social Districts
2. Proposed Amendment to City of Brevard Unified Development Ordinance - Short Term Rentals
3. Proposed Amendment to City of Brevard Traffic Schedule - Code of Ordinance Chapter 66 Section 5 - No Parking Areas
4. Proposed Amendment to Brevard Code of Ordinance Chapter 66 Section 90 - Unmuffled Engine Compression Brakes

M. New Business

1. Employee Wellness Center Agreement
2. Amendment to Fee Schedule - Social District Permit Fee
3. EDA Grant Application
4. Burrell Mountain Water Tank Additional Funding Request

N. Remarks / Future Agenda Considerations

O. Closed Session(s)

P. Adjourn

_____

Agenda Posted, Website, Sunshine List (August 17, 2023)
D. Hodsdon, City Clerk

To review Agenda materials, go to the City's website www.cityofbrevard.com. Select "Your Government" tab followed by "Agenda Packets" tab. Agenda packet materials are posted on Thursday afternoon prior to Council's Monday meeting.

STAFF REPORT
City Council, Monday, August 21, 2023

Title:	Ordinance - Voluntary Contiguous Annexation - Nielsen, 31 York Circle - Continued from April 17, 2023 Meeting
Speaker:	Aaron Bland, Asst Planning Director
Prepared by:	Aaron Bland, Asst Planning Director
Approved by:	Wilson Hooper, City Manager

Background
On January 24, 2023, David and Catherine Nielsen ("Applicant") submitted a request for voluntary continuous annexation for their property at 31 York Circle. The subject property is located off of Osborne Road and is identified by PIN 8596-26-2338-000. See Attachment 1 for the petition materials, Attachment 2 for the preliminary annexation plat submitted, and Attachment 3 for a site map.

This request was presented to Council as part of its February 20, 2023 meeting package, and again on March 20, 2023 where Council set April 17, 2023 as the date for the statutorily required Public Hearing. In April the hearing was recessed to the June 19th meeting at the request of the property owner. The owner then requested a second recess until August 21st to allow additional time to evaluate if a septic system can be done on the site. The owner would now like to move forward with the annexation request and hearing.

Discussion
The subject property is located within the City's Extra-Territorial Jurisdiction (ETJ) adjacent to the corporate limits and is zoned General Residential – 8 (GR8). The Applicant wishes to annex the entirety of the property. The financial and service delivery impacts are estimated to be minimal; see Attachment 4 for full financial impact details.

There are currently two structures on the property, one historic cabin built in 1905, approximately 600 square feet in size, and a larger barn/woodworking shop space. The Applicant has indicated their intention to build a new primary single-family house and convert the cabin to an accessory dwelling unit (ADU). Per Brevard's Unified Development Ordinance, properties in General Residential are limited to one principal structure (i.e., the single-family home) and up to two accessory structures, one of which may be an accessory dwelling unit, thus the Applicant's stated plans for the property are allowed by the UDO.

The existing cabin structure is already connected to City water, upon annexation it is assumed it will also be connected to City sewer. Additionally, the new principal house will require new connections as well. The cost of determining the appropriate connection method and physical connections will be borne by the property owner.

Policy Analysis
Voluntary, contiguous annexations are governed by North Carolina General Statute §160A-

31 which authorizes cities to annex any area contiguous to its borders on receipt of a petition signed by all the owners of real property within the area proposed for annexation. The subject property qualifies for annexation under this statute.

Action
Staff recommends approval of the proposed annexation. The Planning Board discussed this request at their March 28, 2023 meeting and unanimously recommended approval.

Fiscal Impact
See Attahcment 4.

Attachments:
1. Petition Materials
2. Preliminary Plat
3. Site Map
4. Financial Impact Assessment
5. Ordinance Extending Corporate Limits

RECEIVED 2/3/2023 dh

STATE OF NORTH CAROLINA
COUNTY OF TRANSYLVANIA
CITY OF BREVARD

PETITION REQUESTING A CONTIGUOUS ANNEXATION
(G.S. 160A-31)

Date: 1-24-2023

To the City Council of the City of Brevard:

1. We the undersigned owners of real property respectfully request that the area described in paragraph 2 below be annexed to the City of Brevard.

2. The area to be annexed is contiguous to the City of Brevard and the boundaries of such territory are as follows:

Transylvania County Property Identification Number(s): 8596-26-2338-000

Street Address: 31 York Circle Brevard, NC 28712

(ATTACH A METES AND BOUNDS PROPERTY DESCRIPTION AS "ATTACHMENT A")

3. A map is attached showing the area proposed for annexation in relation to the primary corporate limits of the City of Brevard. (ATTACH MAP AS "ATTACHMENT B", including the Tax Map PIN)

4. We acknowledge that any zoning vested rights acquired pursuant to G.S. 160A-385.1 or G.S. 153A-344.1 must be declared and identified on this petition. We further acknowledge that failure to declare such rights on this petition shall result in a termination of vested rights previously acquired for the property. (If zoning vested rights are claimed, indicate below and attach proof.)

Property Owner(s): Do you declare vested rights? Yes____ No X
(Vested rights are rights belonging completely and unconditionally to a person which cannot be impaired or taken away by another party.)

Property Owners Contact Information (If there are more than three property owners, provide their names, contact information and signatures upon a separate and attached sheet.)

a. Name Catherine Nielsen
Address 31 York Circle Brevard, NC 28712
Telephone 828 289 6831 Email catalexandernielsen@gmail.com
Signature

b. Name David Nielsen
Address 31 York Circle Brevard, NC 28712
Telephone 828 755 5701 Email nielsendc223@gmail.com
Signature

c. Name
Address
Telephone Email
Signature

Property Ownership by Corporation or LLC: (If there are more than three principals or managing members then provide their names, contact information and signatures upon a separate and attached sheet.)

a. Name
Address
Telephone Email
By:
Type or Print Name and Title (President / Managing Member)
Signature

b. Name _____
Address _____
_____
Telephone _____Email_____

By: _____
Type or Print Name and Title (President / Managing Member)

Signature _____

c. Name _____
Address _____
_____
Telephone _____Email_____

By: _____
Type or Print Name and Title (President / Managing Member)

Signature _____

* * * * * * * * * * *

AGENT:
Name: _____
Address: _____
_____
Telephone:_____Email_____

Petition along with a copy of the property Deed, Metes and Bounds description (Attachment A), Map / Survey (Attachment B) and cash/credit or check in the amount of $500 made payable to the City of Brevard is to be returned to:

Denise Hodsdon, City Clerk
City of Brevard
95 West Main St., Brevard, NC 28712

ATTACHMENT 1

2021007887
TRANSYLVANIA COUNTY NC FEE $26.00
STATE OF NC REAL ESTATE EXTX
$400.00
PRESENTED & RECORDED
10/18/2021 02:18:42 PM
CINDY M OWNBEY
REGISTER OF DEEDS
BY: KARIN SMITH
DEPUTY REGISTER OF DEEDS
BK: DOC 1006
PG: 499 - 506

NORTH CAROLINA GENERAL WARRANTY DEED

Excise Tax: $400.00 Return after recording to: Edmonds & Matthews, PLLC
Brief description for the Index: Lot 2-A, Osborne Road
This Deed was prepared by: Donald E. Jordan, Attorney at Law
This property does not include the primary residence of Grantor

This DEED is made this 5th day of October, 2021, by and between:

GRANTOR: **JAMES H. WOLFE, individually and as Executor of the Estate of Carolyn Osborne Howie, Transylvania 21-E-16 joined by his wife, Ellen Wolfe; ELIZABETH H. ALEXANDER (the same as Barbara H. Alexander), joined by her husband, Donald Max Alexander; MARTHA JEANNE HOWIE, unmarried; REBECCA H. BEARD, unmarried (the same as Rebecca Howie Beard); PARKS HUNTER HOWIE, JR. (the same as Parks H. Howie, Jr.), joined by his wife, Robin Howie; and TRACY FRANCES HOWIE, unmarried (middle name Francis in Will)**

Grantor's Address: 17 Tiverton Lane, Asheville, NC 28803

GRANTEE: **CATHERINE ALEXANDER NIELSEN and DAVID C. NIELSEN, Wife and Husband**

Grantee's Address: 31 York Circle, Brevard, NC 28712

The designation Grantor and Grantee in this Deed shall include the parties, their heirs, successors, and assigns, and shall include singular, plural, masculine, feminine or neuter as required by context.

The Grantor, for a valuable consideration paid by the Grantee (the receipt of which is acknowledged) grants, bargains, sells and conveys to the Grantee in fee simple, all of the lot or parcel of land located in Brevard Township, North Carolina, and as is described in the attached Exhibit A. This is a portion of the same property described in the Deed recorded in Document Book 169, Page 531, Transylvania County Registry. This conveyance is made subject to real property taxes for the current year.

Submitted electronically by "Edmonds & Matthews, PLLC"
in compliance with North Carolina statutes governing recordable documents
and the terms of the submitter agreement with the Transylvania County Register of Deeds.

ATTACHMENT 1

THIS CONVEYANCE IS MADE FOR THE GRANTEE TO HAVE AND TO HOLD the Property and all privileges and appurtenances belonging to the Property in fee simple.

The Grantor covenants with the Grantee that Grantor is seized of the Property in fee simple, has the right to convey the same in fee simple, that title is marketable and free and clear of all encumbrances, and that Grantor will warrant and defend the title against the lawful claims of all persons, subject only to the stated exceptions.

Grantor is signing this Deed as of the date specified above.

James H. Wolfe
Individually and as Executor

Ellen Wolfe

(See attached signature pages for additional Grantors)

STATE OF NORTH CAROLINA
COUNTY OF Transylvania

I, Donald E. Jordan, a Notary Public of the specified County and State, certify that James H. Wolfe personally appeared before me this day and acknowledged the voluntary execution of this Deed.

Witness my signature and official stamp or seal, this 5 day of October, 2021.

My commission expires: Aug 30, 2024

Notary Public

DONALD E. JORDAN NOTARY PUBLIC TRANSYLVANIA COUNTY, N.C.

STATE OF NORTH CAROLINA
COUNTY OF Buncombe

I, Thomas L. Allen, Jr. a Notary Public of the specified County and State, certify that Ellen Wolfe personally appeared before me this day and acknowledged the voluntary execution of this Deed.

Witness my signature and official stamp or seal, this 5th day of October, 2021.

My commission expires: 05/21/25

Notary Public

THOMAS S. ALLEN, JR. NOTARY PUBLIC HAYWOOD COUNTY, NC

ATTACHMENT 1

SIGNATURE PAGE TO DEED - HOWIE ESTATE DEVISEES

Signed as of October 5, 2021:

Tracy F Howie
Tracy Frances Howie

STATE OF North CAROLINA
COUNTY OF Cabarrus

I, Thomas S. Allen Jr., a Notary Public of the specified County and State, certify that Tracy Frances Howie personally appeared before me this day and acknowledged the voluntary execution of this Deed.

Witness my signature and official stamp or seal, this 6th day of October, 2021.

My commission expires: 05/21/2025

Thomas S. Allen Jr.
Notary Public

THOMAS S. ALLEN, JR. NOTARY PUBLIC HAYWOOD COUNTY, NC

ATTACHMENT 1

SIGNATURE PAGE TO DEED - HOWIE ESTATE DEVISEES

Signed as of October 5, 2021:

Rebecca H. Beard

Rebecca H. Beard

STATE OF NORTH CAROLINA
COUNTY OF Mecklenburg

I, Thomas S. Allen Jr., a Notary Public of the specified County and State, certify that Rebecca H. Beard personally appeared before me this day and acknowledged the voluntary execution of this Deed.

Witness my signature and official stamp or seal, this 6th day of October, 2021.

My commission expires: 05/21/2025

Thomas S. Allen Jr.
Notary Public

THOMAS S. ALLEN, JR. NOTARY PUBLIC HAYWOOD COUNTY

ATTACHMENT 1

SIGNATURE PAGE TO DEED - HOWIE ESTATE DEVISEES

Signed as of October 5, 2021:

Parks Hunter Howie, Jr.

Robin Howie

STATE OF NORTH CAROLINA
COUNTY OF Cabarrus

I, Lyn M Eckert, a Notary Public of the specified County and State, certify that Parks Hunter Howie, Jr. and Robin Howie personally appeared before me this day and acknowledged the voluntary execution of this Deed.

Witness my signature and official stamp or seal, this 5th day of October, 2021.

My commission expires: 2/25/2023

Notary Public

Lyn M. Eckert
Notary Public
Cabarrus County, NC
My Commission Expires 2/25/2023

ATTACHMENT 1

SIGNATURE PAGE TO DEED - HOWIE ESTATE DEVISEES

Signed as of October 5, 2021:

Martha Jeanne Howie

STATE OF NORTH CAROLINA
COUNTY OF Cabarrus

I Thomas S. Allen Jr a Notary Public of the specified County and State, certify that Martha Jeanne Howie personally appeared before me this day and acknowledged the voluntary execution of this Deed.

Witness my signature and official stamp or seal, this 6th day of October, 2021.

My commission expires: 05/21/2025 Thomas S. Allen Jr.
Notary Public

THOMAS S. ALLEN, JR. NOTARY PUBLIC HAYWOOD COUNTY, NC

ATTACHMENT 1

SIGNATURE PAGE TO DEED - HOWIE ESTATE DEVISEES

Signed as of October 5, 2021:

Elizabeth H. Alexander

Donald Max Alexander

STATE OF NORTH CAROLINA
COUNTY OF Buncombe

I, Thomas S. Allen, Jr., a Notary Public of the specified County and State, certify that Elizabeth H. Alexander and Donald Max Alexander personally appeared before me this day and acknowledged the voluntary execution of this Deed.

Witness my signature and official stamp or seal, this 6th day of October, 2021.

My commission expires: 05/21/2025

Notary Public

THOMAS S. ALLEN, JR. NOTARY PUBLIC HAYWOOD COUNTY, NC

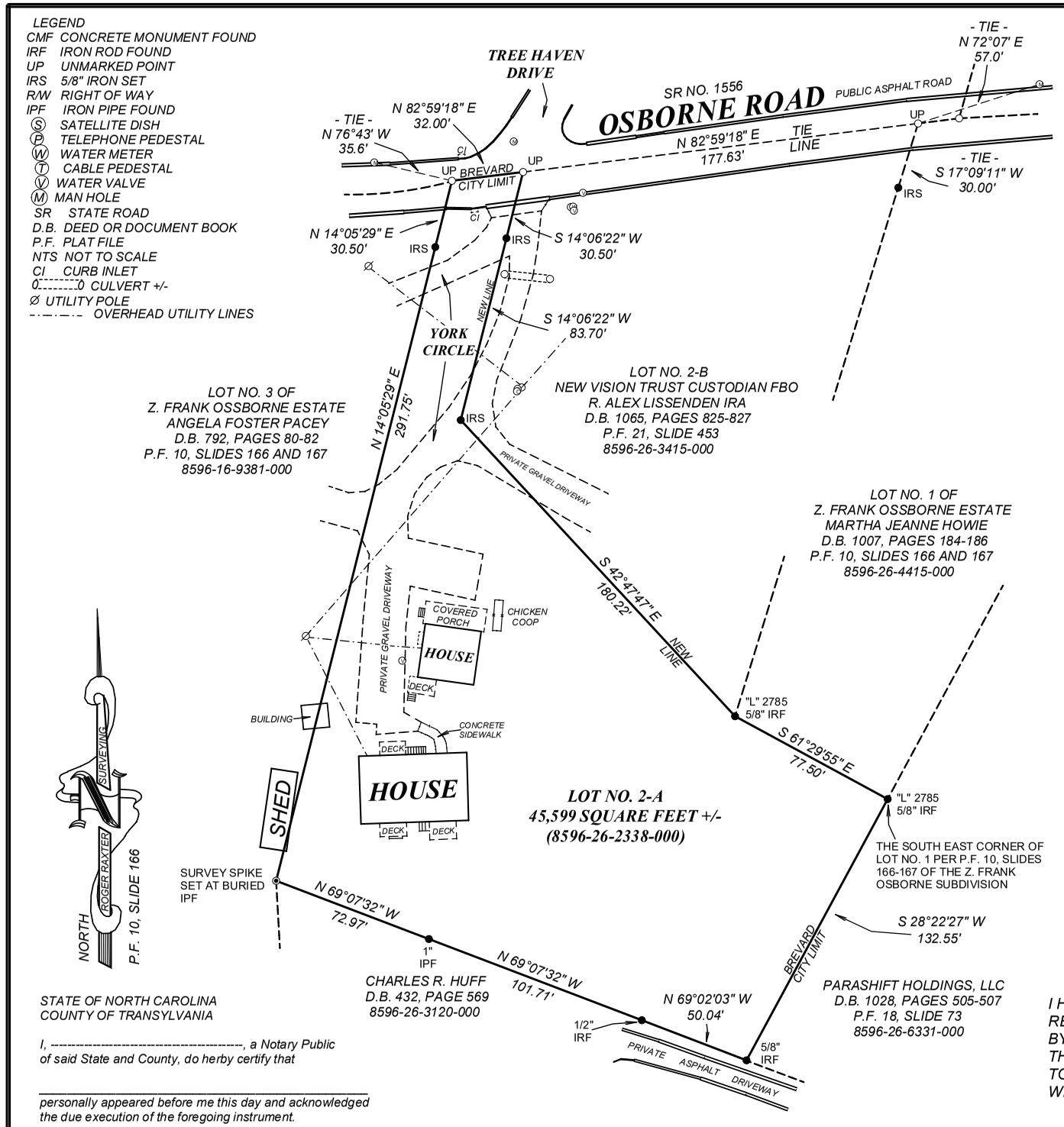
ATTACHMENT 1

EXHIBIT A - LEGAL DESCRIPTION

All of Lot 2-A, containing 45,599 square feet, as shown on the plat of a survey dated August 18, 2021, prepared by E. Roger Raxter, PLS, for Carolyn Osborne Howie and Parks Hunter Howie, recorded in Plat File 21, Slide 453, Records of Plats for Transylvania County, in the office of the Register of Deeds, Transylvania County, North Carolina.

This conveyance is made together with a right to use the shared driveway shown on the referenced Plat located partially on the adjoining Lot 2-B, and this conveyance is also subject to the rights of owners adjoining on both sides of Lot 2-A for the joint use of the driveways shown on the Plat.

LEGEND
CMF CONCRETE MONUMENT FOUND
IRF IRON ROD FOUND
UP UNMARKED POINT
IRS 5/8" IRON SET
R/W RIGHT OF WAY
IPF IRON PIPE FOUND
(S) SATELLITE DISH
(P) TELEPHONE PEDESTAL
(W) WATER METER
(T) CABLE PEDESTAL
(V) WATER VALVE
(M) MAN HOLE
SR STATE ROAD
D.B. DEED OR DOCUMENT BOOK
P.F. PLAT FILE
NTS NOT TO SCALE
CI CURB INLET
CULVERT +/-
UTILITY POLE
OVERHEAD UTILITY LINES



STATE OF NORTH CAROLINA
COUNTY OF TRANSYLVANIA

I, ----------, a Notary Public of said State and County, do herby certify that

_____ personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and Notarial Seal, this the ---------- day of ----------, 2012.

_____
Notary Public

My Comission Expires _____ .

I, E. ROGER RAXTER, PROFESSIONAL LAND SURVEYOR, CERTIFY THAT THIS PLAT WAS DRAWN UNDER MY SUPERVISION FROM RECORDED DOCUMENTS AND/OR OTHER INFORMATION AND DOES NOT REPRESENT AN ACTUAL FIELD SURVEY. THAT THIS PLAT WAS PREPARED IN ACCORDANCE WITH GS 47-30 AS AMENDED.

_____ January 13, 2023
E. ROGER RAXTER DATE
NC PLS L-2938

Review Officer Certification.

State of North Carolina, County of Transylvania

I, _____, Review Officer of Transylvania County, certify that the map or plat to which this certification is affixed meets all the statutory requirements for recording.

_____/_____
Date Review Officer

PRELIMINARY PLAT ONLY, NOT TO BE USED FOR SALES, CONVEYANCES OR RECORDING.

I, E. Roger Raxter, N.C. PLS certify that this a plat of an existing parcel or parcels of land and does not create a new street or change an existing street.

_____ January 13, 2023
E. ROGER RAXTER, NC PLS DATE
(@Copyright E. Roger Raxter 2023)

40 20 0 40 80 120 160
GRAPHIC SCALE : 1 INCH = 40 FEET

ANNEXATION PLAT-ORDINANCE NO. _____

OF PROPERTY OWNED BY :

CATHERINE ALEXANDER NIELSEN and husband, DAVID C. NIELSEN

PROPERTY LOCATED IN :
CITY OF BREVARD
BREVARD TOWNSHIP
TRANSYLVANIA COUNTY
NORTH CAROLINA

BEING ALL OF LOT NO. 2-A OF THE HOWIE SURVEY AS DESCRIBED AND RECORDED IN P.F. 21, SLIDE 453 AND D.B. 1006, PAGES 499-506 OF THE TRANSYLVANIA COUNTY REGISTRY.

DEED REFERENCE : D.B. 1006, PAGES 499-506.

PLAT REFERENCE : P.F. 21, SLIDE 453.

DATE : JANUARY 13. 2023.

NOTES

1) This property is located in Zone X, areas determined to be outside the 500-year floodplain per F.I.R.M.of this area dated October 02, 2009.
2) This property is subject to matters found by a title examination and also subject to all restrictions, setback lines, roadways, zoning ordinaces and right of ways appearing on this property and/or of record.
3) Area computed by coordinate method, including all right of ways.
4) This is of another category, such as the recombination of existing parcels, a court ordered survey or other exception to the definition of subdivision. (GS 47-30)(11) d.
5) This map is not transferable, and may not be used by any person or enitity without written authorization from E. Roger Raxter, PLS. This plat is provided for the use of the parties named hereon.
6) The corners found and set are one inch to twelve inches above the ground, unless otherwise noted.
7) This survey does not certify legal title to the land itself or to the boundaries shown. Users of this plat should obtain an accurate legal opinion as to the ownership within the boundaries of this plat.
8) The Tax Pin is : 8596-26-2338-000.
9) York Circle is an existing private gravel roadbed with an existing deeded right of way per D.B. 169, Page 531.
10) This property is zoned GR 8.
11) The owners address is : 31 York Circle, Brevard, NC, 28712.
12) This plat was prepared from the recorded plat referred to above. No actual field survey was done in 2023.

ROGER RAXTER SURVEYING

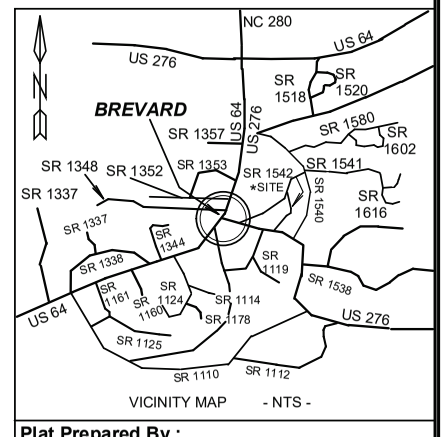
CITY OF BREVARD-ANNEXATION

I HEREBY CERTIFY THAT THIS PLAT FOR ANNEXATION HAS FOLLOWED ALL REQUIREMENTS AND PROCEDURES AND A PUBLIC HEARING WAS HELD BY THE CITY OF BREVARD TO ANNEX THE PROPERTY HEREIN DESCRIBED. THE CITY OF BREVARD ADOPTED ORDINANCE NUMBER _____ TO ANNEX THE PROPERTY DESCRIBED HEREIN ON _____ WITH THE EFFECTIVE DATE OF ANNEXATION ON _____.

Owner Certificate- Annexation : I (we) hereby certify that I am (we are) the owner(s) of the property shown and described hereon and that I (we) hereby adopt this plat of annexation with my (our) free consent.

_____ _____
Date Owner

_____ _____
Date Owner

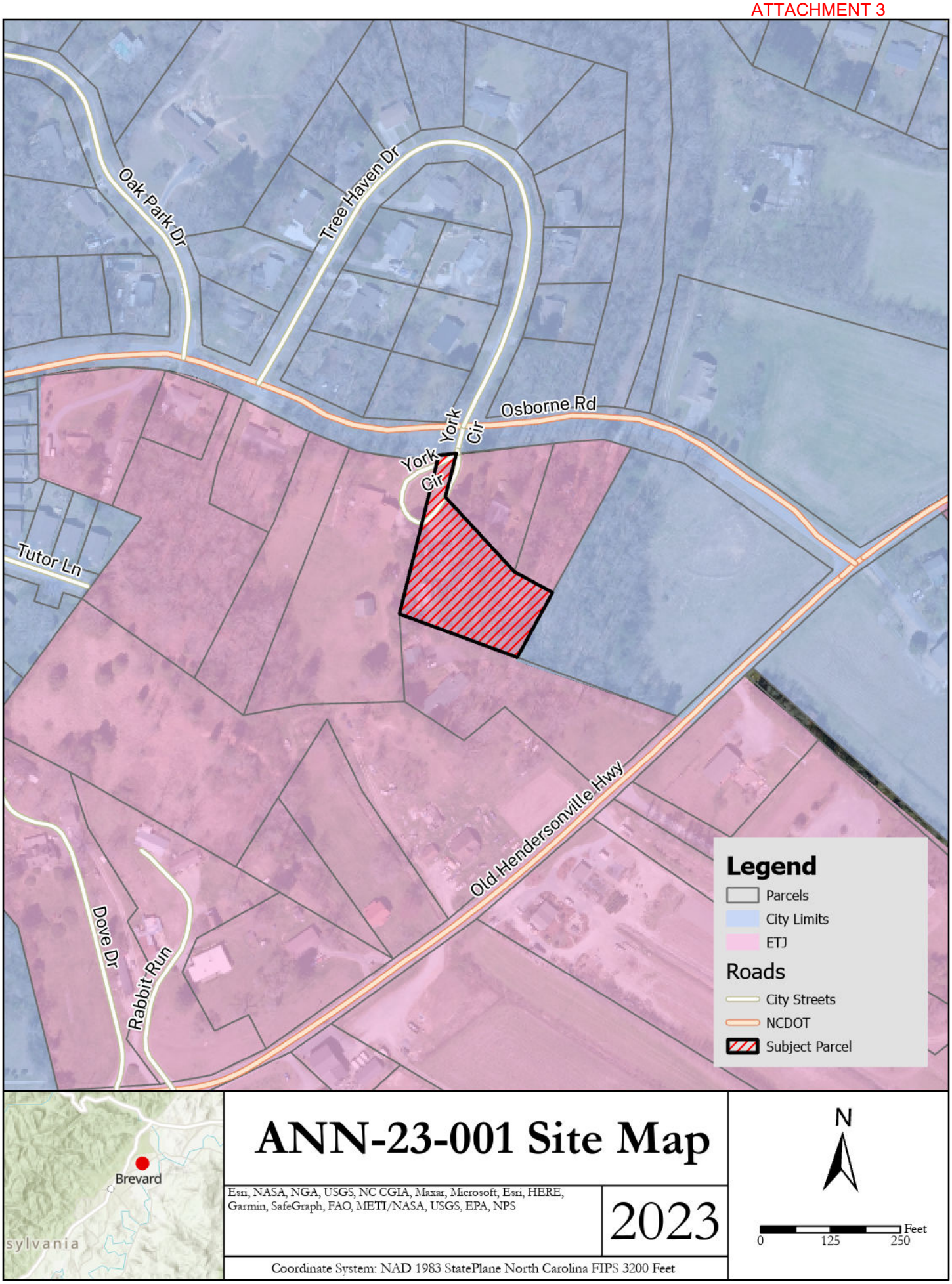


VICINITY MAP - NTS -

Plat Prepared By :
E. ROGER RAXTER, N.C. PLS L-2938
1101 SILVERSTEEN ROAD
LAKE TOXAWAY, N.C. 28747
PHONE : (828) 966-4399 OR
CELL : (828) 226-0251
E-MAIL : erraxter@hotmail.com

DATE **DRAWING NUMBER**
JANUARY 13, 2023 **21064B**

ATTACHMENT 2


Oak Park Dr
Tree Haven Dr
Osborne Rd
York Cir
York Cir
Tutor Ln
Old Hendersonville Hwy
Dove Dr
Rabbit Run
Legend
Parcels
City Limits
ETJ
Roads
City Streets
NCDOT
Subject Parcel
Brevard
sylvania
ANN-23-001 Site Map
Esri, NASA, NGA, USGS, NC CGIA, Maxar, Microsoft, Esri, HERE, Garmin, SafeGraph, FAO, METI/NASA, USGS, EPA, NPS
2023
Coordinate System: NAD 1983 StatePlane North Carolina FIPS 3200 Feet
N
0
125
250
Feet

ANNEXATION #ANN-23-001

FINANCIAL SUMMARY
1 SINGLE FAMILY HOME + ADU

REVENUE	GENERAL FUND	WATER AND SEWER FUND	FIRE DEPT SPECIAL REVENUE FUND	TOTAL ALL FUNDS
ESTIMATED PROPERTY TAXES	2,698.55		273.42	**2,971.97**
TRASH AND RECYCLING FEES	-	480.00	-	**480.00**
WATER & SEWER UTILITY CHARGES		3,544.80		**3,544.80**
POWELL BILL	-			**-**
TOTAL REVENUE	**2,698.55**	**4,024.80**	**273.42**	**6,996.77**
EXPENDITURES				
ADMINISTRATION/FINANCE/HR	583.20			**583.20**
POLICE DEPT	1,069.20			**1,069.20**
FIRE DEPT			273.42	**273.42**
TRASH AND RECYCLING	-	480.00		**480.00**
STREET DEPT	529.16			**529.16**
PARKS & PROPERTY MANAGEMENT	250.00		-	**250.00**
PLANNING & ZONING	291.60			**291.60**
WATER DISTRIBUTION		386.38		**386.38**
WATER TREATMENT PLANT		549.44		**549.44**
SEWER COLLECTIONS		531.72		**531.72**
WASTERWATER TREATMENT PLANT		978.36		**978.36**
WATER & SEWER FUND DEBT		1,098.89		**1,098.89**
TOTAL EXPENDITURES	**2,723.16**	**4,024.80**	**273.42**	**7,021.38**
NET GAIN OR (LOSS)	**(24.61)**	**-**	**-**	**(24.61)**

ASSUMPTIONS: BUILDING OF ADDITIONAL SINGLE FAMILY HOME AND CONVERSION OF EXISTING HOUSE TO ADU; 5,000 GALLONS/MONTH/HOME; PER CAPITA CHARGE FOR PUBLIC SERVICES

TAX VALUE OF EXISTING HOME	$182,740
TOTAL TAX VALUE ADDED WITH NEW HOME	**$582,740**

ORDINANCE NO. 2023-XX
AN ORDINANCE TO EXTEND THE CORPORATE LIMITS
OF THE CITY OF BREVARD, NORTH CAROLINA

WHEREAS, the Brevard City Council has been petitioned under G.S. 160A-31, as amended, to annex the contiguous area described herein, and,

WHEREAS, the City Council has by Resolution No. 2023-11 directed the City Clerk to investigate the sufficiency of said petition; and,

WHEREAS, the Brevard Planning Board reviewed the Petition at their meeting held on March 28, 2023 and recommended approval of the voluntary contiguous annexation; and,

WHEREAS, the City Clerk has certified the sufficiency of said petition (relying on the opinion of the City Attorney) and the City Council adopted Resolution No. 2023-14 fixing a date of public hearing. By authority granted by G.S. 160A-31, a public hearing on the question of this annexation was held at the City Council Chambers at 5:30 P.M. on the 17th day of April, 2023, after due notice by publication on the 3rd day of April, 2023; and

WHEREAS, at the request of the petitioner the April 17, 2023 public hearing was opened and recessed until June 19, 2023. The petitioner requested a second recess until August 21, 2023; and

WHEREAS, the City Council does hereby find as a fact that the petition meets the requirements of G.S. 160A-31, as amended.

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

Section 1. By virtue of the authority granted by G.S. 160A-31, as amended, all of that property lying in Transylvania County, owned by Catherine and David Nielsen, as shown and all of that property described in the deed recorded in Document Book 1006, Pages 499 - 506, in the Transylvania County Register of Deeds and that certain plat provided by the Petitioners to be duly recorded upon annexation is hereby annexed and made a part of the City of Brevard as of the _____ day of _____, 2023.

Said property is more fully described as follows:

> All of Lot 2-A, containing 45,599 square feet, as shown on the plat of a survey dated August 18, 2021, prepared by E. Roger Raxter, PLS, for Carolyn Osborne Howie and Parks Hunter Howie, recorded in Plat File 21, Slide 453, Records of Plats for Transylvania County, in the office of the Register of Deeds, Transylvania County, North Carolina.
>
> This conveyance is made together with a right to use the shared driveway shown on the referenced Plat located partially on the adjoining Lot 2-B, and this conveyance is also subject to the rights of owners adjoining both sides of Lot 2-A for the joint use of the driveways shown on the Plat.

Section 2. Upon and after the _____ day of _____, 2023 the above described territory and its citizens and property shall be subject to all debts, laws, ordinances and regulations in force in the City of Brevard and shall be entitled to the same privileges and benefits as other parts of the City of Brevard. Said territory shall be subject to the municipal taxes according to G.S. 160A-31.

Also being all of that property described in a plat prepared by E. Roger Raxter, PLS for Catherine Alexander Nielsen and David C. Nielsen dated January 13, 2023 and recorded in Plat File _____, Slide _____, of the Transylvania County Registry.

Section 3. Pursuant to 160A-29 it shall be the duty of the Mayor of the City of Brevard to cause an accurate map of the annexed territory as described in Section 1 hereof, together with a duly certified copy of this Ordinance, to be recorded in the office of the

Register of Deeds of Transylvania County, North Carolina, and in the office of the Secretary of State at Raleigh, North Carolina. Such a map shall also be delivered to the Transylvania County Board of Elections as required by G.S. 163.288.1.

Section 4. Notice of adoption of this Ordinance shall be published once, following the effective date of annexation, in a newspaper having general circulation in the City of Brevard.

Adopted and approved the _____ day of _____, 2023.

_____
Maureen Copelof
Mayor

ATTEST:

_____
Denise Hodsdon, CMC
City Clerk

APPROVED AS TO FORM:

_____
Mack McKeller
City Attorney

STAFF REPORT
City Council, Monday, August 21, 2023

Title:	Proposed Amendment to City of Brevard Unified Development Ordinance Chapters 6 and 13 - Staff Determinations
Speaker:	Aaron Bland, Asst. Planning Director
Prepared by:	Aaron Bland, Asst Planning Director
Approved by:	Wilson Hooper, City Manager

Background
Daily administration of the City's Unified Development Ordinance (UDO) often requires the zoning administrators to use their professional judgement to make determinations. It has always been good practice for the UDO to include some degree of guidance or factors that the administrator can rely on when making these determinations, but since the passage of G.S. 160D, and the case law that has followed, this has become more and more of a requirement. This is a staff-initiated text amendment that looks to build on others that have been done in the past several years that have added such guidance for administrative decisions into the UDO. This amendment seeks to clarify two areas of ambiguity when making these sorts of determinations that come up regularly in the Planning Department's day-to-day operations.

Discussion
The first is determining which street is the "higher classification" for parcels that front on more than one street, such as corner lots. Determining the which street, road or other type of roadway is a higher classification comes up for the purposes of administering and enforcing the zoning code in several ways, including setback calculations, yard classifications, location of parking facilities, and façade requirements. Often times, determining which of two streets is a higher classification can be quite simple, for example, a lot on the corner of Caldwell Street, a multi-lane US Highway, and Bracken Lane, a narrow dead-end street with only a few houses on it. However, there are instances where it is not so simple, and this amendment looks to give the administrator clear, objective standards to apply when determining which street is of higher or lower classification.

The second is determining what qualifies as a "stream" for the purposes of the 30-foot surface water protection area required by UDO Section 6.7. Staff is proposing utilizing the NC Surface Water Classifications Schedule and associated webmap, which is maintained by the Water Resources Division of the North Carolina Department of Environmental Quality. This will create a single point of reference for developers and administrators to refer to when determining if something is an actual stream that requires the 30-foot buffer, or if it is simply, for example, a drainage ditch. The map can be viewed at https://experience.arcgis.com/experience/7073e9122ab74588b8c48ded34c3df55/page/Page-1/

Policy Analysis

Recommendation LUH-19 of the Building Brevard Comprehensive Land Use Plan speaks to ensuring clarity of the regulations found within the UDO, stating "Strive to make planning documents and UDO more approachable and user friendly to empower citizens to understand and advocate for their neighborhoods."

The Plan also specifically calls for the continuation of the stream buffer in PNRC-10 which includes "continue to enforce steep slope and stream buffer requirements for new development."

Recommendation
The Planning Board discussed this matter at their June 27, 2023 meeting and, after a brief discussion, unanimously recommended in favor. In accordance with North Carolina General Statutes, the Planning Board also submits the attached statement analyzing the consistency and reasonableness of this proposal with regards to existing policies or plans of the City of Brevard.

Action
This presentation is for information and public hearing purposes only; no action is requested at this time.

Attachments:
1. 6.7 and 13.7 Draft Amendments
2. Consistency Statement

6.7. Surface water protection requirements.

A. *Purpose and intent:* The purpose of this section is to provide a network of protected stream corridors thereby helping to maintain water quality, provide wildlife habitats, filter pollutants, store floodgates, and contribute to the "green infrastructure" of the City of Brevard and lands within its jurisdiction. Stream systems are comprised of each stream and its respective drainage basin. Streams have the primary natural functions of conveying storm, ground, and surface waters, storing flood waters, and supporting aquatic life. Vegetated lands adjacent to the stream channel serve to protect the stream's ability to fulfill its natural functions. Surface water protection areas have the primary natural functions of protecting water quality by (1) filtering sediments and pollutants such as nitrogen, phosphorus, trace metals, and hydrocarbons, (2) providing intermittent storage for flood waters, (3) allowing channels to meander naturally, and (4) providing suitable habitat for wildlife.

B. *Applicability:* This section shall apply to all surface waters (as defined by this ordinance) and all non-encroachment areas and regulatory floodways (as delineated upon the most recently published Flood Boundary and Floodway Map (FBFM) and/or Flood Insurance Rate Map (FIRM), within the planning jurisdiction of the City of Brevard.

C. *Relationship to previously approved development plans, structures, and uses:* Uses and structures approved and constructed in a protection area prior to the enactment of this ordinance may remain as nonconformities, subject to any legal requirements attributed to that status. All development plans, development projects and uses permitted subsequent to the enactment of this ordinance, including expansions to previously approved and constructed uses and structures, shall comply with the surface water protection requirements of this ordinance.

D. *Surface water protection area delineation:* Surface water protection area requirements apply to the regulatory floodway and non-encroachment areas, as well as lands within 30 feet from the top of each bank of a stream or other surface water body.

1. For streams and other surface waters with defined channels, protection area widths are measured horizontally on a line perpendicular to the surface water, landward from the top of the bank on each side of the channel.

2. "Top of bank" shall be determined by the administrator by considering factors such as the break in slope for a watercourse and the presence of streamside vegetation.

3. For rivers, streams, creeks, brooks, and any other continuous body of surface water flowing within the bed and banks of a channel, the determination of applicability of this section shall be based on the water body's inclusion on the NC Surface Water Classifications Schedule and Map, as maintained by the Division of Water Resources of the North Carolina Department of Environmental Quality.

4. For wetlands, as defined in this ordinance, protection area widths are measured horizontally, landward from the outermost point at which wetland conditions can be identified.

45. For ponds, lakes, and other impounded surface waters, protection areas widths are measured horizontally, landward from the ordinary high water line. Protection areas requirements do not apply to wet ponds used as structural stormwater control and treatment measures for stormwater.

56. For other surface waters, the protection area shall be determined by the administrator in consideration of the purposes of this section.

67. When a combination of floodway/non-encroachment area and/or surface water types exist, the most restrictive measurement of surface water protection area shall apply.

E. *Surface water protection area requirements:*

1. Protection areas shall be left in a naturally vegetated state, unless reforestation of disturbed protection areas is required as part of any site plan approval. When reforestation of a disturbed protection area is required, it shall be done in accordance with a planting plan approved by the administrator.
2. Concentrated runoff from ditches or other manmade conveyances shall be diverted to diffuse flow before the runoff enters the protection area.
3. Periodic corrective action to restore diffuse flow shall be taken by the property owner as necessary to avoid the formation of erosion gullies.
4. Diffuse flow of runoff shall be maintained in the protection area by dispersing concentrated flow and reestablishing vegetation.
5. Surface water protection areas shall be delineated upon any development plan and shall be noted as protection areas within which no disturbance or development shall be permitted.
6. The following impacts are expressly forbidden in surface water protection areas (including floodways, non-encroachment areas) and associated water bodies:
    a. The placement of fill or the deposition of any natural or manmade material or substance;
    b. New development, substantial improvements, new construction, new impervious surfaces, the placement of structures or any other form of development or encroachment, except those associated with public utilities;
    c. Grading, excavation, the removal of vegetation, or any disturbance of any kind; except excavation and fill required to plant any new trees or vegetation;
    d. The ditching, dredging, channelization, straightening, relocation, diking, levying, or any other alteration or modification of any kind, to surface waters, except dredging necessary to maintain pre-existing, human-made water impoundments such as ponds and lakes;
    e. The routing underground (by culvert or other means) of any surface water, except to facilitate crossings by approved roads, streets, driveways, greenways, sidewalks, and other transportation facilities;
    f. The impoundment of water bodies (this shall not prohibit the maintenance of existing ponds, lakes, and other impoundments); and
    g. Any other type of encroachment, disturbance, or modification to floodways, non-encroachment areas, or other surface water protection areas or associated surface waters.
7. The following protection area impacts are permitted; however, design and construction shall comply with applicable city standards for stabilization of disturbed areas to minimize negative effects on the quality of surface waters.
    a. Road crossings for connectivity or transportation links and required utilities including public and private streets, driveways, and bridges, where the City of Brevard has granted site plan approval.
    b. Parallel water and sewer utility installation as approved by City of Brevard.
    c. Approved public or common area open space, paths and trails. Pathways should use existing and proposed utility alignments or previously cleared areas and minimize tree cutting to the maximum extent practicable. To the extent possible, pathways shall be "on-grade" and shall preserve existing drainage patterns and avoid drainage structures that concentrate stormwater.
    d. Incidental drainage improvements/repairs for maintenance provided that such maintenance does not result in channelization, straightening, or modification of the natural course of a stream channel or the deforestation of the regulatory floodway or protection areas.

e. Mitigation approved by a local, state, or federal agency acting pursuant to Sections 401 or 404 of the Federal Clean Water Act.

f. Stream bank or stream channel restoration or soil stabilization activities of the North Carolina Cooperative Extension Service, Transylvania County Soil and Water Conservation Service, USDA Natural Resources Conservation Service, Transylvania County, the City of Brevard, the North Carolina Forest Service, or a cooperating organization or entity. This exception does not include the straightening or channelization of any watercourse.

g. The removal of invasive exotic plant and tree species or trees posing a hazard to life or property.

8. Uses permitted in the protection area shall be coordinated to ensure minimal disturbance of the protection area system. For example, if it is necessary to install utilities within the protection area and if greenway trails are then to be built, they should follow these cleared areas instead of necessitating additional clearing.

9. The approving authority may reduce the required front, rear, or side setbacks by up to 20 percent of the required distance in order to facilitate compliance with this section. Additional setback deviations shall be considered as variances by the BOA in accordance with the procedures set forth in Section 16.8.

(Ord. No. 2021-16 , § 1(Exh. A), 4-19-21)

DRAFT

13.7. ~~Reserved~~Street classifications.

A. *Determining streets of higher classification*

1. *Ownership*. When making a determination, the administrator shall first consider the ownership of each of the roads. State roads are always considered higher classification than local roads. Local roads are always considered a higher classification than private roads. If any portion of the roadway is a State road, regardless of if property in question is adjacent to a section maintained by the City, the road shall be considered a higher classification than local roads. This applies to French Broad Street, Main Street, Whitmire Street, Elm Bend Road, and other streets that change ownership within the City's jurisdiction. This does not apply to roads that change ownership at the edge of the City's corporate limits, such as Carolina Avenue.

2. *Other factors*. If that does not establish the higher classification, the administrator shall consider the following factors in making a determination:

    a. The speed limits on the roads, according to the adopted traffic schedule in Section 66 of the City Code;

    b. The estimated traffic volumes on the roads;

    c. The length of the roads (e.g., a road that is 2 miles long in total verses a road that only extends ¼ mile); and

    d. The width of the rights-of-way on the roads.

DRAFT

COMMENT OF CONSISTENCY WITH COMPREHENSIVE PLAN AND ANY OTHER OFFICIALLY ADOPTED APPLICABLE PLANS

NCGS 160D-605 requires that the Planning Board shall advise and comment on whether the proposed amendment is consistent with any comprehensive plan prior to consideration by the Governing Board. The Planning Board shall provide a written recommendation to the Governing Board that addresses plan consistency and other matters as deemed appropriate by the Planning Board, but a comment by the Planning Board that a proposed amendment is inconsistent with the Comprehensive Plan shall not preclude consideration or approval of the proposed amendment by the Governing Board.

The Brevard Planning Board forwards this recommendation to City Council with a finding that the proposed zoning map amendment is **consistent** with the following elements of the City's adopted plans and policies:

Building Brevard Comprehensive Land Use Plan:

LUH- 19: Enhance communication of land use planning efforts, policy development, approvals and processes. Create online public information portal to provide updates on proposed and in-progress development projects. Strive to make planning documents and UDO more approachable and user friendly to empower citizens to understand and advocate for their neighborhoods.

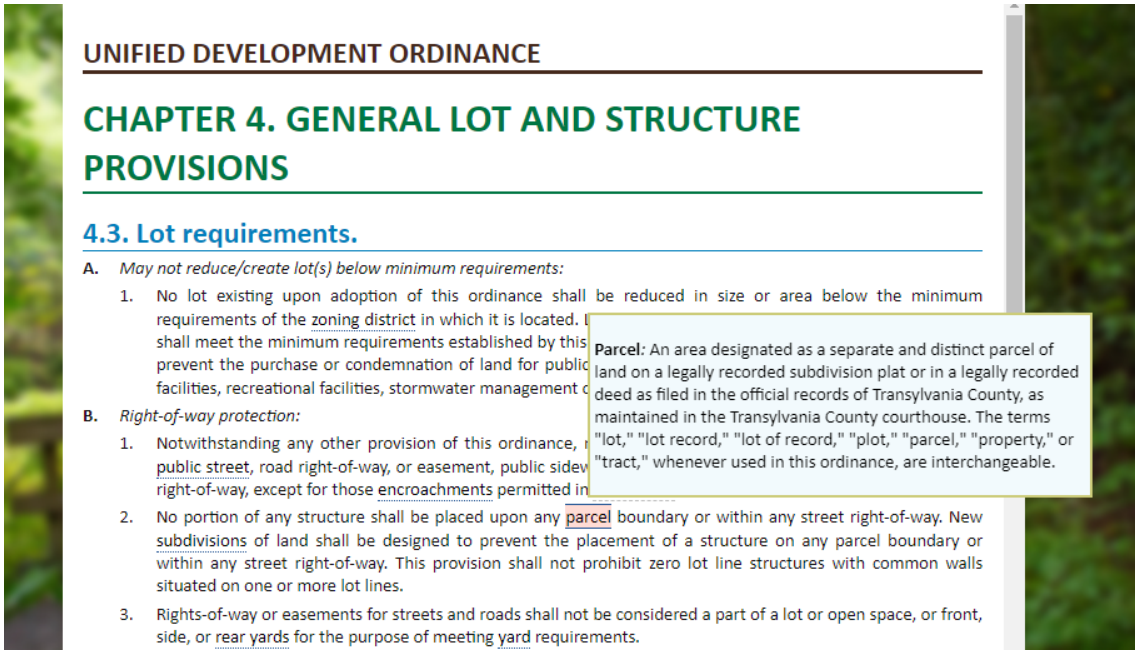
PNRC- 10: Preserve steep slopes and natural areas adjacent to Pisgah Forest. Continue to enforce steep slope and stream buffer requirements for new development. Coordinate with landowners and land trust to conserve strategic lands.

STAFF REPORT
City Council, Monday, August 21, 2023

Title:	Proposed Amendments to City of Brevard Code of Ordinances Chapters 1, 6, 10, 14, 18, 38, 42, 43 (proposed), 46, 58, 62, 66, 70, 77 and 78 - Consolidating Definitions
Speaker:	Emily Brewer, AICP, Senior Planner
Prepared by:	Emily Brewer, Senior Planner
Approved by:	Paul Ray, Planning Director, Wilson Hooper, City Manager

Background & Discussion
The City hosts the Code of Ordinances and Unified Development Ordinance online to be readily available to members of the public. These web-based documents enable citizens to navigate important information at their convenience. In July 2023, the City transitioned to a new web portal, EnCodePlus (to view the new Code Portal please visit www.cityofbrevard.com/ordinances).

EnCodePlus is a unique web-based content management software that allows next-day publishing of adopted text amendments and offers a suite of citizen-friendly features. The new interactive website hosts the City Code, UDO, and other critical planning documents, like the Pedestrian and Bicycle Plan and the Comprehensive Land Use Plan. The platform has enhanced features including pop-up definitions for key terms, hyperlinking within and between documents, and page layouts to better accommodate tables and graphics, among others. An illustration of the pop-up definitions can be found below:



During the transition, Staff found it challenging to fully utilize the pop-up definitions function in the Code of Ordinances. This is in part because the definitions are spread throughout the document and are often nested within sections.

The proposed text amendment consolidates all of the definitions in the Code of Ordinances into one section (Code Section 1-2: Definitions), similar to that of the Unified Development Ordinance (UDO Section 19.3). This text amendment also makes changes within other sections of the Code that reference the definitions. For example, the changes to Section 70-143.B.3 replace "the control authority as defined in subsection 70-140.B.1.C" with "the control authority as defined in Section 1-2."

Notes for Reviewing the Text Amendment
Both a strikethrough version and a clean version of the proposed text amendments are provided. When reviewing the strikethrough text amendment, blue text is added language and ~~red text~~ is removed language. Green text refers to language that moved from one portion of the Code of Ordinances to another. The green text can be found with a ~~strikethrough~~ in the initial location (the section where it currently is in the code) and without a strikethrough in the new location where it is being incorporated (Section 1-2).

Policy Analysis
Posting the codes is critical in ensuring the materials are readily available for constituents, but it needs to be usable so members of the public can quickly and easily navigate this necessary information. EnCodePlus is an approachable platform that improves the transparency of city administration, law enforcement directives, planning processes, development regulations, and other important ordinances.

The proposed text amendments will further improve the functionality and accessibility of these important documents. The *Building Brevard 2030* Comprehensive Land Use Plan identifies engaging and empowering neighborhoods as a priority, specifically:

- ***Land Use and Housing – 19:*** *Enhance communication of land use planning efforts, policy development, approvals and processes.*

Action
No action is requested at this time. For information and public hearing only. Staff requests that Council take one of the following actions at the next regular meeting:

1. Adopt the amendments as written;
2. Revise and adopt the amendments as revised;
3. Reject the amendments; or
4. Table the amendments for further public hearings and/or consideration.

Attachments:

1. Proposed Text Amendment - Strikethrough Version
2. Proposed Text Amendment - Clean Version

PART II: CODE OF ORDINANCES

CHAPTER 1. GENERAL PROVISIONS

1-2. Definitions and rules of construction.

In the construction of this Code and of all ordinances, the following definitions and rules of construction shall be observed, unless inconsistent with the manifest intent of the council or the context clearly requires otherwise:

ABC Permittee: ~~means a~~ A person holding any of the following ABC permits:

A. An on-premises malt beverage permit issued pursuant to N.C.G.S. §18B-1001(1).

B. An on-premises unfortified wine permit issued pursuant to N.C.G.S. §18B-1001(3).

C. An on-premises fortified wine permit issued pursuant to N.C.G.S. §18B-1001(5).

D. A mixed beverages permit issued pursuant to N.C.G.S. §18B-1001(10).

E. A wine shop permit issued pursuant to N.C.G.S. §18B-1001(16).

F. A distillery permit issued pursuant to N.C.G.S. §18B-1100(5).

Agricultural operation: ~~has~~ the Any operation as defined ~~definition given~~ in G.S. 106-701(b) (or any successor thereto), and includes, without limitation, any facility for the production for commercial purposes of crops, livestock, poultry, livestock products or poultry products.

Alarm system: ~~means~~ A~~a~~ny electronic or mechanical device transmitting an electronic alarm signal or recorded message to the emergency communications center indicating a fire or an actual or attempted unauthorized entry into a building, or indicating the commission or attempted commission of a crime in or about a building.

Ambient noise level: ~~means a~~ An average A-weighted sound level based on at least three readings made and recorded over a period of no less than ten minutes, made at the location where a complainant claims to be disturbed by an alleged violation but at a time when no noise is then being alleged to violate this ordinance, and made at a point no closer than outside the property line of the property from where the noise is generated.

Animal: ~~means a~~ A living creature, domestic or nondomestic, but does not include humans.

Animal control: ~~means a~~ Any authority designated by the city manager to discharge the requirements of this chapter.

Animal shelter: ~~means a~~ Any premises designated by the health director for the purpose of impounding and caring for animals.

ANSI: ~~refers to t~~ The American National Standards Institute or any successor to such organization.

Approval authority: ~~.~~ When referring to sewer usage, ~~T~~the director of the division of water quality of the North Carolina Department of Environment and Natural Resources or his designee.

Ashes: ~~means t~~ The residue from the burning of wood, coal, coke or other combustible materials.

At large animal: ~~means a~~An animal shall be deemed to be at large when it is off the property of its owner or keeper and not under physical restraint.

Authorized emergency vehicle: Vehicles of the Fire Department, Police Department, vehicles owned by the Transylvania County Emergency Medical Service and vehicles owned by the various rescue squad units operating within Transylvania County.

Authorized representative of the industrial user:~~.~~

A. If the industrial user is a corporation, authorized representative shall mean:

1. The president, secretary, or a vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or
2. The manager of one or more manufacturing, production, or operation facilities, provided, the manager is authorized to make management decisions which govern the operation of the regulated facility, including having the explicit or implicit duty of making major capital investment recommendations, and initiate and direct comprehensive measures to assure long-term environmental compliance with environmental laws and regulations; can ensure that the necessary systems are established or actions taken to gather complete and accurate information for control mechanism requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

B. If the industrial user is a partnership or sole proprietorship, an authorized representative shall mean a general partner or the proprietor, respectively.

C. If the industrial user is a federal, state or local government facility, an authorized representative shall mean a director or highest official appointed or designated to oversee the operation and performance of the activities of the government facility, or their designee.

D. The individuals described in paragraphs ~~1—3~~. A - C, above, may designate another authorized representative if the authorization is in writing, the authorization specifies the individual or position responsible for the overall operation of the facility from which the discharge originates or having overall responsibility for environmental matters for the company, and the written authorization is submitted to the city.

E. If the designation of an authorized representative is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, or overall responsibility for environmental matters for the company, a new authorization satisfying the requirements of this section must be submitted to director prior to or together with any reports to be signed by an authorized representative.

Authorizing official: ~~means~~ When referring to the removal of motor vehicles, the supervisory employee of the police department designated to authorize the removal of vehicles under the provisions of this division.

Available to the public: ~~means~~ When referring to obscene materials, that the matter or performance may be purchased or attended on a subscription basis, on a membership fee arrangement, or for a separate fee for each item or performance.

A-weighted sound level: ~~means t~~ The sound pressure level in decibels as measured on a sound level meter using the A-weighting network measured by a sound level meter, following the criteria approved by ANSI.

Basement: ~~shall mean a~~ A portion of a building which is located partly underground, having direct access to light and air from windows located above the level of the adjoining ground.

Basic structural elements: ~~means t~~ The parts of a building which provide the principal strength, stability, integrity, shape and safety of the building, including, but not limited to plates, studs, joists, rafters, stringers, stairs, subflooring, flooring, sheathing, lathing, roofing, siding, window frames, door frames, porches, railings, eaves, chimneys, flashing, masonry and all other essential components.

Bedroom: ~~shall mean a~~ A room or space in which people sleep, which can also include permanent provisions for living, eating, and either sanitation or kitchen facilities but not both. Such rooms and spaces that are also part of a dwelling unit are not sleeping units.

Bicycle*:* A non-motorized vehicle with two or three wheels tandem, a steering handle, one or two saddle seats, and pedals by which the vehicle is propelled.

Bicycle route*:* Those bikeways on existing street rights of way where bicycles share the roadway with motor vehicles. Bicycle routes are designated by signs placed on vertical posts or stenciled on the pavement.

Bicycle lane*:* Those bikeways on existing street rights of way where a portion of the roadway is set aside for exclusive bicycle use and designated by signs on vertical posts or stenciled on the pavement and by a painted line marking the bicycle lane on the pavement. Through travel by motor vehicles or pedestrians is prohibited. Cross flows by motor vehicles and pedestrians when necessary to gain access to and from a public street or alley and/or a private driveway or other entranceway are permitted.

Bicycle path*:* Those bikeways on existing street rights of way or on a completely separated right-of-way or easement. Use by pedestrians may or may not be permitted. The parking of any through traffic by motor vehicles is prohibited. Cross flows by motor vehicles and pedestrians when necessary to gain access to and from a public street or alley and/or a private driveway or other entranceway are permitted.

Bike trail; ~~means a~~ Any road or trail maintained for bicycles.

Bikeways*:* All thoroughfares that explicitly provide for bicycle travel including facilities existing within street and highway rights of way and facilities along separate and independent corridors.

Bite: ~~means a~~Any penetration of the skin by teeth constitutes a bite exposure.

Board of commissioners*:* Transylvania County Board of Commissioners.

BOD ~~(denoting~~or biochemical oxygen demand): ~~means t~~ The quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory conditions for five days at 20 degrees Celsius, expressed in milligrams per liter.

Bond~~.~~ : When a bond is required, an undertaking in writing shall be sufficient.

Building*:* A structure having a roof supported by columns or walls for the shelter, support or enclosure of persons, animals, or equipment and requiring a separate power meter to be installed for the building to have electrical service, or a separate water meter to be installed for the building to have water service. This will also include mobile homes or manufactured homes.

A. The term "building" shall be construed as if followed by the words "or parts thereof".

B. Each portion of a building separated by division wall from the ground up without openings shall be considered a separate building irrespective of the presence of a separate power or water meter.

C. The term "building" may also include other manmade structures or spaces that could be reasonably construed to be a building within the spirit and intent of this definition.

Building drain: ~~means t~~ That part of the lowest horizontal piping of a drainage system which receives the discharge from soil, waste and other drainage pipes inside the walls of a building and conveys it to a sewer service line, beginning five feet (1.5 meters) outside the inner face of the building wall.

Bypass: ~~-~~ When referring to sewer usage, ~~T~~the intentional diversion of waste streams from any portion of a user's treatment facility.

Cat: ~~means c~~Cats, both male and female, more than six months old.

Categorical standards~~.~~: ~~N~~When referring to sewer usage, national categorical pretreatment standards or pretreatment standard.

Cellar: ~~shall mean a~~ A portion of a building located partly or wholly underground having an inadequate access to light and air from windows located partly or wholly below the level of the adjoining ground.

Certificate of public convenience and necessity: ~~means a certificate of public convenience and necessity~~ A certificate issued by the city, authorizing the holder thereof to conduct a taxicab business within the city.

Certificate of public convenience and necessity ~~H~~holder: ~~means~~ A~~a~~ person to whom a certificate of public convenience and necessity has been issued.

Charter~~.~~: The term "Charter" or "the Charter" means and refers to the Charter of the City of Brevard, North Carolina, as printed in PART I of this volume.

Chicken coop :~~means a~~ A weather and predator proof structure or container employed in the keeping of chickens.

Chicken run: ~~means an~~ An outdoor enclosure employed in the keeping of chickens.

Chronic violations of wastewater discharge limits:~~, defined here as those~~ Significant noncompliance of wastewater discharge limits in which 66 percent or more of all the measurements taken for the same pollutant parameter (not including flow) during a six-month period exceed (by any magnitude) a numeric pretreatment standard or requirement including instantaneous limits, as defined by 40 CFR Part 403.3(l);

City or~~,~~ municipality~~.~~: The words "city" and "municipality" mean the City of Brevard in the County of Transylvania and State of North Carolina. Where the context admits, it shall mean the particular department or officer of the city charged with a specific function.

Close familial relationship: ~~shall mean a~~ A spouse, parent, child, brother, sister, grandparent, or grandchild. The term includes the step, half, and in-law relationships.

Code~~.~~: Reference to "the Code" or "this Code" means the Code of Ordinances, City of Brevard, North Carolina, as designated in Section 1-1.

Code enforcement officer*:* The official of the City of Brevard charged with enforcing or supporting the enforcement of this article, and with overseeing and/or supporting the administration and enforcement of other ordinances of the city.

Commercial animal establishment: ~~means a~~ Any pet shop, grooming shop, auction, riding school or stable, zoological park, circus, animal exhibition or kennel.

Component~~.~~: Any assembly, subassembly, or combination of elements designed to be combined with other components to form part of a building or structure. Examples of a component include an excavated footing trench containing no concrete. The term does not include a system.

Computation of time~~.~~: The time within which an act is to be done shall be computed by excluding the day of the act, event, default or publication after which the designated period of time begins to run and including the last day; unless the last day is a Saturday, Sunday or legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday or legal holiday. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation. A half holiday shall be considered as other days and not as a holiday.

State law reference(s)—Computation of time, G.S. 1A-1, rule 6(a).

Conjunctions~~.~~: Conjunctions, such as "and" and "or," shall each be deemed to include the other as the context shall admit.

Conservation easement: ~~means a~~ An easement, held by the State of North Carolina under the administration of the North Carolina Clean Water Management Trust Fund, which binds the City of Brevard to certain terms and conditions governing uses of and activities ~~upon the Bracken Preserve~~.

Control authority~~.~~: ~~Refers~~ When referring to sewer usage, ~~to~~ the POTW organization, if the POTW organization's pretreatment program approval has not been withdrawn, the City of Brevard.

Council or~~,~~ city council~~.~~: The terms "council" and "city council" mean the Mayor and Council of the City of Brevard.

County~~.~~: The word "county" means the County of Transylvania in the State of North Carolina.

Customer~~.~~: ~~means~~ In reference to social districts, a person who purchases an alcoholic beverage from an ABC permittee that is in a social district.

Decibel: ~~is a~~ A unit of measuring the amplitude of sound equal to 20 times the logarithm to the base ten of the ratio between the pressure of sound measured to the reference pressure, which is 20 micronewtons per square meter, as approved by ANSI.

Dense smoke: Smoke shall be considered dense when it is of a density equal to or greater than no. 2 on the Ringelmann Smoke Chart approved and adopted as provided in this division.

Deteriorated: ~~shall mean~~ When referring to a dwelling, it shall mean that a dwelling is unfit for human habitation and can be repaired, altered or improved to comply with all of the minimum standards established by ~~this article~~ Chapter 18, Article V at a cost not in excess of 50 percent of its value, as determined by finding of the inspections.

Dilapidated: ~~shall~~ When referring to a dwelling, it shall mean that a dwelling is unfit for human habitation and cannot be repaired, altered or improved to comply with all of the minimum standards established by ~~this article~~Chapter 18, Article V at a cost not in excess of 50 percent of its value, as determined by finding of the inspector.

Display: ~~means to~~ To put or spread before the view of those passing within sight distance of the matter displayed, in an ostentatious manner designed to attract attention to or show off the matter displayed. Magazines that meet the definition of sexually explicit materials shall be considered displayed if they are placed in a location (e.g., a magazine rack or shelf) accessible to minors and arranged in a manner calculated to encourage minors to view or read such materials. Sexually explicit materials located within any business or commercial establishment shall not be considered displayed if they are placed in a location that is only accessible to adults or if they are located such that they are only available to customers upon request made to a person in charge of or employed by such business or commercial establishment.

Disseminate: ~~means~~ When referring to obscene materials, ~~to~~ the transfer possession of, with or without consideration.

Dog: ~~means d~~ Dogs, both male and female, more than six months old.

Dog park: ~~.~~ The Brevard Dog Park is the designated area located within the City's Sports Complex where dog owners may allow their dog to run off-leash inside the designated fenced area.

Driver's license: ~~means~~ When referring to taxicab drivers, the permission granted by the city to a person to drive a taxicab upon the streets of the city.

Driveway*:* A private road, private easement, or private right-of-way, giving access from a public street or road, private road, or private right-of-way, leading to a building. A driveway does not serve more than two buildings that have or require separate power or water meters to be installed for electrical service.

Duly authorized person, administrator, or official: ~~means t~~ The code enforcement officer, officers of the Brevard Police Department, or any other individual or person duly authorized by the city manager or, in the case of the Chapter 14 and Chapter 77, ~~-~~local health director to act on behalf of the city for purposes of this chapter.

Dwelling: ~~shall mean a~~ A building that contains one or two dwelling units used, intended or designed to be used, rented, leased, let or hired out to be occupied for living purposes.

Dwelling unit: ~~shall mean a~~ A single unit providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation.

~~**Multiple D**~~**dwelling, multiple:** ~~shall mean a~~Any dwelling containing more than two dwelling units.

E-bike ~~-s~~ Cclass I and III:~~-~~ Electric assisted bicycles, with no throttle and no self-propulsion, which are not categorized as a motor vehicle as defined in this chapter.

E-bike ~~-s~~ Cclass II:~~-~~ Throttle assisted bicycles, characterized by self-propulsion, which are considered motor vehicles as defined in this chapter.

Electric personal assistive mobility device*:* A self~~-~~-balancing non tandem two wheeled device, designed to transport one person, with a propulsion system that limits the maximum speed of the device to 15 miles per hour or less.

Element~~.~~: A combination of products designed to be combined with other elements to form all or part of a building component. The term does not include a system.

Emergency communications center: ~~means~~ T~~t~~he city's communication center receiving telephonic requests or signal requests for police, fire, ambulance, rescue or other emergency service within the city.

Enforcement response plan or ERP.~~-~~: An administrative procedure, promulgated by the city manager or designee thereof. The ERP is a guidance document that is intended to provide for fair and equitable treatment of all users for anticipated enforcement situations. Generally, enforcement actions will be taken in accordance with the ERP; however, additional legal actions are available (SUO subsection 70-147.D). Therefore, a combination of enforcement actions may be taken against a user in noncompliance.

Environmental Protection Agency or EPA:~~-~~ The U.S. Environmental Protection Agency, or where appropriate the term may also be used as a designation for the administrator or other duly authorized official of said agency.

Exposed to rabies~~.~~: An animal shall be deemed to have been exposed to rabies if it has been bitten by, or been in the presence of, any animal known or suspected to have been infected with rabies.

Extermination: ~~shall mean t~~ The control and elimination of insects, rodents or other pests by eliminating their harborage places; by removing or making inaccessible materials that may serve as their food; by poisoning, spraying, fumigating, trapping or by any other recognized and legal pest elimination methods approved by the inspector.

False alarm: ~~means~~ A~~a~~n alarm signal or recorded message transmitted to the emergency communications center indicating a fire or an actual or attempted unauthorized entry into a building, or indicating the commission or attempted commission of a crime in or about a building, when in fact no evidence exists upon inspection of the building upon response to such alarm that a fire occurred or that an unauthorized entry was committed or attempted or that a crime was committed or attempted in or about the building.

Following: The word "following" means next after.

Forest management plan: ~~is~~ A~~a~~ general management plan prepared by the City of Brevard and a forest management plan prepared by a forester licensed to practice forestry within the State of North Carolina.

Frontage unit: A frontage unit is a standard interval in feet used to assign consecutive property numbers on a street or road. The standard frontage unit adopted for use throughout Transylvania County is 5.28 feet.

Game room: ~~means a~~ Any place of business that operates mechanical and electronic games or other devices for which charge is made, either directly or indirectly. Examples of such games, by way of illustration and not limitation, are pinball machines, electronic video games, automatic amusement devices and the like.

Garbage: ~~means p~~ Putrescible animal and vegetable wastes resulting from the handling, preparation, cooking and consumption of food and from the handling, storage and sale of produce.

Gender~~.~~ : Words importing one gender shall include the other genders.

Governing board ~~shall~~: ~~have the ordinary meaning~~ The appropriate board and shall also be read to include city council.

Grab sample: ~~-~~ A sample which is taken from a waste stream on a one-time basis without regard to the flow in the waste stream and over a period of time not to exceed 15 minutes.

Grooming shop: ~~means a~~Any establishment, whether operated separately or in connection with another business enterprise, which provides hair and nail clipping, bathing and other cosmetic services for animals.

Group: ~~means a~~ A number of individuals related by a common factor, having structured organization, defined leadership, and activities directed by a charter or written bylaws.

Grossly reckless: ~~-~~ A reckless activity that is inherently dangerous and results in injury or presents a high risk of grave injury to self or others with disregard for self-preservation or the preservation of the safety of others. Operation of an e-bike while under the influence of alcohol or drugs is hereby declared to be grossly reckless. Any operation of an e-bike with the intent of doing harm to any person or property is hereby declared to be grossly reckless.

Habitable room: ~~shall mean a~~ A room or enclosed floor space used or intended to be used for living, sleeping, cooking or eating purposes, excluding bathrooms, water closet compartments, laundries, heater rooms, foyers, or communicating corridors, closets and storage spaces.

Habitually or ~~,~~repeatedly and on a regular basis: ~~-~~ W~~w~~hen referring to dog barking or other sounds, shall mean barking or other sounds which occur on at least five occasions during a 60-day period or on at least three occasions during a 30-day period.

Harmful to minors: ~~means that~~ The quality of any description or representation, in whatever form, of nudity, sexual conduct, sexual excitement or sadomasochistic abuse, when it:

D. Predominantly appeals.to the prurient, shameful or morbid interest of minors;

E. Is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material for minors; and

F. Taken as a whole, lacks serious literacy, artistic, political or scientific value for minors.

Hazardous recreational activity ~~means~~: S~~s~~kateboarding, inline skating, or freestyle bicycling, and, or, any other type(s) not listed.

Head of household: ~~means~~ T~~t~~he person who maintains the household, or, if no one person maintains the household, the head of the household shall be the eldest person residing in the household.

Hiking trail: ~~means a~~ Any road or trail maintained for pedestrians.

Holding tank waste: ~~.~~ Any waste from holding tanks, including, but not limited to, such holding tanks as vessels, chemical toilets, campers, trailers, septic tanks, and vacuum-pump tank trucks.

House number: The number assigned by the property address coordinator to any building for the purpose of identification of the location.

Humane Society: ~~means t~~ The Transylvania County Humane Society and its representatives.

Hunting: ~~means t~~ The lawful hunting of game animals as defined by the N.C. Wildlife Resources Commission.

Impoundment: ~~means a~~ Any animal in custody of a person or animal shelter duly authorized by the local health director.

~~**Vacant i**~~**Industrial warehouse, vacant:** ~~means a~~Any building or structure designed for the storage of goods or equipment in connection with manufacturing processes, which has not been used for that purpose for at least one year and has not been converted to another use.

Indirect discharge ~~**or discharge**~~**:** ~~.~~ The discharge or the introduction from any nondomestic source regulated under Section 307(b), (c), or (d) of the Federal Water Pollution Control Act, (33 U.S.C. 1317), into the POTW including holding tank waste discharged into the sewage system.

Industrial user ~~**or user**~~**:** ~~.~~ A source of indirect discharge.

~~**Significant i**~~**industrial user, significant** ~~**or**~~ **(SIU)**. An industrial user that discharges wastewater into a POTW and that:

A. Discharges an average of 25,000 gallons per day or more of process wastewater to the POTW, excluding sanitary, noncontact cooling and boiler blowdown wastewaters; or

B. Contributes more than five percent of any design or treatment capacity (i.e., allowable pollutant load) of the wastewater treatment plant receiving the indirect discharge; or

C. Is subject to categorical pretreatment standards under 40 CFR Part 403.6 and 40 CFR Chapter I, Subchapter N, Parts 405-471; or

D. Is designated as such by the control authority on the basis that the industrial user has a reasonable potential for adversely affecting the POTW''s operation, or for violating any pretreatment standard or requirement, or for contributing to violations of the POTW''s effluent limitations and conditions in its NPDES or non-discharge permit, or for limiting the POTW''s sludge disposal options.

Infestation shall mean the presence, within or around a dwelling, or any insects, rodents or other pests in such number as to constitute a menace to the health, safety or welfare of the occupants or the public.

Inherent risk means those dangers or conditions that are characteristic of, intrinsic to, or an integral part of skateboarding.

Inspector shall mean a building inspector of the city or any agent of the inspector who is authorized by the inspector.

Interference: ~~.~~ The inhibition or disruption of the POTW collection system, treatment processes, operations, or its sludge process, use, or disposal, which causes or contributes to a violation of any requirement of the control authority''s NPDES, collection system, or non-discharge permit or prevents sewage sludge use or disposal in compliance with specified applicable state and federal statutes, regulations, or permits. The term includes prevention of sewage sludge use or disposal by the POTW in accordance with section 405 of the Federal Water Pollution Control Act, (33 U.S.C. 1345) or any criteria, guidelines, or regulations developed pursuant to the Solid

Waste Disposal Act (SWDA)(42 U.S.C. § 6901 et seq.), the Clean Air Act, the Toxic Substances Control Act, the Marine Protection Research and Sanctuary Act (MPRSA) or more stringent state criteria (including those contained in any state sludge management plan prepared pursuant to Title IV of SWDA) applicable to the method of disposal or use employed by the POTW.

Joint authority~~.~~: All words giving a joint authority to three or more persons or officers shall be construed as giving such authority to a majority of such persons or officers.

Keeper: ~~means a~~ A person having custody of an animal, or who keeps or harbors an animal, or who knowingly permits an animal to remain on or about any premises occupied or controlled by such person.

Kennel: ~~means a~~ Any premises wherein a person boards, lets for hire, trains for a fee, breeds, buys or sells dogs or cats. This shall not include the ownership of dogs which are part of the household or which are maintained adjoining a private residence for hunting, tracking practice, exhibition, or the guarding or protection of the owner~~'~~'s property when no more than five dogs per year are sold by such owner.

Knowing: means When referring to obscene materials, having a general knowledge of, or reason to know, or a belief or ground for belief that warrants further inspection or inquiry of the character and content of any of the materials described in Section 42-42~~.B of this section~~ that are reasonably susceptible of examination by the person charged with such knowledge.

Knowingly: ~~means~~ When referring to obscene materials, being aware of the character and the content of the material.

~~"~~Known unlawful drug user, possessor or seller:~~" defined. For purposes of this section, the term "known unlawful drug user, possessor or seller" means a~~ A person who has, within the knowledge of the arresting officer or complaining witness, been convicted in any court within this state of any violation involving the use, possession or sale of any of the controlled substances or drug paraphernalia referred to in the North Carolina Controlled Substances Act, G.S. 90-89 et seq., or has been convicted of any violation of any substantially similar laws of any political subdivision of this state or of any other state, or of federal law.

Livestock~~.~~:

A. Domestic animals, such as cows, bulls, calves, hogs, pigs, horses, mules, ponies, goats or sheep.

B. Any animal raised or kept for profit, excepting:

1. Dogs and cats kept for show competition;
2. Single litters of rabbits, puppies or kittens, per household; and
3. Tropical aquarium fishes.

Local board of health or ~~and~~ board of health: ~~mean t~~ The county board of health.

Local government: ~~shall have the ordinary meaning and shall also be read to include~~ T~~t~~he City of Brevard.

Local health department or ~~and~~ health department: ~~mean t~~ The county health department.

Local health director or ~~and~~ health director: ~~mean t~~ The health director of the county health department, or his designee.

Mailing address: The address assigned by the property address coordinator and used by the United States Postal Service for the purpose of delivery of the United States mail. The property address and mailing address will be the same for all buildings unless the property owners utilize a post office box for delivery of their mail.

Manifest: ~~means a~~ A daily record prepared by a taxicab driver of all trips made by the driver, showing time and place of origin, destination and number of passengers.

~~Vacant m~~Manufacturing facility, vacant: ~~means a~~ Any building or structure previously used for the lawful production or manufacturing of goods, which has not been used for that purpose for at least one year and has not been converted to another use.

Material: ~~means a~~ Any book, magazine, newspaper or other printed or written material or any picture, drawing, photograph, motion picture or other pictorial representation or any statue or other figure, or any recording, transcription or mechanical, chemical or electrical reproduction or any other articles, equipment or machines not otherwise subject to and governed by Section 42-41.

May: When "may" is used, the action is permissive.

Medical waste: ~~.~~ Isolation wastes, infectious agents, human blood and blood products, pathological wastes, sharps, body parts, contaminated bedding, surgical wastes, potentially contaminated laboratory wastes, and dialysis wastes.

Minor: ~~means a~~ Any person under the age of 18.

Month~~.~~ : ~~The word "month" means a~~A calendar month.

Motor vehicle ~~and~~ or vehicle: ~~mean a~~All machines designed or intended to travel over land by self-propulsion or while attached to any self-propelled vehicle, such as a camping trailer, fifth-wheel travel trailer, motor home, travel trailer, and truck camper. ~~.~~ A self-propelled vehicle shall include, but is not limited to passenger automobiles, mopeds, off-road vehicles (ORV), golf carts, motorcycles, all-terrain vehicles, Segways, and go-carts. This term does not include bicycles or electric personal assistive mobility devices.

This term shall not apply to a device which is designed for and intended to be used as a means of transportation for a person with a mobility impairment, or who uses the device for mobility enhancement, is suitable for use both inside and outside a building, including sidewalks, and is limited by design to a maximum speed of 15 miles per hour when the device is being operated by a person with a mobility impairment.

Motor vehicle, a~~Abandoned vehicle~~.: As authorized and defined in G.S. 160A-303, an abandoned motor vehicle is one that:

A. Is left upon a public street or highway in violation of a law or ordinance prohibiting parking;

B. Is left on a public street or highway for longer than seven days;

C. Is left on property owned or operated by the city for longer than 24 hours; or

D. Is left on private property, without the consent of the owner, occupant or lessee thereof, for longer than two hours.

Motor vehicle, ~~J~~junked ~~motor vehicle~~.: As authorized and defined in G.S. 160A-303.2, the term "~~"~~junked motor vehicle~~"~~" means a vehicle that does not display a current license plate lawfully upon that vehicle and that:

A. Is partially dismantled or wrecked;

B. Cannot be self-propelled or moved in the manner in which it originally was intended to move; or

C. Is more than five years old and appears to be worth less than $100.00.

Motor vehicle, ~~N~~nuisance: ~~vehicle~~ ~~means a~~ A vehicle on public or private property that is determined and declared to be a health or safety hazard, a public nuisance, and unlawful, including a vehicle found to be:

A. A breeding ground or harbor for mosquitoes, other insects, rats or other pests;

B. A point of heavy growth of weeds or other noxious vegetation over eight inches in height;

C. A point of collection of pools or ponds of water;

D. A point of concentration of quantities of gasoline, oil or other flammable or explosive materials as evidenced by odor;

E. One which has areas of confinement which cannot be operated from the inside, such as trunks, hoods, etc.;

F. So situated or located that there is a danger of it falling or turning over;

G. One which is a point of collection of garbage, food waste, animal waste, or any other rotten or putrescible matter of any kind;

H. One which has sharp parts thereof which are jagged or contain sharp edges of metal or glass;

I. It is a vehicle no longer commonly being used for personal or commercial transportation or conveyance of goods, but is stationary, either temporarily or permanently, and being utilized as an advertising platform, storage facility, dwelling, animal shelter or other use not of its original primary design; or

J. Any other vehicle specifically declared a health and safety hazard and a public nuisance by the city council.

Motorized travel: ~~.~~ All modes of travel or transport upon a motorized vehicle as defined in this chapter over land or water by self-propulsion.

Multi-tenant establishment: ~~means a~~ A building or structure, or multiple buildings and structures on the same property, or within the same planned development project, that may be subject to a common declaration of restrictive covenants administered by a common property owners'' association, and under common ownership, control, or property owners'' association governance, that contains or contain multiple businesses that sell food, goods, services, or a combination of food, goods, and services, and that include or are connected by common areas. The term multi-tenant establishment includes a mixed-use development.

Multi-use trail: ~~means a~~ Any trail maintained for use by any of the following: bicycle or pedestrian.

National categorical pretreatment standard or categorical standard: ~~.~~ Any regulation containing pollutant discharge limits promulgated by EPA in accordance with Sections 307(b) and (c) of the Federal Water Pollution Control Act (33 U.S.C. § 1317) which applies to a specific category of industrial users, and which appears in 40 CFR Chapter 1, Subchapter N, Parts 405-471.

National prohibitive discharge standard or prohibitive discharge standard: ~~.~~ Absolute prohibitions against the discharge of certain substances; these prohibitions appear in subsection 70-141.A of this ordinance and are developed under the authority of Section 307(b) of the Federal Water Pollution Control Act and 40 CFR, section 403.5.

National Pollution Discharge Elimination System, or NPDES, permit: ~~.~~ A permit issued pursuant to Section 402 of the Federal Water Pollution Control Act (33 U.S.C. § 1342), or pursuant to G.S. 143-215.1 by the state under delegation from EPA.

Negligence: ~~.~~ Any breach of the duty of due care, resulting in or reasonably likely to result in proximate harm to persons or property. Violating a posted speed limit or posted rule of conduct is hereby declared to be negligence in every instance, but may also be grossly reckless when circumstances so warrant.

New source.

A. Any building, structure, facility, or installation from which there may be a discharge of pollutants, the construction of which commenced after the publication of proposed categorical pretreatment standards under Section 307~~(c)~~I of the Federal Water Pollution Act which will be applicable to such source if such standards are thereafter promulgated in accordance with Section 307~~(c)~~I, provided that:

1. The building, structure, facility, or installation is constructed at a site at which no other source is located; or
2. The building, structure, facility, or installation totally replaces the process or production equipment that causes the discharge of pollutants at an existing source; or
3. The production or wastewater generating processes of the building, structure, facility, or installation are substantially independent of an existing source at the same site. In determining whether these are substantially independent, factors such as the extent to which the new facility is integrated with the existing plant, and the extent to which the new facility is engaged in the same general type of activity as the existing source, should be considered.

B. Construction on a site at which an existing source is located results in a modification rather than a new source if the construction does not create a new building, structure, facility, or installation meeting the criteria of sections ~~s.1.ii~~A.2. or ~~s.1.iii~~A.3. above but otherwise alters, replaces, or adds to existing process or production equipment.

C. For purposes of this definition, construction of a new source has commenced if the owner or operator has:

1. Begun, or caused to begin, as part of a continuous on-site construction program:
   a. Any placement, assembly, or installation of facilities or equipment; or
   b. Significant site preparation work including clearing, excavation, or removal of existing buildings, structures or facilities which is necessary for the placement, assembly, or installation of new source facilities or equipment; or
2. Entered into a binding contractual obligation for the purchase of facilities or equipment which are intended to be used in its operation within a reasonable time. Options to purchase or contracts which can be terminated or modified without substantial loss, and contracts for feasibility, engineering, and design studies do not constitute a contractual obligation under this definition.

Noncontact cooling water: ~~.~~ Water used for cooling which does not come into direct contact with any raw material, intermediate product, waste product, or finished product.

Non-discharge permit ~~or permit~~: ~~means a~~ A permit issued by the state pursuant to G.S. 143-215.1(d) for a waste which is not discharged directly to surface waters of the state or for a wastewater treatment works which does not discharge directly to surface waters of the state.

Non-Permittee Business: ~~means a~~ In reference to social districts, a business located in a social district and does not hold any North Carolina Alcoholic Beverage Control Commission (ABC) permit.

Nonresidential: ~~means a~~ Any building or structure or portion of a building or structure occupied or intended to be occupied, in whole or in part, for a use other than a dwelling, home, residing place, living space or sleeping space for one or more human beings, either permanently or transiently.

Nudity: ~~means t~~ The showing of the human male or female genitals, pubic area or buttocks with less than a full opaque covering, or the showing of the female breast with less than a full opaque covering of any portion thereof below the top of the nipple, or the depiction of covered male genitals in a discernibly turgid state.

Number ~~.~~ : Words used in the singular include the plural and the plural includes the singular number.

Nuisance ~~.~~ : An animal or group of animals shall be considered a nuisance if it:

A. Damages, soils or defiles private or public property;

B. Interferes with, molests or attacks persons or other animals;

C. Is repeatedly at large;

D. Causes unsanitary and offensive conditions, including interrupting the tranquility of the community;

E. Chases, snaps at, harasses or impedes pedestrians, bicyclists or vehicles; or

F. Is diseased.

Oath ~~.~~ : The word "oath" includes an affirmation in all cases in which, by law, an affirmation may be substituted for an oath, and in such cases the words "swear" and "sworn" shall be equivalent to the words "affirm" and "affirmed."

Obscene: ~~means t~~ That, to the average person applying contemporary community standards:

A. The predominant appeal of the matter, taken as a whole, is to prurient interest, i.e., a shameful or morbid interest in sexual conduct, nudity or excretion;

B. The matter depicts or describes, in a patently offensive manner, sexual conduct regulated by the General Statutes of the state; and

C. The work, taken as a whole, lacks serious literary, artistic, political or scientific value.

Obstruction (permanent or semipermanent)*:* An object that is kept out on public streets, sidewalks, and alleyways after business hours. Such objects include but are not limited to displays, fixtures, inventory racks, display cases, planters, vending machines, and seating. Also referred to as a semipermanent or permanent object.

Occupant: ~~shall mean a~~Any person who has charge, care or control of a building, or part thereof, in which dwelling units or rooming units are let.

Official road name*:* The road name list and the road name map on file with the Transylvania County 911 Emergency Operations shall be the official road names and map for Transylvania County roads, including those located within the jurisdiction of the City of Brevard, unless changed by action of the board of commissioners or city council within their respective jurisdictions.

Officials or~~,~~ officers ~~.~~ : Reference to a particular official or officer of the city includes duly authorized deputies, assistants and representatives of such official or officer. Whenever any officer, employee, department, board, commission or other agency is referred to by title only, such reference shall be construed as if followed by the words "of the City of Brevard, North Carolina."

Open Container: ~~means a~~ A container that has a broken seal or a container other than the manufactu~~r~~rer's unopened original container.

Operator: ~~means a~~ Any person who has charge, care, or control of a nonresidential building or structure, or part thereof.

Owner ~~.~~ :

A. The word "owner," applied to a building or land, includes any part owner, joint owner, tenant in common, joint tenant or tenant by the entirety, of the whole or a part of such building or land.

~~A.~~**B.** The word "owner," applied to an animal, includes any person or legal entity having a possessory property right in an animal. The head of a household shall be deemed to be the owner in respect to any dogs owned, kept or harbored on the premises by any person residing in the household. While using the dog park, the owner is the person with immediate custody of the dog.

Park manager: ~~means a~~ An employee or employees of the City of Brevard, designated by the city manager, who coordinates management of a specific park or recreation facility, such as the Bracken Preserve or the Skate Park.

Parties in interest: ~~shall mean a~~ All individuals, associations, and corporations who have interests of record in a dwelling and any who are in possession thereof.

Pass-through: ~~.~~ A discharge which exits the POTW into waters of the state in quantities or concentrations which, alone or with discharges from other sources, causes a violation, including an increase in the magnitude or duration of a violation, of the control authority's (and/or P~~O~~OTW's, if different from the control authority) NPDES, collection system, or non-discharge permit or a downstream water quality standard even if not included in the permit.

Patrol dog: ~~means a~~ A dog that is trained or conditioned to attack or otherwise respond aggressively, but only upon command from a handler either off or on lead.

Performance: ~~means a~~ Any preview, play, show, skit, film, dance or other exhibition performed before an audience.

Permit: ~~means a~~ Any written license issued by or under the authority of the City of Brevard permitting the performance of a specified act or acts.

Permittee: ~~means a~~ Any person, corporation, company or association in possession of a valid permit.

Person: ~~. The word "person" includes a corporation, firm, partnership, association, organization and any other group acting as a unit, as well as an individual.~~ Any individual, group acting as a unit, such as a partnership, co-partnership, firm, company, corporation, association, joint stock company, trust, estate, governmental entity or any other legal entity, or their legal representatives, agents or assigns.

Personal property~~.~~: The term "personal property" includes every species of property except real property.

Pet: ~~means~~ A~~a~~ny animal kept for pleasure rather than utility.

Pet shop: ~~means a~~ Any commercial establishment, whether operated separately or in connection with another business enterprise, except for a licensed kennel, that buys, sells or boards any species of animal.

pH: ~~means t~~ A measure of the acidity or alkalinity of a substance, expressed as standard units, and calculated as the logarithm of the reciprocal of the weight of hydrogen ions in grams per liter of solution.

Plumbing: ~~shall mean and include all of the following s~~ Supplied facilities and equipment, including: Gas pipes, gas-burning equipment, water pipes, mechanical garbage disposal units (mechanical sink grinder), waste pipes, water closets, sinks, installed dishwashers, lavatories, bathtubs, shower baths, installed clothes washing machines, catch basin, drains, vents and any other similar supplied fixtures, together with all connections to water, sewer or gas lines.

Pollutant: ~~.~~ A~~n~~ny "was~~s~~te" as defined in G.S. 143-213(18) and dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, medical wastes, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal and agricultural waste and certain characteristics of wastewater (e.g., pH, temperature, TSS, turbidity, color, metals, BOD, COD, toxicity, and odor).

POTW director~~ or director~~: ~~.~~ The city administrator designated with the responsibility for the pretreatment program and enforcement of this sewer use ordinance.

POTW treatment plant: ~~.~~ That portion of the POTW designed to provide treatment to wastewater.

Preceding~~, following~~~~.~~: The word~~s~~ "preceding" ~~and "following"~~ means next before ~~and next after, respectively~~.

Premises: ~~means~~ In reference to social districts, a fixed permanent establishment, including all areas inside or outside the licensed establishment, where the ABC permittee has control through a lease, deed, or other legal processes.

Pretreatment or treatment.: The reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater prior to or in lieu of discharging or otherwise introducing such pollution into a POTW. The reduction or alteration can be obtained by physical, chemical or biological processes, or process changes or other means, except by diluting the concentration of the pollutants or as otherwise prohibited by 40 CFR Part 403.6(d).

Pretreatment program: The program for the control of pollutants introduced into the POTW from non-domestic sources which was developed by the city in compliance with 40 CFR 403.8 and approved by the approval authority as authorized by G.S. 143-215.3(a)(14) in accordance with 40 CFR 403.11.

Pretreatment requirements: Any substantive or procedural requirement related to pretreatment, other than a pretreatment standard.

Pretreatment standard: Any prohibited discharge standard, categorical standard, or local limit which applies to an industrial user.

Private road: Any road servicing more than two buildings or structures containing separate power or water meters, that is not otherwise defined as a street or driveway by this article, and which is not maintained for public use by the United States Government, the North Carolina Department of Transportation, or the City of Brevard through the use of public funds.

Promote: ~~means t~~ To cause, permit, procure, counsel or assist.

Property.: The word "property" includes real and personal property.

Property address coordinator: The official of Transylvania County, and any authorized agent or delegate thereof, charged with the administration of this article.

Public authority: ~~shall mean a~~ Any housing authority or any officer who is in charge of any department or branch of the government of the city, county, or state relating to health, fire, building regulations, or other activities concerning dwellings in the local government.

Public nudity: ~~means a~~ A person's intentional ~~failure to cover with a fully opaque covering the person's genitals, pubic area, anal area, or female breasts below a point from the top of the areola~~ nudity, as defined herein, while in a public place.

Public officer: ~~shall mean t~~ The officer or officers who are authorized by ordinances adopted hereunder to exercise the powers prescribed by the ordinances and by G.S. 160D, art. 12.

Public park: ~~means a~~ Any publicly-owned or maintained land which is designated by the City of Brevard as a park or recreation facility.

~~"~~**Public place**:~~" *defined.* For purposes of this section, the term "public place" means a~~ Any street, sidewalk, bridge, alley or alleyway, plaza, park, driveway, parking lot or transportation facility, or the doorways and entranceways to any building which fronts on any of those places, or a motor vehicle in or on any of those places, or any property owned by the city or by any public agency or public authority and located within the city.

Public Street: ~~means a~~ Any highway, road, street, avenue, boulevard, or another way within and under the control of the City or State and open to public use, including the sidewalks of any such street.

Publicly owned treatment works (POTW) or municipal wastewater system.: A treatment works as defined by Section 212 of the Federal Water Pollution Control Act, (33 U.S.C. § 1292) which is owned in this instance by the city. This definition includes any devices or systems used in the collection, storage, treatment, recycling, and reclamation of municipal sewage or industrial wastes of a liquid nature. It also includes sewers, pipes, and other

conveyances only if they convey wastewater to the POTW treatment plant. For the purposes of this ordinancee, "P~~O~~OTW" shall also include any sewers that convey wastewaters to the POTW from persons outside the city who are, by contract or agreement with the city, or in any other way, users of the POTW of the city.

Rate card: ~~means a~~ A card issued by the city for display in each taxicab, which card contains the rates of fares then enforced.

Real property~~.~~: The term "real property" includes lands, tenements and hereditaments.

Refuse: ~~means a~~ All putrescible and nonputrescible solid wastes (except body wastes), including garbage, rubbish, ashes, street cleanings, dead animals, and solid market and industrial wastes.

Registered sex offender: ~~[means] a~~ An individual who is registered by any state or federal agency as a sex offender and whose name is published on any state or federal registered sex offender listing, including, but not limited to the sex offender registry established in Article 27A of G.S. ch. 14.

Restaurant*:* A retail business selling ready-to-eat food and/or beverages for on or off-premise consumption. Customers may be served from an ordering counter (i.e. cafeteria or limited service restaurant), at their tables (full-service restaurant), and at exclusively pedestrian-oriented facilities that serve from a walk-up ordering counter (snack and/or nonalcoholic bars).

Restraint~~.~~: Any animal shall be considered under restraint if it is within the real property limits of its owner, or secured by a leash or lead, or confined.

Riding school or ~~or~~ stable: ~~means a~~ Any place which has available for hire, boarding and/or riding instruction any horse, pony, donkey or burro.

Road*:* A public or private one-way or two-way street or road for ingress and/or egress. Such roads may be of various types including frontage roads, rear access roads, roads with culs-de-sac and dead-end roads. This definition does not include driveways.

Road sign*:* A metal blade and necessary hardware used to convey a street name, public or private road name, or driveway name, and, where applicable, the state road number.

Rock climbing: ~~means t~~ Traversing a rock face that is steep enough to require the use of hands and feet to get up or down.

Rooming house: ~~shall mean a~~ Any short or long-term accommodations that serve a specific group or membership such as a dormitory, fraternity or sorority house, youth or adult hostel, or similar accommodations, or single room occupancy units that provide a number of related services including, but not limited to housekeeping, meals, and laundry services; excludes hotels, motels, inns, bed and breakfasts, and short-term rentals.

Rubbish: ~~means n~~ Nonputrescible solid wastes (including ashes) consisting of both combustible and noncombustible wastes, such as paper, cardboard, tin cans, yard clippings, wood, glass, bedding, rubble, crockery and similar materials.

Sadomasochistic abuse: ~~means f~~ Flagellation or torture by or upon a person clad in undergarments, a mask or bizarre costume, or the condition of being fettered, bound or otherwise physically restrained on the part of one so clothed.

Security dog: ~~means a~~ Any dog used, kept or maintained in the county for the purpose of protecting any person or property. Any such dog shall be further classified as a patrol dog, sentry dog or watch dog.

Sentry dog: ~~means a~~ A dog that is trained or conditioned to attack or otherwise respond aggressively without command.

Septage: ~~means t~~ The solid and liquid contents of privies, septic tanks or cesspools, industrial wastes, chemical compounds and sludges which are hauled by truck or other mobile conveyance.

Service permit: ~~means a~~ A permit, issued by the city manager or designee thereof, authorizing a connection to the city sewer system and setting forth any necessary conditions associated with such connection, including, but not limited to, pretreatment requirements and the assessment of any surcharges.

Service to patrons: ~~means t~~ The provision of services to paying guests in establishments providing food and beverages, including but not limited to hostessing, hat checking, cooking, bartending, serving, table setting and clearing, waiter and waitressing, and entertaining.

Severe property damage. Substantial physical damage to property, damage to the user's treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

Sexual conduct: ~~means a~~ Acts of masturbation~~, homosexuality~~, sexual intercourse or physical contact with a person's clothed or unclothed genitals, pubic area, buttocks, or, if such person be a female, breast.

Sexually explicit materials: ~~means~~ M~~m~~aterials consisting of:

A. Any picture, photograph, drawing, sculpture, motion picture film, or similar visual representation or image of a person or portion of the human body which depicts nudity, sexual conduct or sadomasochistic abuse and which is harmful to minors; or

B. Any book, pamphlet, magazine, printed matter, however reproduced, or sound recording which contains any matter enumerated in the definitions of nudity, sadomasochistic abuse, sexual conduct and subsection (A) of this definition, or any explicit and detailed verbal description or narrative account of sexual excitement, sexual conduct or sadomasochistic abuse, which, taken as a whole, is harmful to minors.

Sewer: ~~means a~~ A pipe or conduit for carrying sewage.

Sewer, B~~b~~uilding ~~sewer~~: ~~.~~ A sewer conveying wastewater from the premises of a user to the POTW.

Sewer, P~~p~~ublic ~~sewer~~: ~~means a~~ A sewer in which all owners of abutting properties have equal rights, and which is controlled by public authority.

Sewer, S~~s~~anitary ~~sewer~~: ~~means a~~ A sewer which carries wastewater or sewage and to which stormwater, surface water and groundwater are not intentionally admitted.

Sewer service line: ~~means t~~ The extension from a building drain to the public sewer or other place of disposal; also, a lateral connection.

Sewer system: ~~means a~~ All facilities for collecting, pumping, treating and disposing of wastewater.

Shall~~, may~~. : ~~The term~~When "shall" is used, the action is ~~means~~ mandatory~~, and the term "may" means permissive.~~

Sidewalk~~.~~ : ~~The word "sidewalk" means a~~ Any portion of a street between the curbline and the adjacent property line intended for the use of pedestrians.

Signature or~~,~~ subscription~~.~~ : The terms "signature" and "subscription" include a mark when the person cannot write.

Significant noncompliance or SNC. The status of noncompliance of a significant industrial user when one or more of the following criteria are met. ~~Additionally, any industrial user which meets the criteria in subsections 70-140.B.1.jj.iii., 70-140.B.1.jj.iv., or 70-140.B.1.jj.viii., below, shall also be SNC.~~

A. Chronic violations of wastewater discharge limits, as defined herein.

B. Technical review criteria violations, as defined herein.

C. Any other violation of a pretreatment standard or requirement as defined by 40 CFR Part 403.3(l) (daily maximum, long-term average, instantaneous limit, or narrative standard) that the control authority and/or POTW determines has caused, alone or in combination with other discharges, interference or pass through (including endangering the health of POTW personnel or the general public);

D. Any discharge of a pollutant or wastewater that has caused imminent endangerment to human health, welfare or to the environment or has resulted in either the control authority's POTW's, if different from the control authority, exercise of its emergency authority under 40 CFR Part 403.8(f)(1)(vi)(B) and subsection 70-147.A.4 of this SUO to halt or prevent such a discharge;

E. Violations of compliance schedule milestones, contained in a pretreatment permit or enforcement order, for starting construction, completing construction, and attaining final compliance by 90 days or more after the schedule date.

F. Failure to provide reports for compliance schedule, self-monitoring data, baseline monitoring reports, 90-day compliance reports, and periodic compliance reports within 30 days from the due date.

G. Failure to accurately report noncompliance.

H. Any other violation or group of violations that the control authority and/or POTW determines will adversely affect the operation or implementation of the local pretreatment program.

Skate park: ~~means a~~ Any city-owned facility specifically designed, constructed, and designated by on-site signage as an area in which a person may engage in skateboarding.

Sleeping unit: ~~shall mean a~~ A room or space in which people sleep, which can also include permanent provisions for living, eating, and either sanitation or kitchen facilities but not both. Such rooms and spaces that are also part of a dwelling unit are not sleeping units.

Slug load or discharge~~.~~: Any discharge at a flow rate or concentration which has a reasonable potential to cause interference or pass-through, or in any other way violates the P~~O~~'TW's regulations, local limits, or industrial user permit conditions. This can include, but is not limited to, spills and other accidental discharges; discharges of a non-routine, episodic nature; a non-customary batch discharge; or any other discharges that can cause a violation of the prohibited discharge standards in subsection 70-141.A of this ordinance.

Smoking: ~~means t~~ The inhaling, exhaling, burning or carrying of a lighted pipe, cigar, cigarette or other combustible tobacco product.

Social District: ~~means a~~ A defined area in which a person may consume alcoholic beverages sold by an ABC permittee, pursuant to N.C.G.S. 18B-300.1 or other applicable state law. A social district may include both indoor and outdoor areas of businesses within or contiguous to the defined area during the days and hours set by the local government by ordinance. A social district may include privately owned property, including ABC permittees and non-permittee businesses, and multi-tenant establishments, and public streets, crosswalks, or parking areas whether or not the streets or parking areas are closed to vehicle traffic.

Sound level meter: ~~means a~~ An instrument which measures sound levels in decibels, which either meets the standard of ASAS 1.4-1983 or other ANSI approved minimum requirements, and provided further that such instrument shall be serviced, calibrated and operated as recommended by the manufacturer, operated by a person or persons trained to operate the same, as approved by the chief of police or his designee.

Standard industrial classification (SIC).: A classification pursuant to the Standard Industrial Classification Manual issued by the Executive Office of the President, Office of Management and Budget, 1987.

State.: The word "state" means the State of North Carolina.

State law.: Reference to a section or other subdivision of the General Statutes (G.S.) refers to such section or subdivision as amended or to any other section or subdivision to which the section or other subdivision has been transferred or by which the section or other subdivision has been superseded.

State road number: A number assigned by the North Carolina Department of Transportation~~, also known as the~~.

Storm drain and storm sewer: ~~mean a~~ A sewer which carries stormwater and surface water and drainage, but excludes sewage and industrial wastes other than unpolluted cooling water.

Stormwater: ~~.~~ Any flow occurring during or following any form of natural precipitation and resulting therefrom.

Stray: ~~means a~~ Any unregistered or unlicensed dog or cat deemed to be at large.

~~**Street**. The word "street" means and includes any public way, road, highway, street, avenue, boulevard, parkway, alley, lane, viaduct and bridge and the approaches thereto.~~

Street: Any alley, avenue, circle, highway, lane, road, street, drive, or other public way situated within a dedicated public right-of-way which has been accepted by the appropriate governmental agency for continuing maintenance and upkeep; and/or any alley, avenue, circle, highway, lane, road, street, drive, or other public way maintained for public use by the United States Government, the North Carolina Department of Transportation, or the City of Brevard through the use of public funds.

Subscriber: ~~means a~~Any person, corporation, partnership, or governmental or educational entity owning or leasing an alarm system.

Supplied: ~~shall mean p~~ Paid for, furnished, or provided by, or under the control of, the owner or operator.

Suspected of having rabies: ~~means a~~ An animal which does not have a current vaccination against rabies in accordance with section 14-41 or has bitten a person, or any animal bitten or scratched by a wild carnivorous mammal (including a bat) not available for testing.

Suspended solids: ~~means s~~ Solids that either float on the surface of or are in suspension in water, sewage or other liquids, and which are removable by laboratory filtering.

Taxicab: ~~means a~~ A motor vehicle regularly engaged in the business of carrying passengers for hire, having a seating capacity of less than six persons and not operated on a fixed route.

Technical review criteria ~~(TRC)~~ violations (TRC):~~,~~ ~~defined here as those~~ Significant noncompliance of wastewater discharge limits in which 33 percent or more of all the measurements taken for the same pollutant parameter during a six-month period equal or exceed the product of the numeric pretreatment standard or requirement including instantaneous limits, as defined by 40 CFR Part 403.3(l) multiplied by the applicable TRC; [TRC = 1.4 for BOD, TSS, fats, oil and grease, 1.2 for all other pollutants (except flow and pH)];

Temporary housing: ~~shall mean a~~Any tent, trailer or other structure used for human shelter which is designed to be transportable and which is not attached to the ground, to another structure, or to any utilities system on the same premises for more than 30 consecutive days.

Tenant~~,~~ or occupant~~.~~: The words "tenant" and "occupant," applied to a building or land, include any person who occupies the whole or a part of such building or land, whether alone or with others.

Tense~~.~~: Words used in the past, present or future tense each include the other tenses.

Unfit for human habitation: ~~shall mean~~ When referring to a dwelling, it shall mean that conditions exist in a dwelling which violate or do not comply with one or more of the minimum standards of fitness or one or more of the requirements established by this article.

Unregistered dog or ~~or~~ unlicensed dog~~.~~: ~~means a~~A dog which has not been listed on the owner~~'~~'s tax listing form for the then-current year or registered for a vaccination tag and certification, and/or a dog which does not have affixed to it a rabies vaccination tag.

Upset~~:~~: When referring to sewer usage, ~~A~~an exceptional incident in which there is unintentional and temporary noncompliance with categorical pretreatment standards because of factors beyond the reasonable control of the user. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

User: ~~means~~ When referring to sewage, any person using the services of the city for conveyance or treatment of wastewater.

User permit: ~~means the~~l permit issued by the chief of police in response to a written application from a subscriber authorizing connection to and use of the alarm system in the emergency communications center.

Vehicle for hire: ~~means a~~ Any vehicle providing public passenger transportation for a fee, from a point originating or terminating within the ci~~t~~'ty's jurisdiction, including limousine and passenger van services but excluding taxicabs, which are regulated in article ii. (See G.S. 20-87, 160A-579(12).

Vehicles of the fire department: Shall include the personal vehicles of members of the fire department responding to a fire call and using a red light to indicate an emergency whether they be at the location of a fire, parked in the immediate vicinity of the fire station or in route to either location.

Vendor, ~~/~~contractor: ~~means t~~ The security company designated by the city to operate and maintain the alarm system of the city along with all incoming apparatus connecting to the ~~ci~~'~~ty's~~city's system.

Veterinary hospital: ~~means~~ A~~a~~ny establishment maintained and operated by a licensed veterinarian for surgery, diagnosis and treatment of diseases and injuries of animals.

Vicious animal: ~~means a~~ Any animal which has bitten one or more persons without provocation, or one in which a propensity is known or ought reasonably to be known to the owner or keeper.

Vicious dog: ~~means a~~ Any dog which has bitten one or more persons without provocation, or one in which a propensity is known or ought reasonably to be known to the owner or keeper.

Waiting time: ~~means t~~ The time when a taxicab is not in motion from the time of acceptance of a passenger to the time of discharge, but it does not include any time that the taxicab is not in motion due to any cause other than the request, act or fault of a passenger.

Wastewater: ~~means t~~ The liquid and water-carried industrial or domestic wastes from dwellings, commercial buildings, industrial facilities, mobile sources, institutions and treatment facilities, together with any groundwater, surface water, and stormwater that may be present, whether treated or untreated, which are contributed into or permitted to enter the sewer system. Also *sewage* .

Wastewater, ~~C~~compatible ~~wastewater~~: ~~means w~~ Wastewaters with only those polluting constituents which are susceptible to adequate treatment in the treatment system works, without harm to the sewerage system. The te~~r~~rm "compatible constituen~~n~~nts" has like meaning with reference to individual wastewater parameters.

Wastewater, ~~I~~incompatible ~~wastewater~~: ~~means w~~ Wastewater containing constituents or characteristics which render it unsuitable for transport or treatment in the sewerage system. The ter~~m~~ms "incompatible constituen~~n~~nts" a~~n~~nd "incompatible characteristi~~i~~ics" have like meaning with reference to individual wastewater parameters. Incompatible constituents and characteristics include water parameters. Incompatible constituents and characteristics include the elements listed in prohibitions and may include other elements so identified by the manager and specified in the user's service permit.

Wastewater permit. As set forth in subsection 70-143.B of this ordinance.

Wastewater treatment plant: ~~means t~~ The arrangement of infrastructure including, but not limited to, piping, pumps, equipment, devices and structures used for treating wastewater and discharging effluent meeting the requirements.

Watch dog: ~~means a~~ A dog that barks and threatens to bite any intruder and that has not been specifically trained or conditioned for that purpose.

Watercourse: ~~means a~~ A channel in which a flow of water occurs, either continuously or intermittently.

Waters of the State: ~~.~~ All streams, rivers, brooks, creeks, swamps, lakes, waterways, reservoirs, ponds, marshes, wells, springs, aquifers, irrigation systems, drainage systems, bays, sounds, tidal estuaries and all other bodies or accumulations of water, surface or underground, natural or artificial, public or private, which are contained within, flow through, or border upon the state or any portion thereof.

Writing or~~,~~ written~~.~~: The words "writing" and "written" include printing and any other mode of representing words and letters.

Year~~.~~: The word "year" means a calendar year.

CHAPTER 6. ALARM SYSTEMS

ARTICLE II. EMERGENCY COMMUNICATIONS CENTER ALARM SYSTEM POLICY

6-32. ~~Definitions~~Reserved.

~~The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:~~

~~*Cross reference(s)—Definitions generally, § 1-2.*~~

~~**Alarm system** means any electronic or mechanical device transmitting an electronic alarm signal or recorded message to the emergency communications center indicating a fire or an actual or attempted unauthorized entry into a building, or indicating the commission or attempted commission of a crime in or about a building.~~

~~**Emergency communications center** means the city's communication center receiving telephonic requests or signal requests for police, fire, ambulance, rescue or other emergency service within the city.~~

~~**False alarm** means an alarm signal or recorded message transmitted to the emergency communications center indicating a fire or an actual or attempted unauthorized entry into a building, or indicating the commission or attempted commission of a crime in or about a building, when in fact no evidence exists upon inspection of the building upon response to such alarm that a fire occurred or that an unauthorized entry was committed or attempted or that a crime was committed or attempted in or about the building.~~

~~**Subscriber** means any person, corporation, partnership, or governmental or educational entity owning or leasing an alarm system.~~

~~**User permit** means the permit issued by the chief of police in response to a written application from a subscriber authorizing connection to and use of the alarm system in the emergency communications center.~~

~~**Vendor/contractor** means the security company designated by the city to operate and maintain the alarm system of the city along with all incoming apparatus connecting to the city's system.~~

CHAPTER 10. AMUSEMENTS

ARTICLE III. GAME ROOMS

10-81. ~~Definitions~~Reserved.

~~The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:~~

~~*Cross reference(s)—Definitions generally, § 1-2.*~~

~~**Game room** means any place of business that operates mechanical and electronic games or other devices for which charge is made, either directly or indirectly. Examples of such games, by way of illustration and not limitation, are pinball machines, electronic video games, automatic amusement devices and the like.~~

CHAPTER 14. ANIMALS AND FOWL

ARTICLE I. IN GENERAL

14-1. ~~Definitions.~~Reserved.

~~The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:~~

~~**Agricultural operation** has the definition given in G.S. 106-701(b), and includes, without limitation, any facility for the production for commercial purposes of crops, livestock, poultry, livestock products or poultry products.~~

~~**Animal** means a living creature, domestic or nondomestic, but does not include humans.~~

~~**Animal control** means any authority designated by the city manager to discharge the requirements of this chapter.~~

~~**Animal shelter** means any premises designated by the health director for the purpose of impounding and caring for animals.~~

~~**At large** means an animal shall be deemed to be at large when it is off the property of its owner or keeper and not under physical restraint.~~

~~**Bite** means any penetration of the skin by teeth constitutes a bite exposure.~~

~~**Cat** means cats, both male and female, more than six months old.~~

~~**Commercial animal establishment** means any pet shop, grooming shop, auction, riding school or stable, zoological park, circus, animal exhibition or kennel.~~

~~**Chicken coop** means a weather and predator proof structure or container employed in the keeping of chickens.~~

~~**Chicken run** means an outdoor enclosure employed in the keeping of chickens.~~

~~**Dog** means dogs, both male and female, more than six months old.~~

~~**Duly authorized person, administrator, or official** means the code enforcement officer, officers of the Brevard Police Department, or any other individual or person duly authorized by the city manager or local health director to act on behalf of the city for purposes of this chapter.~~

~~**Exposed to rabies.** An animal shall be deemed to have been exposed to rabies if it has been bitten by, or been in the presence of, any animal known or suspected to have been infected with rabies.~~

~~**Grooming shop** means any establishment, whether operated separately or in connection with another business enterprise, which provides hair and nail clipping, bathing and other cosmetic services for animals.~~

~~**Habitually, repeatedly and on a regular basis,** when referring to dog barking or other sounds, shall mean barking or other sounds which occur on at least five occasions during a 60-day period or on at least three occasions during a 30-day period.~~

~~**Head of household** means the person who maintains the household, or, if no one person maintains the household, the head of the household shall be the eldest person residing in the household.~~

Humane Society means the Transylvania County Humane Society and its representatives.

Impoundment means any animal in custody of a person or animal shelter duly authorized by the local health director.

Keeper means a person having custody of an animal, or who keeps or harbors an animal, or who knowingly permits an animal to remain on or about any premises occupied or controlled by such person.

Kennel means any premises wherein a person boards, lets for hire, trains for a fee, breeds, buys or sells dogs or cats. This shall not include the ownership of dogs which are part of the household or which are maintained adjoining a private residence for hunting, tracking practice, exhibition, or the guarding or protection of the ower's property when no more than five dogs per year are sold by such owner.

Livestock.

A. Domestic animals, such as cows, bulls, calves, hogs, pigs, horses, mules, ponies, goats or sheep.

B.A. Any animal raised or kept for profit, excepting:

1. Dogs and cats kept for show competition;

2.1. Single litters of rabbits, puppies or kittens, per household; and

3.1. Tropical aquarium fishes.

Local board of health and board of health mean the county board of health.

Local health department and health department mean the county health department.

Local health director and health director mean the health director of the county health department, or his designee.

Nuisance. An animal or group of animals shall be considered a nuisance if it:

A. Damages, soils or defiles private or public property;

B.A. Interferes with, molests or attacks persons or other animals;

C.A. Is repeatedly at large;

D.A. Causes unsanitary and offensive conditions, including interrupting the tranquility of the community;

E.A. Chases, snaps at, harasses or impedes pedestrians, bicyclists or vehicles; or

F.A. Is diseased.

Owner means any person or legal entity having a possessory property right in an animal. The head of a household shall be deemed to be the owner in respect to any dogs owned, kept or harbored on the premises by any person residing in the household.

Pet means any animal kept for pleasure rather than utility.

Pet shop means any commercial establishment, whether operated separately or in connection with another business enterprise, except for a licensed kennel, that buys, sells or boards any species of animal.

Restraint. Any animal shall be considered under restraint if it is within the real property limits of its owner, or secured by a leash or lead, or confined.

Riding school or stable means any place which has available for hire, boarding and/or riding instruction any horse, pony, donkey or burro.

~~**Security dog** means any dog used, kept or maintained in the county for the purpose of protecting any person or property. Any such dog shall be further classified as a patrol dog, sentry dog or watch dog.~~

~~**A.** *Patrol dog* means a dog that is trained or conditioned to attack or otherwise respond aggressively, but only upon command from a handler either off or on lead.~~

~~**B.A.** *Sentry dog* means a dog that is trained or conditioned to attack or otherwise respond aggressively without command.~~

~~**C.A.** *Watch dog* means a dog that barks and threatens to bite any intruder and that has not been specifically trained or conditioned for that purpose.~~

~~*Stray* means any unregistered or unlicensed dog or cat deemed to be at large.~~

~~**Suspected of having rabies** means an animal which does not have a current vaccination against rabies in accordance with section 14-41 or has bitten a person, or any animal bitten or scratched by a wild carnivorous mammal (including a bat) not available for testing.~~

~~**Unregistered dog or unlicensed dog** means a dog which has not been listed on the owner's tax listing form for the then current year or registered for a vaccination tag and certification, and/or a dog which does not have affixed to it a rabies vaccination tag.~~

~~**Veterinary hospital** means any establishment maintained and operated by a licensed veterinarian for surgery, diagnosis and treatment of diseases and injuries of animals.~~

~~**Vicious animal** means any animal which has bitten one or more persons without provocation, or one in which a propensity is known or ought reasonably to be known to the owner or keeper.~~

ARTICLE II. DOGS AND OTHER ANIMALS

14-37. Animals creating nuisance.

A. *Prohibited.* It shall be unlawful for an owner or keeper to permit an animal to create a nuisance, or to maintain a nuisance created by an animal. An agricultural operation or any of its appurtenances shall not constitute a nuisance when operated in accordance with the conditions and provisions set forth in G.S. 106-701.

B. *Abatement procedure.* Compliance shall be required as follows:

1. When an animal control officer, law enforcement officer or duly authorized person observes a violation, the owner or keeper will be provided written notification of such violation and be given 48 hours from the time of notification to abate the nuisance.
2. Upon receipt of a written, detailed and signed complaint being made to the city manager, or the local health director, where the county is contracted to provide animal control services for the city or by any person that any other person is maintaining a nuisance as defined in Section ~~14-1~~1-2, the city manager, or local health director, shall cause the owner or keeper of the animal in question to be notified that a complaint has been received, and shall cause the situation complained of to be investigated and a report and findings thereon to be reduced to writing.
3. If the written findings indicate that the complaint is justified, then the city manager, the local health director or a duly authorized person shall cause the owner or keeper of the animal in question to be so notified in writing, and ordered to abate such nuisance within 48 hours by whatever means may be necessary. If the owner or keeper of the animal is unknown and cannot be ascertained, the notice and

order, along with a general description of the animal, shall be posted for 48 hours at the animal shelter, city hall and county courthouse. If after 48 hours the owner or keeper of the animal remains unknown, the animal may be impounded or humanely destroyed.

C. *Violations.* It shall be unlawful for a person to fail or refuse to abate the nuisance as required by this section. Violation is punishable as a misdemeanor with fine up to $500.00 per G.S. 14-4(a).

CHAPTER 18. BUILDINGS AND BUILDING REGULATIONS

ARTICLE III. PERMITS AND INSPECTIONS

18-69. Inspection procedure.

A. *Generally.* In performing the specific inspections required by the North Carolina Building Code, the inspector shall conduct all inspections requested by the permit holder for each scheduled inspection visit. For each requested inspection, the inspector shall inform the permit holder of instances in which the work inspected fails to meet the requirements of the North Carolina Residential Code for One- and Two-Family Dwellings or the North Carolina Building Code. In accordance with G.S. 160D-1113, the inspection department must perform (or contract for) inspections for building permits. The inspection department shall inspect all buildings and structures and real property and work therein or thereon for which a permit of any kind has been issued as often as necessary in order to determine whether the work complies with this chapter and the appropriate codes.

B. *Off-site inspection.* When deemed necessary by the appropriate inspector, materials and assemblies may be inspected at the point of manufacture or fabrication, or inspections may be made by approved and recognized inspection organizations; provided, no approval shall be based upon reports of such organizations unless the reports are in writing and certified by a responsible officer of such organization.

C. *Inspection stages.* All holders of permits, or their agencies, shall notify the inspection department and the appropriate inspector at each of the following stages of construction so that approval may be given before work is continued:

1. *Foundation inspection.* To be made after trenches are excavated and the necessary reinforcement and forms are in place, and before concrete is placed. Drilled footings, piles and similar types of foundations shall be inspected as installed.
2. *Framing inspection.* To be made after all structural framing is in place and all roughing-in of plumbing and electrical and heating has been installed, and after all fire blocking, chimneys, bracing and vents are installed, but before any of the structure is enclosed or covered. Poured-in-place concrete structural elements shall be inspected before each pour of any structural member.
3. *Fireproofing inspection.* To be made after all areas required to be protected by fireproofing are lathed, but before plastering or other fireproofing is applied.
4. *Final inspection.* To be made after the building or structure has all doors hung and fixtures set and is ready for occupancy, but before the building is occupied. Before the local power utility company is contacted to install permanent power, the building or structure must have passed the building, electrical and plumbing final inspection.

D. *Calls for inspection.* Requests for inspections may be made to the office of the inspection department or to the appropriate inspector. The inspection department shall make inspections as soon as practicable after request is made therefor, provided such work is ready for inspection at the time the request is made. To ensure that work is ready for inspection and to permit adequate scheduling by the inspection department, the licensed contractor, or where no licensed contractor is used the permit holder, must place the call for inspection at least one working day prior to the time requested for inspection.

E. *Reinspections.* Reinspections may be made at the convenience of the inspector. No work shall be inspected until it is in proper and completed condition, ready for inspection. All work which has been concealed before the inspection and approval shall be uncovered at the request of the inspector and placed in condition for proper inspection. Approval or rejection of the work shall be furnished by the appropriate inspector in the form of a notice posted on the building or given to the permit holder or his agent. Failure to call for inspections or proceeding without approval at each stage of construction shall be deemed a violation of this Code. A reinspection fee shall be charged to the individual or company that calls for an inspection which is not ready or does not pass inspection. The fee shall be as provided for in Section 18-68.

F. *Survey of street or alley lines.* Where the applicant for a permit proposes to erect any building or structure on the line of any street, alley or other public place, he shall secure a survey of the line of such street, alley or other public place, adjacent to the property upon which such building or structure is to be erected, before proceeding with construction of such building or structure. It shall be the duty of the building inspector to see that the building does not encroach upon such street, alley or other public place.

G. *Alternate inspection method.* Notwithstanding the requirements of this Article, a city shall accept and approve, without further responsibility to inspect, a design or other proposal for a component or element in the construction of buildings from an architect licensed under G.S. ch. 83A or professional engineer licensed under G.S. ch. 89C provided all of the following apply:

1. The submission design or other proposal is completed under valid seal of the licensed architect or licensed professional engineer.
2. Field inspection of the installation or completion of a component or element of the building is performed by a licensed architect or licensed professional engineer or a person under the direct supervisory control of the licensed architect or licensed professional engineer.
3. The licensed architect or licensed professional engineer under subdivision (2) of this subsection provides the city with a signed written document stating the component or element of the building inspected under subdivision (2) of this subsection is in compliance with the North Carolina State Building Code or the North Carolina Residential Code for One- and Two-Family Dwellings. The inspection certification required under this subdivision shall be provided by electronic or physical delivery and its receipt shall be promptly acknowledged by the city through reciprocal means.

~~4. As used in this section, the following definitions apply:~~

~~a. *Component.* Any assembly, subassembly, or combination of elements designed to be combined with other components to form part of a building or structure. Examples of a component include an excavated footing trench containing no concrete. The term does not include a system.~~

~~b.~~a. ~~*Element.* A combination of products designed to be combined with other elements to form all or part of a building component. The term does not include a system.~~

Upon the acceptance and approval receipt of a signed written document by the city as required under subsection G of this section, notwithstanding the issuance of a certificate of occupancy, the city, its inspection department, and the inspectors shall be discharged and released from any liabilities, duties, and responsibilities imposed by this article with respect to or in common law from any claim arising out of or attributed to the component or element in the construction of the building for which the signed written document was submitted.

H. *Inspections of work in progress.* As the work pursuant to a building permit progresses, local inspectors shall make as many inspections thereof as may be necessary to satisfy them that the work is being done according to the provisions of any applicable state and local laws and of the terms of the permit. In exercising this power, members of the inspection department shall have a right to enter on any premises within the jurisdiction of the department at all reasonable hours for the purposes of inspection or other enforcement action, upon presentation of proper credentials. If a building permit has been obtained by an owner exempt from licensure under G.S. 87-1(b)(2), no inspection shall be conducted without the owner being present, unless the plans for the building were drawn and sealed by an architect licensed pursuant to G.S. ch. 83A.

I. *Periodic inspections.* The inspection department may make periodic inspections, subject to the governing board's directions, for unsafe, unsanitary, or otherwise hazardous and unlawful conditions in buildings or structures within its planning and development regulation jurisdiction. In exercising this power, members of the department shall have a right to enter on any premises within the jurisdiction of the department at all reasonable hours for the purposes of inspection or other enforcement action, upon presentation of proper credentials. Inspections of dwellings shall follow the provisions of G.S. 160D-1207. Nothing in this section shall be construed to prohibit periodic inspections in accordance with state fire prevention code or as otherwise required by state law.

ARTICLE V. MINIMUM HOUSING STANDARDS

18-132. ~~Definitions~~ Meaning of certain words.

~~The following definitions shall apply in the interpretation and enforcement of this article.~~

~~**Basement** shall mean a portion of a building which is located partly underground, having direct access to light and air from windows located above the level of the adjoining ground.~~

~~**Bedroom** shall mean a room or space in which people sleep, which can also include permanent provisions for living, eating, and either sanitation or kitchen facilities but not both. Such rooms and spaces that are also part of a dwelling unit are not sleeping units.~~

~~**Building** shall mean any structure used or intended for supporting or sheltering any use or occupancy.~~

~~**Cellar** shall mean a portion of a building located partly or wholly underground having an inadequate access to light and air from windows located partly or wholly below the level of the adjoining ground.~~

~~**Close familial relationship** shall mean a spouse, parent, child, brother, sister, grandparent, or grandchild. The term includes the step, half, and in-law relationships.~~

~~**Deteriorated** shall mean that a dwelling is unfit for human habitation and can be repaired, altered or improved to comply with all of the minimum standards established by this article at a cost not in excess of 50 percent of its value, as determined by finding of the inspections.~~

~~**Dilapidated** shall mean that a dwelling is unfit for human habitation and cannot be repaired, altered or improved to comply with all of the minimum standards established by this article at a cost not in excess of 50 percent of its value, as determined by finding of the inspector.~~

~~**Dwelling** shall mean a building that contains one or two dwelling units used, intended or designed to be used, rented, leased, let or hired out to be occupied for living purposes.~~

~~**Dwelling unit** shall mean a single unit providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation.~~

~~**Extermination** shall mean the control and elimination of insects, rodents or other pests by eliminating their harborage places; by removing or making inaccessible materials that may serve as their food; by poisoning, spraying, fumigating, trapping or by any other recognized and legal pest elimination methods approved by the inspector.~~

Garbage shall mean the animal and vegetable waste resulting from the handling, preparation, cooking and consumption of food.

~~**Habitable room** shall mean a room or enclosed floor space used or intended to be used for living, sleeping, cooking or eating purposes, excluding bathrooms, water closet compartments, laundries, heater rooms, foyers, or communicating corridors, closets and storage spaces.~~

~~**Infestation** shall mean the presence, within or around a dwelling, or any insects, rodents or other pests in such number as to constitute a menace to the health, safety or welfare of the occupants or the public.~~

~~**Inspector** shall mean a building inspector of the city or any agent of the inspector who is authorized by the inspector.~~

~~**Multiple dwelling** shall mean any dwelling containing more than two dwelling units.~~

~~**Occupant** shall mean any person who has charge, care or control of a building, or part thereof, in which dwelling units or rooming units are let.~~

~~**Owner** shall mean the holder of the title in fee simple and every mortgagee of record.~~

~~**Parties in interest** shall mean all individuals, associations, and corporations who have interests of record in a dwelling and any who are in possession thereof.~~

~~**Plumbing** shall mean and include all of the following supplied facilities and equipment: Gas pipes, gas burning equipment, water pipes, mechanical garbage disposal units (mechanical sink grinder), waste pipes, water closets, sinks, installed dishwashers, lavatories, bathtubs, shower baths, installed clothes washing machines, catch basin, drains, vents and any other similar supplied fixtures, together with all connections to water, sewer or gas lines.~~

~~**Public authority** shall mean any housing authority or any officer who is in charge of any department or branch of the government of the city, county, or state relating to health, fire, building regulations, or other activities concerning dwellings in the local government.~~

~~**Public officer** shall mean the officer or officers who are authorized by ordinances adopted hereunder to exercise the powers prescribed by the ordinances and by G.S. 160D, art. 12.~~

~~**Rooming house** shall mean any short or long-term accommodations that serve a specific group or membership such as a dormitory, fraternity or sorority house, youth or adult hostel, or similar accommodations, or single room occupancy units that provide a number of related services including, but not limited to housekeeping, meals, and laundry services; excludes hotels, motels, inns, bed and breakfasts, and short-term rentals.~~

Rubbish shall mean combustible and noncombustible waste materials, except garbage and ashes, and the term shall include paper, rags, cartons, boxes, wood, excelsior, rubber, leather, tree branches, yard trimmings, tin cans, metals, mineral matter, glass crockery, and dust.

Sleeping unit shall mean a room or space in which people sleep, which can also include permanent provisions for living, eating, and either sanitation or kitchen facilities but not both. Such rooms and spaces that are also part of a dwelling unit are not sleeping units.

Supplied shall mean paid for, furnished, or provided by, or under the control of, the owner or operator.

Temporary housing shall mean any tent, trailer or other structure used for human shelter which is designed to be transportable and which is not attached to the ground, to another structure, or to any utilities system on the same premises for more than 30 consecutive days.

Unfit for human habitation shall mean that conditions exist in a dwelling which violate or do not comply with one or more of the minimum standards of fitness or one or more of the requirements established by this article.

18-132. Definitions. (Continued)

Meaning of certain words. Whenever the words "dwelling, dwelling unit, rooming house, rooming unit, premises" are used in this chapter, they shall be construed as though they were followed by the words "or any part thereof".

ARTICLE VI. NONRESIDENTIAL BUILDING OR STRUCTURE CODE

18-155. DefinitionsReserved.

The following definitions shall apply in the interpretation and enforcement of this article:

Basic structural elements means the parts of a building which provide the principal strength, stability, integrity, shape and safety of the building, including, but not limited to plates, studs, joists, rafters, stringers, stairs, subflooring, flooring, sheathing, lathing, roofing, siding, window frames, door frames, porches, railings, eaves, chimneys, flashing, masonry and all other essential components.

Building or buildings shall have their ordinary meaning and shall also be read to include other structures.

Governing board shall have the ordinary meaning and shall also be read to include city council.

Local government shall have the ordinary meaning and shall also be read to include the City of Brevard.

Nonresidential means any building or structure or portion of a building or structure occupied or intended to be occupied, in whole or in part, for a use other than a dwelling, home, residing place, living space or sleeping space for one or more human beings, either permanently or transiently.

Operator means any person who has charge, care, or control of a nonresidential building or structure, or part thereof.

Parties in interest means all individuals, associations, and corporations who have interests of record in a nonresidential building or structure and any who are in possession thereof.

Public officer shall have the ordinary meaning and shall also be read to include the officer or officers who are authorized by regulations adopted hereunder to exercise the powers prescribed by the regulations and by this chapter.

~~**Vacant industrial warehouse** means any building or structure designed for the storage of goods or equipment in connection with manufacturing processes, which has not been used for that purpose for at least one year and has not been converted to another use.~~

~~**Vacant manufacturing facility** means any building or structure previously used for the lawful production or manufacturing of goods, which has not been used for that purpose for at least one year and has not been converted to another use.~~

18-163. Regulation authorized as to repair, closing, and demolition of nonresidential buildings or structures; order of public officer.

A. *Authority.* The governing board of the local government may adopt and enforce regulations relating to nonresidential buildings or structures that fail to meet minimum standards of maintenance, sanitation, and safety established by the governing board. The minimum standards shall address only conditions that are dangerous and injurious to public health, safety, and welfare and identify circumstances under which a public necessity exists for the repair, closing, or demolition of such buildings or structures. The regulation shall provide for designation or appointment of a public officer to exercise the powers prescribed by the regulation, in accordance with the procedures specified in this section. Such regulation shall be applicable within the local government's entire planning and development regulation jurisdiction or limited to one or more designated zoning districts or municipal service districts.

B. *Investigation.* Whenever it appears to the public officer that any nonresidential building or structure has not been properly maintained so that the safety or health of its occupants or members of the general public are jeopardized for failure of the property to meet the minimum standards established by the governing board, the public officer shall undertake a preliminary investigation. If entry upon the premises for purposes of investigation is necessary, such entry shall be made pursuant to a duly issued administrative search warrant in accordance with G.S. 15-27.2 or with permission of the owner, the owner's agent, a tenant, or other person legally in possession of the premises.

C. *Complaint and hearing.* If the preliminary investigation discloses evidence of a violation of the minimum standards, the public officer shall issue and cause to be served upon the owner of and parties in interest in the nonresidential building or structure a complaint. The complaint shall state the charges and contain a notice that an administrative hearing will be held before the public officer, or his or her designated agent, at a place within the county scheduled not less than ten days nor more than 30 days after the serving of the complaint; that the owner and parties in interest shall be given the right to answer the complaint and to appear in person, or otherwise, and give testimony at the place and time fixed in the complaint; and that the rules of evidence prevailing in courts of law or equity shall not be controlling in hearings before the public officer.

D. *Order.* If, after notice and hearing, the public officer determines that the nonresidential building or structure has not been properly maintained so that the safety or health of its occupants or members of the general public is jeopardized for failure of the property to meet the minimum standards established by the governing board, the public officer shall state in writing findings of fact in support of that determination and shall issue and cause to be served upon the owner thereof an order. The order may require the owner to take remedial action, within a reasonable time specified, subject to the procedures and limitations herein.

E. *Limitations on orders.*

1. An order may require the owner to repair, alter, or improve the nonresidential building or structure in order to bring it into compliance with the minimum standards established by the governing board or to vacate and close the nonresidential building or structure for any use.

2. An order may require the owner to remove or demolish the nonresidential building or structure if the cost of repair, alteration, or improvement of the building or structure would exceed 50 percent of its then current value. Notwithstanding any other provision of law, if the nonresidential building or structure is designated as a local historic landmark, listed in the National Register of Historic Places, or located in a locally designated historic district or in a historic district listed in the National Register of Historic Places and the governing board determines, after a public hearing as provided by ordinance, that the nonresidential building or structure is of individual significance or contributes to maintaining the character of the district, and the nonresidential building or structure has not been condemned as unsafe, the order may require that the nonresidential building or structure be vacated and closed until it is brought into compliance with the minimum standards established by the governing board.
3. An order may not require repairs, alterations, or improvements to be made to vacant manufacturing facilities or vacant industrial warehouse facilities to preserve the original use. The order may require such building or structure to be vacated and closed, but repairs may be required only when necessary to maintain structural integrity or to abate a health or safety hazard that cannot be remedied by ordering the building or structure closed for any use.

F. *Action by governing board upon failure to comply with order.*

1. If the owner fails to comply with an order to repair, alter, or improve or to vacate and close the nonresidential building or structure, the governing board may adopt an ordinance ordering the public officer to proceed to effectuate the purpose of this section with respect to the particular property or properties that the public officer found to be jeopardizing the health or safety of its occupants or members of the general public. The property or properties shall be described in the ordinance. The ordinance shall be recorded in the office of the register of deeds and shall be indexed in the name of the property owner or owners in the grantor index. Following adoption of an ordinance, the public officer may cause the building or structure to be repaired, altered, or improved or to be vacated and closed. The public officer may cause to be posted on the main entrance of any nonresidential building or structure so closed a placard with the following words: "This building is unfit for any use; the use or occupation of this building for any purpose is prohibited and unlawful." Any person who occupies or knowingly allows the occupancy of a building or structure so posted shall be guilty of a Class 3 misdemeanor.
2. If the owner fails to comply with an order to remove or demolish the nonresidential building or structure, the governing board may adopt an ordinance ordering the public officer to proceed to effectuate the purpose of this section with respect to the particular property or properties that the public officer found to be jeopardizing the health or safety of its occupants or members of the general public. No ordinance shall be adopted to require demolition of a nonresidential building or structure until the owner has first been given a reasonable opportunity to bring it into conformity with the minimum standards established by the governing board. The property or properties shall be described in the ordinance. The ordinance shall be recorded in the office of the register of deeds and shall be indexed in the name of the property owner or owners in the grantor index. Following adoption of an ordinance, the public officer may cause the building or structure to be removed or demolished.

G. *Action by governing board upon abandonment of intent to repair.* If the governing board has adopted an ordinance or the public officer has issued an order requiring the building or structure to be repaired or vacated and closed and the building or structure has been vacated and closed for a period of two years pursuant to the ordinance or order, the governing board may make findings that the owner has abandoned the intent and purpose to repair, alter, or improve the building or structure and that the continuation of the building or structure in its vacated and closed status would be inimical to the health, safety, and welfare of the local government in that it would continue to deteriorate, would create a fire or safety hazard, would be a threat to

children and vagrants, would attract persons intent on criminal activities, or would cause or contribute to blight and the deterioration of property values in the area. Upon such findings, the governing board may, after the expiration of the two-year period, enact an ordinance and serve such ordinance on the owner, setting forth the following:

1. If the cost to repair the nonresidential building or structure to bring it into compliance with the minimum standards is less than or equal to 50 percent of its then current value, the ordinance shall require that the owner either repair or demolish and remove the building or structure within 90 days.
2. If the cost to repair the nonresidential building or structure to bring it into compliance with the minimum standards exceeds 50 percent of its then current value, the ordinance shall require the owner to demolish and remove the building or structure within 90 days.

In the case of vacant manufacturing facilities or vacant industrial warehouse facilities, the building or structure must have been vacated and closed pursuant to an order or ordinance for a period of five years before the governing board may take action under this subsection. The ordinance shall be recorded in the office of the register of deeds in the county wherein the property or properties are located and shall be indexed in the name of the property owner in the grantor index. If the owner fails to comply with the ordinance, the public officer shall effectuate the purpose of the ordinance.

H. *Service of complaints and orders.* Complaints or orders issued by a public officer pursuant to an ordinance adopted under this section shall be served upon persons either personally or by certified mail so long as the means used are reasonably designed to achieve actual notice. When service is made by certified mail, a copy of the complaint or order may also be sent by regular mail. Service shall be deemed sufficient if the certified mail is refused but the regular mail is not returned by the post office within ten days after the mailing. If regular mail is used, a notice of the pending proceedings shall be posted in a conspicuous place on the premises affected. If the identities of any owners or the whereabouts of persons are unknown and cannot be ascertained by the public officer in the exercise of reasonable diligence and the public officer makes an affidavit to that effect, the serving of the complaint or order upon the owners or other persons may be made by publication in a newspaper having general circulation in the local government at least once no later than the time that personal service would be required under this section. When service is made by publication, a notice of the pending proceedings shall be posted in a conspicuous place on the premises affected.

I. *Liens.*

1. The amount of the cost of repairs, alterations, or improvements, or vacating and closing, or removal or demolition by the public officer shall be a lien against the real property upon which the cost was incurred, which lien shall be filed, have the same priority, and be collected as the lien for special assessment provided in G.S. ch. 160A, art. 10.
2. If the real property upon which the cost was incurred is located in an incorporated city, the amount of the costs is also a lien on any other real property of the owner located within the city limits except for the owner's primary residence. The additional lien provided in this subdivision is inferior to all prior liens and shall be collected as a money judgment.
3. If the nonresidential building or structure is removed or demolished by the public officer, he or she shall offer for sale the recoverable materials of the building or structure and any personal property, fixtures, or appurtenances found in or attached to the building or structure and shall credit the proceeds of the sale, if any, against the cost of the removal or demolition, and any balance remaining shall be deposited in the superior court by the public officer, shall be secured in a manner directed by the court, and shall be disbursed by the court to the persons found to be entitled thereto by final order or decree of the court. Nothing in this section shall be construed to impair or limit in any way the power of the governing board

to define and declare nuisances and to cause their removal or abatement by summary proceedings or otherwise.

J. *Ejectment.* If any occupant fails to comply with an order to vacate a nonresidential building or structure, the public officer may file a civil action in the name of the local government to remove the occupant. The action to vacate shall be in the nature of summary ejectment and shall be commenced by filing a complaint naming as parties-defendant any person occupying the nonresidential building or structure. The clerk of superior court shall issue a summons requiring the defendant to appear before a magistrate at a certain time, date, and place not to exceed ten days from the issuance of the summons to answer the complaint. The summons and complaint shall be served as provided in G.S. 42-29. The summons shall be returned according to its tenor, and if on its return it appears to have been duly served and if at the hearing the public officer produces a certified copy of an ordinance adopted by the governing board pursuant to subsection (f) of this section to vacate the occupied nonresidential building or structure, the magistrate shall enter judgment ordering that the premises be vacated and all persons be removed. The judgment ordering that the nonresidential building or structure be vacated shall be enforced in the same manner as the judgment for summary ejectment entered under G.S. 42-30. An appeal from any judgment entered under this subsection by the magistrate may be taken as provided in G.S. 7A-228, and the execution of the judgment may be stayed as provided in G.S. 7A-227. An action to remove an occupant of a nonresidential building or structure who is a tenant of the owner may not be in the nature of a summary ejectment proceeding pursuant to this subsection unless the occupant was served with notice, at least 30 days before the filing of the summary ejectment proceeding, that the governing board has ordered the public officer to proceed to exercise his or her duties under subsection (f) of this section to vacate and close or remove and demolish the nonresidential building or structure.

K. *Civil penalty.* The governing board may impose civil penalties against any person or entity that fails to comply with an order entered pursuant to this section. However, the imposition of civil penalties shall not limit the use of any other lawful remedies available to the governing board for the enforcement of any ordinances adopted pursuant to this section.

L. *Supplemental powers.* The powers conferred by this section are supplemental to the powers conferred by any other law. An ordinance adopted by the governing board may authorize the public officer to exercise any powers necessary or convenient to carry out and effectuate the purpose and provisions of this section, including the following powers in addition to others herein granted:

1. To investigate nonresidential buildings and structures in the local government's planning and development regulation jurisdiction to determine whether they have been properly maintained in compliance with the minimum standards so that the safety or health of the occupants or members of the general public are not jeopardized.
2. To administer oaths, affirmations, examine witnesses, and receive evidence.
3. To enter upon premises pursuant to Subsection B of this section for the purpose of making examinations in a manner that will do the least possible inconvenience to the persons in possession.
4. To appoint and fix the duties of officers, agents, and employees necessary to carry out the purposes of the ordinances adopted by the governing board.
5. To delegate any of his or her functions and powers under the ordinance to other officers and agents.

M. *Appeals.* The governing board may provide that appeals may be taken from any decision or order of the public officer to the local government's housing appeals board or board of adjustment. Any person aggrieved by a decision or order of the public officer shall have the remedies provided in G.S. 160D-1208.

N. *Funding.* The governing board is authorized to make appropriations from its revenues necessary to carry out the purposes of this section and may accept and apply grants or donations to assist in carrying out the provisions of the ordinances adopted by the governing board.

O. *No effect on just compensation for taking by eminent domain.* Nothing in this section shall be construed as preventing the owner or owners of any property from receiving just compensation for the taking of property by the power of eminent domain under the laws of this State nor as permitting any property to be condemned or destroyed except in accordance with the police power of the State.

~~**P.** *Definitions.* As used in this section, the following definitions apply:~~

~~1. **Parties in interest**. All individuals, associations, and corporations who have interests of record in a nonresidential building or structure and any who are in possession thereof.~~

~~2. **Vacant industrial warehouse**. Any building or structure designed for the storage of goods or equipment in connection with manufacturing processes, which has not been used for that purpose for at least one year and has not been converted to another use.~~

~~3. **Vacant manufacturing facility**. Any building or structure previously used for the lawful production or manufacturing of goods, which has not been used for that purpose for at least one year and has not been converted to another use.~~

CHAPTER 38. HEALTH AND SANITATION

ARTICLE II. NUISANCES

DIVISION 2. NOISE

38-72.1. ~~Definitions; v~~Violations; exceptions.

Notwithstanding the enumeration of prohibited noises as listed in section 38-72, whenever it is practicable to do so in the discretion of the law enforcement officer or officers, or code enforcement officer or officers responding to the noise complaint, the following ~~definitions and~~ procedure shall be used to determine whether any specific noise alleged to be a violation of this noise ordinance is, in fact, a violation, at any certain time and for any given location from which a complaint arises.

~~*Definitions*.~~

~~**Ambient noise level** means an average A-weighted sound level based on at least three readings made and recorded over a period of no less than ten minutes, made at the location where a complainant claims to be disturbed by an alleged violation but at a time when no noise is then being alleged to violate this ordinance, and made at a point no closer than outside the property line of the property from where the noise is generated.~~

~~**ANSI** refers to the American National Standards Institute or any successor to such organization.~~

~~**A-weighted sound level** means the sound pressure level in decibels as measured on a sound level meter using the A-weighting network measured by a sound level meter, following the criteria approved by ANSI.~~

~~**Decibel** is a unit of measuring the amplitude of sound equal to 20 times the logarithm to the base ten of the ratio between the pressure of sound measured to the reference pressure, which is 20 micronewtons per square meter, as approved by ANSI.~~

~~**Sound level meter** means an instrument which measures sound levels in decibels, which either meets the standard of ASAS 1.4-1983 or other ANSI approved minimum requirements, and provided further that such instrument shall be serviced, calibrated and operated as recommended by the manufacturer, operated by a person or persons trained to operate the same, as approved by the chief of police or his designee.~~

A. *Violations.* In order to document and prove a prima facie violation of this noise ordinance:

1. The ambient noise level shall be determined, if it is reasonably practicable to do so in the discretion of the law enforcement officer or officers, or code enforcement officer or officers responding to the noise complaint. Then, the alleged violation noise level shall be determined at the same location, both determinations to be made by the use of the same sound level meter, and using the same procedure. A violation shall have occurred if the alleged violation noise level exceeds the ambient noise level:
   a. By ten decibels, between the hours of 9:00 p.m. and 7:00 a.m.; or
   b. By 20 decibels, between the hours of 7:00 a.m. and 9:00 p.m.
2. If, due to the nature of the alleged violation noise level, no determination of an ambient noise level is practicable in the discretion of the law enforcement officer or officers, or code enforcement officer or officers responding to the noise complaint, then a violation shall have occurred if the alleged violation noise level exceeds:
   a. 60 decibels between the hours of 9:00 p.m. and 7:00 a.m.; or
   b. 70 decibels between the hours of 7:00 a.m. and 9:00 p.m.
3. If no decibel readings or comparison between ambient noise levels and alleged violation noise levels are practicable in the discretion of the law enforcement officer or officers, or code enforcement officer or officers responding to the noise complaint, the alleged violation is listed in section 38-72, and the violator does not voluntarily and promptly reduce the noise level when requested to do so by a law enforcement officer or code enforcement officer, so as to comply with the definitions in section 38-71, or if, having reduced the noise level to comply therewith but then within a 24-hour period again produces or allows to be produced noise at a level not in compliance with the definitions in section 38-71, the noise shall be a violation of the ordinance.

B. *Exceptions.* The following are excepted from this noise ordinance:

1. Any noise generated by an emergency vehicle, such as a fire truck, police car, an EMS vehicle or their sirens, or other noises generated by or at the behest of a governmental entity which is intended to immediately promote the public health, safety or welfare.
2. Any sporting event sanctioned by a school, any other government agency, or any civic group or club provided that in the latter instance, such event is properly permitted.
3. Noises caused by:
   a. Lawn care equipment, agricultural equipment or construction equipment operated for intended and legitimate purposes between the hours of 7:00 a.m. and 9:00 p.m.;
   b. Properly permitted events such as parades, fairs, circuses and other entertainment events;
   c. Bells, chimes and similar devices which operate from a stationary location, which were in operation before the complainant's residency was established, and which operate for no longer than five minutes in any hour;
   d. Emergency work reasonably necessary to safeguard the public safety to person or property;
   e. Duly permitted electrical transformers and utility substations;

f. Traffic noises other than the unnecessary use of horns, radios or other sound amplifying or receiving equipment, intentional screeching of tires, intentional revving of motors, provided that such traffic noises emanate from a public street or right-of-way; and

g. Noises permitted pursuant to section 38-73.

C. *Regulations and measurement standards promulgated by the chief of police.* The chief of police may promulgate any regulations and sound level measurement standards consistent with this noise ordinance which, in his professional opinion, will aid in the enforcement hereof.

D. *Noises are public nuisances.* Nothing in this noise ordinance shall be construed in such manner as to prohibit the code enforcement officer, the city manager and/or the city council from following the procedure for abatement of a nuisance, enumerated in division 1 of this article, as an alternative or in addition to the prosecution of a violation of the noise ordinance as a misdemeanor with fine up to $500.00 per G.S. 14-4(a).

DIVISION 4. SMOKE CONTROL

38-122. ~~"Dense smoke" defined.~~Reserved.

~~Smoke shall be considered dense when it is of a density equal to or greater than no. 2 on the Ringelmann Smoke Chart approved and adopted as provided in this division.~~

DIVISION 5. ABANDONED, NUISANCE AND JUNKED MOTOR VEHICLES

38-152. ~~Definitions~~Reserved.

~~The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:~~

~~**Abandoned vehicle.** As authorized and defined in G.S. 160A-303, an abandoned motor vehicle is one that:~~

~~**A.** Is left upon a public street or highway in violation of a law or ordinance prohibiting parking;~~

~~**B.A.** Is left on a public street or highway for longer than seven days;~~

~~**C.A.** Is left on property owned or operated by the city for longer than 24 hours; or~~

~~**D.A.** Is left on private property, without the consent of the owner, occupant or lessee thereof, for longer than two hours.~~

~~**Authorizing official** means the supervisory employee of the police department designated to authorize the removal of vehicles under the provisions of this division.~~

~~**Junked motor vehicle.** As authorized and defined in G.S. 160A-303.2, the term "junked motor vehicle" means a vehicle that does not display a current license plate lawfully upon that vehicle and that:~~

~~**A.** Is partially dismantled or wrecked;~~

~~**B.A.** Cannot be self-propelled or moved in the manner in which it originally was intended to move; or~~

~~**C.A.** Is more than five years old and appears to be worth less than $100.00.~~

~~**Motor vehicle and vehicle** mean all machines designed or intended to travel over land by self-propulsion or while attached to any self-propelled vehicle.~~

~~**Nuisance vehicle** means a vehicle on public or private property that is determined and declared to be a health or safety hazard, a public nuisance, and unlawful, including a vehicle found to be:~~

~~**A.** A breeding ground or harbor for mosquitoes, other insects, rats or other pests;~~

~~**B.A.** A point of heavy growth of weeds or other noxious vegetation over eight inches in height;~~

~~**C.A.** A point of collection of pools or ponds of water;~~

~~**D.A.** A point of concentration of quantities of gasoline, oil or other flammable or explosive materials as evidenced by odor;~~

~~**E.A.** One which has areas of confinement which cannot be operated from the inside, such as trunks, hoods, etc.;~~

~~**F.A.** So situated or located that there is a danger of it falling or turning over;~~

~~**G.A.** One which is a point of collection of garbage, food waste, animal waste, or any other rotten or putrescible matter of any kind;~~

~~**H.A.** One which has sharp parts thereof which are jagged or contain sharp edges of metal or glass; or~~

~~**I.A.** Any other vehicle specifically declared a health and safety hazard and a public nuisance by the city council.~~

ARTICLE III. SMOKING IN MUNICIPAL BUILDINGS

38-191. ~~Definitions.~~Reserved.

~~The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:~~

~~**Smoking** means the inhaling, exhaling, burning or carrying of a lighted pipe, cigar, cigarette or other combustible tobacco product.~~

CHAPTER 42. OFFENSES AND MISCELLANEOUS PROVISIONS

ARTICLE I. IN GENERAL

42-6. Loitering for purpose of engaging in drug-related activity.

~~**A.** *"Public place" defined.* For purposes of this section, the term "public place" means any street, sidewalk, bridge, alley or alleyway, plaza, park, driveway, parking lot or transportation facility, or the doorways and entranceways to any building which fronts on any of those places, or a motor vehicle in or on any of those places, or any property owned by the city or by any public agency or public authority and located within the city.~~

~~**B.A.** *"Known unlawful drug user, possessor or seller" defined.* For purposes of this section, the term "known unlawful drug user, possessor or seller" means a person who has, within the knowledge of the arresting officer or complaining witness, been convicted in any court within this state of any violation involving the use, possession or sale of any of the controlled substances or drug paraphernalia referred to in the North Carolina Controlled Substances Act, G.S. 90-89 et seq., or has been convicted of any violation of any substantially similar laws of any political subdivision of this state or of any other state, or of federal law.~~

~~C.~~**A.** *Violations.* It shall be unlawful for a person to loiter, remain or wander about in a public place in a manner and under circumstances manifesting the purpose of engaging in a violation of any subdivision of the North Carolina Controlled Substances Act, G.S. 90-89 et seq. A prima facie showing of a violation of this section is made by proof that a person, while in a public place, loiters and commits any of the following acts or courses of conduct:

1. Repeatedly beckons to, stops or attempts to stop passersby, or repeatedly attempts to engage passersby in conversation;
2. Repeatedly stops or attempts to stop motor vehicles;
3. Repeatedly interferes with the free passage of motor vehicles or other persons;
4. Associates at such location with one or more persons who are known unlawful drug users, possessors and sellers;
5. Behaves in such a manner as to raise a reasonable suspicion that he is about to engage in, or is engaged in, an unlawful drug-related activity;
6. Repeatedly passes to or receives from passersby, whether on foot or in a vehicle, money or objects;
7. Takes flight upon the approach or appearance of a police officer;
8. Is at a location frequented by persons who use, possess or sell drugs; or
9. Uses or associates with the user of any vehicle which is registered to a known unlawful drug user, possessor or seller, or is known to be or have been involved in drug-related activities.

~~D.~~**B.** *Penalty.* A violation of any provision of this section is a misdemeanor and shall subject the offender to punishment in accordance with Section 1-8.

ARTICLE II. OBSCENE MATERIALS

42-42. Display of sexually explicit materials.

~~**A.** *Definitions.* The words and phrases defined in this subsection shall have the meaning indicated when used in this section:~~

~~1. **Display** means to put or spread before the view of those passing within sight distance of the matter displayed, in an ostentatious manner designed to attract attention to or show off the matter displayed. Magazines that meet the definition of sexually explicit materials shall be considered displayed if they are placed in a location (e.g., a magazine rack or shelf) accessible to minors and arranged in a manner calculated to encourage minors to view or read such materials. Sexually explicit materials located within any business or commercial establishment shall not be considered displayed if they are placed in a location that is only accessible to adults or if they are located such that they are only available to customers upon request made to a person in charge of or employed by such business or commercial establishment.~~

~~2.~~1. ~~**Harmful to minors** means that quality of any description or representation, in whatever form, of nudity, sexual conduct, sexual excitement or sadomasochistic abuse, when it:~~

~~A. Predominantly appeals to the prurient, shameful or morbid interest of minors;~~

~~B.~~A. ~~Is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material for minors; and~~

~~C.~~A. ~~Taken as a whole, lacks serious literacy, artistic, political or scientific value for minors.~~

~~3.1. **Knowing** means having a general knowledge of, or reason to know, or a belief or ground for belief that warrants further inspection or inquiry of the character and content of any of the materials described in 42-42.B of this section that are reasonably susceptible of examination by the person charged with such knowledge.~~

~~4.1. **Minor** means any person under the age of 18.~~

~~5.1. **Nudity** means the showing of the human male or female genitals, pubic area or buttocks with less than a full opaque covering, or the showing of the female breast with less than a full opaque covering of any portion thereof below the top of the nipple, or the depiction of covered male genitals in a discernibly turgid state.~~

~~6.1. **Sadomasochistic abuse** means flagellation or torture by or upon a person clad in undergarments, a mask or bizarre costume, or the condition of being fettered, bound or otherwise physically restrained on the part of one so clothed.~~

~~7.1. **Sexual conduct** means acts of masturbation, homosexuality, sexual intercourse or physical contact with a pers'on's clothed or unclothed genitals, pubic area, buttocks, or, if such person be a female, breast.~~

~~8.1. **Sexually explicit materials** means materials consisting of:~~

~~A. Any picture, photograph, drawing, sculpture, motion picture film, or similar visual representation or image of a person or portion of the human body which depicts nudity, sexual conduct or sadomasochistic abuse and which is harmful to minors; or~~

~~B.A. Any book, pamphlet, magazine, printed matter, however reproduced, or sound recording which contains any matter enumerated in the definitions of nudity, sadomasochistic abuse, sexual conduct and subsection (A) of this definition, or any explicit and detailed verbal description or narrative account of sexual excitement, sexual conduct or sadomasochistic abuse, which, taken as a whole, is harmful to minors.~~

A. *Display.* ~~Subject to 42-42.C, n~~No person, knowing the character of the materials involved, may display or cause or permit the display of any sexually explicit materials in or on any window, showcase, newsstand, display rack, billboard, display board, viewing screen, motion picture screen, marquee or similar place in such manner that the display is visible from any public street, highway, sidewalk or other public right-of-way, or in any business or commercial establishment where minors, as a part of the general public or otherwise, are or will probably be exposed to view all or any part of such materials. Violation punishable as a misdemeanor with fine up to $500.00 per G.S. 14-4(a).

B. *Exception.* Nothing in this section shall apply to any recognized historical society or museum accorded charitable status by the federal government or any library operated by any unit of state or local government.

ARTICLE III. OBSCENITY

42-71. ~~Definitions.~~Reserved.

~~The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:~~

~~**Available to the public** means that the matter or performance may be purchased or attended on a subscription basis, on a membership fee arrangement, or for a separate fee for each item or performance.~~

~~**Disseminate** means to transfer possession of, with or without consideration.~~

~~**Knowingly** means being aware of the character and the content of the material.~~

~~**Material** means any book, magazine, newspaper or other printed or written material or any picture, drawing, photograph, motion picture or other pictorial representation or any statue or other figure, or any recording, transcription or mechanical, chemical or electrical reproduction or any other articles, equipment or machines not otherwise subject to and governed by Section 42-41.~~

~~**Nudity** means the showing of the human male or female genitals, female breasts or pubic area with less than a fully opaque covering, or the depiction of covered male genitals in a discernible turgid state.~~

~~**Obscene** means that, to the average person applying contemporary community standards:~~

~~**A.** The predominant appeal of the matter, taken as a whole, is to prurient interest, i.e., a shameful or morbid interest in sexual conduct, nudity or excretion;~~

~~**B.A.** The matter depicts or describes, in a patently offensive manner, sexual conduct regulated by the General Statutes of the state; and~~

~~**C.A.** The work, taken as a whole, lacks serious literary, artistic, political or scientific value.~~

~~**Performance** means any preview, play, show, skit, film, dance or other exhibition performed before an audience.~~

~~**Person** means any individual, partnership, firm, association, corporation or other legal entity.~~

~~**Promote** means to cause, permit, procure, counsel or assist.~~

~~**Public park** means any publicly owned or maintained land which is designated by the City of Brevard as a park or recreation facility.~~

~~**Registered sex offender** [means] an individual who is registered by any state or federal agency as a sex offender and whose name is published on any state or federal registered sex offender listing, including, but not limited to the sex offender registry established in Article 27A of G.S. ch. 14.~~

~~**Service to patrons** means the provision of services to paying guests in establishments providing food and beverages, including but not limited to hostessing, hat checking, cooking, bartending, serving, table setting and clearing, waiter and waitressing, and entertaining.~~

CHAPTER 43. SOCIAL DISTRICTS

(Reflects the proposed Chapter 43 – Social Districts, which is going before City Council for a vote on 8/21/23)

ARTICLE I. IN GENERAL

43-2. ~~Definitions.~~Reserved.

~~The following words, terms, and phrases, when used in this Chapter, shall have the meanings ascribed to them in this section, except where the context indicates a different meaning:~~

~~**A. ABC Permittee** means a person holding any of the following ABC permits:~~

~~1. An on-premises malt beverage permit issued pursuant to N.C.G.S. §18B-1001(1).~~

~~2.1. An on-premises unfortified wine permit issued pursuant to N.C.G.S. §18B-1001(3).~~

~~3.1. An on-premises fortified wine permit issued pursuant to N.C.G.S. §18B-1001(5).~~

4.1. A mixed beverages permit issued pursuant to N.C.G.S. §18B-1001(10).

5.1. A wine shop permit issued pursuant to N.C.G.S. §18B-1001(16).

6.1. A distillery permit issued pursuant to N.C.G.S. §18B-1100(5).

B.A. **Customer** means a person who purchases an alcoholic beverage from an ABC permittee that is in a social district.

C.A. **Multi-tenant establishment** means a building or structure, or multiple buildings and structures on the same property, or within the same planned development project, that may be subject to a common declaration of restrictive covenants administered by a common property owners' association, and under common ownership, control, or property owners' association governance, that contains or contain multiple businesses that sell food, goods, services, or a combination of food, goods, and services, and that include or are connected by common areas. The term multi-tenant establishment includes a mixed-use development.

D.A. **Non-Permittee Business** means a business located in a social district and does not hold any North Carolina Alcoholic Beverage Control Commission (ABC) permit.

E.A. **Open Container** means a container that has a broken seal or a container other than the manufacturer's unopened original container.

F.A. **Public Street** means any highway, road, street, avenue, boulevard, or another way within and under the control of the City or State and open to public use, including the sidewalks of any such street.

G. **Person** means an individual, firm, partnership, association, corporation, limited liability company, other organization or group, or other combination of individuals acting as a unit.

H.A. **Premises** means a fixed permanent establishment, including all areas inside or outside the licensed establishment, where the ABC permittee has control through a lease, deed, or other legal processes.

I.A. **Social District** means a defined area in which a person may consume alcoholic beverages sold by an ABC permittee, pursuant to N.C.G.S. 18B-300.1 or other applicable state law. A social district may include both indoor and outdoor areas of businesses within or contiguous to the defined area during the days and hours set by the local government by ordinance. A social district may include privately owned property, including ABC permittees and non-permittee businesses, and multi-tenant establishments, and public streets, crosswalks, or parking areas whether or not the streets or parking areas are closed to vehicle traffic.

CHAPTER 46. PEDDLERS AND SOLICITORS

ARTICLE I. IN GENERAL

46-7. Definitions.Reserved.

As used in this ordinance the words and expressions defined in this section shall be held to have the meanings herein given to them:

Obstruction (permanent or semipermanent): An object that is kept out on public streets, sidewalks, and alleyways after business hours. Such objects include but are not limited to displays, fixtures, inventory racks, display cases, planters, vending machines, and seating. Also referred to as a semipermanent or permanent object.

~~**Restaurant**: A retail business selling ready-to-eat food and/or beverages for on or off-premise consumption. Customers may be served from an ordering counter (i.e. cafeteria or limited service restaurant), at their tables (full-service restaurant), and at exclusively pedestrian-oriented facilities that serve from a walk-up ordering counter (snack and/or nonalcoholic bars).~~

CHAPTER 58. SOLID WASTE MANAGEMENT

58-1. ~~Definitions.~~Reserved.

~~The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:~~

~~**Ashes** means the residue from the burning of wood, coal, coke or other combustible materials.~~

~~**Director** means the public works director.~~

~~**Garbage** means putrescible animal and vegetable wastes resulting from the handling, preparation, cooking and consumption of food.~~

~~**Refuse** means all putrescible and nonputrescible solid wastes (except body wastes), including garbage, rubbish, ashes, street cleanings, dead animals, and solid market and industrial wastes.~~

~~**Rubbish** means nonputrescible solid wastes (including ashes) consisting of both combustible and noncombustible wastes, such as paper, cardboard, tin cans, yard clippings, wood, glass, bedding, rubble, crockery and similar materials.~~

58-2. Management and control of collection services; appeals.

A. All garbage and other refuse accumulated in the city shall be collected, conveyed and disposed of by the city under the control of the city manager, and under the supervision of the director of public works. The director shall have the authority to make regulations concerning the days of collection, type and location of waste containers, and such other matters pertaining to the collection, conveyance and disposal as he shall find necessary, and to change and modify the regulations after due notice as required by law, provided such regulations are not contrary to the provisions of law.

B. Any person aggrieved by a regulation of, or fee charged by, the public works director shall have the right of appeal to the city manager, who shall have the authority to confirm, modify or revoke any such regulations or fee.

58-5. Containers.

A. *Required; maintenance; specifications.* Refuse containers shall be provided by the owner, tenant, lessee or occupant of the premises served and shall be of a type approved by the public works director. Containers shall be maintained in good condition and shall be kept in a clean, neat and sanitary condition at all times. Any container that does not conform to the provisions of this chapter or that may have ragged or sharp edges or any other defect liable to hamper or injure the person collecting the contents thereof shall be promptly replaced upon notice. The public works director shall have the authority to refuse collection services for failure to comply herewith. City collection personnel shall exercise due care in the handling of containers and the city shall not be liable for any damage to containers resulting from handling the containers unless it can be shown

that the personnel were negligent or careless in the handling thereof, and in such cases the liability of the city shall extend only to replacement of the container with one in good condition of like material and capacity. The following types and numbers of containers are prescribed for use in the collection of waste material:

1. *Residential containers.* The standard small container, normally used at residences, shall be made of metal or substantial plastic equipped with suitable handles and tight-fitting covers, shall be watertight and shall have a capacity of not more than 32 gallons. These containers may be used for any waste material. Care shall be taken to ensure that the weight of the contents shall be such that the container, with contents, can readily be handled by one adult person.
2. *Dumpsters.* Commercial dumpster containers shall be of steel construction, of up to four-cubic-yard capacity and of such design and construction as to facilitate mechanical unloading by collection equipment operated by the city. Sub-grade dumpsters may be installed of steel or polyethylene construction for private hauler service and maintenance; the public works director may require the customer use a private hauler to collect the waste in such dumpsters due to city collection capabilities. Dumpsters may be used for garbage, refuse or rubbish.
3. *Disposable containers.* Disposable containers shall be made of either metal, plastic, wood, cardboard or paper, all of which shall be removed with the contents thereof. These containers together with the contents thereof shall be of such weight that they can readily be handled by one adult person and shall be of sufficient strength to withstand failure when being picked up and placed in the collection vehicle.
4. *Number of containers.* Residential and noncommercial business customers shall be limited to two standard small containers per dwelling unit or business per collection. If more than two containers are used on a regular basis, the collection fee shall be doubled. For multifamily residential buildings having more than four units, a commercial dumpster container shall be provided in lieu of the standard small containers. Commercial customers requiring more than four standard small containers on a regular basis shall be required to use a commercial dumpster container.

B. *Use.* No person shall place any refuse in any street, alley or other public place, or upon any private property, whether or not owned by such person, within the city except in proper containers for collection or under express approval granted by the public works director; nor shall any person throw or deposit any refuse in any stream or other body of water.

C. *Placement.* Refuse containers shall be placed for collection at ground level and directly accessible from the street or alley from which collection is made. Residential refuse containers shall be placed at curbside prior to collection, no later than 7:30 AM and shall be removed within reasonable time thereafter. A suitable permanent location, satisfactory to the public works director, may be established for containers of commercial customers.

58-6. Frequency of collection.

A. Refuse shall be collected once each week under normal circumstances.

B. Hotels, restaurants and such other businesses and institutions as deem it necessary may enter into an agreement for a greater frequency of collection.

C. Where necessary to protect the public health, the public works director shall have the authority to require that more frequent collection be made. If necessary, an extra city-wide collection shall not affect fees. Individual collections made according to this section shall be charged on a pro-rata basis to the affected fee payer.

58-7. Refuse quantity.

A. The public works director shall collect a reasonable accumulation of refuse of each patron during each collection period for the standard charge. The public works director shall have the authority to refuse to collect unreasonable amounts, or to make additional charges for such amounts.

B. Only material placed in approved containers shall be picked up. Refuse placed on the ground or scattered about in the immediate vicinity of the container shall not be picked up unless, in the opinion of the public works director, pickup by city personnel is warranted due to delays in the service or other factors which are strictly the responsibility of the city.

58-8. Special refuse problems.

A. *Contagious disease refuse.* The removal of wearing apparel, bedding or other refuse from homes or other places where highly infectious or contagious diseases have prevailed shall be performed under the supervision and direction of the county health department. Such refuse shall not be placed in containers for regular collection.

B. *Construction debris; tree limbs, trunks, etc.* Rubbish resulting from any construction, remodeling, wrecking or repair of any building or other real estate improvement shall be removed by the producer of such rubbish, or by the owner of the premises upon which rubbish has accumulated, at his own expense, subject to the provisions of section 58-9. These restrictions shall apply to the removal of limbs, trunks, stumps, etc., of any trees or shrubs removed or trimmed by landscape gardeners, tree surgeons or other parties engaged to carry on such work.

C. *Inflammable or explosive refuse.* Highly inflammable or explosive materials shall not be placed in containers for regular collection but shall be disposed of as directed by the public works director at the expense of the owner or possessor thereof.

D. *Free curbside pickup service.* Rubble, wood, tree trimmings, hedge clippings and debris resulting from cleaning of property may be placed at curbside for collection. The public works director shall collect a reasonable amount of such rubbish at no charge, but he shall have the authority to refuse to collect heavy or bulky items that cannot be handled readily by two adult persons. It shall be unlawful for any person to place or allow to be placed any tree trimmings or shrubbery trimmings on any street or sidewalk so as to obstruct the free passage of vehicles or pedestrians.

E. *Parking of pickup vehicles at private residence*s. The city manager or his designee may authorize city vehicles to be parked at private residences to facilitate the collection of brush and other refuse that would otherwise be collected under other provisions of this section. The city manager is directed to develop a written policy to provide for the implementation of this subsection. The policy is to be kept on file in the office of the city clerk and at the public works department. The fee for this service shall be adopted in the city's annual schedule of fees.

58-9. Collection by actual producers and outside collectors.

A. *Vehicles.* The actual producers of refuse or the owners of premises upon which refuse is accumulated who desire personally to collect and dispose of such refuse, persons who desire to dispose of waste material not included in the definition of refuse and collectors of refuse from outside of the city who desire to haul over the streets of the city shall use a watertight vehicle provided with a tight cover and so operated as to prevent offensive odors escaping therefrom and refuse from being blown, dropped or spilled.

B. *Additional rules and regulations.* The public works director shall have the authority to make such other reasonable regulations concerning individual collection and disposal, and relating to the hauling of refuse over

city streets by outside collectors, as such director may find necessary, subject to the right of appeal as set forth in Section 58-2.

58-11. Fees; delinquent accounts.

A. *Establishment of fees for the collection and disposal of refuse.* Fees for the collection and disposal of refuse shall be set forth within the schedule of taxes, fees and charges of the annually adopted budget ordinance for the City of Brevard. The specific policies and procedures for the collection of such fees shall be established by the city manager.

B. *Applicability of fee.* The appropriate fee for collection and disposal of refuse shall be charged each occupied single, duplex or multifamily dwelling. Businesses which have a contract for refuse collection by a private contractor shall not be required to pay the city fee.

C. *Single and duplex family dwellings.* The fee for collection and disposal of refuse placed for collection adjacent to the side of the street or alley from which collection is made shall be as set forth in the schedule of taxes, fees and charges, and shall include the free pickup service provided for in Section 58-8.D.

D. *Multifamily dwellings.* For each dwelling unit in a multifamily dwelling, i.e., three or more family dwelling units per building, the fee shall be as set forth in the schedule of taxes, fees and charges, provided, however, that this fee shall not include the free pickup service provided for in Section 58-8.D. The regular fee provided for in Subsection 58-11.F shall be charged for pickup of rubble, wood, tree trimmings, hedge clippings and debris resulting from cleaning of property at multifamily dwellings. Owners of multifamily dwelling buildings shall have the option of using a dumpster container at the regular commercial rate in lieu of individual unit garbage containers.

E. *Fee for commercial premises.* The fee for collection and disposal of refuse from nonresidential premises shall be as set forth in the schedule of taxes, fees and charges.

F. *Fee for special loads.* The fee for the collection and disposal of special loads of refuse shall be as set forth in the schedule of taxes, fees and charges.

G. *Delinquent accounts.* All accounts shall be considered delinquent if not paid by the 20th of the month following the month in which service is rendered. All delinquent accounts are subject to stoppage of service without notice. If the delinquent account is not paid within 30 days, the public works director shall cease all refuse collection for that account unless otherwise directed by the city manager. Service shall be resumed thereafter only upon payment of the accumulated fees for the period of collection and the period of noncollection unless the city manager specifically directs otherwise. The stoppage of services for nonpayment of collection charges shall be in addition to the right of the city to proceed for the collection of such unpaid charges in any manner provided by law for the collection of a claim of the city.

CHAPTER 62. STREETS, SIDEWALKS AND OTHER PUBLIC WAYS

ARTICLE VI. PEDESTRIAN/BICYCLE PATHWAY

62-141. ~~Definitions.~~Reserved.

~~As used in this article the words and expressions defined in this section shall be held to have the meanings herein given to them:~~

~~**Bicycle**: A non-motorized vehicle with two or three wheels tandem, a steering handle, one or two saddle seats, and pedals by which the vehicle is propelled.~~

~~**Bikeways**: All thoroughfares that explicitly provide for bicycle travel including facilities existing within street and highway rights of way and facilities along separate and independent corridors.~~

~~**A.** *Bicycle route:* Those bikeways on existing street rights of way where bicycles share the roadway with motor vehicles. Bicycle routes are designated by signs placed on vertical posts or stenciled on the pavement.~~

~~**B.** **A.** *Bicycle lane:* Those bikeways on existing street rights of way where a portion of the roadway is set aside for exclusive bicycle use and designated by signs on vertical posts or stenciled on the pavement and by a painted line marking the bicycle lane on the pavement. Through travel by motor vehicles or pedestrians is prohibited. Cross flows by motor vehicles and pedestrians when necessary to gain access to and from a public street or alley and/or a private driveway or other entranceway are permitted.~~

~~**C.** **A.** *Bicycle path:* Those bikeways on existing street rights of way or on a completely separated right of way or easement. Use by pedestrians may or may not be permitted. The parking of any through traffic by motor vehicles is prohibited. Cross flows by motor vehicles and pedestrians when necessary to gain access to and from a public street or alley and/or a private driveway or other entranceway are permitted.~~

~~**Electric personal assistive mobility device**: A self balancing non tandem two wheeled device, designed to transport one person, with a propulsion system that limits the maximum speed of the device to 15 miles per hour or less.~~

~~**Motor vehicle**: Every self propelled device in, upon or by which any person or property is or may be transported or drawn upon a highway, with the exception of bicycles and electric personal assistive mobility device as defined herein. This term shall not apply to a device which is designed for and intended to be used as a means of transportation for a person with a mobility impairment, or who uses the device for mobility enhancement, is suitable for use both inside and outside a building, including sidewalks, and is limited by design to a maximum speed of 15 miles per hour when the device is being operated by a person with a mobility impairment.~~

ARTICLE VII. PROPERTY ADDRESSING AND ROAD NAMING

62-164. ~~Definitions.~~Reserved.

~~For the purpose of this article, the following terms are defined below. Unless specifically defined, words or phrases used in this article shall be interpreted to give them the meaning they have in common usage and to give this article the most reasonable application.~~

~~**Board of commissioners**: Transylvania County Board of Commissioners.~~

Building: A structure having a roof supported by columns or walls for the shelter, support or enclosure of persons, animals, or equipment and requiring a separate power meter to be installed for the building to have electrical service, or a separate water meter to be installed for the building to have water service. This will also include mobile homes or manufactured homes. The term "building" shall be construed as if followed by the words "or parts thereof". Each portion of a building separated by division wall from the ground up without openings shall be considered a separate building irrespective of the presence of a separate power or water meter. The term "building" may also include other manmade structures or spaces that could be reasonably construed to be a building within the spirit and intent of this definition.

City: The City of Brevard, North Carolina.

City council: The City Council of the City of Brevard.

Code enforcement officer: The official of the City of Brevard charged with enforcing or supporting the enforcement of this article, and with overseeing and/or supporting the administration and enforcement of other ordinances of the city.

Driveway: A private road, private easement, or private right-of-way, giving access from a public street or road, private road, or private right-of-way, leading to a building. A driveway does not serve more than two buildings that have or require separate power or water meters to be installed for electrical service.

Frontage unit: A frontage unit is a standard interval in feet used to assign consecutive property numbers on a street or road. The standard frontage unit adopted for use throughout Transylvania County is 5.28 feet.

House number: The number assigned by the property address coordinator to any building for the purpose of identification of the location.

Mailing address: The address assigned by the property address coordinator and used by the United States Postal Service for the purpose of delivery of the United States mail. The property address and mailing address will be the same for all buildings unless the property owners utilize a post office box for delivery of their mail.

Official road name: The road name list and the road name map on file with the Transylvania County 911 Emergency Operations shall be the official road names and map for Transylvania County roads, including those located within the jurisdiction of the City of Brevard, unless changed by action of the board of commissioners or city council within their respective jurisdictions.

Private road: Any road servicing more than two buildings or structures containing separate power or water meters, that is not otherwise defined as a street or driveway by this article, and which is not maintained for public use by the United States Government, the North Carolina Department of Transportation, or the City of Brevard through the use of public funds.

Property address coordinator: The official of Transylvania County, and any authorized agent or delegate thereof, charged with the administration of this article.

Road: A public or private one-way or two-way street or road for ingress and/or egress. Such roads may be of various types including frontage roads, rear access roads, roads with culs-de-sac and dead-end roads. This definition does not include driveways.

Road sign: A metal blade and necessary hardware used to convey a street name, public or private road name, or driveway name, and, where applicable, the state road number.

~~**Street**: Any alley, avenue, circle, highway, lane, road, street, drive, or other public way situated within a dedicated public right-of-way which has been accepted by the appropriate governmental agency for continuing maintenance and upkeep; and/or any alley, avenue, circle, highway, lane, road, street, drive, or other public way maintained for public use by the United States Government, the North Carolina Department of Transportation, or the City of Brevard through the use of public funds.~~

~~**State road number**: A number assigned by the North Carolina Department of Transportation, also known as the~~

CHAPTER 66. TRAFFIC

ARTICLE I. IN GENERAL

66-1. Adoption of state law.

A. For the purpose of regulating traffic on the streets of the city, and in addition to the provisions of this chapter, there are hereby adopted by reference by the city the following provisions of G.S. ch. 20: G.S. 20-4.01 (Definitions), G.S. 20-115 et seq. (The Size, Weight, Construction and Equipment of Vehicles), G.S. 20-138.1 et seq. (Operation of Vehicles and Rules of the Road), G.S. 20-171.1 et seq. (Operation of Bicycles), G.S. 20-172 et seq. (Pedestrians) and G.S. 20-216 et seq. (Miscellaneous Provisions Relating to Motor Vehicles).

~~**B.** The definition of the term "authorized emergency vehicle" is hereby amended as follows:~~

~~*Authorized emergency vehicle:* Vehicles of the Fire Department, Police Department, vehicles owned by the Transylvania County Emergency Medical Service and vehicles owned by the various rescue squad units operating within Transylvania County.~~

~~*Vehicles of the fire department:* Shall include the personal vehicles of members of the fire department responding to a fire call and using a red light to indicate an emergency whether they be at the location of a fire, parked in the immediate vicinity of the fire station or in route to either location.~~

~~C.~~**B.** The violation of any such provision shall be deemed a violation of this Code, and punishable as such.

CHAPTER 70. UTILITIES

ARTICLE III. SEWER SYSTEM

70-83. ~~Definitions.~~Reserved.

~~The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:~~

~~**BOD (denoting biochemical oxygen demand)** means the quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory conditions for five days at 20 degrees Celsius, expressed in milligrams per liter.~~

Building drain means that part of the lowest horizontal piping of a drainage system which receives the discharge from soil, waste and other drainage pipes inside the walls of a building and conveys it to a sewer service line, beginning five feet (1.5 meters) outside the inner face of the building wall.

Compatible wastewater means wastewaters with only those polluting constituents which are susceptible to adequate treatment in the treatment system works, without harm to the sewerage system. The term "compatible constituents" has like meaning with reference to individual wastewater parameters.

Garbage means solid wastes from the domestic and commercial preparation, cooking and dispensing of food, and from the handling, storage and sale of produce.

Incompatible wastewater means wastewater containing constituents or characteristics which render it unsuitable for transport or treatment in the sewerage system. The terms "incompatible constituents" and "incompatible characteristics" have like meaning with reference to individual wastewater parameters. Incompatible constituents and characteristics include water parameters. Incompatible constituents and characteristics include the elements listed in prohibitions and may include other elements so identified by the manager and specified in the user's service permit.

Non-discharge permit or permit means a permit issued by the state pursuant to G.S. 143-215.1(d) for a waste which is not discharged directly to surface waters of the state or for a wastewater treatment works which does not discharge directly to surface waters of the state.

pH means the logarithm of the reciprocal of the weight of hydrogen ions in grams per liter of solution.

Public sewer means a sewer in which all owners of abutting properties have equal rights, and which is controlled by public authority.

Sanitary sewer means a sewer which carries wastewater or sewage and to which stormwater, surface water and groundwater are not intentionally admitted.

Septage means the solid and liquid contents of privies, septic tanks or cesspools, industrial wastes, chemical compounds and sludges which are hauled by truck or other mobile conveyance.

Service permit means a permit, issued by the city manager or designee thereof, authorizing a connection to the city sewer system and setting forth any necessary conditions associated with such connection, including, but not limited to, pretreatment requirements and the assessment of any surcharges.

Sewer means a pipe or conduit for carrying sewage.

Sewer service line means the extension from a building drain to the public sewer or other place of disposal; also, a lateral connection.

Sewer system means all facilities for collecting, pumping, treating and disposing of wastewater.

Storm drain and storm sewer mean a sewer which carries stormwater and surface water and drainage, but excludes sewage and industrial wastes other than unpolluted cooling water.

Suspended solids means solids that either float on the surface of or are in suspension in water, sewage or other liquids, and which are removable by laboratory filtering.

System means the sewerage system of the city.

User means any person using the services of the city for conveyance or treatment of wastewater.

~~**Wastewater** means the liquid and water-carried industrial or domestic wastes from dwellings, commercial buildings, industrial facilities, mobile sources, institutions and treatment facilities, together with any groundwater, surface water, and stormwater that may be present, whether treated or untreated, which are contributed into or permitted to enter the sewer system. Also *sewage*.~~

~~**Wastewater treatment plant** means the arrangement of infrastructure including, but not limited to, piping, pumps, equipment, devices and structures used for treating wastewater and discharging effluent meeting the requirements.~~

~~**Watercourse** means a channel in which a flow of water occurs, either continuously or intermittently.~~

ARTICLE V. SEWER USE ORDINANCE

70-140. General provisions.

A. *Purpose and policy.* This ordinance sets forth uniform requirements for direct and indirect contributors into the wastewater collection and treatment system for the City of Brevard, hereafter referred to as the city, and enables the city to comply with all applicable state and federal laws, including the Clean Water Act (33 United States Code § 1251 et seq.) and the General Pretreatment Regulations (40 CFR, Part 403).

The objectives of this ordinance are:

This ordinance provides for the regulation of direct and indirect contributors to the municipal wastewater system, through the issuance of permits to certain non-domestic users and through enforcement of general requirements for the other users, authorizes monitoring and enforcement activities, requires user reporting and provides for the setting of fees for the equitable distribution of costs resulting from the program established herein.

This ordinance shall apply to all users of the municipal wastewater system, as authorized by G.S. 160A-312 and/or 153A-275. The city shall designate an administrator of the POTW and pretreatment program hereafter referred to as the POTW director or director. Except as otherwise provided herein, the director shall administer, implement and enforce the provisions of this ordinance. Any powers granted to or imposed upon the director may be delegated by the director to other city personnel.

By discharging wastewater into the city wastewater system, industrial users located within or outside the city limits agree to comply with the terms and conditions established in this ordinance, as well as any permits, enforcement actions, or orders issued hereunder. Users subject to this ordinance are also subject to the City of Brevard Code of Ordinances, CHAPTER 70 - utilities.

1. To prevent the introduction of pollutants and wastewater discharges into the municipal wastewater system which will interfere with the operation of the wastewater system or contaminate the resulting sludge;
2. To prevent the introduction of pollutants and wastewater discharges into the municipal wastewater system which will pass through the system, inadequately treated, into any waters of the state or otherwise be incompatible with the system;
3. To promote reuse and recycling of industrial wastewater and sludges from the municipal system;
4. To protect both municipal personnel who may be affected by sewage, sludge, and effluent in the course of their employment as well as protecting the general public;

5. To provide for equitable distribution of the cost of operation, maintenance and improvement of the municipal wastewater system; and
6. To ensure that the municipality complies with its NPDES or non-discharge permit conditions, sludge use and disposal requirements and any other federal or state laws to which the municipal wastewater system is subject.

B. ~~*Definitions and A*~~*abbreviations.*

~~1. Unless the context specifically indicates otherwise, the following terms and phrases, as used in this ordinance, shall have the meanings hereinafter designated:~~

~~a. ***Act*** or ***the Act***. The Federal Water Pollution Control Act, also known as the Clean Water Act, as amended, 33 U.S.C. § 1251 et seq.~~

~~b.~~a. ~~***Approval authority***. The director of the division of water quality of the North Carolina Department of Environment and Natural Resources or his designee.~~

~~c.~~a. ~~***Authorized representative of the industrial user***.~~

~~i. If the industrial user is a corporation, authorized representative shall mean:~~

~~(A) The president, secretary, or a vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or~~

~~(B)~~(A) ~~The manager of one or more manufacturing, production, or operation facilities, provided, the manager is authorized to make management decisions which govern the operation of the regulated facility, including having the explicit or implicit duty of making major capital investment recommendations, and initiate and direct comprehensive measures to assure long-term environmental compliance with environmental laws and regulations; can ensure that the necessary systems are established or actions taken to gather complete and accurate information for control mechanism requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.~~

~~ii.~~i. ~~If the industrial user is a partnership or sole proprietorship, an authorized representative shall mean a general partner or the proprietor, respectively.~~

~~iii.~~i. ~~If the industrial user is a federal, state or local government facility, an authorized representative shall mean a director or highest official appointed or designated to oversee the operation and performance of the activities of the government facility, or their designee.~~

~~iv.~~i. ~~The individuals described in paragraphs 1—3., above, may designate another authorized representative if the authorization is in writing, the authorization specifies the individual or position responsible for the overall operation of the facility from which the discharge originates or having overall responsibility for environmental matters for the company, and the written authorization is submitted to the city.~~

~~v.~~i. ~~If the designation of an authorized representative is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, or overall responsibility for environmental matters for the company, a new authorization satisfying the requirements of this section must be submitted to director prior to or together with any reports to be signed by an authorized representative.~~

d. ***Biochemical oxygen demand (BOD)***. The quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedures for five days at 20° Centigrade, usually expressed as a concentration (e.g., mg/l).

e.a. ***Building sewer***. A sewer conveying wastewater from the premises of a user to the POTW.

f.a. ***Bypass***. The intentional diversion of waste streams from any portion of a us'er's treatment facility.

g.a. ***Categorical standards***. National categorical pretreatment standards or pretreatment standard.

h.a. ***Control authority***. Refers to the POTW organization, if the POTW organizati'on's pretreatment program approval has not been withdrawn, the City of Brevard.

i.a. ***Enforcement response plan or ERP***. An administrative procedure, promulgated by the city manager or designee thereof. The ERP is a guidance document that is intended to provide for fair and equitable treatment of all users for anticipated enforcement situations. Generally, enforcement actions will be taken in accordance with the ERP; however, additional legal actions are available (SUO subsection 70-147.D). Therefore, a combination of enforcement actions may be taken against a user in noncompliance.

j.a. ***Environmental Protection Agency or EPA***. The U.S. Environmental Protection Agency, or where appropriate the term may also be used as a designation for the administrator or other duly authorized official of said agency.

k.a. ***Grab sample***. A sample which is taken from a waste stream on a one-time basis without regard to the flow in the waste stream and over a period of time not to exceed 15 minutes.

l.a. ***Holding tank waste***. Any waste from holding tanks, including, but not limited to, such holding tanks as vessels, chemical toilets, campers, trailers, septic tanks, and vacuum pump tank trucks.

m.a. ***Indirect discharge or discharge***. The discharge or the introduction from any nondomestic source regulated under Section 307(b), (c), or (d) of the Act, (33 U.S.C. 1317), into the POTW including holding tank waste discharged into the system.

n.a. ***Industrial user or user***. A source of indirect discharge.

o.a. ***Interference***. The inhibition or disruption of the POTW collection system, treatment processes, operations, or its sludge process, use, or disposal, which causes or contributes to a violation of any requirement of the control authori'ty's NPDES, collection system, or non-discharge permit or prevents sewage sludge use or disposal in compliance with specified applicable state and federal statutes, regulations, or permits. The term includes prevention of sewage sludge use or disposal by the POTW in accordance with section 405 of the Act, (33 U.S.C. 1345) or any criteria, guidelines, or regulations developed pursuant to the Solid Waste Disposal Act (SWDA)(42 U.S.C. § 6901 et seq.), the Clean Air Act, the Toxic Substances Control Act, the Marine Protection Research and Sanctuary Act (MPRSA) or more stringent state criteria (including those contained in any state sludge management plan prepared pursuant to Title IV of SWDA) applicable to the method of disposal or use employed by the POTW.

p.a. ***Medical waste***. Isolation wastes, infectious agents, human blood and blood products, pathological wastes, sharps, body parts, contaminated bedding, surgical wastes, potentially contaminated laboratory wastes, and dialysis wastes.

q.a. ***National categorical pretreatment standard or categorical standard***. Any regulation containing pollutant discharge limits promulgated by EPA in accordance with Sections 307(b) and (c) of the Act (33 U.S.C. § 1317) which applies to a specific category of industrial users, and which appears in 40 CFR Chapter 1, Subchapter N, Parts 405-471.

r.a. ***National prohibitive discharge standard or prohibitive discharge standard.*** Absolute prohibitions against the discharge of certain substances; these prohibitions appear in subsection 70-141.A of this ordinance and are developed under the authority of Section 307(b) of the Act and 40 CFR, section 403.5.

s.a. ***New source.***

i. Any building, structure, facility, or installation from which there may be a discharge of pollutants, the construction of which commenced after the publication of proposed categorical pretreatment standards under Section 307(c) of the Act which will be applicable to such source if such standards are thereafter promulgated in accordance with Section 307(c), provided that:

(A) The building, structure, facility, or installation is constructed at a site at which no other source is located; or

(B)(A) The building, structure, facility, or installation totally replaces the process or production equipment that causes the discharge of pollutants at an existing source; or

(C)(A) The production or wastewater generating processes of the building, structure, facility, or installation are substantially independent of an existing source at the same site. In determining whether these are substantially independent, factors such as the extent to which the new facility is integrated with the existing plant, and the extent to which the new facility is engaged in the same general type of activity as the existing source, should be considered.

ii.i. Construction on a site at which an existing source is located results in a modification rather than a new source if the construction does not create a new building, structure, facility, or installation meeting the criteria of sections s.1.ii. or s.1.iii. above but otherwise alters, replaces, or adds to existing process or production equipment.

iii.i. For purposes of this definition, construction of a new source has commenced if the owner or operator has:

(A) Begun, or caused to begin, as part of a continuous on-site construction program:

(1) Any placement, assembly, or installation of facilities or equipment; or

(2)(1) Significant site preparation work including clearing, excavation, or removal of existing buildings, structures or facilities which is necessary for the placement, assembly, or installation of new source facilities or equipment; or

(B)(A) Entered into a binding contractual obligation for the purchase of facilities or equipment which are intended to be used in its operation within a reasonable time. Options to purchase or contracts which can be terminated or modified without substantial loss, and contracts for feasibility, engineering, and design studies do not constitute a contractual obligation under this definition.

t.a. ***Noncontact cooling water.*** Water used for cooling which does not come into direct contact with any raw material, intermediate product, waste product, or finished product.

u.a. ***National Pollution Discharge Elimination System, or NPDES, permit.*** A permit issued pursuant to Section 402 of the Act (33 U.S.C. § 1342), or pursuant to G.S. 143-215.1 by the state under delegation from EPA.

v. ***Non-discharge permit***. A permit issued by the state pursuant to G.S. 143-215.1(d) for a waste which is not discharged directly to surface waters of the state or for a wastewater treatment works which does not discharge directly to surface waters of the state.

w.a. ***Pass-through***. A discharge which exits the POTW into waters of the state in quantities or concentrations which, alone or with discharges from other sources, causes a violation, including an increase in the magnitude or duration of a violation, of the control authority's (and/or POTW's, if different from the control authority) NPDES, collection system, or non-discharge permit or a downstream water quality standard even if not included in the permit.

x. ***Person***. Any individual, partnership, co-partnership, firm, company, corporation, association, joint stock company, trust, estate, governmental entity or any other legal entity, or their legal representatives, agents or assigns. This definition includes all federal, state, and local government entities.

y. ***pH***. A measure of the acidity or alkalinity of a substance, expressed as standard units, and calculated as the logarithm (base 10) of the reciprocal of the concentration of hydrogen ions expressed in grams per liter of solution.

z.a. ***Pollutant***. Any "waste" as defined in G.S. 143-213(18) and dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, medical wastes, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal and agricultural waste and certain characteristics of wastewater (e.g., pH, temperature, TSS, turbidity, color, metals, BOD, COD, toxicity, and odor).

aa.a. ***POTW director or director***. The city administrator designated with the responsibility for the pretreatment program and enforcement of this sewer use ordinance.

bb.a. ***POTW treatment plant***. That portion of the POTW designed to provide treatment to wastewater.

cc.a. ***Pretreatment or treatment***. The reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater prior to or in lieu of discharging or otherwise introducing such pollution into a POTW. The reduction or alteration can be obtained by physical, chemical or biological processes, or process changes or other means, except by diluting the concentration of the pollutants or as otherwise prohibited by 40 CFR Part 403.6(d).

dd.a. ***Pretreatment program***. The program for the control of pollutants introduced into the POTW from non-domestic sources which was developed by the city in compliance with 40 CFR 403.8 and approved by the approval authority as authorized by G.S. 143-215.3(a)(14) in accordance with 40 CFR 403.11.

ee.a. ***Pretreatment requirements***. Any substantive or procedural requirement related to pretreatment, other than a pretreatment standard.

ff.a. ***Pretreatment standard***. Any prohibited discharge standard, categorical standard, or local limit which applies to an industrial user.

gg.a. ***Publicly owned treatment works (POTW) or municipal wastewater system***. A treatment works as defined by Section 212 of the Act, (33 U.S.C. § 1292) which is owned in this instance by the city. This definition includes any devices or systems used in the collection, storage, treatment, recycling, and reclamation of municipal sewage or industrial wastes of a liquid nature. It also includes sewers, pipes, and other conveyances only if they convey wastewater to the POTW treatment plant. For the purposes of this ordinance, "POTW" shall also include any sewers that convey wastewaters to the

POTW from persons outside the city who are, by contract or agreement with the city, or in any other way, users of the POTW of the city.

hh.a. ***Severe property damage***. Substantial physical damage to property, damage to the user's treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

ii.a. ***Significant industrial user or SIU***. An industrial user that discharges wastewater into a POTW and that:

i. Discharges an average of 25,000 gallons per day or more of process wastewater to the POTW, excluding sanitary, noncontact cooling and boiler blowdown wastewaters; or

ii.i. Contributes more than five percent of any design or treatment capacity (i.e., allowable pollutant load) of the wastewater treatment plant receiving the indirect discharge; or

iii.i. Is subject to categorical pretreatment standards under 40 CFR Part 403.6 and 40 CFR Chapter I, Subchapter N, Parts 405-471; or

iv.i. Is designated as such by the control authority on the basis that the industrial user has a reasonable potential for adversely affecting the PO'TW's operation, or for violating any pretreatment standard or requirement, or for contributing to violations of the PO'TW's effluent limitations and conditions in its NPDES or non-discharge permit, or for limiting the PO'TW's sludge disposal options.

jj.a. ***Significant noncompliance or SNC***. The status of noncompliance of a significant industrial user when one or more of the following criteria are met. Additionally, any industrial user which meets the criteria in subsections 70-140.B.1.jj.iii., 70-140.B.1.jj.iv., or 70-140.B.1.jj.viii., below, shall also be SNC.

i. Chronic violations of wastewater discharge limits, defined here as those in which 66 percent or more of all the measurements taken for the same pollutant parameter (not including flow) during a six-month period exceed (by any magnitude) a numeric pretreatment standard or requirement including instantaneous limits, as defined by 40 CFR Part 403.3(l);

ii.i. Technical review criteria (TRC) violations, defined here as those in which 33 percent or more of all the measurements taken for the same pollutant parameter during a six-month period equal or exceed the product of the numeric pretreatment standard or requirement including instantaneous limits, as defined by 40 CFR Part 403.3(l) multiplied by the applicable TRC; [TRC = 1.4 for BOD, TSS, fats, oil and grease, 1.2 for all other pollutants (except flow and pH)];

iii.i. Any other violation of a pretreatment standard or requirement as defined by 40 CFR Part 403.3(l) (daily maximum, long-term average, instantaneous limit, or narrative standard) that the control authority and/or POTW determines has caused, alone or in combination with other discharges, interference or pass through (including endangering the health of POTW personnel or the general public);

iv.i. Any discharge of a pollutant or wastewater that has caused imminent endangerment to human health, welfare or to the environment or has resulted in either the control authority's POTW's, if different from the control authority, exercise of its emergency authority under 40 CFR Part 403.8(f)(1)(vi)(B) and subsection 70-147.A.4 of this SUO to halt or prevent such a discharge;

v.i. Violations of compliance schedule milestones, contained in a pretreatment permit or enforcement order, for starting construction, completing construction, and attaining final compliance by 90 days or more after the schedule date.

vi.i. Failure to provide reports for compliance schedule, self-monitoring data, baseline monitoring reports, 90-day compliance reports, and periodic compliance reports within 30 days from the due date.

vii.i. Failure to accurately report noncompliance.

viii.i. Any other violation or group of violations that the control authority and/or POTW determines will adversely affect the operation or implementation of the local pretreatment program.

kk.a. ***Slug load or discharge***. Any discharge at a flow rate or concentration which has a reasonable potential to cause interference or pass through, or in any other way violates the POTW's regulations, local limits, or industrial user permit conditions. This can include, but is not limited to, spills and other accidental discharges; discharges of a non-routine, episodic nature; a non-customary batch discharge; or any other discharges that can cause a violation of the prohibited discharge standards in subsection 70-141.A of this ordinance.

ll.a. ***Standard industrial classification (SIC)***. A classification pursuant to the Standard Industrial Classification Manual issued by the Executive Office of the President, Office of Management and Budget, 1987.

mm.a. ***Stormwater***. Any flow occurring during or following any form of natural precipitation and resulting therefrom.

nn. ***Suspended solids***. The total suspended matter that floats on the surface of, or is suspended in, water, wastewater or other liquids, and which is removable by laboratory filtering.

oo.a. ***Upset***. An exceptional incident in which there is unintentional and temporary noncompliance with categorical pretreatment standards because of factors beyond the reasonable control of the user. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

pp. ***Wastewater***. The liquid- and water-carried industrial or domestic wastes from dwellings, commercial buildings, industrial facilities, mobile sources, treatment facilities and institutions, together with any groundwater, surface water, and stormwater that may be present, whether treated or untreated, which are contributed into or permitted to enter the POTW.

qq.a. ***Wastewater permit***. As set forth in subsection 70-143.B of this ordinance.

rr.a. ***Waters of the State***. All streams, rivers, brooks, creeks, swamps, lakes, waterways, reservoirs, ponds, marshes, wells, springs, aquifers, irrigation systems, drainage systems, bays, sounds, tidal estuaries and all other bodies or accumulations of water, surface or underground, natural or artificial, public or private, which are contained within, flow through, or border upon the state or any portion thereof.

2. This ordinance is gender neutral and the masculine gender shall include the feminine and vice versa.

3. Shall is mandatory; may is permissive or discretionary.

4. The use of the singular shall be construed to include the plural and the plural shall include the singular as indicated by the context of its use.

5.1. The following abbreviations, when used in this ordinance, shall have the designated meanings:

a. BOD: Biochemical oxygen demand;

b. CFR: Code of Federal Regulations;

c. COD: Chemical oxygen demand;

d. EPA: Environmental Protection Agency;

e. gpd: Gallons per day;
f. l: Liter;
g. mg: Milligrams;
h. mg/l: Milligrams per liter;
i. G.S.: North Carolina General Statutes;
j. NPDES: National Pollution Discharge Elimination System;
k. O&M: Operation and maintenance;
l. POTW: Publicly owned treatment works;
m. RCRA: Resource Conservation and Recovery Act;
n. SIC: Standard industrial classification;
o. SWDA: Solid Waste Disposal Act;
p. TSS: Total suspended solids;
q. TKN: Total Kjeldahl nitrogen; and
r. U.S.C.: United States Code.

70-141. General sewer use requirements.

A. *Prohibited discharge standards.*

1. *General prohibitions.* No user shall contribute or cause to be contributed into the POTW, directly or indirectly, any pollutant or wastewater which causes interference or pass-through. These general prohibitions apply to all users of a POTW whether or not the user is a significant industrial user or subject to any national, state, or local pretreatment standards or requirements.
2. *Specific prohibitions.* No user shall contribute or cause to be contributed into the POTW the following pollutants, substances, or wastewater:
   a. Pollutants which create a fire or explosive hazard in the POTW, including, but not limited to, waste streams with a closed cup flashpoint of less than 140° F (60° C) using the test methods specified in 40 CFR 261.21.
   b. Solid or viscous substances in amounts which will cause obstruction of the flow in the POTW resulting in interference but in no case solids greater than one-half inch in any dimension.
   c. Petroleum oil, nonbiodegradable cutting oil, or products of mineral oil origin, in amounts that will cause interference or pass-through.
   d. Any wastewater having a pH less than 5.0 or more than 10.0 or wastewater having any other corrosive property capable of causing damage to the POTW or equipment.
   e. Any wastewater containing pollutants, including oxygen-demanding pollutants, (BOD, etc.) in sufficient quantity, (flow or concentration) either singly or by interaction with other pollutants, to cause interference with the POTW.
   f. Any wastewater having a temperature greater than 139° F (59.4° C), or which will inhibit biological activity in the POTW treatment plant resulting in interference, but in no case wastewater which causes the temperature at the introduction into the treatment plant to exceed 104° F (40° C).

g. Any pollutants which result in the presence of toxic gases, vapors or fumes within the POTW in a quantity that may cause acute worker health and safety problems.

h. Any trucked or hauled pollutants, except at discharge points designated by the director in accordance with subsection 70-141.I of this ordinance.

i. Any noxious or malodorous liquids, gases, or solids or other wastewater which, either singly or by interaction with other wastes, are sufficient to create a public nuisance or hazard to life or are sufficient to prevent entry into the sewers for maintenance and repair.

j. Any substance which may cause the POTW's effluent or any other product of the POTW such as residues, sludges, or scums, to be unsuitable for reclamation and reuse or to interfere with the reclamation process. In no case, shall a substance discharged to the POTW cause the POTW to be in noncompliance with sludge use or disposal regulations or permits issued under Section 405 of the Act; the Solid Waste Disposal Act, the Clean Air Act, the Toxic Substances Control Act, or state criteria applicable to the sludge management method being used.

k. Any wastewater which imparts color which cannot be removed by the treatment process, including, but not limited to, dye wastes and vegetable tanning solutions, which consequently imparts sufficient color to the treatment plant's effluent to render the waters injurious to public health or secondary recreation or to aquatic life and wildlife or to adversely affect the palatability of fish or aesthetic quality or impair the receiving waters for any designated uses.

l. Any wastewater containing any radioactive wastes or isotopes except as specifically approved by the director in compliance with applicable state or federal regulations.

m. Stormwater, surface water, groundwater, artesian well water, roof runoff, subsurface drainage, swimming pool drainage, condensate, deionized water, noncontact cooling water and unpolluted industrial wastewater, unless specifically authorized by the director.

n. Fats, oils, or greases of animal or vegetable origin in concentrations greater than 100 mg/l unless authorized by the director.

o. Any sludges, screenings or other residues from the pretreatment of industrial wastes.

p. Any medical wastes, except as specifically authorized by the director in a wastewater discharge permit.

q. Any material containing ammonia, ammonia salts, or other chelating agents which will produce metallic complexes that interfere with the municipal wastewater system.

r. Any material that would be identified as hazardous waste according to 40 CFR Part 261 if not disposed of in a sewer except as may be specifically authorized by the director.

s. Any wastewater causing the treatment plant effluent to violate state water quality standards for toxic substances as described in 15A NCAC 2B.0200.

t. Wastewater causing, alone or in conjunction with other sources, the treatment plant's effluent to fail a toxicity test.

u. Recognizable portions of the human or animal anatomy.

v. Any wastes containing detergents, surface active agents, or other substances which may cause excessive foaming in the municipal wastewater system.

w. At no time, shall two successive readings on an explosion hazard meter, at the point of discharge into the wastewater system (or at any point in the system) be more than five percent nor any single reading over ten percent of the lower explosive limit (LEL) of the meter.

3. Pollutants, substances, wastewater, or other wastes prohibited by this section shall not be processed or stored in such a manner that they could be discharged to the municipal wastewater system. All floor drains located in process or materials storage areas must discharge to the industrial user's pretreatment facility before connecting with the POTW.

   When the director determines that a user is contributing to the POTW, any of the above-enumerated substances in such amounts which may cause or contribute to interference of POTW operation or pass-through, the director shall:

   a. Advise the user(s) of the potential impact of the contribution on the POTW in accordance with subsection 70-147.B; and

   b. Take appropriate actions in accordance with section 70-143 for such user(s) to protect the POTW from interference or pass-through.

B. *National categorical pretreatment standards.* Users subject to categorical pretreatment standards are required to comply with applicable standards as set out in 40 CFR Chapter 1, Subchapter N, Parts 405-471 and incorporated herein.

1. Where a categorical pretreatment standard is expressed only in terms of either the mass or the concentration of a pollutant in wastewater, the director may impose equivalent concentration or mass limits in accordance with 40 CFR 403.6(c).
2. When wastewater subject to a categorical pretreatment standard is mixed with wastewater not regulated by the same standard, the director shall impose an alternate limit using the combined waste stream formula in 40 CFR 403.6(e).
3. A user may obtain a variance from a categorical pretreatment standard if the user can prove, pursuant to the procedural and substantive provisions in 40 CFR 403.13, that factors relating to its discharge are fundamentally different from the factors considered by EPA when developing the categorical pretreatment standard.
4. A user may obtain a net gross adjustment to a categorical standard in accordance with 40 CFR 403.15.

C. *Local limits.* An industrial waste survey is required prior to a user discharging wastewater (containing in excess of the following average discharge limits):

TABLE 70-141A: LOCAL LIMITS TO WASTEWATER DISCHARGE		
BOD	220	mg/l
TSS	220	mg/l
NH_3	25	mg/l
Arsenic	0.003	mg/l
Cadmium	0.003	mg/l
Chromium	0.05	mg/l (total chromium)
Copper	0.061	mg/l
Cyanide	0.015	mg/l
Lead	0.049	mg/l
Mercury	0.0003	mg/l
Nickel	0.021	mg/l
Silver	0.005	mg/l

Zinc	0.175	mg/l

C. Industrial waste survey information will be used to develop user-specific local limits when necessary to ensure that the POTW's maximum allowable headworks loading is not exceeded for pollutants of concern. User-specific local limits for pollutants of concern shall be included in wastewater permits. The director may impose mass based limits in addition to, or in place of, concentration based limits.

D. *State requirements.* State requirements and limitations on discharges shall apply in any case where they are more stringent than federal requirements and limitations or those in this ordinance.

E. *Right of revision.* The city reserves the right to establish limitations and requirements which are more stringent than those required by either state or federal regulation if deemed necessary to comply with the objectives presented in subsection 70-140.A of this ordinance or the general and specific prohibitions in subsection 70-141.A of this ordinance, as is allowed by 40 CFR 403.4.

F. *Dilution.* No user shall increase the use of process water or, in any way, attempt to dilute a discharge as a partial or complete substitute for adequate treatment to achieve compliance with the limitations contained in the national categorical pretreatment standards, unless expressly authorized by an applicable pretreatment standard, or in any other pollutant-specific limitation developed by the city or state.

G. *Pretreatment of wastewater.*

1. *Pretreatment facilities.* Users shall provide wastewater treatment as necessary to comply with this ordinance and wastewater permits issued under subsection 70-143.B of this ordinance and shall achieve compliance with all national categorical pretreatment standards, local limits, and the prohibitions set out in subsection 70-141.A of this ordinance within the time limitations as specified by EPA, the state, or the director, whichever is more stringent. Any facilities necessary for compliance shall be provided, operated, and maintained at the user's expense. Detailed plans showing the pretreatment facilities and operating procedures shall be submitted to the city for review, and shall be approved by the director before construction of the facility. The review of such plans and operating procedures shall in no way relieve the user from the responsibility of modifying the facility as necessary to produce an effluent acceptable to the city under the provisions of this ordinance. Any subsequent changes in the pretreatment facilities or method of operation shall be reported to and be approved by the director prior to the user's initiation of the changes.
2. *Additional pretreatment measures.*
    a. Whenever deemed necessary, the director may require users to restrict their discharge during peak flow periods, designate that certain wastewater be discharged only into specific sewers, relocate and/or consolidate points of discharge, separate sewage waste streams from industrial waste streams, and such other conditions as may be necessary to protect the POTW and determine the user's compliance with the requirements of this ordinance.
    b. The director may require any person discharging into the POTW to install and maintain, on their property and at their expense, a suitable storage and flow-control facility to ensure equalization of flow. A wastewater discharge permit may be issued solely for flow equalization.
    c. Grease, oil, and sand/grit interceptors shall be provided when, in the opinion of the director, they are necessary for the proper handling of wastewater containing excessive amounts of grease and oil, or sand; except that such interceptors shall not be required for residential users. All interception units shall be of type and capacity approved by the director and shall be so located to be easily

accessible for cleaning and inspection. Such interceptors shall be inspected, cleaned, and repaired regularly, as needed, by the user at their expense.

d. Users with the potential to discharge flammable substances may be required to install and maintain an approved combustible gas detection meter.

H. *Accidental discharge/slug control plans.*

1. The director shall evaluate whether each significant industrial user needs a plan or other action to control and prevent slug discharges and accidental discharges as defined in ~~subsection 70-140.B.1.kk~~ Section 1-2. All SIUs must be evaluated within one year of being designated an SIU. The director may require any user to develop, submit for approval, and implement such a plan or other specific action. Alternatively, the director may develop such a plan for any user.
2. All SIUs are required to notify the POTW immediately of any changes at its facility affecting the potential for spills and other accidental discharge, discharge of a non-routine, episodic nature, a non-customary batch discharge, or a slug load. Also see subsections 70-144.E and 70-144.F.
3. An accidental discharge/slug control plan shall address, at a minimum, the following:
   a. Description of discharge practices, including non-routine batch discharges;
   b. Description of stored chemicals;
   c. Procedures for immediately notifying the director of any accidental or slug discharge, as required by subsection 70-144.F of this ordinance; and
   d. Procedures to prevent adverse impact from any accidental or slug discharge. Such procedures include, but are not limited to, inspection and maintenance of storage areas, handling and transfer of materials, loading and unloading operations, control of plant site runoff, worker training, building of containment structures or equipment, measures for containing toxic organic pollutants, including solvents, and/or measures and equipment for emergency response.

I. *Hauled wastewater.*

1. Septic tank waste may be introduced into the POTW only at locations designated by the director, and at such times as are established by the director. Such waste shall not violate section 70-141 of this ordinance or any other requirements established by the city. The director may require septic tank waste haulers to obtain wastewater discharge permits.
2. The director shall require haulers of industrial waste to obtain wastewater discharge permits. The director may require generators of hauled industrial waste to obtain wastewater discharge permits. The director also may prohibit the disposal of hauled industrial waste. The discharge of hauled industrial waste is subject to all other requirements of this ordinance.
3. Industrial waste haulers may discharge loads only at locations designated by the director. No load may be discharged without prior consent of the director. The director may collect samples of each hauled load to ensure compliance with applicable standards. The director may require the industrial waste hauler to provide a waste analysis of any load prior to discharge.
4. Industrial waste haulers must provide a waste-tracking form for every load. This form shall include, at a minimum, the name and address of the industrial waste hauler, permit number, truck identification, names and addresses of sources of waste, and volume and characteristics of waste. The form shall identify the type of industry, known or suspected waste constituents, and whether any wastes are RCRA hazardous wastes.

70-143. Wastewater discharge permit application and issuance.

A. *Wastewater dischargers.* It shall be unlawful for any person to connect or discharge to the POTW without first obtaining the permission of the city. When requested by the director, a user must submit information on the nature and characteristics of its wastewater within 30 days of the request. The director is authorized to prepare a form for this purpose and may periodically require users to update this information.

B. *Wastewater permits.* All significant industrial users shall obtain a significant industrial user permit prior to the commencement of discharge to the POTW. Existing industrial users who are determined by the director to be significant industrial users shall obtain a significant industrial user permit within 180 days of receiving notification of the POTW director's determination. Industrial users who do not fit the significant industrial user criteria may at the discretion of the director be required to obtain a wastewater discharge permit for non-significant industrial users.

1. *Significant industrial user determination.* All persons proposing to discharge non-domestic wastewater, or proposing to change the volume or characteristics of an existing discharge of non-domestic wastewater shall request from the director a significant industrial user determination. If the director determines or suspects that the proposed discharge fits the significant industrial user criteria, he will require that a significant industrial user permit application be filed.
2. *Significant industrial user permit application.* Users required to obtain a significant industrial user permit shall complete and file with the city, an application in the form prescribed by the director, and accompanied by an application fee in the amount prescribed in the schedule of charges and fees. Significant industrial users shall apply for a significant industrial user permit within 90 days after notification of the POTW director's determination in subsection 70-143.B.1 above. The application shall include at a minimum:
    a. Name of industrial user;
    b. Address of industrial user;
    c. Standard industrial classification (SIC) code(s) or expected classification and industrial user category;
    d. Wastewater flow;
    e. Types and concentrations (or mass) of pollutants contained in the discharge;
    f. Major products manufactured or services supplied;
    g. Description of existing on-site pretreatment facilities and practices;
    h. Locations of discharge points;
    i. Raw materials used or stored at the site;
    j. Flow diagram or sewer map for the industrial user;
    k. Number of employees;
    l. Operation and production schedules; and
    m. Description of current and projected waste reduction activities in accordance with G.S. 143-215.1(g).
3. *Application signatories and certification.* All wastewater discharge permit applications and user reports must be signed by the current authorized representative of the user on file with the control authority as defined in ~~subsection~~Section 1-2~~ 70-140.B.1.c~~. and contain the following certification statement:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

4. *Application review and evaluation.* The director will evaluate the data furnished by the user and may require additional information.
    a. The director is authorized to accept applications for the city and shall refer all applications to the POTW staff for review and evaluation.
    b. The director shall acknowledge and accept the complete application; or if not complete, shall return the application to the applicant with a statement of what additional information is required.
5. *Tentative determination and draft permit.*
    a. The POTW staff shall conduct a review of the application and an on-site inspection of the significant industrial user, including any pretreatment facilities, and shall prepare a written evaluation and tentative determination to issue or deny the significant industrial user permit.
    b. If the staff's tentative determination in subsection 70-143(b)(5)a. above is to issue the permit, the following additional determinations shall be made in writing:
        i. Proposed discharge limitations for those pollutants proposed to be limited;
        ii. A proposed schedule of compliance, including interim dates and requirements, for meeting the proposed limitations; and
        iii. A brief description of any other proposed special conditions which will have significant impact upon the discharge described in the application.
    c. Subsections 70-143.B.5.a. and 70-143.B.5.b. above and the general permit conditions of the city into a significant industrial user permit.
6. *Permit supporting documentation.* The control authority staff shall prepare the following documents for all significant industrial user permits.
    a. An allocation table (AT) listing permit information for all significant industrial users, including, but not limited to, permit limits, permit effective and expiration dates, and a comparison of total permitted flows and loads with division-approved maximum allowable loadings of the POTW, including flow, on forms or in a format approved by the division. The AT shall be updated as permits are issued or renewed, and as permits are modified where the permitted limits or other AT information is revised.
    b. The basis, or rationale, for the pretreatment limitations, including the following:
        i. Documentation of categorical determination, including documentation of any calculations used in applying categorical pretreatment standards; and
        ii. Documentation of the rationale of any parameters for which monitoring has been waived under 40 CFR Part 403.12(e)(2).
7. *Final action on significant industrial user permit applications.*
    a. The director shall take final action on all applications not later than 90 days following receipt of a complete application.

b. The director is authorized to:

i. Issue a significant industrial user permit containing such conditions as are necessary to effectuate the purposes of this ordinance and G.S. 143-215.1;

ii. Issue a significant industrial user permit containing time schedules for achieving compliance with applicable pretreatment standards and requirements;

iii. Modify any permit upon not less than 60 days' notice and pursuant to subsection 70-143.B.9;

iv. Revoke any permit pursuant to subsection 70-147.A;

v. Suspend a permit pursuant to subsection 70-147.A;

vi. Deny a permit application when in the opinion of the director such discharge may cause or contribute to pass-through or interference of the wastewater treatment plant or where necessary to effectuate the purposes of G.S. 143-215.1.

8. *Permit modification.*

a. Modifications of permits shall be subject to the same procedural requirements as the issuance of permits except as listed below. Any changes or new conditions in the permit shall include a reasonable time schedule for compliance.

i. Changes in the ownership of the discharge when no other change in the permit is indicated,

ii. A single modification of any compliance schedule not in excess of four months,

iii. Modification of compliance schedules (construction schedules) in permits for new sources where the new source will not begin to discharge until control facilities are operational.

b. Within nine months of the promulgation of a national categorical pretreatment standard, the wastewater discharge permit of users subject to such standards shall be revised to require compliance with such standard within the time frame prescribed by such standard. Where a user, subject to a national categorical pretreatment standard, has not previously submitted an application for a wastewater discharge permit as required by subsection 70-143(b)(2), the user shall apply for a wastewater discharge permit within 180 days after the promulgation of the applicable national categorical pretreatment standard.

c. A request for a modification by the permittee shall constitute a waiver of the 60-day notice required by G.S. 143-215.1(b) for modifications.

9. *Permit conditions.*

a. The director shall have the authority to grant a permit with such conditions attached as he believes necessary to achieve the purpose of this ordinance and G.S. 143-215.1. Wastewater permits shall contain, but are not limited to, the following:

i. A statement of duration (in no case more than five years);

ii. A statement of non-transferability;

iii. Applicable effluent limits based on categorical standards or local limits or both;

iv. Applicable monitoring, sampling, reporting, notification, and record keeping requirements. These requirements shall include an identification of pollutants to be monitored, sampling location, sampling frequency, and sample type based on federal, state and local law;

v. Requirements for notifying the POTW in the event of an accidental discharge or slug load as defined in ~~subsection 70-140~~ Section 1-2;

vi. Requirements to implement a plan or other controls for prevention of accidental discharges and/or slug loads ~~as defined in subsection 70-140~~, if determined by the director to be necessary for the user and,

vii. Requirements for immediately notifying the POTW of any changes at its facility affecting the potential for spills and other accidental discharges, or slug load ~~as defined in subsection 70-140~~. Also see subsections 70-144.E and 70-144.F; and

viii. A statement of applicable civil and/or criminal penalties for violation of pretreatment standards and requirements and any applicable compliance schedule.

b. In addition, permits may contain, but are not limited to, the following:

i. Limits on the average and/or maximum rate of discharge, and/or requirements for flow regulation and equalization.

ii. Limits on the instantaneous, daily and/or monthly average and/or maximum concentration, mass, or other measure of identified wastewater pollutants or properties.

iii. Requirements for the installation of pretreatment technology or construction of appropriate containment devices, etc., designed to reduce, eliminate, or prevent the introduction of pollutants into the treatment works.

iv. Development and implementation of waste minimization plans to reduce the amount of pollutants discharged to the municipal wastewater system.

v. The unit charge or schedule of user charges and fees for the management of the wastewater discharged to the system.

vi. Requirements for installation and maintenance of inspection and sampling facilities and equipment.

vii. Specifications for monitoring programs which may include sampling locations, frequency of sampling, number, types, and standards for tests, and reporting schedules.

viii. Requirements for immediate reporting of any instance of noncompliance and for automatic resampling and reporting within 30 days where self-monitoring indicates a violation(s).

ix. Compliance schedules for meeting pretreatment standards and requirements.

x. Requirements for submission of periodic self-monitoring or special notification reports.

xi. Requirements for maintaining and retaining plans and records relating to wastewater discharges as specified in subsection 70-144.M and affording the director, or his representatives, access thereto.

xii. Requirements for prior notification and approval by the director of any new introduction of wastewater pollutants or of any significant change in the volume or character of the wastewater prior to introduction in the system.

xiii. Requirements for the prior notification and approval by the director of any change in the manufacturing and/or pretreatment process used by the permittee.

xiv. A statement that compliance with the permit does not relieve the permittee of responsibility for compliance with all applicable federal and state pretreatment standards, including those which become effective during the terms of the permit.

xv. Other conditions as deemed appropriate by the director to ensure compliance with this ordinance, and state and federal laws, rules, and regulations.

10. *Permit duration.* Permits shall be issued for a specified time period, not to exceed five years. A permit may be issued for a period less than a year or may be stated to expire on a specific date.
11. *Permit transfer.* Wastewater permits are issued to a specific user for a specific operation. A wastewater discharge permit shall not be reassigned or transferred or sold to a new owner, new user, different premises, or a new or changed operation.
12. *Permit reissuance.* A significant industrial user shall apply for permit reissuance by submitting a complete permit application in accordance with subsection 70-143.B a minimum of 90 days prior to the expiration of the existing permit.

70-144. Reporting requirements.

A. *Baseline monitoring reports (BMRs).*

1. Within either 180 days after the effective date of a categorical pretreatment standard, or the final administrative decision on a category determination under 40 CFR 403.6(a)(4), whichever is later, existing categorical users currently discharging to or scheduled to discharge to the POTW shall submit to the director a report which contains the information listed in subsection 70-144.A.2, below. At least 90 days prior to commencement of their discharge, new sources, and sources that become categorical users subsequent to the promulgation of an applicable categorical standard, shall submit to the director a report which contains the information listed in subsection 70-144.A.2, below. A new source shall report the method of pretreatment it intends to use to meet applicable categorical standards. A new source also shall give estimates of its anticipated flow and quantity of pollutants to be discharged.
2. Users described above shall submit the information set forth below:
    a. *Identifying information.* The name and address of the facility, including the name of the operator and owner.
    b. *Environmental permits.* A list of any environmental control permits held by or for the facility.
    c. *Description of operations.* A brief description of the nature, average rate of production, and standard industrial classifications of the operation(s) carried out by such user. This description should include a schematic process diagram which indicates points of discharge to the POTW from the regulated processes.
    d. *Flow measurement.* Information showing the measured average daily and maximum daily flow, in gallons per day, to the POTW from regulated process streams and other streams, as necessary, to allow use of the combined waste stream formula set out in 40 CFR 403.6(e).
    e. *Measurement of pollutants.*
        i. The categorical pretreatment standards applicable to each regulated process.
        ii. The results of sampling and analysis identifying the nature and concentration, and/or mass, where required by the standard or by the POTW director, of regulated pollutants in the discharge from each regulated process. Instantaneous, daily maximum, and long-term average concentrations, or mass, where required, shall be reported. The sample shall be representative of daily operations and shall be analyzed in accordance with procedures set out in subsection 70-144.J of this ordinance.
        iii. Sampling must be performed in accordance with procedures set out in subsection 70-144.K of this ordinance and 40 CFR 403.12(b) and (g), including 40 CFR 403.12(g)(4).

f. *Certification.* A statement, reviewed by the user's current authorized representative of the industrial user as defined in ~~subsection 70-140~~Section 1-2 and certified by a qualified professional, indicating whether pretreatment standards are being met on a consistent basis, and, if not, whether additional operation and maintenance (O&M) and/or additional pretreatment is required to meet the pretreatment standards and requirements.

g. *Compliance schedule.* If additional pretreatment and/or O&M will be required to meet the pretreatment standards, the shortest schedule by which the user will provide such additional pretreatment and/or O&M. The completion date in this schedule shall not be later than the compliance date established for the applicable pretreatment standard. A compliance schedule pursuant to this section must meet the requirements set out in subsection 70-144.B of this ordinance.

h. *Signature and certification.* All baseline monitoring reports must be signed and certified in accordance with subsection 70-143.B.3 of this ordinance.

B. *Compliance schedule progress reports.* The following conditions shall apply to the compliance schedule required by subsection 70-144.A.2.g. of this ordinance:

1. The schedule shall contain progress increments in the form of dates for the commencement and completion of major events leading to the construction and operation of additional pretreatment required for the user to meet the applicable pretreatment standards (such events include, but are not limited to, hiring an engineer, completing preliminary and final plans, executing contracts for major components, commencing and completing construction, and beginning and conducting routine operation);
2. No increment referred to above shall exceed nine months;
3. The user shall submit a progress report to the director no later than 14 days following each date in the schedule and the final date of compliance including, as a minimum, whether or not it complied with the increment of progress, the reason for any delay, and, if appropriate, the steps being taken by the user to return to the established schedule; and
4. In no event shall more than nine months elapse between such progress reports to the director.

C. *Reports on compliance with categorical pretreatment standard, deadline.* Within 90 days following the date for final compliance with applicable categorical pretreatment standards, or in the case of a new source following commencement of the introduction of wastewater into the POTW, any user subject to such pretreatment standards and requirements shall submit to the director a report containing the information described in subsections 70-144.A.2.d. through 70-144.A.2.f. of this ordinance. For users subject to equivalent mass or concentration limits established in accordance with the procedures in 40 CFR 403.6(c), this report shall contain a reasonable measure of the user's long-term production rate. For all other users subject to categorical pretreatment standards expressed in terms of allowable pollutant discharge per unit of production (or other measure of operation), this report shall include the user's actual production during the appropriate sampling period. All compliance reports must be signed and certified in accordance with subsection 70-143.B.3 of this ordinance.

D. *Periodic compliance reports.* The control authority may sample and analyze user discharges in lieu of requiring the users to conduct sampling and analysis.

1. All significant industrial users shall, at a frequency determined by the director but in no case less than once every six months, submit a report indicating the nature and concentration of pollutants in the discharge which are limited by pretreatment standards and the applicable flows for the reporting period. Sampling and analysis must be performed in accordance with procedures set out in subsections 70-144.J

and 70-144.K of this ordinance. All periodic compliance reports must be signed and certified in accordance with subsection 70-143.B.3 of this ordinance.

2. If a user subject to the reporting requirement in this section monitors any pollutant more frequently than required by the director, using the procedures prescribed in subsections 70-144.J and 70-144.K of this ordinance, the results of this monitoring shall be included in the report.

E. *Reports of changed conditions.* Each user must notify the director of any planned significant changes to the user's operations or system which might alter the nature, quality, or volume of its wastewater at least 30 days before the change. The permittee shall not begin the changes until receiving written approval from the control authority. See subsection 70-144.F.4 for other reporting requirements.

1. The director may require the user to submit such information as may be deemed necessary to evaluate the changed condition, including the submission of a wastewater discharge permit application under subsection 70-143.B of this ordinance.
2. The director may issue a wastewater discharge permit under subsection 70-143.B of this ordinance or modify an existing wastewater discharge permit under subsection 70-143.B of this ordinance in response to changed conditions or anticipated changed conditions.
3. For purposes of this requirement, significant changes include, but are not limited to, flow or pollutant increases of 15 percent or greater, or the discharge of any previously unreported pollutants.

F. *Reports of potential problems.*

1. In the case of any discharge, including, but not limited to, accidental discharges, discharges of a non-routine, episodic nature, a non-customary batch discharge, or a slug load ~~as defined in Section 70-140~~, that may cause potential problems for the POTW, the user shall immediately telephone and notify the POTW director of the incident. This notification shall include the location of the discharge, type of waste, concentration and volume, if known, and corrective actions taken by the user.
2. Within five days following such discharge, the user shall, unless waived by the director, submit a detailed written report describing the cause(s) of the discharge and the measures to be taken by the user to prevent similar future occurrences. Such notification shall not relieve the user of any expense, loss, damage, or other liability which may be incurred as a result of damage to the POTW, natural resources, or any other damage to person or property; nor shall such notification relieve the user of any fines, penalties, or other liability which may be imposed pursuant to this ordinance.
3. A notice shall be permanently posted on the user's bulletin board or other prominent place advising employees who to call in the event of a discharge described in subsection 70-144.F.1, above. Employers shall ensure that all employees, who may cause such a discharge to occur, are advised of the emergency notification procedure.
4. All SIUs are required to notify the POTW immediately of any changes at its facility affecting the potential for spills and other accidental discharge, discharge of a non-routine, episodic nature, a non-customary batch discharge, or a slug load ~~as defined in subsection 70-140~~.

G. *Reports from unpermitted users.* All users not required to obtain a wastewater discharge permit shall provide appropriate reports to the director as the director may require.

H. *Notice of violation/repeat sampling and reporting.*

1. If sampling performed by a user indicates a violation, the user must notify the director within 24 hours of becoming aware of the violation. The user shall also repeat the sampling and analysis and submit the results of the repeat analysis to the director within 30 days after becoming aware of the violation. If allowed by the director, the user is not required to resample:

a. If the director monitors at the user's facility at least once a month; or

b. If the director samples between the user's initial sampling and when the user receives the results of this sampling.

2. If the director has performed the sampling and analysis in lieu of the industrial user and the POTW sampling of the user indicates a violation, the director shall repeat the sampling and obtain the results of the repeat analysis within 30 days after becoming aware of the violations, unless one of the following occurs:

a. The director monitors at the user's facility at least once a month; or

b. The director samples the user between their initial sampling and when the POTW receives the results of this initial sampling; or

c. The director requires the user to perform sampling and submit the results to the director within the 30-day deadline of the POTW becoming aware of the violation.

I. *Notification of the discharge of hazardous waste.* The city prohibits the discharge of any hazardous wastes without notification to and approval by the director.

1. Any user who commences the discharge of hazardous waste shall notify the POTW, the EPA Regional Waste Management Division Director, and state hazardous waste authorities, in writing, of any discharge into the POTW of a substance which, if otherwise disposed of, would be a hazardous waste under 40 CFR Part 261. Such notification must include the name of the hazardous waste as set forth in 40 CFR Part 261, the EPA hazardous waste number, and the type of discharge (continuous, batch, or other). If the user discharges more than 100 kilograms of such waste per calendar month to the POTW, the notification also shall contain the following information to the extent such information is known and readily available to the user: an identification of the hazardous constituents contained in the wastes, an estimation of the mass and concentration of such constituents in the waste stream discharge during the calendar month, and an estimation of the mass and concentration of such constituents in the waste stream expected to be discharged during the following 12 months. All notifications must take place no later than 90 days before the discharge commences. The user shall not begin the discharge until receiving written approval from the city. Any notification under this paragraph need be submitted only once for each hazardous waste discharge. However, notifications of changed conditions must be submitted under subsection 70-144.E. The notification requirement in this section does not apply to pollutants already reported by users subject to categorical pretreatment standards under the self-monitoring requirements of subsections 70-144.A, subsection 70-144.C, and subsection 70-144.D.

2. Dischargers are exempt from the requirements of subsection 70-144.I.1, above, during a calendar month in which they discharge no more than 15 kilograms of hazardous wastes, unless the wastes are acute hazardous wastes as specific in 40 CFR 261.30(d) and 261.33(e). Discharge of more than 15 kilograms of nonacute hazardous wastes in a calendar month, or of any quantity of acute hazardous wastes as specified in 40 CFR 261.30(d) and 261.33(e), requires a one-time notification. Subsequent months during which the user discharges more than such quantities of any hazardous waste do not require additional notification.

3. In the case of any new regulation under section 3001 of RCRA identifying additional characteristics of hazardous waste or listing any additional substance as a hazardous waste, the user must notify the director, the EPA Regional Waste Management Waste Division Director, and state hazardous waste authorities of the discharge of such substance within 90 days of the effective date of such regulations.

4. In the case of any notification made under this section, the user shall certify that it has a program in place to reduce the volume and toxicity of hazardous wastes generated to the degree it has determined to be economically practical.

5. This provision does not create a right to discharge any substance not otherwise permitted to be discharged by this ordinance, a permit issued thereunder, or any applicable federal or state law.

J. *Analytical requirements.* All pollutant analyses, including sampling techniques, to be submitted as part of a wastewater discharge permit application or report shall be performed by a laboratory certified by the state to perform the wastewater analyses in accordance with the techniques prescribed in 40 CFR Part 136, unless otherwise specified in an applicable categorical pretreatment standard. If 40 CFR Part 136 does not contain sampling or analytical techniques for the pollutant in question, sampling and analyses must be performed in accordance with procedures approved by EPA and city. Analyses must be performed by a state certified lab for each parameter analyzed, if such certification exists for that parameter.

K. *Grab and composite sample collection.*

1. All wastewater samples must be representative of the user's discharge. Wastewater monitoring and flow measurement facilities shall be operated in accordance with best management practices, kept clean, and maintained in good working order at all times. The failure of a user to keep its monitoring facility in this manner shall not be grounds for the user to claim that sample results are unrepresentative of its discharge and may be in violation of its wastewater discharge permit.
2. Grab samples must be used for pH, cyanide, total phenols, oil and grease, sulfide, volatile organic compounds, and any other pollutants as required by 40 CFR 136. The POTW shall determine the number of grabs necessary to be representative of the user's discharge. See 40 CFR 403.12(g)(5) for additional grab sample number requirements for baseline monitoring reports and 90-day compliance reports. Additionally, the director may allow collection of multiple grabs during a 24-hour period which are composited prior to analysis as allowed under 40 CFR 136.
3. Composite samples: All wastewater composite samples shall be collected with a minimum of hourly aliquots or grabs for each hour that there is a discharge. All wastewater composite samples shall be collected using flow proportional composite collection techniques, unless time-proportional composite sampling or grab sampling is authorized by the director. When authorizing time-proportional composites or grabs, the samples must be representative and the decision to allow the alternative sampling must be documented.

L. *Timing.* Written reports will be deemed to have been submitted on the date postmarked. For reports which are not mailed, postage prepaid, into a mail facility serviced by the United States Postal Service, the date of receipt of the report shall govern.

M. *Record keeping.* Users subject to the reporting requirements of this ordinance shall retain, and make available for inspection and copying, all records of information obtained pursuant to any monitoring activities required by this ordinance and any additional records of information obtained pursuant to monitoring activities undertaken by the user independent of such requirements. Records shall include the date, exact place, method, and time of sampling, and the name of the person(s) taking the samples; the dates analyses were performed; who performed the analyses; the analytical techniques or methods used; and the results of such analyses. These records shall remain available for a period of at least three years. This period shall be automatically extended for the duration of any litigation concerning the user or the city, or where the user has been specifically notified of a longer retention period by the director.

N. *Electronic reporting.* The director may develop procedures for receipt of electronic reports for any reporting requirements of this ordinance. Such procedures shall comply with 40 CFR Part 3. These procedures shall be enforceable under section 70-147.

O. *Special reporting requirements for IUs in satellite POTWs.* In the case of industrial user located in a satellite POTW organization's jurisdiction, all information required to be reported to the industrial user's pretreatment program control authority by the section shall also be reported to the POTW treatment plant organization.

CHAPTER 77. PARKS AND RECREATION

ARTICLE I. BRACKEN PRESERVE MANAGEMENT RULES

77-2. ~~Definitions of terms.~~Reserved.

~~As used in this rule the following terms have the following meanings:~~**~~Bike trail~~** ~~means any road or trail maintained for bicycles.~~

~~Conservation easement~~ ~~means an easement, held by the State of North Carolina under the administration of the North Carolina Clean Water Management Trust Fund, which binds the City of Brevard to certain terms and conditions governing uses of and activities upon the Bracken Preserve.~~

~~Forest management plan~~ ~~is a general management plan prepared by the City of Brevard and a forest management plan prepared by a forester licensed to practice forestry within the State of North Carolina.~~

~~Group~~ ~~means a number of individuals related by a common factor, having structured organization, defined leadership, and activities directed by a charter or written bylaws.~~

~~Hiking trail~~ ~~means any road or trail maintained for pedestrians.~~

~~Hunting~~ ~~means the lawful hunting of game animals as defined by the N.C. Wildlife Resources Commission.~~

~~Motorized vehicle~~ ~~means every vehicle which is self-propelled or which is pulled by a self-propelled vehicle (such as a camping trailer, fifth-wheel travel trailer, motor home, travel trailer, and truck camper). A self-propelled vehicle shall include, but is not limited to passenger automobiles, mopeds, off-road vehicles (ORV), golf carts, motorcycles, mini-bikes, all-terrain vehicles, Segways, and go-carts. This does not include motorized wheel chairs or other similar vehicles designed for and used by persons with disabilities.~~

~~Multi-use trail~~ ~~means any trail maintained for use by any of the following: bicycle or pedestrian.~~

~~Park manager~~ ~~means an employee or employees of the City of Brevard, designated by the city manager, who coordinates management of the Bracken Preserve.~~

~~Permit~~ ~~means any written license issued by or under the authority of the City of Brevard permitting the performance of a specified act or acts.~~

~~Permittee~~ ~~means any person, corporation, company or association in possession of a valid permit.~~

~~Person~~ ~~means any individual, firm, partnership, corporation, association, public or private institution, political subdivision, or government agency.~~

~~Public nudity~~ ~~means a person's intentional failure to cover with a fully opaque covering the person's genitals, pubic area, anal area, or female breasts below a point from the top of the areola while in a public place.~~

~~Rock climbing~~ ~~means traversing a rock face that is steep enough to require the use of hands and feet to get up or down.~~

ARTICLE II. SKATE PARK

77-41. ~~Definitions of terms.~~Reserved.

~~As used in this rule the following terms have the following meanings:~~

~~**Bike trail** means any road or trail maintained for bicycles.~~

~~**Group** means a number of individuals related by a common factor, having structured organization, defined leadership, and activities directed by a charter or written bylaws.~~

~~**Hazardous recreational activity** means skateboarding, inline skating, or freestyle bicycling, and, or, any other type(s) not listed.~~

~~**Hiking trail** means any road or trail maintained for pedestrians.~~

~~**Hunting** means the lawful hunting of game animals as defined by the North Carolina Wildlife Resources Commission.~~

~~**Inherent risk** means those dangers or conditions that are characteristic of, intrinsic to, or an integral part of skateboarding.~~

~~**Motorized vehicle** means any vehicle which is self-propelled or which is pulled by a self-propelled vehicle (such as a camping trailer, fifth-wheel travel trailer, motor home, travel trailer, and truck camper). A self-propelled vehicle shall include, but is not limited to passenger automobiles, mopeds, off-road vehicles (ORV), golf carts, motorcycles, mini-bikes, all-terrain vehicles, Segways, and go-carts. This does not include motorized wheel chairs or other similar vehicles designed for and used by persons with disabilities.~~

~~**Multi-use trail** means any trail maintained for use by any of the following: bicycle or pedestrian.~~

~~**Park manager** means an employee or employees of the City of Brevard, designated by the city manager, who coordinates management of the skate park.~~

~~**Permit** means any written license issued by or under the authority of the City of Brevard permitting the performance of a specified act or acts.~~

~~**Permittee** means any person, corporation, company or association in possession of a valid permit.~~

~~**Person** means any individual, firm, partnership, corporation, association, public or private institution, political subdivision, or government agency.~~

~~**Skate park** means any city-owned facility specifically designed, constructed, and designated by on-site signage as an area in which a person may engage in skateboarding.~~

ARTICLE III. ELECTRIC BICYCLES AND MULTIUSE PATH

77-48. ~~Definitions of terms.~~Reserved.

~~**E-bikes class I and III.** Electric assisted bicycles, with no throttle and no self-propulsion, which are not categorized as a motor vehicle as defined in this chapter.~~

~~**E-bikes class II.** Throttle assisted bicycles, characterized by self-propulsion, which are considered motor vehicles as defined in this chapter.~~

Grossly reckless. A reckless activity that is inherently dangerous and results in injury or presents a high risk of grave injury to self or others with disregard for self-preservation or the preservation of the safety of others. Operation of an e-bike while under the influence of alcohol or drugs is hereby declared to be grossly reckless. Any operation of an e-bike with the intent of doing harm to any person or property is hereby declared to be grossly reckless.

Motor or motorized vehicle. All machines designed or intended to travel over land or water by self-propulsion or while attached to any self-propelled vehicle.

Motorized travel. All modes of travel or transport upon a motorized vehicle as defined in this chapter over land or water by self-propulsion.

Negligence. Any breach of the duty of due care, resulting in or reasonably likely to result in proximate harm to persons or property. Violating a posted speed limit is hereby declared to be negligence in every instance, but may also be grossly reckless when circumstances so warrant.

ARTICLE IV. BREVARD DOG PARK RULES AND CONDUCT

77-52. ~~Definitions of terms.~~Reserved.

Bite means any penetration of the skin by teeth constitutes a bite exposure.

Dog park. The Brevard Dog Park is the designated area located within the City's Sports Complex where dog owners may allow their dog to run off-leash inside the designated fenced area.

Duly authorized person, administrator, or official means the code enforcement officer, officers of the Brevard Police Department, or any other individual or person duly authorized by the city manager or local health director to act on behalf of the city for purposes of this chapter.

Grossly reckless. A reckless activity that is inherently dangerous and results in injury or presents a high risk of grave injury to self or others with disregard for self-preservation or the preservation of the safety of others. Willful disregard of rules or knowingly bringing a vicious dog with the intent of doing harm to any person or property is hereby declared to be grossly reckless.

Keeper means a person having custody of an animal.

Negligence. Any breach of the duty of due care, resulting in or reasonably likely to result in proximate harm to persons or property. Violating a posted dog park rule of conduct is hereby declared to be negligence in every instance, but may also be grossly reckless when circumstances so warrant.

Owner means any person or legal entity having a possessory property right in an animal. While using the dog park, the owner is the person with immediate custody of the dog.

Unregistered dog or unlicensed dog means a dog which has not been listed on the owner's tax listing form for the then-current year or registered for a vaccination tag and certification, and/or a dog which does not have affixed to it a rabies vaccination tag.

Vicious dog means any dog which has bitten one or more persons without provocation, or one in which a propensity is known or ought reasonably to be known to the owner or keeper.

CHAPTER 78. VEHICLES FOR HIRE

ARTICLE I. IN GENERAL

78-2. Vehicles other than taxicabs.

A. *Purpose.* The purpose of this section is to ensure the public safety through the minimal regulation of public vehicles for hire.

~~**B.** *Definition.* The following definition shall apply with respect to vehicles regulated pursuant to this section:~~

~~**Vehicle for hire** means any vehicle providing public passenger transportation for a fee, from a point originating or terminating within the city's jurisdiction, including limousine and passenger van services but excluding taxicabs, which are regulated in article ii. (See G.S. 20-87, 160A-579(12).~~

~~**C.**~~**B.** *Requirements.* The owners of all vehicles for hire shall apply to the city clerk annually for certification to operate their vehicle for hire within the city's jurisdiction. Such application shall contain their full names and addresses, the number, make, model of all vehicles for hire in operation, and shall state that:

1. All such vehicles have met all state inspection requirements and are in good working order;
2. All such vehicles have met all of the city's rules and regulations regarding cleanliness and sanitation, as referred to (with respect to taxicabs) in section 78-33;
3. All drivers are duly licensed to operate such vehicles;
4. All such vehicles are fully insured with regard to liability for personal injury and property damage, to the extent required by state law;
5. To the extent that it may be applicable, all such vehicles have been approved by the state utilities commission or such other regulatory agency as may have jurisdiction over the matter.

Upon the completion of such application, the city clerk shall certify the applicant to operate such vehicle for hire.

~~**D.**~~**C.** *Inspections.* Every vehicle operating under this section may be periodically inspected by the police department at such intervals as may be established by the chief of the Department to ensure the continuing maintenance of the vehicle in a safe operating condition.

~~**E.**~~**D.** *Violation.* Any violation of this section shall be punishable as a Misdemeanor or Infraction with fine up to $500.00 per G.S. 14-4. In addition, any violation shall be grounds for refusal to issue or renew the owner's certificate to operate vehicles for hire within the city's jurisdiction. Upon a failure to submit to the inspection required by ~~subsection 78-2.D~~ this section or upon a failure to pass such inspection, the owner's certificate to operate the vehicle shall be immediately revoked.

ARTICLE II. TAXICABS

DIVISION 1. GENERALLY

78-31. ~~Definitions.~~ Reserved.

~~The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:~~

~~**Certificate** means a certificate of public convenience and necessity issued by the city, authorizing the holder thereof to conduct a taxicab business within the city.~~

~~**Cruising** means the driving of a taxicab on the streets, alleys or other public places of the city in search of or soliciting prospective passengers for hire.~~

~~**Driver's license** means the permission granted by the city to a person to drive a taxicab upon the streets of the city.~~

~~**Holder** means a person to whom a certificate of public convenience and necessity has been issued.~~

~~**Manifest** means a daily record prepared by a taxicab driver of all trips made by the driver, showing time and place of origin, destination and number of passengers.~~

~~**Rate card** means a card issued by the city for display in each taxicab, which card contains the rates of fares then enforced.~~

~~**Taxicab** means a motor vehicle regularly engaged in the business of carrying passengers for hire, having a seating capacity of less than six persons and not operated on a fixed route.~~

~~**Waiting time** means the time when a taxicab is not in motion from the time of acceptance of a passenger to the time of discharge, but it does not include any time that the taxicab is not in motion due to any cause other than the request, act or fault of a passenger.~~

PART II: CODE OF ORDINANCES

CHAPTER 1. GENERAL PROVISIONS

1-2. Definitions and rules of construction.

In the construction of this Code and of all ordinances, the following definitions and rules of construction shall be observed, unless inconsistent with the manifest intent of the council or the context clearly requires otherwise:

ABC Permittee: A person holding any of the following ABC permits:

A. An on-premises malt beverage permit issued pursuant to N.C.G.S. §18B-1001(1).

B. An on-premises unfortified wine permit issued pursuant to N.C.G.S. §18B-1001(3).

C. An on-premises fortified wine permit issued pursuant to N.C.G.S. §18B-1001(5).

D. A mixed beverages permit issued pursuant to N.C.G.S. §18B-1001(10).

E. A wine shop permit issued pursuant to N.C.G.S. §18B-1001(16).

F. A distillery permit issued pursuant to N.C.G.S. §18B-1100(5).

Agricultural operation: the Any operation as defined in G.S. 106-701(b) (or any successor thereto), and includes, without limitation, any facility for the production for commercial purposes of crops, livestock, poultry, livestock products or poultry products.

Alarm system: Any electronic or mechanical device transmitting an electronic alarm signal or recorded message to the emergency communications center indicating a fire or an actual or attempted unauthorized entry into a building, or indicating the commission or attempted commission of a crime in or about a building.

Ambient noise level: An average A-weighted sound level based on at least three readings made and recorded over a period of no less than ten minutes, made at the location where a complainant claims to be disturbed by an alleged violation but at a time when no noise is then being alleged to violate this ordinance, and made at a point no closer than outside the property line of the property from where the noise is generated.

Animal: A living creature, domestic or nondomestic, but does not include humans.

Animal control: Any authority designated by the city manager to discharge the requirements of this chapter.

Animal shelter: Any premises designated by the health director for the purpose of impounding and caring for animals.

ANSI: The American National Standards Institute or any successor to such organization.

Approval authority*:* When referring to sewer usage, the director of the division of water quality of the North Carolina Department of Environment and Natural Resources or his designee.

Ashes: The residue from the burning of wood, coal, coke or other combustible materials.

At large animal: An animal shall be deemed to be at large when it is off the property of its owner or keeper and not under physical restraint.

Authorized emergency vehicle*:* Vehicles of the Fire Department, Police Department, vehicles owned by the Transylvania County Emergency Medical Service and vehicles owned by the various rescue squad units operating within Transylvania County.

Authorized representative of the industrial user:

A. If the industrial user is a corporation, authorized representative shall mean:

1. The president, secretary, or a vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or
2. The manager of one or more manufacturing, production, or operation facilities, provided, the manager is authorized to make management decisions which govern the operation of the regulated facility, including having the explicit or implicit duty of making major capital investment recommendations, and initiate and direct comprehensive measures to assure long-term environmental compliance with environmental laws and regulations; can ensure that the necessary systems are established or actions taken to gather complete and accurate information for control mechanism requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

B. If the industrial user is a partnership or sole proprietorship, an authorized representative shall mean a general partner or the proprietor, respectively.

C. If the industrial user is a federal, state or local government facility, an authorized representative shall mean a director or highest official appointed or designated to oversee the operation and performance of the activities of the government facility, or their designee.

D. The individuals described in paragraphs. A - C, above, may designate another authorized representative if the authorization is in writing, the authorization specifies the individual or position responsible for the overall operation of the facility from which the discharge originates or having overall responsibility for environmental matters for the company, and the written authorization is submitted to the city.

E. If the designation of an authorized representative is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, or overall responsibility for environmental matters for the company, a new authorization satisfying the requirements of this section must be submitted to director prior to or together with any reports to be signed by an authorized representative.

Authorizing official: When referring to the removal of motor vehicles, the supervisory employee of the police department designated to authorize the removal of vehicles under the provisions of this division.

Available to the public: When referring to obscene materials, that the matter or performance may be purchased or attended on a subscription basis, on a membership fee arrangement, or for a separate fee for each item or performance.

A-weighted sound level: The sound pressure level in decibels as measured on a sound level meter using the A-weighting network measured by a sound level meter, following the criteria approved by ANSI.

Basement: A portion of a building which is located partly underground, having direct access to light and air from windows located above the level of the adjoining ground.

Basic structural elements: The parts of a building which provide the principal strength, stability, integrity, shape and safety of the building, including, but not limited to plates, studs, joists, rafters, stringers, stairs, subflooring, flooring, sheathing, lathing, roofing, siding, window frames, door frames, porches, railings, eaves, chimneys, flashing, masonry and all other essential components.

Bedroom: A room or space in which people sleep, which can also include permanent provisions for living, eating, and either sanitation or kitchen facilities but not both. Such rooms and spaces that are also part of a dwelling unit are not sleeping units.

Bicycle*:* A non-motorized vehicle with two or three wheels tandem, a steering handle, one or two saddle seats, and pedals by which the vehicle is propelled.

Bicycle route*:* Those bikeways on existing street rights of way where bicycles share the roadway with motor vehicles. Bicycle routes are designated by signs placed on vertical posts or stenciled on the pavement.

Bicycle lane*:* Those bikeways on existing street rights of way where a portion of the roadway is set aside for exclusive bicycle use and designated by signs on vertical posts or stenciled on the pavement and by a painted line marking the bicycle lane on the pavement. Through travel by motor vehicles or pedestrians is prohibited. Cross flows by motor vehicles and pedestrians when necessary to gain access to and from a public street or alley and/or a private driveway or other entranceway are permitted.

Bicycle path*:* Those bikeways on existing street rights of way or on a completely separated right-of-way or easement. Use by pedestrians may or may not be permitted. The parking of any through traffic by motor vehicles is prohibited. Cross flows by motor vehicles and pedestrians when necessary to gain access to and from a public street or alley and/or a private driveway or other entranceway are permitted.

Bike trail; Any road or trail maintained for bicycles.

Bikeways*:* All thoroughfares that explicitly provide for bicycle travel including facilities existing within street and highway rights of way and facilities along separate and independent corridors.

Bite: Any penetration of the skin by teeth constitutes a bite exposure.

Board of commissioners*:* Transylvania County Board of Commissioners.

BOD or biochemical oxygen demand): The quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory conditions for five days at 20 degrees Celsius, expressed in milligrams per liter.

Bond: When a bond is required, an undertaking in writing shall be sufficient.

Building*:* A structure having a roof supported by columns or walls for the shelter, support or enclosure of persons, animals, or equipment and requiring a separate power meter to be installed for the building to have electrical service, or a separate water meter to be installed for the building to have water service. This will also include mobile homes or manufactured homes.

A. The term "building" shall be construed as if followed by the words "or parts thereof".
B. Each portion of a building separated by division wall from the ground up without openings shall be considered a separate building irrespective of the presence of a separate power or water meter.
C. The term "building" may also include other manmade structures or spaces that could be reasonably construed to be a building within the spirit and intent of this definition.

Building drain: That part of the lowest horizontal piping of a drainage system which receives the discharge from soil, waste and other drainage pipes inside the walls of a building and conveys it to a sewer service line, beginning five feet (1.5 meters) outside the inner face of the building wall.

Bypass*:* When referring to sewer usage, the intentional diversion of waste streams from any portion of a user's treatment facility.

Cat: Cats, both male and female, more than six months old.

Categorical standards: When referring to sewer usage, national categorical pretreatment standards or pretreatment standard.

Cellar: A portion of a building located partly or wholly underground having an inadequate access to light and air from windows located partly or wholly below the level of the adjoining ground.

Certificate of public convenience and necessity: A certificate issued by the city, authorizing the holder thereof to conduct a taxicab business within the city.

Certificate of public convenience and necessity holder: A person to whom a certificate of public convenience and necessity has been issued.

Charter: The term "Charter" or "the Charter" means and refers to the Charter of the City of Brevard, North Carolina, as printed in PART I of this volume.

Chicken coop: A weather and predator proof structure or container employed in the keeping of chickens.

Chicken run: An outdoor enclosure employed in the keeping of chickens.

Chronic violations of wastewater discharge limits: Significant noncompliance of wastewater discharge limits in which 66 percent or more of all the measurements taken for the same pollutant parameter (not including flow) during a six-month period exceed (by any magnitude) a numeric pretreatment standard or requirement including instantaneous limits, as defined by 40 CFR Part 403.3(l);

City or municipality: The words "city" and "municipality" mean the City of Brevard in the County of Transylvania and State of North Carolina. Where the context admits, it shall mean the particular department or officer of the city charged with a specific function.

Close familial relationship: A spouse, parent, child, brother, sister, grandparent, or grandchild. The term includes the step, half, and in-law relationships.

Code: Reference to "the Code" or "this Code" means the Code of Ordinances, City of Brevard, North Carolina, as designated in Section 1-1.

Code enforcement officer*:* The official of the City of Brevard charged with enforcing or supporting the enforcement of this article, and with overseeing and/or supporting the administration and enforcement of other ordinances of the city.

Commercial animal establishment: Any pet shop, grooming shop, auction, riding school or stable, zoological park, circus, animal exhibition or kennel.

Component: Any assembly, subassembly, or combination of elements designed to be combined with other components to form part of a building or structure. Examples of a component include an excavated footing trench containing no concrete. The term does not include a system.

Computation of time: The time within which an act is to be done shall be computed by excluding the day of the act, event, default or publication after which the designated period of time begins to run and including the last day; unless the last day is a Saturday, Sunday or legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday or legal holiday. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation. A half holiday shall be considered as other days and not as a holiday.

State law reference(s)—Computation of time, G.S. 1A-1, rule 6(a).

Conjunctions: Conjunctions, such as "and" and "or," shall each be deemed to include the other as the context shall admit.

Conservation easement: An easement, held by the State of North Carolina under the administration of the North Carolina Clean Water Management Trust Fund, which binds the City of Brevard to certain terms and conditions governing uses of and activities.

Control authority: When referring to sewer usage, the POTW organization, if the POTW organization's pretreatment program approval has not been withdrawn, the City of Brevard.

Council or city council: The terms "council" and "city council" mean the Mayor and Council of the City of Brevard.

County: The word "county" means the County of Transylvania in the State of North Carolina.

Customer: In reference to social districts, a person who purchases an alcoholic beverage from an ABC permittee that is in a social district.

Decibel: A unit of measuring the amplitude of sound equal to 20 times the logarithm to the base ten of the ratio between the pressure of sound measured to the reference pressure, which is 20 micronewtons per square meter, as approved by ANSI.

Dense smoke: Smoke shall be considered dense when it is of a density equal to or greater than no. 2 on the Ringelmann Smoke Chart approved and adopted as provided in this division.

Deteriorated: When referring to a dwelling, it shall mean that a dwelling is unfit for human habitation and can be repaired, altered or improved to comply with all of the minimum standards established by Chapter 18, Article V at a cost not in excess of 50 percent of its value, as determined by finding of the inspections.

Dilapidated: When referring to a dwelling, it shall mean that a dwelling is unfit for human habitation and cannot be repaired, altered or improved to comply with all of the minimum standards established by Chapter 18, Article V at a cost not in excess of 50 percent of its value, as determined by finding of the inspector.

Display: To put or spread before the view of those passing within sight distance of the matter displayed, in an ostentatious manner designed to attract attention to or show off the matter displayed. Magazines that meet the definition of sexually explicit materials shall be considered displayed if they are placed in a location (e.g., a magazine rack or shelf) accessible to minors and arranged in a manner calculated to encourage minors to view or read such materials. Sexually explicit materials located within any business or commercial establishment shall not be considered displayed if they are placed in a location that is only accessible to adults or if they are located such that they are only available to customers upon request made to a person in charge of or employed by such business or commercial establishment.

Disseminate: When referring to obscene materials, the transfer possession of, with or without consideration.

Dog: Dogs, both male and female, more than six months old.

Dog park*:* The Brevard Dog Park is the designated area located within the City's Sports Complex where dog owners may allow their dog to run off-leash inside the designated fenced area.

Driver's license: When referring to taxicab drivers, the permission granted by the city to a person to drive a taxicab upon the streets of the city.

Driveway*:* A private road, private easement, or private right-of-way, giving access from a public street or road, private road, or private right-of-way, leading to a building. A driveway does not serve more than two buildings that have or require separate power or water meters to be installed for electrical service.

Duly authorized person, administrator, or official: The code enforcement officer, officers of the Brevard Police Department, or any other individual or person duly authorized by the city manager or, in the case of the Chapter 14 and Chapter 77, local health director to act on behalf of the city for purposes of this chapter.

Dwelling: A building that contains one or two dwelling units used, intended or designed to be used, rented, leased, let or hired out to be occupied for living purposes.

Dwelling unit: A single unit providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation.

Dwelling, multiple: Any dwelling containing more than two dwelling units.

E-bike - Class I and III*:* Electric assisted bicycles, with no throttle and no self-propulsion, which are not categorized as a motor vehicle as defined in this chapter.

E-bike - Class II*:* Throttle assisted bicycles, characterized by self-propulsion, which are considered motor vehicles as defined in this chapter.

Electric personal assistive mobility device*:* A self-balancing non tandem two wheeled device, designed to transport one person, with a propulsion system that limits the maximum speed of the device to 15 miles per hour or less.

Element: A combination of products designed to be combined with other elements to form all or part of a building component. The term does not include a system.

Emergency communications center: The city's communication center receiving telephonic requests or signal requests for police, fire, ambulance, rescue or other emergency service within the city.

Enforcement response plan or ERP: An administrative procedure, promulgated by the city manager or designee thereof. The ERP is a guidance document that is intended to provide for fair and equitable treatment of all users for anticipated enforcement situations. Generally, enforcement actions will be taken in accordance with the ERP; however, additional legal actions are available (SUO subsection 70-147.D). Therefore, a combination of enforcement actions may be taken against a user in noncompliance.

Environmental Protection Agency or EPA: The U.S. Environmental Protection Agency, or where appropriate the term may also be used as a designation for the administrator or other duly authorized official of said agency.

Exposed to rabies: An animal shall be deemed to have been exposed to rabies if it has been bitten by, or been in the presence of, any animal known or suspected to have been infected with rabies.

Extermination: The control and elimination of insects, rodents or other pests by eliminating their harborage places; by removing or making inaccessible materials that may serve as their food; by poisoning, spraying, fumigating, trapping or by any other recognized and legal pest elimination methods approved by the inspector.

False alarm: An alarm signal or recorded message transmitted to the emergency communications center indicating a fire or an actual or attempted unauthorized entry into a building, or indicating the commission or attempted commission of a crime in or about a building, when in fact no evidence exists upon inspection of the building upon response to such alarm that a fire occurred or that an unauthorized entry was committed or attempted or that a crime was committed or attempted in or about the building.

Following: The word "following" means next after.

Forest management plan: A general management plan prepared by the City of Brevard and a forest management plan prepared by a forester licensed to practice forestry within the State of North Carolina.

Frontage unit*:* A frontage unit is a standard interval in feet used to assign consecutive property numbers on a street or road. The standard frontage unit adopted for use throughout Transylvania County is 5.28 feet.

Game room: Any place of business that operates mechanical and electronic games or other devices for which charge is made, either directly or indirectly. Examples of such games, by way of illustration and not limitation, are pinball machines, electronic video games, automatic amusement devices and the like.

Garbage: Putrescible animal and vegetable wastes resulting from the handling, preparation, cooking and consumption of food and from the handling, storage and sale of produce.

Gender: Words importing one gender shall include the other genders.

Governing board: The appropriate board and shall also be read to include city council.

Grab sample: A sample which is taken from a waste stream on a one-time basis without regard to the flow in the waste stream and over a period of time not to exceed 15 minutes.

Grooming shop: Any establishment, whether operated separately or in connection with another business enterprise, which provides hair and nail clipping, bathing and other cosmetic services for animals.

Group: A number of individuals related by a common factor, having structured organization, defined leadership, and activities directed by a charter or written bylaws.

Grossly reckless*:* A reckless activity that is inherently dangerous and results in injury or presents a high risk of grave injury to self or others with disregard for self-preservation or the preservation of the safety of others. Operation of an e-bike while under the influence of alcohol or drugs is hereby declared to be grossly reckless. Any operation of an e-bike with the intent of doing harm to any person or property is hereby declared to be grossly reckless.

Habitable room: A room or enclosed floor space used or intended to be used for living, sleeping, cooking or eating purposes, excluding bathrooms, water closet compartments, laundries, heater rooms, foyers, or communicating corridors, closets and storage spaces.

Habitually or repeatedly and on a regular basis*:* When referring to dog barking or other sounds, shall mean barking or other sounds which occur on at least five occasions during a 60-day period or on at least three occasions during a 30-day period.

Harmful to minors: The quality of any description or representation, in whatever form, of nudity, sexual conduct, sexual excitement or sadomasochistic abuse, when it:

A. Predominantly appeals.to the prurient, shameful or morbid interest of minors;

B. Is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material for minors; and

C. Taken as a whole, lacks serious literacy, artistic, political or scientific value for minors.

Hazardous recreational activity: Skateboarding, inline skating, or freestyle bicycling, and, or, any other type(s) not listed.

Head of household: The person who maintains the household, or, if no one person maintains the household, the head of the household shall be the eldest person residing in the household.

Hiking trail: Any road or trail maintained for pedestrians.

Holding tank waste: Any waste from holding tanks, including, but not limited to, such holding tanks as vessels, chemical toilets, campers, trailers, septic tanks, and vacuum-pump tank trucks.

House number*:* The number assigned by the property address coordinator to any building for the purpose of identification of the location.

Humane Society: The Transylvania County Humane Society and its representatives.

Hunting: The lawful hunting of game animals as defined by the N.C. Wildlife Resources Commission.

Impoundment: Any animal in custody of a person or animal shelter duly authorized by the local health director.

Industrial warehouse, vacant: Any building or structure designed for the storage of goods or equipment in connection with manufacturing processes, which has not been used for that purpose for at least one year and has not been converted to another use.

Indirect discharge: The discharge or the introduction from any nondomestic source regulated under Section 307(b), (c), or (d) of the Federal Water Pollution Control Act, (33 U.S.C. 1317), into the POTW including holding tank waste discharged into the sewage system.

Industrial user: A source of indirect discharge.

Industrial user, significant (SIU). An industrial user that discharges wastewater into a POTW and that:

A. Discharges an average of 25,000 gallons per day or more of process wastewater to the POTW, excluding sanitary, noncontact cooling and boiler blowdown wastewaters; or

B. Contributes more than five percent of any design or treatment capacity (i.e., allowable pollutant load) of the wastewater treatment plant receiving the indirect discharge; or

C. Is subject to categorical pretreatment standards under 40 CFR Part 403.6 and 40 CFR Chapter I, Subchapter N, Parts 405-471; or

D. Is designated as such by the control authority on the basis that the industrial user has a reasonable potential for adversely affecting the POTW's operation, or for violating any pretreatment standard or requirement, or for contributing to violations of the POTW's effluent limitations and conditions in its NPDES or non-discharge permit, or for limiting the POTW's sludge disposal options.

Infestation shall mean the presence, within or around a dwelling, or any insects, rodents or other pests in such number as to constitute a menace to the health, safety or welfare of the occupants or the public.

Inherent risk means those dangers or conditions that are characteristic of, intrinsic to, or an integral part of skateboarding.

Inspector shall mean a building inspector of the city or any agent of the inspector who is authorized by the inspector.

Interference: The inhibition or disruption of the POTW collection system, treatment processes, operations, or its sludge process, use, or disposal, which causes or contributes to a violation of any requirement of the control authority's NPDES, collection system, or non-discharge permit or prevents sewage sludge use or disposal in compliance with specified applicable state and federal statutes, regulations, or permits. The term includes prevention of sewage sludge use or disposal by the POTW in accordance with section 405 of the Federal Water Pollution Control Act, (33 U.S.C. 1345) or any criteria, guidelines, or regulations developed pursuant to the Solid Waste Disposal Act (SWDA)(42 U.S.C. § 6901 et seq.), the Clean Air Act, the Toxic Substances Control Act, the Marine Protection Research and Sanctuary Act (MPRSA) or more stringent state criteria (including those contained in any state sludge management plan prepared pursuant to Title IV of SWDA) applicable to the method of disposal or use employed by the POTW.

Joint authority: All words giving a joint authority to three or more persons or officers shall be construed as giving such authority to a majority of such persons or officers.

Keeper: A person having custody of an animal, or who keeps or harbors an animal, or who knowingly permits an animal to remain on or about any premises occupied or controlled by such person.

Kennel: Any premises wherein a person boards, lets for hire, trains for a fee, breeds, buys or sells dogs or cats. This shall not include the ownership of dogs which are part of the household or which are maintained adjoining a private residence for hunting, tracking practice, exhibition, or the guarding or protection of the owner's property when no more than five dogs per year are sold by such owner.

Knowing: means When referring to obscene materials, having a general knowledge of, or reason to know, or a belief or ground for belief that warrants further inspection or inquiry of the character and content of any of the materials described in Section 42-42 that are reasonably susceptible of examination by the person charged with such knowledge.

Knowingly: When referring to obscene materials, being aware of the character and the content of the material.

Known unlawful drug user, possessor or seller: A person who has, within the knowledge of the arresting officer or complaining witness, been convicted in any court within this state of any violation involving the use, possession or sale of any of the controlled substances or drug paraphernalia referred to in the North Carolina Controlled Substances Act, G.S. 90-89 et seq., or has been convicted of any violation of any substantially similar laws of any political subdivision of this state or of any other state, or of federal law.

Livestock*:*

A. Domestic animals, such as cows, bulls, calves, hogs, pigs, horses, mules, ponies, goats or sheep.

B. Any animal raised or kept for profit, excepting:

1. Dogs and cats kept for show competition;
2. Single litters of rabbits, puppies or kittens, per household; and
3. Tropical aquarium fishes.

Local board of health or board of health: The county board of health.

Local government: The City of Brevard.

Local health department or health department: The county health department.

Local health director or health director: The health director of the county health department, or his designee.

Mailing address*:* The address assigned by the property address coordinator and used by the United States Postal Service for the purpose of delivery of the United States mail. The property address and mailing address will be the same for all buildings unless the property owners utilize a post office box for delivery of their mail.

Manifest: A daily record prepared by a taxicab driver of all trips made by the driver, showing time and place of origin, destination and number of passengers.

Manufacturing facility, vacant: Any building or structure previously used for the lawful production or manufacturing of goods, which has not been used for that purpose for at least one year and has not been converted to another use.

Material: Any book, magazine, newspaper or other printed or written material or any picture, drawing, photograph, motion picture or other pictorial representation or any statue or other figure, or any recording, transcription or mechanical, chemical or electrical reproduction or any other articles, equipment or machines not otherwise subject to and governed by Section 42-41.

May: When "may" is used, the action is permissive.

Medical waste: Isolation wastes, infectious agents, human blood and blood products, pathological wastes, sharps, body parts, contaminated bedding, surgical wastes, potentially contaminated laboratory wastes, and dialysis wastes.

Minor: Any person under the age of 18.

Month: A calendar month.

Motor vehicle or vehicle: All machines designed or intended to travel over land by self-propulsion or while attached to any self-propelled vehicle, such as a camping trailer, fifth-wheel travel trailer, motor home, travel trailer, and truck camper. A self-propelled vehicle shall include, but is not limited to passenger automobiles, mopeds, off-road vehicles (ORV), golf carts, motorcycles, all-terrain vehicles, Segways, and go-carts. This term does not include bicycles or electric personal assistive mobility devices. This term shall not apply to a device which is designed for and intended to be used as a means of transportation for a person with a mobility impairment, or who uses the device for mobility enhancement, is suitable for use both inside and outside a building, including sidewalks, and is limited by design to a maximum speed of 15 miles per hour when the device is being operated by a person with a mobility impairment.

Motor vehicle, abandoned*:* As authorized and defined in G.S. 160A-303, an abandoned motor vehicle is one that:

A. Is left upon a public street or highway in violation of a law or ordinance prohibiting parking;

B. Is left on a public street or highway for longer than seven days;

C. Is left on property owned or operated by the city for longer than 24 hours; or

D. Is left on private property, without the consent of the owner, occupant or lessee thereof, for longer than two hours.

Motor vehicle, junked*:* As authorized and defined in G.S. 160A-303.2, the term "junked motor vehicle" means a vehicle that does not display a current license plate lawfully upon that vehicle and that:

A. Is partially dismantled or wrecked;

B. Cannot be self-propelled or moved in the manner in which it originally was intended to move; or

C. Is more than five years old and appears to be worth less than $100.00.

Motor vehicle, nuisance: A vehicle on public or private property that is determined and declared to be a health or safety hazard, a public nuisance, and unlawful, including a vehicle found to be:

A. A breeding ground or harbor for mosquitoes, other insects, rats or other pests;

B. A point of heavy growth of weeds or other noxious vegetation over eight inches in height;

C. A point of collection of pools or ponds of water;

D. A point of concentration of quantities of gasoline, oil or other flammable or explosive materials as evidenced by odor;

E. One which has areas of confinement which cannot be operated from the inside, such as trunks, hoods, etc.;

F. So situated or located that there is a danger of it falling or turning over;

G. One which is a point of collection of garbage, food waste, animal waste, or any other rotten or putrescible matter of any kind;

H. One which has sharp parts thereof which are jagged or contain sharp edges of metal or glass;

I. It is a vehicle no longer commonly being used for personal or commercial transportation or conveyance of goods, but is stationary, either temporarily or permanently, and being utilized as an advertising platform, storage facility, dwelling, animal shelter or other use not of its original primary design; or

J. Any other vehicle specifically declared a health and safety hazard and a public nuisance by the city council.

Motorized travel*:* All modes of travel or transport upon a motorized vehicle as defined in this chapter over land or water by self-propulsion.

Multi-tenant establishment: A building or structure, or multiple buildings and structures on the same property, or within the same planned development project, that may be subject to a common declaration of restrictive covenants administered by a common property owners' association, and under common ownership, control, or property owners' association governance, that contains or contain multiple businesses that sell food, goods, services, or a combination of food, goods, and services, and that include or are connected by common areas. The term multi-tenant establishment includes a mixed-use development.

Multi-use trail: Any trail maintained for use by any of the following: bicycle or pedestrian.

National categorical pretreatment standard or categorical standard: Any regulation containing pollutant discharge limits promulgated by EPA in accordance with Sections 307(b) and (c) of the Federal Water Pollution Control Act (33 U.S.C. § 1317) which applies to a specific category of industrial users, and which appears in 40 CFR Chapter 1, Subchapter N, Parts 405-471.

National prohibitive discharge standard or prohibitive discharge standard: Absolute prohibitions against the discharge of certain substances; these prohibitions appear in subsection 70-141.A of this ordinance and are developed under the authority of Section 307(b) of the Federal Water Pollution Control Act and 40 CFR, section 403.5.

National Pollution Discharge Elimination System, or NPDES, permit: A permit issued pursuant to Section 402 of the Federal Water Pollution Control Act (33 U.S.C. § 1342), or pursuant to G.S. 143-215.1 by the state under delegation from EPA.

Negligence*:* Any breach of the duty of due care, resulting in or reasonably likely to result in proximate harm to persons or property. Violating a posted speed limit or posted rule of conduct is hereby declared to be negligence in every instance, but may also be grossly reckless when circumstances so warrant.

New source.

A. Any building, structure, facility, or installation from which there may be a discharge of pollutants, the construction of which commenced after the publication of proposed categorical pretreatment standards under Section 307I of the Federal Water Pollution Act which will be applicable to such source if such standards are thereafter promulgated in accordance with Section 307I, provided that:

1. The building, structure, facility, or installation is constructed at a site at which no other source is located; or
2. The building, structure, facility, or installation totally replaces the process or production equipment that causes the discharge of pollutants at an existing source; or
3. The production or wastewater generating processes of the building, structure, facility, or installation are substantially independent of an existing source at the same site. In determining whether these are substantially independent, factors such as the extent to which the new facility is integrated with the existing plant, and the extent to which the new facility is engaged in the same general type of activity as the existing source, should be considered.

B. Construction on a site at which an existing source is located results in a modification rather than a new source if the construction does not create a new building, structure, facility, or installation meeting the criteria of sections A.2. orA.3. above but otherwise alters, replaces, or adds to existing process or production equipment.

C. For purposes of this definition, construction of a new source has commenced if the owner or operator has:

1. Begun, or caused to begin, as part of a continuous on-site construction program:
    a. Any placement, assembly, or installation of facilities or equipment; or
    b. Significant site preparation work including clearing, excavation, or removal of existing buildings, structures or facilities which is necessary for the placement, assembly, or installation of new source facilities or equipment; or
2. Entered into a binding contractual obligation for the purchase of facilities or equipment which are intended to be used in its operation within a reasonable time. Options to purchase or contracts which can be terminated or modified without substantial loss, and contracts for feasibility, engineering, and design studies do not constitute a contractual obligation under this definition.

Noncontact cooling water: Water used for cooling which does not come into direct contact with any raw material, intermediate product, waste product, or finished product.

Non-discharge permit: A permit issued by the state pursuant to G.S. 143-215.1(d) for a waste which is not discharged directly to surface waters of the state or for a wastewater treatment works which does not discharge directly to surface waters of the state.

Non-Permittee Business: In reference to social districts, a business located in a social district and does not hold any North Carolina Alcoholic Beverage Control Commission (ABC) permit.

Nonresidential: Any building or structure or portion of a building or structure occupied or intended to be occupied, in whole or in part, for a use other than a dwelling, home, residing place, living space or sleeping space for one or more human beings, either permanently or transiently.

Nudity: The showing of the human male or female genitals, pubic area or buttocks with less than a full opaque covering, or the showing of the female breast with less than a full opaque covering of any portion thereof below the top of the nipple, or the depiction of covered male genitals in a discernibly turgid state.

Number: Words used in the singular include the plural and the plural includes the singular number.

Nuisance*:* An animal or group of animals shall be considered a nuisance if it:

A. Damages, soils or defiles private or public property;

B. Interferes with, molests or attacks persons or other animals;

C. Is repeatedly at large;

D. Causes unsanitary and offensive conditions, including interrupting the tranquility of the community;

E. Chases, snaps at, harasses or impedes pedestrians, bicyclists or vehicles; or

F. Is diseased.

Oath: The word “oath” includes an affirmation in all cases in which, by law, an affirmation may be substituted for an oath, and in such cases the words “swear” and “sworn” shall be equivalent to the words “affirm” and “affirmed.”

Obscene: That, to the average person applying contemporary community standards:

A. The predominant appeal of the matter, taken as a whole, is to prurient interest, i.e., a shameful or morbid interest in sexual conduct, nudity or excretion;

B. The matter depicts or describes, in a patently offensive manner, sexual conduct regulated by the General Statutes of the state; and

C. The work, taken as a whole, lacks serious literary, artistic, political or scientific value.

Obstruction (permanent or semipermanent)*:* An object that is kept out on public streets, sidewalks, and alleyways after business hours. Such objects include but are not limited to displays, fixtures, inventory racks, display cases, planters, vending machines, and seating. Also referred to as a semipermanent or permanent object.

Occupant: Any person who has charge, care or control of a building, or part thereof, in which dwelling units or rooming units are let.

Official road name*:* The road name list and the road name map on file with the Transylvania County 911 Emergency Operations shall be the official road names and map for Transylvania County roads, including those located within the jurisdiction of the City of Brevard, unless changed by action of the board of commissioners or city council within their respective jurisdictions.

Officials or officers: Reference to a particular official or officer of the city includes duly authorized deputies, assistants and representatives of such official or officer. Whenever any officer, employee, department, board, commission or other agency is referred to by title only, such reference shall be construed as if followed by the words "of the City of Brevard, North Carolina."

Open Container: A container that has a broken seal or a container other than the manufacturer's unopened original container.

Operator: Any person who has charge, care, or control of a nonresidential building or structure, or part thereof.

Owner:

A. The word "owner," applied to a building or land, includes any part owner, joint owner, tenant in common, joint tenant or tenant by the entirety, of the whole or a part of such building or land.

B. The word "owner," applied to an animal, includes any person or legal entity having a possessory property right in an animal. The head of a household shall be deemed to be the owner in respect to any dogs owned, kept or harbored on the premises by any person residing in the household. While using the dog park, the owner is the person with immediate custody of the dog.

Park manager: An employee or employees of the City of Brevard, designated by the city manager, who coordinates management of a specific park or recreation facility, such as the Bracken Preserve or the Skate Park.

Parties in interest: All individuals, associations, and corporations who have interests of record in a dwelling and any who are in possession thereof.

Pass-through: A discharge which exits the POTW into waters of the state in quantities or concentrations which, alone or with discharges from other sources, causes a violation, including an increase in the magnitude or duration of a violation, of the control authority's (and/or POTW's, if different from the control authority) NPDES, collection system, or non-discharge permit or a downstream water quality standard even if not included in the permit.

Patrol dog: A dog that is trained or conditioned to attack or otherwise respond aggressively, but only upon command from a handler either off or on lead.

Performance: Any preview, play, show, skit, film, dance or other exhibition performed before an audience.

Permit: Any written license issued by or under the authority of the City of Brevard permitting the performance of a specified act or acts.

Permittee: Any person, corporation, company or association in possession of a valid permit.

Person: Any individual, group acting as a unit, such as a partnership, co-partnership, firm, company, corporation, association, joint stock company, trust, estate, governmental entity or any other legal entity, or their legal representatives, agents or assigns.

Personal property: The term "personal property" includes every species of property except real property.

Pet: Any animal kept for pleasure rather than utility.

Pet shop: Any commercial establishment, whether operated separately or in connection with another business enterprise, except for a licensed kennel, that buys, sells or boards any species of animal.

pH: A measure of the acidity or alkalinity of a substance, expressed as standard units, and calculated as the logarithm of the reciprocal of the weight of hydrogen ions in grams per liter of solution.

Plumbing: Supplied facilities and equipment, including: Gas pipes, gas-burning equipment, water pipes, mechanical garbage disposal units (mechanical sink grinder), waste pipes, water closets, sinks, installed dishwashers, lavatories, bathtubs, shower baths, installed clothes washing machines, catch basin, drains, vents and any other similar supplied fixtures, together with all connections to water, sewer or gas lines.

Pollutant: Any "waste" as defined in G.S. 143-213(18) and dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, medical wastes, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal and agricultural waste and certain characteristics of wastewater (e.g., pH, temperature, TSS, turbidity, color, metals, BOD, COD, toxicity, and odor).

POTW director: The city administrator designated with the responsibility for the pretreatment program and enforcement of this sewer use ordinance.

POTW treatment plant: That portion of the POTW designed to provide treatment to wastewater.

Preceding: The word "preceding" means next before.

Premises: In reference to social districts, a fixed permanent establishment, including all areas inside or outside the licensed establishment, where the ABC permittee has control through a lease, deed, or other legal processes.

Pretreatment or treatment: The reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater prior to or in lieu of discharging or otherwise introducing such pollution into a POTW. The reduction or alteration can be obtained by physical, chemical or biological processes, or process changes or other means, except by diluting the concentration of the pollutants or as otherwise prohibited by 40 CFR Part 403.6(d).

Pretreatment program: The program for the control of pollutants introduced into the POTW from non-domestic sources which was developed by the city in compliance with 40 CFR 403.8 and approved by the approval authority as authorized by G.S. 143-215.3(a)(14) in accordance with 40 CFR 403.11.

Pretreatment requirements: Any substantive or procedural requirement related to pretreatment, other than a pretreatment standard.

Pretreatment standard: Any prohibited discharge standard, categorical standard, or local limit which applies to an industrial user.

Private road*:* Any road servicing more than two buildings or structures containing separate power or water meters, that is not otherwise defined as a street or driveway by this article, and which is not maintained for public use by the United States Government, the North Carolina Department of Transportation, or the City of Brevard through the use of public funds.

Promote: To cause, permit, procure, counsel or assist.

Property: The word "property" includes real and personal property.

Property address coordinator*:* The official of Transylvania County, and any authorized agent or delegate thereof, charged with the administration of this article.

Public authority: Any housing authority or any officer who is in charge of any department or branch of the government of the city, county, or state relating to health, fire, building regulations, or other activities concerning dwellings in the local government.

Public nudity: A person's intentional nudity, as defined herein, while in a public place.

Public officer: The officer or officers who are authorized by ordinances adopted hereunder to exercise the powers prescribed by the ordinances and by G.S. 160D, art. 12.

Public park: Any publicly-owned or maintained land which is designated by the City of Brevard as a park or recreation facility.

Public place: Any street, sidewalk, bridge, alley or alleyway, plaza, park, driveway, parking lot or transportation facility, or the doorways and entranceways to any building which fronts on any of those places, or a motor vehicle in or on any of those places, or any property owned by the city or by any public agency or public authority and located within the city.

Public Street: Any highway, road, street, avenue, boulevard, or another way within and under the control of the City or State and open to public use, including the sidewalks of any such street.

Publicly owned treatment works (POTW) or municipal wastewater system: A treatment works as defined by Section 212 of the Federal Water Pollution Control Act, (33 U.S.C. § 1292) which is owned in this instance by the city. This definition includes any devices or systems used in the collection, storage, treatment, recycling, and reclamation of municipal sewage or industrial wastes of a liquid nature. It also includes sewers, pipes, and other conveyances only if they convey wastewater to the POTW treatment plant. For the purposes of this ordinance, "POTW" shall also include any sewers that convey wastewaters to the POTW from persons outside the city who are, by contract or agreement with the city, or in any other way, users of the POTW of the city.

Rate card: A card issued by the city for display in each taxicab, which card contains the rates of fares then enforced.

Real property: The term "real property" includes lands, tenements and hereditaments.

Refuse: All putrescible and nonputrescible solid wastes (except body wastes), including garbage, rubbish, ashes, street cleanings, dead animals, and solid market and industrial wastes.

Registered sex offender: An individual who is registered by any state or federal agency as a sex offender and whose name is published on any state or federal registered sex offender listing, including, but not limited to the sex offender registry established in Article 27A of G.S. ch. 14.

Restaurant*:* A retail business selling ready-to-eat food and/or beverages for on or off-premise consumption. Customers may be served from an ordering counter (i.e. cafeteria or limited service restaurant), at their tables (full-service restaurant), and at exclusively pedestrian-oriented facilities that serve from a walk-up ordering counter (snack and/or nonalcoholic bars).

Restraint: Any animal shall be considered under restraint if it is within the real property limits of its owner, or secured by a leash or lead, or confined.

Riding school or stable: Any place which has available for hire, boarding and/or riding instruction any horse, pony, donkey or burro.

Road*:* A public or private one-way or two-way street or road for ingress and/or egress. Such roads may be of various types including frontage roads, rear access roads, roads with culs-de-sac and dead-end roads. This definition does not include driveways.

Road sign*:* A metal blade and necessary hardware used to convey a street name, public or private road name, or driveway name, and, where applicable, the state road number.

Rock climbing: Traversing a rock face that is steep enough to require the use of hands and feet to get up or down.

Rooming house: Any short or long-term accommodations that serve a specific group or membership such as a dormitory, fraternity or sorority house, youth or adult hostel, or similar accommodations, or single room occupancy units that provide a number of related services including, but not limited to housekeeping, meals, and laundry services; excludes hotels, motels, inns, bed and breakfasts, and short-term rentals.

Rubbish: Nonputrescible solid wastes (including ashes) consisting of both combustible and noncombustible wastes, such as paper, cardboard, tin cans, yard clippings, wood, glass, bedding, rubble, crockery and similar materials.

Sadomasochistic abuse: Flagellation or torture by or upon a person clad in undergarments, a mask or bizarre costume, or the condition of being fettered, bound or otherwise physically restrained on the part of one so clothed.

Security dog: Any dog used, kept or maintained in the county for the purpose of protecting any person or property. Any such dog shall be further classified as a patrol dog, sentry dog or watch dog.

Sentry dog: A dog that is trained or conditioned to attack or otherwise respond aggressively without command.

Septage: The solid and liquid contents of privies, septic tanks or cesspools, industrial wastes, chemical compounds and sludges which are hauled by truck or other mobile conveyance.

Service permit: A permit, issued by the city manager or designee thereof, authorizing a connection to the city sewer system and setting forth any necessary conditions associated with such connection, including, but not limited to, pretreatment requirements and the assessment of any surcharges.

Service to patrons: The provision of services to paying guests in establishments providing food and beverages, including but not limited to hostessing, hat checking, cooking, bartending, serving, table setting and clearing, waiter and waitressing, and entertaining.

Severe property damage. Substantial physical damage to property, damage to the user's treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

Sexual conduct: Acts of masturbation, sexual intercourse or physical contact with a person's clothed or unclothed genitals, pubic area, buttocks, or, if such person be a female, breast.

Sexually explicit materials: Materials consisting of:

A. Any picture, photograph, drawing, sculpture, motion picture film, or similar visual representation or image of a person or portion of the human body which depicts nudity, sexual conduct or sadomasochistic abuse and which is harmful to minors; or

B. Any book, pamphlet, magazine, printed matter, however reproduced, or sound recording which contains any matter enumerated in the definitions of nudity, sadomasochistic abuse, sexual conduct and subsection (A) of this definition, or any explicit and detailed verbal description or narrative account of sexual excitement, sexual conduct or sadomasochistic abuse, which, taken as a whole, is harmful to minors.

Sewer: A pipe or conduit for carrying sewage.

Sewer, building: A sewer conveying wastewater from the premises of a user to the POTW.

Sewer, public: A sewer in which all owners of abutting properties have equal rights, and which is controlled by public authority.

Sewer, sanitary: A sewer which carries wastewater or sewage and to which stormwater, surface water and groundwater are not intentionally admitted.

Sewer service line: The extension from a building drain to the public sewer or other place of disposal; also, a lateral connection.

Sewer system: All facilities for collecting, pumping, treating and disposing of wastewater.

Shall: When "shall" is used, the action is mandatory

Sidewalk: Any portion of a street between the curbline and the adjacent property line intended for the use of pedestrians.

Signature or subscription: The terms "signature" and "subscription" include a mark when the person cannot write.

Significant noncompliance or SNC. The status of noncompliance of a significant industrial user when one or more of the following criteria are met. Chronic violations of wastewater discharge limits, as defined herein.

A. Technical review criteria violations, as defined herein.

B. Any other violation of a pretreatment standard or requirement as defined by 40 CFR Part 403.3(l) (daily maximum, long-term average, instantaneous limit, or narrative standard) that the control authority and/or POTW determines has caused, alone or in combination with other discharges, interference or pass through (including endangering the health of POTW personnel or the general public);

C. Any discharge of a pollutant or wastewater that has caused imminent endangerment to human health, welfare or to the environment or has resulted in either the control authority's POTW's, if different from the control authority, exercise of its emergency authority under 40 CFR Part 403.8(f)(1)(vi)(B) and subsection 70-147.A.4 of this SUO to halt or prevent such a discharge;

D. Violations of compliance schedule milestones, contained in a pretreatment permit or enforcement order, for starting construction, completing construction, and attaining final compliance by 90 days or more after the schedule date.

E. Failure to provide reports for compliance schedule, self-monitoring data, baseline monitoring reports, 90-day compliance reports, and periodic compliance reports within 30 days from the due date.

F. Failure to accurately report noncompliance.

G. Any other violation or group of violations that the control authority and/or POTW determines will adversely affect the operation or implementation of the local pretreatment program.

Skate park: Any city-owned facility specifically designed, constructed, and designated by on-site signage as an area in which a person may engage in skateboarding.

Sleeping unit: A room or space in which people sleep, which can also include permanent provisions for living, eating, and either sanitation or kitchen facilities but not both. Such rooms and spaces that are also part of a dwelling unit are not sleeping units.

Slug load or discharge: Any discharge at a flow rate or concentration which has a reasonable potential to cause interference or pass-through, or in any other way violates the P'TW's regulations, local limits, or industrial user permit conditions. This can include, but is not limited to, spills and other accidental discharges; discharges of a non-routine, episodic nature; a non-customary batch discharge; or any other discharges that can cause a violation of the prohibited discharge standards in subsection 70-141.A of this ordinance.

Smoking: The inhaling, exhaling, burning or carrying of a lighted pipe, cigar, cigarette or other combustible tobacco product.

Social District: A defined area in which a person may consume alcoholic beverages sold by an ABC permittee, pursuant to N.C.G.S. 18B-300.1 or other applicable state law. A social district may include both indoor and outdoor areas of businesses within or contiguous to the defined area during the days and hours set by the local government by ordinance. A social district may include privately owned property, including ABC permittees and non-permittee businesses, and multi-tenant establishments, and public streets, crosswalks, or parking areas whether or not the streets or parking areas are closed to vehicle traffic.

Sound level meter: An instrument which measures sound levels in decibels, which either meets the standard of ASAS 1.4-1983 or other ANSI approved minimum requirements, and provided further that such instrument shall be serviced, calibrated and operated as recommended by the manufacturer, operated by a person or persons trained to operate the same, as approved by the chief of police or his designee.

Standard industrial classification (SIC): A classification pursuant to the Standard Industrial Classification Manual issued by the Executive Office of the President, Office of Management and Budget, 1987.

State: The word "state" means the State of North Carolina.

State law: Reference to a section or other subdivision of the General Statutes (G.S.) refers to such section or subdivision as amended or to any other section or subdivision to which the section or other subdivision has been transferred or by which the section or other subdivision has been superseded.

State road number*:* A number assigned by the North Carolina Department of Transportation.

Storm drain and storm sewer: A sewer which carries stormwater and surface water and drainage, but excludes sewage and industrial wastes other than unpolluted cooling water.

Stormwater: Any flow occurring during or following any form of natural precipitation and resulting therefrom.

Stray: Any unregistered or unlicensed dog or cat deemed to be at large.

Street*:* Any alley, avenue, circle, highway, lane, road, street, drive, or other public way situated within a dedicated public right-of-way which has been accepted by the appropriate governmental agency for continuing maintenance and upkeep; and/or any alley, avenue, circle, highway, lane, road, street, drive, or other public way maintained for public use by the United States Government, the North Carolina Department of Transportation, or the City of Brevard through the use of public funds.

Subscriber: Any person, corporation, partnership, or governmental or educational entity owning or leasing an alarm system.

Supplied: Paid for, furnished, or provided by, or under the control of, the owner or operator.

Suspected of having rabies: An animal which does not have a current vaccination against rabies in accordance with section 14-41 or has bitten a person, or any animal bitten or scratched by a wild carnivorous mammal (including a bat) not available for testing.

Suspended solids: Solids that either float on the surface of or are in suspension in water, sewage or other liquids, and which are removable by laboratory filtering.

Taxicab: A motor vehicle regularly engaged in the business of carrying passengers for hire, having a seating capacity of less than six persons and not operated on a fixed route.

Technical review criteria violations (TRC): Significant noncompliance of wastewater discharge limits in which 33 percent or more of all the measurements taken for the same pollutant parameter during a six-month period equal or exceed the product of the numeric pretreatment standard or requirement including instantaneous limits, as defined by 40 CFR Part 403.3(l) multiplied by the applicable TRC; [TRC = 1.4 for BOD, TSS, fats, oil and grease, 1.2 for all other pollutants (except flow and pH)];

Temporary housing: Any tent, trailer or other structure used for human shelter which is designed to be transportable and which is not attached to the ground, to another structure, or to any utilities system on the same premises for more than 30 consecutive days.

Tenant or occupant: The words “tenant” and “occupant,” applied to a building or land, include any person who occupies the whole or a part of such building or land, whether alone or with others.

Tense: Words used in the past, present or future tense each include the other tenses.

Unfit for human habitation: When referring to a dwelling, it shall mean that conditions exist in a dwelling which violate or do not comply with one or more of the minimum standards of fitness or one or more of the requirements established by this article.

Unregistered dog or unlicensed dog: A dog which has not been listed on the owner’s tax listing form for the then-current year or registered for a vaccination tag and certification, and/or a dog which does not have affixed to it a rabies vaccination tag.

Upset: When referring to sewer usage, an exceptional incident in which there is unintentional and temporary noncompliance with categorical pretreatment standards because of factors beyond the reasonable control of the user. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

User: When referring to sewage, any person using the services of the city for conveyance or treatment of wastewater.

User permit: I permit issued by the chief of police in response to a written application from a subscriber authorizing connection to and use of the alarm system in the emergency communications center.

Vehicle for hire: Any vehicle providing public passenger transportation for a fee, from a point originating or terminating within the city's jurisdiction, including limousine and passenger van services but excluding taxicabs, which are regulated in article ii. (See G.S. 20-87, 160A-579(12).

Vehicle of the fire department*:* Shall include the personal vehicles of members of the fire department responding to a fire call and using a red light to indicate an emergency whether they be at the location of a fire, parked in the immediate vicinity of the fire station or in route to either location.

Vendor, contractor: The security company designated by the city to operate and maintain the alarm system of the city along with all incoming apparatus connecting to the 'city's system.

Veterinary hospital: Any establishment maintained and operated by a licensed veterinarian for surgery, diagnosis and treatment of diseases and injuries of animals.

Vicious animal: Any animal which has bitten one or more persons without provocation, or one in which a propensity is known or ought reasonably to be known to the owner or keeper.

Vicious dog: Any dog which has bitten one or more persons without provocation, or one in which a propensity is known or ought reasonably to be known to the owner or keeper.

Waiting time: The time when a taxicab is not in motion from the time of acceptance of a passenger to the time of discharge, but it does not include any time that the taxicab is not in motion due to any cause other than the request, act or fault of a passenger.

Wastewater: The liquid and water-carried industrial or domestic wastes from dwellings, commercial buildings, industrial facilities, mobile sources, institutions and treatment facilities, together with any groundwater, surface water, and stormwater that may be present, whether treated or untreated, which are contributed into or permitted to enter the sewer system. Also *sewage*.

Wastewater, compatible: Wastewaters with only those polluting constituents which are susceptible to adequate treatment in the treatment system works, without harm to the sewerage system. The term "compatible constituents" has like meaning with reference to individual wastewater parameters.

Wastewater, incompatible: Wastewater containing constituents or characteristics which render it unsuitable for transport or treatment in the sewerage system. The terms "incompatible constituents" and "incompatible characteristics" have like meaning with reference to individual wastewater parameters. Incompatible constituents and characteristics include water parameters. Incompatible constituents and characteristics include the elements listed in prohibitions and may include other elements so identified by the manager and specified in the user's service permit.

Wastewater permit. As set forth in subsection 70-143.B of this ordinance.

Wastewater treatment plant: The arrangement of infrastructure including, but not limited to, piping, pumps, equipment, devices and structures used for treating wastewater and discharging effluent meeting the requirements.

Watch dog: A dog that barks and threatens to bite any intruder and that has not been specifically trained or conditioned for that purpose.

Watercourse: A channel in which a flow of water occurs, either continuously or intermittently.

Waters of the State: All streams, rivers, brooks, creeks, swamps, lakes, waterways, reservoirs, ponds, marshes, wells, springs, aquifers, irrigation systems, drainage systems, bays, sounds, tidal estuaries and all other bodies or accumulations of water, surface or underground, natural or artificial, public or private, which are contained within, flow through, or border upon the state or any portion thereof.

Writing or written: The words "writing" and "written" include printing and any other mode of representing words and letters.

Year: The word "year" means a calendar year.

CHAPTER 6. ALARM SYSTEMS

6-32. Reserved.

CHAPTER 10. AMUSEMENTS

10-81. Reserved.

CHAPTER 14. ANIMALS AND FOWL

14-1. Reserved.

14-37. Animals creating nuisance.

A. *Prohibited.* It shall be unlawful for an owner or keeper to permit an animal to create a nuisance, or to maintain a nuisance created by an animal. An agricultural operation or any of its appurtenances shall not constitute a nuisance when operated in accordance with the conditions and provisions set forth in G.S. 106-701.

B. *Abatement procedure.* Compliance shall be required as follows:

1. When an animal control officer, law enforcement officer or duly authorized person observes a violation, the owner or keeper will be provided written notification of such violation and be given 48 hours from the time of notification to abate the nuisance.
2. Upon receipt of a written, detailed and signed complaint being made to the city manager, or the local health director, where the county is contracted to provide animal control services for the city or by any person that any other person is maintaining a nuisance as defined in Section 1-2, the city manager, or local health director, shall cause the owner or keeper of the animal in question to be notified that a complaint has been received, and shall cause the situation complained of to be investigated and a report and findings thereon to be reduced to writing.
3. If the written findings indicate that the complaint is justified, then the city manager, the local health director or a duly authorized person shall cause the owner or keeper of the animal in question to be so notified in writing, and ordered to abate such nuisance within 48 hours by whatever means may be necessary. If the owner or keeper of the animal is unknown and cannot be ascertained, the notice and order, along with a general description of the animal, shall be posted for 48 hours at the animal shelter,

city hall and county courthouse. If after 48 hours the owner or keeper of the animal remains unknown, the animal may be impounded or humanely destroyed.

C. *Violations.* It shall be unlawful for a person to fail or refuse to abate the nuisance as required by this section. Violation is punishable as a misdemeanor with fine up to $500.00 per G.S. 14-4(a).

CHAPTER 18. BUILDINGS AND BUILDING REGULATIONS

18-69. Inspection procedure.

A. *Generally.* In performing the specific inspections required by the North Carolina Building Code, the inspector shall conduct all inspections requested by the permit holder for each scheduled inspection visit. For each requested inspection, the inspector shall inform the permit holder of instances in which the work inspected fails to meet the requirements of the North Carolina Residential Code for One- and Two-Family Dwellings or the North Carolina Building Code. In accordance with G.S. 160D-1113, the inspection department must perform (or contract for) inspections for building permits. The inspection department shall inspect all buildings and structures and real property and work therein or thereon for which a permit of any kind has been issued as often as necessary in order to determine whether the work complies with this chapter and the appropriate codes.

B. *Off-site inspection.* When deemed necessary by the appropriate inspector, materials and assemblies may be inspected at the point of manufacture or fabrication, or inspections may be made by approved and recognized inspection organizations; provided, no approval shall be based upon reports of such organizations unless the reports are in writing and certified by a responsible officer of such organization.

C. *Inspection stages.* All holders of permits, or their agencies, shall notify the inspection department and the appropriate inspector at each of the following stages of construction so that approval may be given before work is continued:

1. *Foundation inspection.* To be made after trenches are excavated and the necessary reinforcement and forms are in place, and before concrete is placed. Drilled footings, piles and similar types of foundations shall be inspected as installed.
2. *Framing inspection.* To be made after all structural framing is in place and all roughing-in of plumbing and electrical and heating has been installed, and after all fire blocking, chimneys, bracing and vents are installed, but before any of the structure is enclosed or covered. Poured-in-place concrete structural elements shall be inspected before each pour of any structural member.
3. *Fireproofing inspection.* To be made after all areas required to be protected by fireproofing are lathed, but before plastering or other fireproofing is applied.
4. *Final inspection.* To be made after the building or structure has all doors hung and fixtures set and is ready for occupancy, but before the building is occupied. Before the local power utility company is contacted to install permanent power, the building or structure must have passed the building, electrical and plumbing final inspection.

D. *Calls for inspection.* Requests for inspections may be made to the office of the inspection department or to the appropriate inspector. The inspection department shall make inspections as soon as practicable after request is made therefor, provided such work is ready for inspection at the time the request is made. To ensure that work is ready for inspection and to permit adequate scheduling by the inspection department, the licensed

contractor, or where no licensed contractor is used the permit holder, must place the call for inspection at least one working day prior to the time requested for inspection.

E. *Reinspections.* Reinspections may be made at the convenience of the inspector. No work shall be inspected until it is in proper and completed condition, ready for inspection. All work which has been concealed before the inspection and approval shall be uncovered at the request of the inspector and placed in condition for proper inspection. Approval or rejection of the work shall be furnished by the appropriate inspector in the form of a notice posted on the building or given to the permit holder or his agent. Failure to call for inspections or proceeding without approval at each stage of construction shall be deemed a violation of this Code. A reinspection fee shall be charged to the individual or company that calls for an inspection which is not ready or does not pass inspection. The fee shall be as provided for in Section 18-68.

F. *Survey of street or alley lines.* Where the applicant for a permit proposes to erect any building or structure on the line of any street, alley or other public place, he shall secure a survey of the line of such street, alley or other public place, adjacent to the property upon which such building or structure is to be erected, before proceeding with construction of such building or structure. It shall be the duty of the building inspector to see that the building does not encroach upon such street, alley or other public place.

G. *Alternate inspection method.* Notwithstanding the requirements of this Article, a city shall accept and approve, without further responsibility to inspect, a design or other proposal for a component or element in the construction of buildings from an architect licensed under G.S. ch. 83A or professional engineer licensed under G.S. ch. 89C provided all of the following apply:

1. The submission design or other proposal is completed under valid seal of the licensed architect or licensed professional engineer.
2. Field inspection of the installation or completion of a component or element of the building is performed by a licensed architect or licensed professional engineer or a person under the direct supervisory control of the licensed architect or licensed professional engineer.
3. The licensed architect or licensed professional engineer under subdivision (2) of this subsection provides the city with a signed written document stating the component or element of the building inspected under subdivision (2) of this subsection is in compliance with the North Carolina State Building Code or the North Carolina Residential Code for One- and Two-Family Dwellings. The inspection certification required under this subdivision shall be provided by electronic or physical delivery and its receipt shall be promptly acknowledged by the city through reciprocal means.

Upon the acceptance and approval receipt of a signed written document by the city as required under subsection G of this section, notwithstanding the issuance of a certificate of occupancy, the city, its inspection department, and the inspectors shall be discharged and released from any liabilities, duties, and responsibilities imposed by this article with respect to or in common law from any claim arising out of or attributed to the component or element in the construction of the building for which the signed written document was submitted.

H. *Inspections of work in progress.* As the work pursuant to a building permit progresses, local inspectors shall make as many inspections thereof as may be necessary to satisfy them that the work is being done according to the provisions of any applicable state and local laws and of the terms of the permit. In exercising this power, members of the inspection department shall have a right to enter on any premises within the jurisdiction of the department at all reasonable hours for the purposes of inspection or other enforcement action, upon presentation of proper credentials. If a building permit has been obtained by an owner exempt from licensure under G.S. 87-1(b)(2), no inspection shall be conducted without the owner being present, unless the plans for the building were drawn and sealed by an architect licensed pursuant to G.S. ch. 83A.

I. *Periodic inspections.* The inspection department may make periodic inspections, subject to the governing board's directions, for unsafe, unsanitary, or otherwise hazardous and unlawful conditions in buildings or structures within its planning and development regulation jurisdiction. In exercising this power, members of the department shall have a right to enter on any premises within the jurisdiction of the department at all reasonable hours for the purposes of inspection or other enforcement action, upon presentation of proper credentials. Inspections of dwellings shall follow the provisions of G.S. 160D-1207. Nothing in this section shall be construed to prohibit periodic inspections in accordance with state fire prevention code or as otherwise required by state law.

18-132. Meaning of certain words.

Whenever the words "dwelling, dwelling unit, rooming house, rooming unit, premises" are used in this chapter, they shall be construed as though they were followed by the words "or any part thereof".

18-155. Reserved.

18-163. Regulation authorized as to repair, closing, and demolition of nonresidential buildings or structures; order of public officer.

A. *Authority.* The governing board of the local government may adopt and enforce regulations relating to nonresidential buildings or structures that fail to meet minimum standards of maintenance, sanitation, and safety established by the governing board. The minimum standards shall address only conditions that are dangerous and injurious to public health, safety, and welfare and identify circumstances under which a public necessity exists for the repair, closing, or demolition of such buildings or structures. The regulation shall provide for designation or appointment of a public officer to exercise the powers prescribed by the regulation, in accordance with the procedures specified in this section. Such regulation shall be applicable within the local government's entire planning and development regulation jurisdiction or limited to one or more designated zoning districts or municipal service districts.

B. *Investigation.* Whenever it appears to the public officer that any nonresidential building or structure has not been properly maintained so that the safety or health of its occupants or members of the general public are jeopardized for failure of the property to meet the minimum standards established by the governing board, the public officer shall undertake a preliminary investigation. If entry upon the premises for purposes of investigation is necessary, such entry shall be made pursuant to a duly issued administrative search warrant in accordance with G.S. 15-27.2 or with permission of the owner, the owner's agent, a tenant, or other person legally in possession of the premises.

C. *Complaint and hearing.* If the preliminary investigation discloses evidence of a violation of the minimum standards, the public officer shall issue and cause to be served upon the owner of and parties in interest in the nonresidential building or structure a complaint. The complaint shall state the charges and contain a notice that an administrative hearing will be held before the public officer, or his or her designated agent, at a place within the county scheduled not less than ten days nor more than 30 days after the serving of the complaint; that the owner and parties in interest shall be given the right to answer the complaint and to appear in person, or otherwise, and give testimony at the place and time fixed in the complaint; and that the rules of evidence prevailing in courts of law or equity shall not be controlling in hearings before the public officer.

D. *Order.* If, after notice and hearing, the public officer determines that the nonresidential building or structure has not been properly maintained so that the safety or health of its occupants or members of the general

public is jeopardized for failure of the property to meet the minimum standards established by the governing board, the public officer shall state in writing findings of fact in support of that determination and shall issue and cause to be served upon the owner thereof an order. The order may require the owner to take remedial action, within a reasonable time specified, subject to the procedures and limitations herein.

E. *Limitations on orders.*

1. An order may require the owner to repair, alter, or improve the nonresidential building or structure in order to bring it into compliance with the minimum standards established by the governing board or to vacate and close the nonresidential building or structure for any use.
2. An order may require the owner to remove or demolish the nonresidential building or structure if the cost of repair, alteration, or improvement of the building or structure would exceed 50 percent of its then current value. Notwithstanding any other provision of law, if the nonresidential building or structure is designated as a local historic landmark, listed in the National Register of Historic Places, or located in a locally designated historic district or in a historic district listed in the National Register of Historic Places and the governing board determines, after a public hearing as provided by ordinance, that the nonresidential building or structure is of individual significance or contributes to maintaining the character of the district, and the nonresidential building or structure has not been condemned as unsafe, the order may require that the nonresidential building or structure be vacated and closed until it is brought into compliance with the minimum standards established by the governing board.
3. An order may not require repairs, alterations, or improvements to be made to vacant manufacturing facilities or vacant industrial warehouse facilities to preserve the original use. The order may require such building or structure to be vacated and closed, but repairs may be required only when necessary to maintain structural integrity or to abate a health or safety hazard that cannot be remedied by ordering the building or structure closed for any use.

F. *Action by governing board upon failure to comply with order.*

1. If the owner fails to comply with an order to repair, alter, or improve or to vacate and close the nonresidential building or structure, the governing board may adopt an ordinance ordering the public officer to proceed to effectuate the purpose of this section with respect to the particular property or properties that the public officer found to be jeopardizing the health or safety of its occupants or members of the general public. The property or properties shall be described in the ordinance. The ordinance shall be recorded in the office of the register of deeds and shall be indexed in the name of the property owner or owners in the grantor index. Following adoption of an ordinance, the public officer may cause the building or structure to be repaired, altered, or improved or to be vacated and closed. The public officer may cause to be posted on the main entrance of any nonresidential building or structure so closed a placard with the following words: "This building is unfit for any use; the use or occupation of this building for any purpose is prohibited and unlawful." Any person who occupies or knowingly allows the occupancy of a building or structure so posted shall be guilty of a Class 3 misdemeanor.
2. If the owner fails to comply with an order to remove or demolish the nonresidential building or structure, the governing board may adopt an ordinance ordering the public officer to proceed to effectuate the purpose of this section with respect to the particular property or properties that the public officer found to be jeopardizing the health or safety of its occupants or members of the general public. No ordinance shall be adopted to require demolition of a nonresidential building or structure until the owner has first been given a reasonable opportunity to bring it into conformity with the minimum standards established by the governing board. The property or properties shall be described in the ordinance. The ordinance shall be recorded in the office of the register of deeds and shall be indexed in the name of the property

owner or owners in the grantor index. Following adoption of an ordinance, the public officer may cause the building or structure to be removed or demolished.

G. *Action by governing board upon abandonment of intent to repair.* If the governing board has adopted an ordinance or the public officer has issued an order requiring the building or structure to be repaired or vacated and closed and the building or structure has been vacated and closed for a period of two years pursuant to the ordinance or order, the governing board may make findings that the owner has abandoned the intent and purpose to repair, alter, or improve the building or structure and that the continuation of the building or structure in its vacated and closed status would be inimical to the health, safety, and welfare of the local government in that it would continue to deteriorate, would create a fire or safety hazard, would be a threat to children and vagrants, would attract persons intent on criminal activities, or would cause or contribute to blight and the deterioration of property values in the area. Upon such findings, the governing board may, after the expiration of the two-year period, enact an ordinance and serve such ordinance on the owner, setting forth the following:

1. If the cost to repair the nonresidential building or structure to bring it into compliance with the minimum standards is less than or equal to 50 percent of its then current value, the ordinance shall require that the owner either repair or demolish and remove the building or structure within 90 days.
2. If the cost to repair the nonresidential building or structure to bring it into compliance with the minimum standards exceeds 50 percent of its then current value, the ordinance shall require the owner to demolish and remove the building or structure within 90 days.

In the case of vacant manufacturing facilities or vacant industrial warehouse facilities, the building or structure must have been vacated and closed pursuant to an order or ordinance for a period of five years before the governing board may take action under this subsection. The ordinance shall be recorded in the office of the register of deeds in the county wherein the property or properties are located and shall be indexed in the name of the property owner in the grantor index. If the owner fails to comply with the ordinance, the public officer shall effectuate the purpose of the ordinance.

H. *Service of complaints and orders.* Complaints or orders issued by a public officer pursuant to an ordinance adopted under this section shall be served upon persons either personally or by certified mail so long as the means used are reasonably designed to achieve actual notice. When service is made by certified mail, a copy of the complaint or order may also be sent by regular mail. Service shall be deemed sufficient if the certified mail is refused but the regular mail is not returned by the post office within ten days after the mailing. If regular mail is used, a notice of the pending proceedings shall be posted in a conspicuous place on the premises affected. If the identities of any owners or the whereabouts of persons are unknown and cannot be ascertained by the public officer in the exercise of reasonable diligence and the public officer makes an affidavit to that effect, the serving of the complaint or order upon the owners or other persons may be made by publication in a newspaper having general circulation in the local government at least once no later than the time that personal service would be required under this section. When service is made by publication, a notice of the pending proceedings shall be posted in a conspicuous place on the premises affected.

I. *Liens.*

1. The amount of the cost of repairs, alterations, or improvements, or vacating and closing, or removal or demolition by the public officer shall be a lien against the real property upon which the cost was incurred, which lien shall be filed, have the same priority, and be collected as the lien for special assessment provided in G.S. ch. 160A, art. 10.
2. If the real property upon which the cost was incurred is located in an incorporated city, the amount of the costs is also a lien on any other real property of the owner located within the city limits except for the

owner's primary residence. The additional lien provided in this subdivision is inferior to all prior liens and shall be collected as a money judgment.

3. If the nonresidential building or structure is removed or demolished by the public officer, he or she shall offer for sale the recoverable materials of the building or structure and any personal property, fixtures, or appurtenances found in or attached to the building or structure and shall credit the proceeds of the sale, if any, against the cost of the removal or demolition, and any balance remaining shall be deposited in the superior court by the public officer, shall be secured in a manner directed by the court, and shall be disbursed by the court to the persons found to be entitled thereto by final order or decree of the court. Nothing in this section shall be construed to impair or limit in any way the power of the governing board to define and declare nuisances and to cause their removal or abatement by summary proceedings or otherwise.

J. *Ejectment.* If any occupant fails to comply with an order to vacate a nonresidential building or structure, the public officer may file a civil action in the name of the local government to remove the occupant. The action to vacate shall be in the nature of summary ejectment and shall be commenced by filing a complaint naming as parties-defendant any person occupying the nonresidential building or structure. The clerk of superior court shall issue a summons requiring the defendant to appear before a magistrate at a certain time, date, and place not to exceed ten days from the issuance of the summons to answer the complaint. The summons and complaint shall be served as provided in G.S. 42-29. The summons shall be returned according to its tenor, and if on its return it appears to have been duly served and if at the hearing the public officer produces a certified copy of an ordinance adopted by the governing board pursuant to subsection (f) of this section to vacate the occupied nonresidential building or structure, the magistrate shall enter judgment ordering that the premises be vacated and all persons be removed. The judgment ordering that the nonresidential building or structure be vacated shall be enforced in the same manner as the judgment for summary ejectment entered under G.S. 42-30. An appeal from any judgment entered under this subsection by the magistrate may be taken as provided in G.S. 7A-228, and the execution of the judgment may be stayed as provided in G.S. 7A-227. An action to remove an occupant of a nonresidential building or structure who is a tenant of the owner may not be in the nature of a summary ejectment proceeding pursuant to this subsection unless the occupant was served with notice, at least 30 days before the filing of the summary ejectment proceeding, that the governing board has ordered the public officer to proceed to exercise his or her duties under subsection (f) of this section to vacate and close or remove and demolish the nonresidential building or structure.

K. *Civil penalty.* The governing board may impose civil penalties against any person or entity that fails to comply with an order entered pursuant to this section. However, the imposition of civil penalties shall not limit the use of any other lawful remedies available to the governing board for the enforcement of any ordinances adopted pursuant to this section.

L. *Supplemental powers.* The powers conferred by this section are supplemental to the powers conferred by any other law. An ordinance adopted by the governing board may authorize the public officer to exercise any powers necessary or convenient to carry out and effectuate the purpose and provisions of this section, including the following powers in addition to others herein granted:

1. To investigate nonresidential buildings and structures in the local government's planning and development regulation jurisdiction to determine whether they have been properly maintained in compliance with the minimum standards so that the safety or health of the occupants or members of the general public are not jeopardized.
2. To administer oaths, affirmations, examine witnesses, and receive evidence.

3. To enter upon premises pursuant to Subsection B of this section for the purpose of making examinations in a manner that will do the least possible inconvenience to the persons in possession.
4. To appoint and fix the duties of officers, agents, and employees necessary to carry out the purposes of the ordinances adopted by the governing board.
5. To delegate any of his or her functions and powers under the ordinance to other officers and agents.

M. *Appeals.* The governing board may provide that appeals may be taken from any decision or order of the public officer to the local government's housing appeals board or board of adjustment. Any person aggrieved by a decision or order of the public officer shall have the remedies provided in G.S. 160D-1208.

N. *Funding.* The governing board is authorized to make appropriations from its revenues necessary to carry out the purposes of this section and may accept and apply grants or donations to assist in carrying out the provisions of the ordinances adopted by the governing board.

O. *No effect on just compensation for taking by eminent domain.* Nothing in this section shall be construed as preventing the owner or owners of any property from receiving just compensation for the taking of property by the power of eminent domain under the laws of this State nor as permitting any property to be condemned or destroyed except in accordance with the police power of the State.

CHAPTER 38. HEALTH AND SANITATION

38-72.1. Violations; exceptions.

Notwithstanding the enumeration of prohibited noises as listed in section 38-72, whenever it is practicable to do so in the discretion of the law enforcement officer or officers, or code enforcement officer or officers responding to the noise complaint, the following procedure shall be used to determine whether any specific noise alleged to be a violation of this noise ordinance is, in fact, a violation, at any certain time and for any given location from which a complaint arises.

A. *Violations.* In order to document and prove a prima facie violation of this noise ordinance:

1. The ambient noise level shall be determined, if it is reasonably practicable to do so in the discretion of the law enforcement officer or officers, or code enforcement officer or officers responding to the noise complaint. Then, the alleged violation noise level shall be determined at the same location, both determinations to be made by the use of the same sound level meter, and using the same procedure. A violation shall have occurred if the alleged violation noise level exceeds the ambient noise level:
   a. By ten decibels, between the hours of 9:00 p.m. and 7:00 a.m.; or
   b. By 20 decibels, between the hours of 7:00 a.m. and 9:00 p.m.
2. If, due to the nature of the alleged violation noise level, no determination of an ambient noise level is practicable in the discretion of the law enforcement officer or officers, or code enforcement officer or officers responding to the noise complaint, then a violation shall have occurred if the alleged violation noise level exceeds:
   a. 60 decibels between the hours of 9:00 p.m. and 7:00 a.m.; or
   b. 70 decibels between the hours of 7:00 a.m. and 9:00 p.m.
3. If no decibel readings or comparison between ambient noise levels and alleged violation noise levels are practicable in the discretion of the law enforcement officer or officers, or code enforcement officer or officers responding to the noise complaint, the alleged violation is listed in section 38-72, and the violator

does not voluntarily and promptly reduce the noise level when requested to do so by a law enforcement officer or code enforcement officer, so as to comply with the definitions in section 38-71, or if, having reduced the noise level to comply therewith but then within a 24-hour period again produces or allows to be produced noise at a level not in compliance with the definitions in section 38-71, the noise shall be a violation of the ordinance.

B. *Exceptions.* The following are excepted from this noise ordinance:

1. Any noise generated by an emergency vehicle, such as a fire truck, police car, an EMS vehicle or their sirens, or other noises generated by or at the behest of a governmental entity which is intended to immediately promote the public health, safety or welfare.
2. Any sporting event sanctioned by a school, any other government agency, or any civic group or club provided that in the latter instance, such event is properly permitted.
3. Noises caused by:
   a. Lawn care equipment, agricultural equipment or construction equipment operated for intended and legitimate purposes between the hours of 7:00 a.m. and 9:00 p.m.;
   b. Properly permitted events such as parades, fairs, circuses and other entertainment events;
   c. Bells, chimes and similar devices which operate from a stationary location, which were in operation before the complainant's residency was established, and which operate for no longer than five minutes in any hour;
   d. Emergency work reasonably necessary to safeguard the public safety to person or property;
   e. Duly permitted electrical transformers and utility substations;
   f. Traffic noises other than the unnecessary use of horns, radios or other sound amplifying or receiving equipment, intentional screeching of tires, intentional revving of motors, provided that such traffic noises emanate from a public street or right-of-way; and
   g. Noises permitted pursuant to section 38-73.

C. *Regulations and measurement standards promulgated by the chief of police.* The chief of police may promulgate any regulations and sound level measurement standards consistent with this noise ordinance which, in his professional opinion, will aid in the enforcement hereof.

D. *Noises are public nuisances.* Nothing in this noise ordinance shall be construed in such manner as to prohibit the code enforcement officer, the city manager and/or the city council from following the procedure for abatement of a nuisance, enumerated in division 1 of this article, as an alternative or in addition to the prosecution of a violation of the noise ordinance as a misdemeanor with fine up to $500.00 per G.S. 14-4(a).

38-122. Reserved.

38-152. Reserved.

38-191. Reserved.

CHAPTER 42. OFFENSES AND MISCELLANEOUS PROVISIONS

42-6. Loitering for purpose of engaging in drug-related activity.

A. *Violations.* It shall be unlawful for a person to loiter, remain or wander about in a public place in a manner and under circumstances manifesting the purpose of engaging in a violation of any subdivision of the North Carolina Controlled Substances Act, G.S. 90-89 et seq. A prima facie showing of a violation of this section is made by proof that a person, while in a public place, loiters and commits any of the following acts or courses of conduct:

1. Repeatedly beckons to, stops or attempts to stop passersby, or repeatedly attempts to engage passersby in conversation;
2. Repeatedly stops or attempts to stop motor vehicles;
3. Repeatedly interferes with the free passage of motor vehicles or other persons;
4. Associates at such location with one or more persons who are known unlawful drug users, possessors and sellers;
5. Behaves in such a manner as to raise a reasonable suspicion that he is about to engage in, or is engaged in, an unlawful drug-related activity;
6. Repeatedly passes to or receives from passersby, whether on foot or in a vehicle, money or objects;
7. Takes flight upon the approach or appearance of a police officer;
8. Is at a location frequented by persons who use, possess or sell drugs; or
9. Uses or associates with the user of any vehicle which is registered to a known unlawful drug user, possessor or seller, or is known to be or have been involved in drug-related activities.

B. *Penalty.* A violation of any provision of this section is a misdemeanor and shall subject the offender to punishment in accordance with Section 1-8.

42-42. Display of sexually explicit materials.

A. *Display.* No person, knowing the character of the materials involved, may display or cause or permit the display of any sexually explicit materials in or on any window, showcase, newsstand, display rack, billboard, display board, viewing screen, motion picture screen, marquee or similar place in such manner that the display is visible from any public street, highway, sidewalk or other public right-of-way, or in any business or commercial establishment where minors, as a part of the general public or otherwise, are or will probably be exposed to view all or any part of such materials. Violation punishable as a misdemeanor with fine up to $500.00 per G.S. 14-4(a).

B. *Exception.* Nothing in this section shall apply to any recognized historical society or museum accorded charitable status by the federal government or any library operated by any unit of state or local government.

42-71. Reserved.

CHAPTER 43. SOCIAL DISTRICTS

(Reflects the proposed Chapter 43 – Social Districts, which is going before City Council for a vote on 8/21/23)

43-2. Reserved.

CHAPTER 46. PEDDLERS AND SOLICITORS

46-7. Reserved.

CHAPTER 58. SOLID WASTE MANAGEMENT

58-1. Reserved.

58-2. Management and control of collection services; appeals.

A. All garbage and other refuse accumulated in the city shall be collected, conveyed and disposed of by the city under the control of the city manager, and under the supervision of the director of public works. The director shall have the authority to make regulations concerning the days of collection, type and location of waste containers, and such other matters pertaining to the collection, conveyance and disposal as he shall find necessary, and to change and modify the regulations after due notice as required by law, provided such regulations are not contrary to the provisions of law.

B. Any person aggrieved by a regulation of, or fee charged by, the public works director shall have the right of appeal to the city manager, who shall have the authority to confirm, modify or revoke any such regulations or fee.

58-5. Containers.

A. *Required; maintenance; specifications.* Refuse containers shall be provided by the owner, tenant, lessee or occupant of the premises served and shall be of a type approved by the public works director. Containers shall be maintained in good condition and shall be kept in a clean, neat and sanitary condition at all times. Any container that does not conform to the provisions of this chapter or that may have ragged or sharp edges or any other defect liable to hamper or injure the person collecting the contents thereof shall be promptly replaced upon notice. The public works director shall have the authority to refuse collection services for failure to comply herewith. City collection personnel shall exercise due care in the handling of containers and the city shall not be liable for any damage to containers resulting from handling the containers unless it can be shown that the personnel were negligent or careless in the handling thereof, and in such cases the liability of the city shall extend only to replacement of the container with one in good condition of like material and capacity. The following types and numbers of containers are prescribed for use in the collection of waste material:

1. *Residential containers.* The standard small container, normally used at residences, shall be made of metal or substantial plastic equipped with suitable handles and tight-fitting covers, shall be watertight and shall have a capacity of not more than 32 gallons. These containers may be used for any waste material. Care shall be taken to ensure that the weight of the contents shall be such that the container, with contents, can readily be handled by one adult person.
2. *Dumpsters.* Commercial dumpster containers shall be of steel construction, of up to four-cubic-yard capacity and of such design and construction as to facilitate mechanical unloading by collection equipment operated by the city. Sub-grade dumpsters may be installed of steel or polyethylene construction for private hauler service and maintenance; the public works director may require the customer use a private hauler to collect the waste in such dumpsters due to city collection capabilities. Dumpsters may be used for garbage, refuse or rubbish.
3. *Disposable containers.* Disposable containers shall be made of either metal, plastic, wood, cardboard or paper, all of which shall be removed with the contents thereof. These containers together with the

contents thereof shall be of such weight that they can readily be handled by one adult person and shall be of sufficient strength to withstand failure when being picked up and placed in the collection vehicle.

4. *Number of containers.* Residential and noncommercial business customers shall be limited to two standard small containers per dwelling unit or business per collection. If more than two containers are used on a regular basis, the collection fee shall be doubled. For multifamily residential buildings having more than four units, a commercial dumpster container shall be provided in lieu of the standard small containers. Commercial customers requiring more than four standard small containers on a regular basis shall be required to use a commercial dumpster container.

B. *Use.* No person shall place any refuse in any street, alley or other public place, or upon any private property, whether or not owned by such person, within the city except in proper containers for collection or under express approval granted by the public works director; nor shall any person throw or deposit any refuse in any stream or other body of water.

C. *Placement.* Refuse containers shall be placed for collection at ground level and directly accessible from the street or alley from which collection is made. Residential refuse containers shall be placed at curbside prior to collection, no later than 7:30 AM and shall be removed within reasonable time thereafter. A suitable permanent location, satisfactory to the public works director, may be established for containers of commercial customers.

58-6. Frequency of collection.

A. Refuse shall be collected once each week under normal circumstances.

B. Hotels, restaurants and such other businesses and institutions as deem it necessary may enter into an agreement for a greater frequency of collection.

C. Where necessary to protect the public health, the public works director shall have the authority to require that more frequent collection be made. If necessary, an extra city-wide collection shall not affect fees. Individual collections made according to this section shall be charged on a pro-rata basis to the affected fee payer.

58-7. Refuse quantity.

A. The public works director shall collect a reasonable accumulation of refuse of each patron during each collection period for the standard charge. The public works director shall have the authority to refuse to collect unreasonable amounts, or to make additional charges for such amounts.

B. Only material placed in approved containers shall be picked up. Refuse placed on the ground or scattered about in the immediate vicinity of the container shall not be picked up unless, in the opinion of the public works director, pickup by city personnel is warranted due to delays in the service or other factors which are strictly the responsibility of the city.

58-8. Special refuse problems.

A. *Contagious disease refuse.* The removal of wearing apparel, bedding or other refuse from homes or other places where highly infectious or contagious diseases have prevailed shall be performed under the supervision and direction of the county health department. Such refuse shall not be placed in containers for regular collection.

B. *Construction debris; tree limbs, trunks, etc.* Rubbish resulting from any construction, remodeling, wrecking or repair of any building or other real estate improvement shall be removed by the producer of such rubbish, or by the owner of the premises upon which rubbish has accumulated, at his own expense, subject to the

provisions of section 58-9. These restrictions shall apply to the removal of limbs, trunks, stumps, etc., of any trees or shrubs removed or trimmed by landscape gardeners, tree surgeons or other parties engaged to carry on such work.

C. *Inflammable or explosive refuse.* Highly inflammable or explosive materials shall not be placed in containers for regular collection but shall be disposed of as directed by the public works director at the expense of the owner or possessor thereof.

D. *Free curbside pickup service.* Rubble, wood, tree trimmings, hedge clippings and debris resulting from cleaning of property may be placed at curbside for collection. The public works director shall collect a reasonable amount of such rubbish at no charge, but he shall have the authority to refuse to collect heavy or bulky items that cannot be handled readily by two adult persons. It shall be unlawful for any person to place or allow to be placed any tree trimmings or shrubbery trimmings on any street or sidewalk so as to obstruct the free passage of vehicles or pedestrians.

E. *Parking of pickup vehicles at private residence*s. The city manager or his designee may authorize city vehicles to be parked at private residences to facilitate the collection of brush and other refuse that would otherwise be collected under other provisions of this section. The city manager is directed to develop a written policy to provide for the implementation of this subsection. The policy is to be kept on file in the office of the city clerk and at the public works department. The fee for this service shall be adopted in the city's annual schedule of fees.

58-9. Collection by actual producers and outside collectors.

A. *Vehicles.* The actual producers of refuse or the owners of premises upon which refuse is accumulated who desire personally to collect and dispose of such refuse, persons who desire to dispose of waste material not included in the definition of refuse and collectors of refuse from outside of the city who desire to haul over the streets of the city shall use a watertight vehicle provided with a tight cover and so operated as to prevent offensive odors escaping therefrom and refuse from being blown, dropped or spilled.

B. *Additional rules and regulations.* The public works director shall have the authority to make such other reasonable regulations concerning individual collection and disposal, and relating to the hauling of refuse over city streets by outside collectors, as such director may find necessary, subject to the right of appeal as set forth in Section 58-2.

58-11. Fees; delinquent accounts.

A. *Establishment of fees for the collection and disposal of refuse.* Fees for the collection and disposal of refuse shall be set forth within the schedule of taxes, fees and charges of the annually adopted budget ordinance for the City of Brevard. The specific policies and procedures for the collection of such fees shall be established by the city manager.

B. *Applicability of fee.* The appropriate fee for collection and disposal of refuse shall be charged each occupied single, duplex or multifamily dwelling. Businesses which have a contract for refuse collection by a private contractor shall not be required to pay the city fee.

C. *Single and duplex family dwellings.* The fee for collection and disposal of refuse placed for collection adjacent to the side of the street or alley from which collection is made shall be as set forth in the schedule of taxes, fees and charges, and shall include the free pickup service provided for in Section 58-8.D.

D. *Multifamily dwellings.* For each dwelling unit in a multifamily dwelling, i.e., three or more family dwelling units per building, the fee shall be as set forth in the schedule of taxes, fees and charges, provided, however, that

this fee shall not include the free pickup service provided for in Section 58-8.D. The regular fee provided for in Subsection 58-11.F shall be charged for pickup of rubble, wood, tree trimmings, hedge clippings and debris resulting from cleaning of property at multifamily dwellings. Owners of multifamily dwelling buildings shall have the option of using a dumpster container at the regular commercial rate in lieu of individual unit garbage containers.

E. *Fee for commercial premises.* The fee for collection and disposal of refuse from nonresidential premises shall be as set forth in the schedule of taxes, fees and charges.

F. *Fee for special loads.* The fee for the collection and disposal of special loads of refuse shall be as set forth in the schedule of taxes, fees and charges.

G. *Delinquent accounts.* All accounts shall be considered delinquent if not paid by the 20th of the month following the month in which service is rendered. All delinquent accounts are subject to stoppage of service without notice. If the delinquent account is not paid within 30 days, the public works director shall cease all refuse collection for that account unless otherwise directed by the city manager. Service shall be resumed thereafter only upon payment of the accumulated fees for the period of collection and the period of noncollection unless the city manager specifically directs otherwise. The stoppage of services for nonpayment of collection charges shall be in addition to the right of the city to proceed for the collection of such unpaid charges in any manner provided by law for the collection of a claim of the city.

CHAPTER 62. STREETS, SIDEWALKS AND OTHER PUBLIC WAYS

62-141. Reserved.

62-164. Reserved.

CHAPTER 66. TRAFFIC

66-1. Adoption of state law.

A. For the purpose of regulating traffic on the streets of the city, and in addition to the provisions of this chapter, there are hereby adopted by reference by the city the following provisions of G.S. ch. 20: G.S. 20-4.01 (Definitions), G.S. 20-115 et seq. (The Size, Weight, Construction and Equipment of Vehicles), G.S. 20-138.1 et seq. (Operation of Vehicles and Rules of the Road), G.S. 20-171.1 et seq. (Operation of Bicycles), G.S. 20-172 et seq. (Pedestrians) and G.S. 20-216 et seq. (Miscellaneous Provisions Relating to Motor Vehicles).

B. The violation of any such provision shall be deemed a violation of this Code, and punishable as such.

CHAPTER 70. UTILITIES

70-83. Reserved.

70-140. General provisions.

A. *Purpose and policy.* This ordinance sets forth uniform requirements for direct and indirect contributors into the wastewater collection and treatment system for the City of Brevard, hereafter referred to as the city, and enables the city to comply with all applicable state and federal laws, including the Clean Water Act (33 United States Code § 1251 et seq.) and the General Pretreatment Regulations (40 CFR, Part 403).

The objectives of this ordinance are:

This ordinance provides for the regulation of direct and indirect contributors to the municipal wastewater system, through the issuance of permits to certain non-domestic users and through enforcement of general requirements for the other users, authorizes monitoring and enforcement activities, requires user reporting and provides for the setting of fees for the equitable distribution of costs resulting from the program established herein.

This ordinance shall apply to all users of the municipal wastewater system, as authorized by G.S. 160A-312 and/or 153A-275. The city shall designate an administrator of the POTW and pretreatment program hereafter referred to as the POTW director or director. Except as otherwise provided herein, the director shall administer, implement and enforce the provisions of this ordinance. Any powers granted to or imposed upon the director may be delegated by the director to other city personnel.

By discharging wastewater into the city wastewater system, industrial users located within or outside the city limits agree to comply with the terms and conditions established in this ordinance, as well as any permits, enforcement actions, or orders issued hereunder. Users subject to this ordinance are also subject to the City of Brevard Code of Ordinances, CHAPTER 70 - utilities.

1. To prevent the introduction of pollutants and wastewater discharges into the municipal wastewater system which will interfere with the operation of the wastewater system or contaminate the resulting sludge;
2. To prevent the introduction of pollutants and wastewater discharges into the municipal wastewater system which will pass through the system, inadequately treated, into any waters of the state or otherwise be incompatible with the system;
3. To promote reuse and recycling of industrial wastewater and sludges from the municipal system;
4. To protect both municipal personnel who may be affected by sewage, sludge, and effluent in the course of their employment as well as protecting the general public;
5. To provide for equitable distribution of the cost of operation, maintenance and improvement of the municipal wastewater system; and
6. To ensure that the municipality complies with its NPDES or non-discharge permit conditions, sludge use and disposal requirements and any other federal or state laws to which the municipal wastewater system is subject.

B. *Abbreviations.*

1. The following abbreviations, when used in this ordinance, shall have the designated meanings:
    a. BOD: Biochemical oxygen demand;
    b. CFR: Code of Federal Regulations;
    c. COD: Chemical oxygen demand;
    d. EPA: Environmental Protection Agency;

e. gpd: Gallons per day;
f. l: Liter;
g. mg: Milligrams;
h. mg/l: Milligrams per liter;
i. G.S.: North Carolina General Statutes;
j. NPDES: National Pollution Discharge Elimination System;
k. O&M: Operation and maintenance;
l. POTW: Publicly owned treatment works;
m. RCRA: Resource Conservation and Recovery Act;
n. SIC: Standard industrial classification;
o. SWDA: Solid Waste Disposal Act;
p. TSS: Total suspended solids;
q. TKN: Total Kjeldahl nitrogen; and
r. U.S.C.: United States Code.

70-141. General sewer use requirements.

A. *Prohibited discharge standards.*

1. *General prohibitions.* No user shall contribute or cause to be contributed into the POTW, directly or indirectly, any pollutant or wastewater which causes interference or pass-through. These general prohibitions apply to all users of a POTW whether or not the user is a significant industrial user or subject to any national, state, or local pretreatment standards or requirements.
2. *Specific prohibitions.* No user shall contribute or cause to be contributed into the POTW the following pollutants, substances, or wastewater:
   a. Pollutants which create a fire or explosive hazard in the POTW, including, but not limited to, waste streams with a closed cup flashpoint of less than 140° F (60° C) using the test methods specified in 40 CFR 261.21.
   b. Solid or viscous substances in amounts which will cause obstruction of the flow in the POTW resulting in interference but in no case solids greater than one-half inch in any dimension.
   c. Petroleum oil, nonbiodegradable cutting oil, or products of mineral oil origin, in amounts that will cause interference or pass-through.
   d. Any wastewater having a pH less than 5.0 or more than 10.0 or wastewater having any other corrosive property capable of causing damage to the POTW or equipment.
   e. Any wastewater containing pollutants, including oxygen-demanding pollutants, (BOD, etc.) in sufficient quantity, (flow or concentration) either singly or by interaction with other pollutants, to cause interference with the POTW.
   f. Any wastewater having a temperature greater than 139° F (59.4° C), or which will inhibit biological activity in the POTW treatment plant resulting in interference, but in no case wastewater which causes the temperature at the introduction into the treatment plant to exceed 104° F (40° C).
   g. Any pollutants which result in the presence of toxic gases, vapors or fumes within the POTW in a quantity that may cause acute worker health and safety problems.

h. Any trucked or hauled pollutants, except at discharge points designated by the director in accordance with subsection 70-141.I of this ordinance.

i. Any noxious or malodorous liquids, gases, or solids or other wastewater which, either singly or by interaction with other wastes, are sufficient to create a public nuisance or hazard to life or are sufficient to prevent entry into the sewers for maintenance and repair.

j. Any substance which may cause the POTW's effluent or any other product of the POTW such as residues, sludges, or scums, to be unsuitable for reclamation and reuse or to interfere with the reclamation process. In no case, shall a substance discharged to the POTW cause the POTW to be in noncompliance with sludge use or disposal regulations or permits issued under Section 405 of the Act; the Solid Waste Disposal Act, the Clean Air Act, the Toxic Substances Control Act, or state criteria applicable to the sludge management method being used.

k. Any wastewater which imparts color which cannot be removed by the treatment process, including, but not limited to, dye wastes and vegetable tanning solutions, which consequently imparts sufficient color to the treatment plant's effluent to render the waters injurious to public health or secondary recreation or to aquatic life and wildlife or to adversely affect the palatability of fish or aesthetic quality or impair the receiving waters for any designated uses.

l. Any wastewater containing any radioactive wastes or isotopes except as specifically approved by the director in compliance with applicable state or federal regulations.

m. Stormwater, surface water, groundwater, artesian well water, roof runoff, subsurface drainage, swimming pool drainage, condensate, deionized water, noncontact cooling water and unpolluted industrial wastewater, unless specifically authorized by the director.

n. Fats, oils, or greases of animal or vegetable origin in concentrations greater than 100 mg/l unless authorized by the director.

o. Any sludges, screenings or other residues from the pretreatment of industrial wastes.

p. Any medical wastes, except as specifically authorized by the director in a wastewater discharge permit.

q. Any material containing ammonia, ammonia salts, or other chelating agents which will produce metallic complexes that interfere with the municipal wastewater system.

r. Any material that would be identified as hazardous waste according to 40 CFR Part 261 if not disposed of in a sewer except as may be specifically authorized by the director.

s. Any wastewater causing the treatment plant effluent to violate state water quality standards for toxic substances as described in 15A NCAC 2B.0200.

t. Wastewater causing, alone or in conjunction with other sources, the treatment plant's effluent to fail a toxicity test.

u. Recognizable portions of the human or animal anatomy.

v. Any wastes containing detergents, surface active agents, or other substances which may cause excessive foaming in the municipal wastewater system.

w. At no time, shall two successive readings on an explosion hazard meter, at the point of discharge into the wastewater system (or at any point in the system) be more than five percent nor any single reading over ten percent of the lower explosive limit (LEL) of the meter.

3. Pollutants, substances, wastewater, or other wastes prohibited by this section shall not be processed or stored in such a manner that they could be discharged to the municipal wastewater system. All floor

drains located in process or materials storage areas must discharge to the industrial user's pretreatment facility before connecting with the POTW.

When the director determines that a user is contributing to the POTW, any of the above-enumerated substances in such amounts which may cause or contribute to interference of POTW operation or pass-through, the director shall:

a. Advise the user(s) of the potential impact of the contribution on the POTW in accordance with subsection 70-147.B; and

b. Take appropriate actions in accordance with section 70-143 for such user(s) to protect the POTW from interference or pass-through.

B. *National categorical pretreatment standards.* Users subject to categorical pretreatment standards are required to comply with applicable standards as set out in 40 CFR Chapter 1, Subchapter N, Parts 405-471 and incorporated herein.

1. Where a categorical pretreatment standard is expressed only in terms of either the mass or the concentration of a pollutant in wastewater, the director may impose equivalent concentration or mass limits in accordance with 40 CFR 403.6(c).
2. When wastewater subject to a categorical pretreatment standard is mixed with wastewater not regulated by the same standard, the director shall impose an alternate limit using the combined waste stream formula in 40 CFR 403.6(e).
3. A user may obtain a variance from a categorical pretreatment standard if the user can prove, pursuant to the procedural and substantive provisions in 40 CFR 403.13, that factors relating to its discharge are fundamentally different from the factors considered by EPA when developing the categorical pretreatment standard.
4. A user may obtain a net gross adjustment to a categorical standard in accordance with 40 CFR 403.15.

C. *Local limits.* An industrial waste survey is required prior to a user discharging wastewater (containing in excess of the following average discharge limits):

TABLE 70-141A: LOCAL LIMITS TO WASTEWATER DISCHARGE		
BOD	220	mg/l
TSS	220	mg/l
NH_3	25	mg/l
Arsenic	0.003	mg/l
Cadmium	0.003	mg/l
Chromium	0.05	mg/l (total chromium)
Copper	0.061	mg/l
Cyanide	0.015	mg/l
Lead	0.049	mg/l
Mercury	0.0003	mg/l
Nickel	0.021	mg/l
Silver	0.005	mg/l
Zinc	0.175	mg/l

C. Industrial waste survey information will be used to develop user-specific local limits when necessary to ensure that the POTW's maximum allowable headworks loading is not exceeded for pollutants of concern. User-specific local limits for pollutants of concern shall be included in wastewater permits. The director may impose mass based limits in addition to, or in place of, concentration based limits.

D. *State requirements.* State requirements and limitations on discharges shall apply in any case where they are more stringent than federal requirements and limitations or those in this ordinance.

E. *Right of revision.* The city reserves the right to establish limitations and requirements which are more stringent than those required by either state or federal regulation if deemed necessary to comply with the objectives presented in subsection 70-140.A of this ordinance or the general and specific prohibitions in subsection 70-141.A of this ordinance, as is allowed by 40 CFR 403.4.

F. *Dilution.* No user shall increase the use of process water or, in any way, attempt to dilute a discharge as a partial or complete substitute for adequate treatment to achieve compliance with the limitations contained in the national categorical pretreatment standards, unless expressly authorized by an applicable pretreatment standard, or in any other pollutant-specific limitation developed by the city or state.

G. *Pretreatment of wastewater.*

1. *Pretreatment facilities.* Users shall provide wastewater treatment as necessary to comply with this ordinance and wastewater permits issued under subsection 70-143.B of this ordinance and shall achieve compliance with all national categorical pretreatment standards, local limits, and the prohibitions set out in subsection 70-141.A of this ordinance within the time limitations as specified by EPA, the state, or the director, whichever is more stringent. Any facilities necessary for compliance shall be provided, operated, and maintained at the user's expense. Detailed plans showing the pretreatment facilities and operating procedures shall be submitted to the city for review, and shall be approved by the director before construction of the facility. The review of such plans and operating procedures shall in no way relieve the user from the responsibility of modifying the facility as necessary to produce an effluent acceptable to the city under the provisions of this ordinance. Any subsequent changes in the pretreatment facilities or

method of operation shall be reported to and be approved by the director prior to the user's initiation of the changes.

2. *Additional pretreatment measures.*

   a. Whenever deemed necessary, the director may require users to restrict their discharge during peak flow periods, designate that certain wastewater be discharged only into specific sewers, relocate and/or consolidate points of discharge, separate sewage waste streams from industrial waste streams, and such other conditions as may be necessary to protect the POTW and determine the user's compliance with the requirements of this ordinance.

   b. The director may require any person discharging into the POTW to install and maintain, on their property and at their expense, a suitable storage and flow-control facility to ensure equalization of flow. A wastewater discharge permit may be issued solely for flow equalization.

   c. Grease, oil, and sand/grit interceptors shall be provided when, in the opinion of the director, they are necessary for the proper handling of wastewater containing excessive amounts of grease and oil, or sand; except that such interceptors shall not be required for residential users. All interception units shall be of type and capacity approved by the director and shall be so located to be easily accessible for cleaning and inspection. Such interceptors shall be inspected, cleaned, and repaired regularly, as needed, by the user at their expense.

   d. Users with the potential to discharge flammable substances may be required to install and maintain an approved combustible gas detection meter.

H. *Accidental discharge/slug control plans.*

1. The director shall evaluate whether each significant industrial user needs a plan or other action to control and prevent slug discharges and accidental discharges as defined in Section 1-2. All SIUs must be evaluated within one year of being designated an SIU. The director may require any user to develop, submit for approval, and implement such a plan or other specific action. Alternatively, the director may develop such a plan for any user.

2. All SIUs are required to notify the POTW immediately of any changes at its facility affecting the potential for spills and other accidental discharge, discharge of a non-routine, episodic nature, a non-customary batch discharge, or a slug load. Also see subsections 70-144.E and 70-144.F.

3. An accidental discharge/slug control plan shall address, at a minimum, the following:

   a. Description of discharge practices, including non-routine batch discharges;

   b. Description of stored chemicals;

   c. Procedures for immediately notifying the director of any accidental or slug discharge, as required by subsection 70-144.F of this ordinance; and

   d. Procedures to prevent adverse impact from any accidental or slug discharge. Such procedures include, but are not limited to, inspection and maintenance of storage areas, handling and transfer of materials, loading and unloading operations, control of plant site runoff, worker training, building of containment structures or equipment, measures for containing toxic organic pollutants, including solvents, and/or measures and equipment for emergency response.

I. *Hauled wastewater.*

1. Septic tank waste may be introduced into the POTW only at locations designated by the director, and at such times as are established by the director. Such waste shall not violate section 70-141 of this ordinance

or any other requirements established by the city. The director may require septic tank waste haulers to obtain wastewater discharge permits.

2. The director shall require haulers of industrial waste to obtain wastewater discharge permits. The director may require generators of hauled industrial waste to obtain wastewater discharge permits. The director also may prohibit the disposal of hauled industrial waste. The discharge of hauled industrial waste is subject to all other requirements of this ordinance.
3. Industrial waste haulers may discharge loads only at locations designated by the director. No load may be discharged without prior consent of the director. The director may collect samples of each hauled load to ensure compliance with applicable standards. The director may require the industrial waste hauler to provide a waste analysis of any load prior to discharge.
4. Industrial waste haulers must provide a waste-tracking form for every load. This form shall include, at a minimum, the name and address of the industrial waste hauler, permit number, truck identification, names and addresses of sources of waste, and volume and characteristics of waste. The form shall identify the type of industry, known or suspected waste constituents, and whether any wastes are RCRA hazardous wastes.

70-143. Wastewater discharge permit application and issuance.

A. *Wastewater dischargers.* It shall be unlawful for any person to connect or discharge to the POTW without first obtaining the permission of the city. When requested by the director, a user must submit information on the nature and characteristics of its wastewater within 30 days of the request. The director is authorized to prepare a form for this purpose and may periodically require users to update this information.

B. *Wastewater permits.* All significant industrial users shall obtain a significant industrial user permit prior to the commencement of discharge to the POTW. Existing industrial users who are determined by the director to be significant industrial users shall obtain a significant industrial user permit within 180 days of receiving notification of the POTW director's determination. Industrial users who do not fit the significant industrial user criteria may at the discretion of the director be required to obtain a wastewater discharge permit for non-significant industrial users.

1. *Significant industrial user determination.* All persons proposing to discharge non-domestic wastewater, or proposing to change the volume or characteristics of an existing discharge of non-domestic wastewater shall request from the director a significant industrial user determination. If the director determines or suspects that the proposed discharge fits the significant industrial user criteria, he will require that a significant industrial user permit application be filed.
2. *Significant industrial user permit application.* Users required to obtain a significant industrial user permit shall complete and file with the city, an application in the form prescribed by the director, and accompanied by an application fee in the amount prescribed in the schedule of charges and fees. Significant industrial users shall apply for a significant industrial user permit within 90 days after notification of the POTW director's determination in subsection 70-143.B.1 above. The application shall include at a minimum:
    a. Name of industrial user;
    b. Address of industrial user;
    c. Standard industrial classification (SIC) code(s) or expected classification and industrial user category;
    d. Wastewater flow;

e. Types and concentrations (or mass) of pollutants contained in the discharge;
f. Major products manufactured or services supplied;
g. Description of existing on-site pretreatment facilities and practices;
h. Locations of discharge points;
i. Raw materials used or stored at the site;
j. Flow diagram or sewer map for the industrial user;
k. Number of employees;
l. Operation and production schedules; and
m. Description of current and projected waste reduction activities in accordance with G.S. 143-215.1(g).

3. *Application signatories and certification.* All wastewater discharge permit applications and user reports must be signed by the current authorized representative of the user on file with the control authority as defined in Section 1-2. and contain the following certification statement:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

4. *Application review and evaluation.* The director will evaluate the data furnished by the user and may require additional information.
   a. The director is authorized to accept applications for the city and shall refer all applications to the POTW staff for review and evaluation.
   b. The director shall acknowledge and accept the complete application; or if not complete, shall return the application to the applicant with a statement of what additional information is required.
5. *Tentative determination and draft permit.*
   a. The POTW staff shall conduct a review of the application and an on-site inspection of the significant industrial user, including any pretreatment facilities, and shall prepare a written evaluation and tentative determination to issue or deny the significant industrial user permit.
   b. If the staff's tentative determination in subsection 70-143(b)(5)a. above is to issue the permit, the following additional determinations shall be made in writing:
      i. Proposed discharge limitations for those pollutants proposed to be limited;
      ii. A proposed schedule of compliance, including interim dates and requirements, for meeting the proposed limitations; and
      iii. A brief description of any other proposed special conditions which will have significant impact upon the discharge described in the application.
   c. Subsections 70-143.B.5.a. and 70-143.B.5.b. above and the general permit conditions of the city into a significant industrial user permit.
6. *Permit supporting documentation.* The control authority staff shall prepare the following documents for all significant industrial user permits.

a. An allocation table (AT) listing permit information for all significant industrial users, including, but not limited to, permit limits, permit effective and expiration dates, and a comparison of total permitted flows and loads with division-approved maximum allowable loadings of the POTW, including flow, on forms or in a format approved by the division. The AT shall be updated as permits are issued or renewed, and as permits are modified where the permitted limits or other AT information is revised.

b. The basis, or rationale, for the pretreatment limitations, including the following:

i. Documentation of categorical determination, including documentation of any calculations used in applying categorical pretreatment standards; and

ii. Documentation of the rationale of any parameters for which monitoring has been waived under 40 CFR Part 403.12(e)(2).

7. *Final action on significant industrial user permit applications.*

a. The director shall take final action on all applications not later than 90 days following receipt of a complete application.

b. The director is authorized to:

i. Issue a significant industrial user permit containing such conditions as are necessary to effectuate the purposes of this ordinance and G.S. 143-215.1;

ii. Issue a significant industrial user permit containing time schedules for achieving compliance with applicable pretreatment standards and requirements;

iii. Modify any permit upon not less than 60 days' notice and pursuant to subsection 70-143.B.9;

iv. Revoke any permit pursuant to subsection 70-147.A;

v. Suspend a permit pursuant to subsection 70-147.A;

vi. Deny a permit application when in the opinion of the director such discharge may cause or contribute to pass-through or interference of the wastewater treatment plant or where necessary to effectuate the purposes of G.S. 143-215.1.

8. *Permit modification.*

a. Modifications of permits shall be subject to the same procedural requirements as the issuance of permits except as listed below. Any changes or new conditions in the permit shall include a reasonable time schedule for compliance.

i. Changes in the ownership of the discharge when no other change in the permit is indicated,

ii. A single modification of any compliance schedule not in excess of four months,

iii. Modification of compliance schedules (construction schedules) in permits for new sources where the new source will not begin to discharge until control facilities are operational.

b. Within nine months of the promulgation of a national categorical pretreatment standard, the wastewater discharge permit of users subject to such standards shall be revised to require compliance with such standard within the time frame prescribed by such standard. Where a user, subject to a national categorical pretreatment standard, has not previously submitted an application for a wastewater discharge permit as required by subsection 70-143(b)(2), the user shall apply for a wastewater discharge permit within 180 days after the promulgation of the applicable national categorical pretreatment standard.

c. A request for a modification by the permittee shall constitute a waiver of the 60-day notice required by G.S. 143-215.1(b) for modifications.

9. *Permit conditions.*
    a. The director shall have the authority to grant a permit with such conditions attached as he believes necessary to achieve the purpose of this ordinance and G.S. 143-215.1. Wastewater permits shall contain, but are not limited to, the following:
        i. A statement of duration (in no case more than five years);
        ii. A statement of non-transferability;
        iii. Applicable effluent limits based on categorical standards or local limits or both;
        iv. Applicable monitoring, sampling, reporting, notification, and record keeping requirements. These requirements shall include an identification of pollutants to be monitored, sampling location, sampling frequency, and sample type based on federal, state and local law;
        v. Requirements for notifying the POTW in the event of an accidental discharge or slug load as defined in Section 1-2;
        vi. Requirements to implement a plan or other controls for prevention of accidental discharges and/or slug loads, if determined by the director to be necessary for the user and,
        vii. Requirements for immediately notifying the POTW of any changes at its facility affecting the potential for spills and other accidental discharges, or slug load. Also see subsections 70-144.E and 70-144.F; and
        viii. A statement of applicable civil and/or criminal penalties for violation of pretreatment standards and requirements and any applicable compliance schedule.
    b. In addition, permits may contain, but are not limited to, the following:
        i. Limits on the average and/or maximum rate of discharge, and/or requirements for flow regulation and equalization.
        ii. Limits on the instantaneous, daily and/or monthly average and/or maximum concentration, mass, or other measure of identified wastewater pollutants or properties.
        iii. Requirements for the installation of pretreatment technology or construction of appropriate containment devices, etc., designed to reduce, eliminate, or prevent the introduction of pollutants into the treatment works.
        iv. Development and implementation of waste minimization plans to reduce the amount of pollutants discharged to the municipal wastewater system.
        v. The unit charge or schedule of user charges and fees for the management of the wastewater discharged to the system.
        vi. Requirements for installation and maintenance of inspection and sampling facilities and equipment.
        vii. Specifications for monitoring programs which may include sampling locations, frequency of sampling, number, types, and standards for tests, and reporting schedules.
        viii. Requirements for immediate reporting of any instance of noncompliance and for automatic resampling and reporting within 30 days where self-monitoring indicates a violation(s).
        ix. Compliance schedules for meeting pretreatment standards and requirements.
        x. Requirements for submission of periodic self-monitoring or special notification reports.

xi. Requirements for maintaining and retaining plans and records relating to wastewater discharges as specified in subsection 70-144.M and affording the director, or his representatives, access thereto.

xii. Requirements for prior notification and approval by the director of any new introduction of wastewater pollutants or of any significant change in the volume or character of the wastewater prior to introduction in the system.

xiii. Requirements for the prior notification and approval by the director of any change in the manufacturing and/or pretreatment process used by the permittee.

xiv. A statement that compliance with the permit does not relieve the permittee of responsibility for compliance with all applicable federal and state pretreatment standards, including those which become effective during the terms of the permit.

xv. Other conditions as deemed appropriate by the director to ensure compliance with this ordinance, and state and federal laws, rules, and regulations.

10. *Permit duration.* Permits shall be issued for a specified time period, not to exceed five years. A permit may be issued for a period less than a year or may be stated to expire on a specific date.

11. *Permit transfer.* Wastewater permits are issued to a specific user for a specific operation. A wastewater discharge permit shall not be reassigned or transferred or sold to a new owner, new user, different premises, or a new or changed operation.

12. *Permit reissuance.* A significant industrial user shall apply for permit reissuance by submitting a complete permit application in accordance with subsection 70-143.B a minimum of 90 days prior to the expiration of the existing permit.

70-144. Reporting requirements.

A. *Baseline monitoring reports (BMRs).*

1. Within either 180 days after the effective date of a categorical pretreatment standard, or the final administrative decision on a category determination under 40 CFR 403.6(a)(4), whichever is later, existing categorical users currently discharging to or scheduled to discharge to the POTW shall submit to the director a report which contains the information listed in subsection 70-144.A.2, below. At least 90 days prior to commencement of their discharge, new sources, and sources that become categorical users subsequent to the promulgation of an applicable categorical standard, shall submit to the director a report which contains the information listed in subsection 70-144.A.2, below. A new source shall report the method of pretreatment it intends to use to meet applicable categorical standards. A new source also shall give estimates of its anticipated flow and quantity of pollutants to be discharged.

2. Users described above shall submit the information set forth below:

   a. *Identifying information.* The name and address of the facility, including the name of the operator and owner.

   b. *Environmental permits.* A list of any environmental control permits held by or for the facility.

   c. *Description of operations.* A brief description of the nature, average rate of production, and standard industrial classifications of the operation(s) carried out by such user. This description should include a schematic process diagram which indicates points of discharge to the POTW from the regulated processes.

d. *Flow measurement.* Information showing the measured average daily and maximum daily flow, in gallons per day, to the POTW from regulated process streams and other streams, as necessary, to allow use of the combined waste stream formula set out in 40 CFR 403.6(e).

e. *Measurement of pollutants.*

i. The categorical pretreatment standards applicable to each regulated process.

ii. The results of sampling and analysis identifying the nature and concentration, and/or mass, where required by the standard or by the POTW director, of regulated pollutants in the discharge from each regulated process. Instantaneous, daily maximum, and long-term average concentrations, or mass, where required, shall be reported. The sample shall be representative of daily operations and shall be analyzed in accordance with procedures set out in subsection 70-144.J of this ordinance.

iii. Sampling must be performed in accordance with procedures set out in subsection 70-144.K of this ordinance and 40 CFR 403.12(b) and (g), including 40 CFR 403.12(g)(4).

f. *Certification.* A statement, reviewed by the user's current authorized representative of the industrial user as defined in Section 1-2 and certified by a qualified professional, indicating whether pretreatment standards are being met on a consistent basis, and, if not, whether additional operation and maintenance (O&M) and/or additional pretreatment is required to meet the pretreatment standards and requirements.

g. *Compliance schedule.* If additional pretreatment and/or O&M will be required to meet the pretreatment standards, the shortest schedule by which the user will provide such additional pretreatment and/or O&M. The completion date in this schedule shall not be later than the compliance date established for the applicable pretreatment standard. A compliance schedule pursuant to this section must meet the requirements set out in subsection 70-144.B of this ordinance.

h. *Signature and certification.* All baseline monitoring reports must be signed and certified in accordance with subsection 70-143.B.3 of this ordinance.

B. *Compliance schedule progress reports.* The following conditions shall apply to the compliance schedule required by subsection 70-144.A.2.g. of this ordinance:

1. The schedule shall contain progress increments in the form of dates for the commencement and completion of major events leading to the construction and operation of additional pretreatment required for the user to meet the applicable pretreatment standards (such events include, but are not limited to, hiring an engineer, completing preliminary and final plans, executing contracts for major components, commencing and completing construction, and beginning and conducting routine operation);
2. No increment referred to above shall exceed nine months;
3. The user shall submit a progress report to the director no later than 14 days following each date in the schedule and the final date of compliance including, as a minimum, whether or not it complied with the increment of progress, the reason for any delay, and, if appropriate, the steps being taken by the user to return to the established schedule; and
4. In no event shall more than nine months elapse between such progress reports to the director.

C. *Reports on compliance with categorical pretreatment standard, deadline.* Within 90 days following the date for final compliance with applicable categorical pretreatment standards, or in the case of a new source following commencement of the introduction of wastewater into the POTW, any user subject to such

pretreatment standards and requirements shall submit to the director a report containing the information described in subsections 70-144.A.2.d. through 70-144.A.2.f. of this ordinance. For users subject to equivalent mass or concentration limits established in accordance with the procedures in 40 CFR 403.6(c), this report shall contain a reasonable measure of the user's long-term production rate. For all other users subject to categorical pretreatment standards expressed in terms of allowable pollutant discharge per unit of production (or other measure of operation), this report shall include the user's actual production during the appropriate sampling period. All compliance reports must be signed and certified in accordance with subsection 70-143.B.3 of this ordinance.

D. *Periodic compliance reports.* The control authority may sample and analyze user discharges in lieu of requiring the users to conduct sampling and analysis.

1. All significant industrial users shall, at a frequency determined by the director but in no case less than once every six months, submit a report indicating the nature and concentration of pollutants in the discharge which are limited by pretreatment standards and the applicable flows for the reporting period. Sampling and analysis must be performed in accordance with procedures set out in subsections 70-144.J and 70-144.K of this ordinance. All periodic compliance reports must be signed and certified in accordance with subsection 70-143.B.3 of this ordinance.
2. If a user subject to the reporting requirement in this section monitors any pollutant more frequently than required by the director, using the procedures prescribed in subsections 70-144.J and 70-144.K of this ordinance, the results of this monitoring shall be included in the report.

E. *Reports of changed conditions.* Each user must notify the director of any planned significant changes to the user's operations or system which might alter the nature, quality, or volume of its wastewater at least 30 days before the change. The permittee shall not begin the changes until receiving written approval from the control authority. See subsection 70-144.F.4 for other reporting requirements.

1. The director may require the user to submit such information as may be deemed necessary to evaluate the changed condition, including the submission of a wastewater discharge permit application under subsection 70-143.B of this ordinance.
2. The director may issue a wastewater discharge permit under subsection 70-143.B of this ordinance or modify an existing wastewater discharge permit under subsection 70-143.B of this ordinance in response to changed conditions or anticipated changed conditions.
3. For purposes of this requirement, significant changes include, but are not limited to, flow or pollutant increases of 15 percent or greater, or the discharge of any previously unreported pollutants.

F. *Reports of potential problems.*

1. In the case of any discharge, including, but not limited to, accidental discharges, discharges of a non-routine, episodic nature, a non-customary batch discharge, or a slug load, that may cause potential problems for the POTW, the user shall immediately telephone and notify the POTW director of the incident. This notification shall include the location of the discharge, type of waste, concentration and volume, if known, and corrective actions taken by the user.
2. Within five days following such discharge, the user shall, unless waived by the director, submit a detailed written report describing the cause(s) of the discharge and the measures to be taken by the user to prevent similar future occurrences. Such notification shall not relieve the user of any expense, loss, damage, or other liability which may be incurred as a result of damage to the POTW, natural resources, or any other damage to person or property; nor shall such notification relieve the user of any fines, penalties, or other liability which may be imposed pursuant to this ordinance.

3. A notice shall be permanently posted on the user's bulletin board or other prominent place advising employees who to call in the event of a discharge described in subsection 70-144.F.1, above. Employers shall ensure that all employees, who may cause such a discharge to occur, are advised of the emergency notification procedure.
4. All SIUs are required to notify the POTW immediately of any changes at its facility affecting the potential for spills and other accidental discharge, discharge of a non-routine, episodic nature, a non-customary batch discharge, or a slug load.

G. *Reports from unpermitted users.* All users not required to obtain a wastewater discharge permit shall provide appropriate reports to the director as the director may require.

H. *Notice of violation/repeat sampling and reporting.*

1. If sampling performed by a user indicates a violation, the user must notify the director within 24 hours of becoming aware of the violation. The user shall also repeat the sampling and analysis and submit the results of the repeat analysis to the director within 30 days after becoming aware of the violation. If allowed by the director, the user is not required to resample:
   a. If the director monitors at the user's facility at least once a month; or
   b. If the director samples between the user's initial sampling and when the user receives the results of this sampling.
2. If the director has performed the sampling and analysis in lieu of the industrial user and the POTW sampling of the user indicates a violation, the director shall repeat the sampling and obtain the results of the repeat analysis within 30 days after becoming aware of the violations, unless one of the following occurs:
   a. The director monitors at the user's facility at least once a month; or
   b. The director samples the user between their initial sampling and when the POTW receives the results of this initial sampling; or
   c. The director requires the user to perform sampling and submit the results to the director within the 30-day deadline of the POTW becoming aware of the violation.

I. *Notification of the discharge of hazardous waste.* The city prohibits the discharge of any hazardous wastes without notification to and approval by the director.

1. Any user who commences the discharge of hazardous waste shall notify the POTW, the EPA Regional Waste Management Division Director, and state hazardous waste authorities, in writing, of any discharge into the POTW of a substance which, if otherwise disposed of, would be a hazardous waste under 40 CFR Part 261. Such notification must include the name of the hazardous waste as set forth in 40 CFR Part 261, the EPA hazardous waste number, and the type of discharge (continuous, batch, or other). If the user discharges more than 100 kilograms of such waste per calendar month to the POTW, the notification also shall contain the following information to the extent such information is known and readily available to the user: an identification of the hazardous constituents contained in the wastes, an estimation of the mass and concentration of such constituents in the waste stream discharge during the calendar month, and an estimation of the mass and concentration of such constituents in the waste stream expected to be discharged during the following 12 months. All notifications must take place no later than 90 days before the discharge commences. The user shall not begin the discharge until receiving written approval from the city. Any notification under this paragraph need be submitted only once for each hazardous waste discharge. However, notifications of changed conditions must be submitted under subsection 70-144.E. The notification requirement in this section does not apply to pollutants already reported by users

subject to categorical pretreatment standards under the self-monitoring requirements of subsections 70-144.A, subsection 70-144.C, and subsection 70-144.D.

2. Dischargers are exempt from the requirements of subsection 70-144.I.1, above, during a calendar month in which they discharge no more than 15 kilograms of hazardous wastes, unless the wastes are acute hazardous wastes as specific in 40 CFR 261.30(d) and 261.33(e). Discharge of more than 15 kilograms of nonacute hazardous wastes in a calendar month, or of any quantity of acute hazardous wastes as specified in 40 CFR 261.30(d) and 261.33(e), requires a one-time notification. Subsequent months during which the user discharges more than such quantities of any hazardous waste do not require additional notification.
3. In the case of any new regulation under section 3001 of RCRA identifying additional characteristics of hazardous waste or listing any additional substance as a hazardous waste, the user must notify the director, the EPA Regional Waste Management Waste Division Director, and state hazardous waste authorities of the discharge of such substance within 90 days of the effective date of such regulations.
4. In the case of any notification made under this section, the user shall certify that it has a program in place to reduce the volume and toxicity of hazardous wastes generated to the degree it has determined to be economically practical.
5. This provision does not create a right to discharge any substance not otherwise permitted to be discharged by this ordinance, a permit issued thereunder, or any applicable federal or state law.

J. *Analytical requirements.* All pollutant analyses, including sampling techniques, to be submitted as part of a wastewater discharge permit application or report shall be performed by a laboratory certified by the state to perform the wastewater analyses in accordance with the techniques prescribed in 40 CFR Part 136, unless otherwise specified in an applicable categorical pretreatment standard. If 40 CFR Part 136 does not contain sampling or analytical techniques for the pollutant in question, sampling and analyses must be performed in accordance with procedures approved by EPA and city. Analyses must be performed by a state certified lab for each parameter analyzed, if such certification exists for that parameter.

K. *Grab and composite sample collection.*

1. All wastewater samples must be representative of the user's discharge. Wastewater monitoring and flow measurement facilities shall be operated in accordance with best management practices, kept clean, and maintained in good working order at all times. The failure of a user to keep its monitoring facility in this manner shall not be grounds for the user to claim that sample results are unrepresentative of its discharge and may be in violation of its wastewater discharge permit.
2. Grab samples must be used for pH, cyanide, total phenols, oil and grease, sulfide, volatile organic compounds, and any other pollutants as required by 40 CFR 136. The POTW shall determine the number of grabs necessary to be representative of the user's discharge. See 40 CFR 403.12(g)(5) for additional grab sample number requirements for baseline monitoring reports and 90-day compliance reports. Additionally, the director may allow collection of multiple grabs during a 24-hour period which are composited prior to analysis as allowed under 40 CFR 136.
3. Composite samples: All wastewater composite samples shall be collected with a minimum of hourly aliquots or grabs for each hour that there is a discharge. All wastewater composite samples shall be collected using flow proportional composite collection techniques, unless time-proportional composite sampling or grab sampling is authorized by the director. When authorizing time-proportional composites or grabs, the samples must be representative and the decision to allow the alternative sampling must be documented.

L. *Timing.* Written reports will be deemed to have been submitted on the date postmarked. For reports which are not mailed, postage prepaid, into a mail facility serviced by the United States Postal Service, the date of receipt of the report shall govern.

M. *Record keeping.* Users subject to the reporting requirements of this ordinance shall retain, and make available for inspection and copying, all records of information obtained pursuant to any monitoring activities required by this ordinance and any additional records of information obtained pursuant to monitoring activities undertaken by the user independent of such requirements. Records shall include the date, exact place, method, and time of sampling, and the name of the person(s) taking the samples; the dates analyses were performed; who performed the analyses; the analytical techniques or methods used; and the results of such analyses. These records shall remain available for a period of at least three years. This period shall be automatically extended for the duration of any litigation concerning the user or the city, or where the user has been specifically notified of a longer retention period by the director.

N. *Electronic reporting.* The director may develop procedures for receipt of electronic reports for any reporting requirements of this ordinance. Such procedures shall comply with 40 CFR Part 3. These procedures shall be enforceable under section 70-147.

O. *Special reporting requirements for IUs in satellite POTWs.* In the case of industrial user located in a satellite POTW organization's jurisdiction, all information required to be reported to the industrial user's pretreatment program control authority by the section shall also be reported to the POTW treatment plant organization.

CHAPTER 77. PARKS AND RECREATION

77-2. Reserved.

77-41. Reserved.

77-48. Reserved.

77-52. Reserved.

CHAPTER 78. VEHICLES FOR HIRE

78-2. Vehicles other than taxicabs.

A. *Purpose.* The purpose of this section is to ensure the public safety through the minimal regulation of public vehicles for hire.

B. *Requirements.* The owners of all vehicles for hire shall apply to the city clerk annually for certification to operate their vehicle for hire within the city's jurisdiction. Such application shall contain their full names and addresses, the number, make, model of all vehicles for hire in operation, and shall state that:

1. All such vehicles have met all state inspection requirements and are in good working order;
2. All such vehicles have met all of the city's rules and regulations regarding cleanliness and sanitation, as referred to (with respect to taxicabs) in section 78-33;
3. All drivers are duly licensed to operate such vehicles;

4. All such vehicles are fully insured with regard to liability for personal injury and property damage, to the extent required by state law;
5. To the extent that it may be applicable, all such vehicles have been approved by the state utilities commission or such other regulatory agency as may have jurisdiction over the matter.

Upon the completion of such application, the city clerk shall certify the applicant to operate such vehicle for hire.

C. *Inspections.* Every vehicle operating under this section may be periodically inspected by the police department at such intervals as may be established by the chief of the Department to ensure the continuing maintenance of the vehicle in a safe operating condition.

D. *Violation.* Any violation of this section shall be punishable as a Misdemeanor or Infraction with fine up to $500.00 per G.S. 14-4. In addition, any violation shall be grounds for refusal to issue or renew the owner's certificate to operate vehicles for hire within the city's jurisdiction. Upon a failure to submit to the inspection required by this section or upon a failure to pass such inspection, the owner's certificate to operate the vehicle shall be immediately revoked.

78-31. Reserved.

CITY of BREVARD

The mission of the City of Brevard is to promote a high quality of life, support economic prosperity, and cultivate community while honoring its heritage and culture

TAX SETTLEMENT REPORT

FOR MONTH ENDED

JULY 31, 2023

Tina Tanner, Tax Collector

Finance Department | (828) 885-5600
95 West Main Street | Brevard, North Carolina 28712 | www.cityofbrevard.com

CITY OF BREVARD TAX SETTLEMENT REPORT
MONTH ENDING JULY 31, 2023

UPDATED: 08.16.2023

YEAR	JULY	AUGUST	SEPTEMBER	OCTOBER	NOVEMBER	DECEMBER
2023						
2022-2011	$ 8,264.83					
2010 - Prior	$ -	$ -	$ -	$ -	$ -	$ -
TOTAL:	$ 8,264.83	$ -	$ -	$ -	$ -	$ -

	JANUARY	FEBRUARY	MARCH	APRIL	MAY	JUNE	TOTAL
2023							$ -
2022-2011							$ 8,264.83
2010 - Prior	$ -	$ -	$ -	$ -	$ -	$ -	$ -
TOTAL:	$ -	$ -	$ -	$ -	$ -	$ -	$ 8,264.83

HEART OF BREVARD TAX SETTLEMENT REPORT
MONTH ENDING, JULY 31, 2023

UPDATED: 08.16.2023

YEAR	JULY	AUGUST	SEPTEMBER	OCTOBER	NOVEMBER	DECEMBER
2023						
2022-2011						
2010 - Prior	$ -	$ -	$ -	$ -	$ -	$ -
TOTAL:	$ -	$ -	$ -	$ -	$ -	$ -

	JANUARY	FEBRUARY	MARCH	APRIL	MAY	JUNE	TOTAL
2023							$ -
2022-2011							$ -
2010 - Prior	$ -	$ -	$ -	$ -	$ -	$ -	$ -
TOTAL:	$ -	$ -	$ -	$ -	$ -	$ -	$ -

STAFF REPORT
City Council, Monday, August 21, 2023

Title:	Resolution Fixing a Date of Public Hearing for Annexation-Greenfield, 345 Forest Hill Road
Speaker:	
Prepared by:	Denise Hodsdon
Approved by:	Wilson Hooper, City Manager

Executive Summary
A Petition Requesting Voluntary Contiguous Annexation was submitted on June 14, 2023 by Melinda Greenfield, Trustee of the Melinda Greenfield Living Trust. The petition requests that the property located at 345 Forest Hill Road, Brevard, be annexed into the City of Brevard. (Tax Property Identification Number 8585-35-1388-000)

Discussion
On August 7, 2023, City Council approved a Resolution Directing the Clerk to Investigate the Sufficiency of the Petition. The Clerk, Staff and Attorney have investigated and feel this annexation can move forward with setting a date for public hearing.

Recommendation
Staff recommends Council adopt the drafted Resolution Setting a Date for Public Hearing on Tuesday, September 5, 2023.

Attachments:
1. Certificate of Sufficiency
2. Resolution Fixing Date for Public Hearing

CITY of BREVARD
The mission of the City of Brevard is to promote a high quality of life, support economic prosperity, and cultivate community while honoring its heritage and culture.

Office of City Clerk
(828) 885-5614

Certificate of Sufficiency

I, Denise Hodsdon, City Clerk, do hereby certify that I have investigated the attached petition submitted by **Melinda Greenfield, Trustee of the Melinda Greenfield Living Trust,** for the property located at 345 Forest Hill Road, Brevard, **(PIN 8585-35-1388-000)**, consisting of 0.86 acres, more or less, and have found as a fact that said petition is signed by all owners of real property lying in the area described therein, in accordance with NCGS 160-A-31.

In witness whereof, I have hereunto set my hand and affixed the seal of the City of Brevard this 21st day of August, 2023.

Denise Hodsdon

Denise Hodsdon, CMC
City Clerk

RECEIVED 6/14/2023

STATE OF NORTH CAROLINA
COUNTY OF TRANSYLVANIA
CITY OF BREVARD

PETITION REQUESTING A CONTIGUOUS ANNEXATION
(G.S. 160A-31)

Date: 06/07/2023

To the City Council of the City of Brevard:

1. We the undersigned owners of real property respectfully request that the area described in paragraph 2 below be annexed to the City of Brevard.

2. The area to be annexed is contiguous to the City of Brevard and the boundaries of such territory are as follows:

Transylvania County Property Identification Number(s): 8585-35-1388-000

Street Address: 345 Forest Hill Road Brevard, NC 28712

(ATTACH A METES AND BOUNDS PROPERTY DESCRIPTION AS "ATTACHMENT A")

3. A map is attached showing the area proposed for annexation in relation to the primary corporate limits of the City of Brevard. (ATTACH MAP AS "ATTACHMENT B", including the Tax Map PIN)

4. We acknowledge that any zoning vested rights acquired pursuant to G.S. 160A-385.1 or G.S. 153A-344.1 must be declared and identified on this petition. We further acknowledge that failure to declare such rights on this petition shall result in a termination of vested rights previously acquired for the property. (If zoning vested rights are claimed, indicate below and attach proof.)

Property Owner(s): Do you declare vested rights? Yes X No___
(Vested rights are rights belonging completely and unconditionally to a person which cannot be impaired or taken away by another party.)

Property Owners Contact Information (If there are more than three property owners, provide their names, contact information and signatures upon a separate and attached sheet.)

a. Name Melinda Greenfield
Address 218 Grand Palms Ct ← mailing address
Ponte Vedra Beach, FL 32082
Telephone 229-809-0504 Email melsag@aol.com

Signature _____

b. Name _____
Address _____

Telephone _____ Email _____

Signature _____

c. Name _____
Address _____

Telephone _____ Email _____

Signature _____

Property Ownership by Corporation or LLC: (If there are more than three principals or managing members then provide their names, contact information and signatures upon a separate and attached sheet.)

a. Name _____
Address _____

Telephone _____ Email _____

By: _____
Type or Print Name and Title (President / Managing Member)

Signature _____

b. Name _____
Address _____
_____
Telephone _____Email_____

By: _____
Type or Print Name and Title (President / Managing Member)

Signature _____

c. Name _____
Address _____
_____
Telephone _____Email_____

By: _____
Type or Print Name and Title (President / Managing Member)

Signature _____

* * * * * * * * * * *

AGENT:
Name: _____
Address: _____
_____
Telephone:_____Email_____

Petition along with a copy of the property Deed, Metes and Bounds description (Attachment A), Map / Survey (Attachment B) and cash/credit or check in the amount of $500 made payable to the City of Brevard is to be returned to:

Denise Hodsdon, City Clerk
City of Brevard
95 West Main St., Brevard, NC 28712

RESOLUTION NO. 2023-XX

A RESOLUTION FIXING A DATE OF PUBLIC HEARING ON THE QUESTION OF ANNEXATION PURSUANT TO NCGS 160A-31, AS AMENDED

WHEREAS, a petition was received on June 14, 2023, requesting the annexation of a contiguous area described in said Petition as the Melinda Greenfield, Trustee of the Melinda Greenfield Living Trust property, 345 Forest Hill Road, Brevard, NC 28712, consisting of 0.86 acres, more or less, be annexed into the City of Brevard. (Tax Property Identification Numbers 8585-35-1388-000); and

WHEREAS, the Brevard City Council has by Resolution No. 2023-40 directed the City Clerk to investigate the sufficiency thereof; and

WHEREAS, certification by the City Clerk as to the sufficiency of said petition has been made.

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

Section 1. That a public hearing on the question of annexation of the contiguous area described below as requested by Melinda Greenfield, Trustee of the Melinda Greenfield Living Trust, will be held at Brevard City Hall at 5:30 P.M. on the 5th day of September, 2023.

Section 2. The area proposed for annexation is described as follows:

Property Description:

BEING all of 0.86 acres, more or less, as shown and described on a plat dated April 24, 2014 by E. Roger Raxter, PLS, and recorded in Plat File 16, Slide 61 of the Register of Deeds for Transylvania County, North Carolina.

Being the same property conveyed in a Deed from Uniformity Hub, LLC, dated May 17, 2022 and recorded June 6, 2022 in Book 1040, Pages 127-128 in the Transylvania County, North Carolina Register of Deeds Office.

Section 3. Notice of said public hearing shall be published in the Transylvania Times, a newspaper having general circulation in the City of Brevard, at least ten (10) days prior to the date of said public hearing.

Section 4. This Resolution shall become effective upon its adoption and approval.

Adopted and approved this the 21st day of August, 2023.

_____
Maureen Copelof
Mayor

ATTEST:

_____
Denise Hodsdon, CMC
City Clerk

STAFF REPORT
City Council, Monday, August 21, 2023

Title:	Mary C Jenkins Community Center and Parking Lot Project closeout
Speaker:	Dean Luebbe
Prepared by:	Dean Luebbe, Assistant City Manager/Finance Director
Approved by:	Wilson Hooper, City Manager

Background
On November 6, 2019, project amendment 2019-25, was approved by the City Council in the amount of $2,157,636, for construction of the Mary C Jenkins Community Center and Parking Lot. As the project progressed, cost overruns and change orders, (many related to the parking lot) increased the total project cost to $2,660,000. The Community Center was opened to the public on October 24, 2022 and the parking lot was completed in March of 2023.

Discussion
The Mary C Jenkins Community Center and parking lot project has been completed, and all invoices have been processed. The Project Budget can now be closed. A listing of all expenditures charged to this project since its inception in November of 2018 is attached. Budgeted and actual revenues and expenditures will be reversed in the financial software.

Proposed Action
By motion, close out Ordinance 2019-25, and all related project amendments related to this project

Attachments:
1. Capital Project Closeout - Mary C Jenkins
2. Mary C Jenkins financial recap
3. Mary C Jenkins expense recap

ORDINANCE NO. 2023-XX

CAPITAL PROJECT ORDINANCE TO CLOSE ORDINANCE NO. 2019-25, MARY C JENKINS COMMUNITY CENTER AND PARKING LOT PROJECT

BE IT ORDAINED by the City Council of the City of Brevard, North Carolina that pursuant to Section 13.2 of Chapter 159 of the General Statutes of North Carolina, the following capital project ordinance is hereby closed:

Section 1: The project involved the construction of the Mary C Jenkins Community Center and Parking Lot. The project was funded by debt proceeds in the amount of $2,350,000 and $310,000 in contributions from the General Fund. The debt has a fifteen year term and an interest rate of 1.99%.

Section 2: The project will be closed with actual expenditures of $2,653,096, which was $6,904 under budget. Actual and budgeted revenues and expenditures will be reversed on the City financial software, and no further expenditures will be required on the project.

Section 3: The following amounts were appropriated for the project:

Account Number	Account Name	Budget Amount
82-4100-2910	Mary C Jenkins	$2,660,000
TOTAL PROJECT APPROPRIATION		**$2,660,000**

Section 4: The following revenues are anticipated to be available for project expenses:

Account Number	Account Name	Budget Amount
82-3920-0040	Mary C Jenkins loan	$2,350,000
82-3250-0100	Transfer from General Fund	$310,000
TOTAL PROJECT REVENUE		**$2,660,000**

Section 5: The Finance Director will maintain within the capital project fund sufficient specific detailed accounting records to satisfy the disclosure requirements of all the contractual agreements, if applicable.

Section 6: The Finance Director will maintain a detailed analysis of all revenues and expenses associated with the project since its inception.

Section 9: Copies of this capital project close out shall be furnished to the City Clerk, Finance Director and City Manager.

ADOPTED by the City Council of the City of Brevard, North Carolina, on this 21st day of August, 2023.

_____
Maureen Copelof
Mayor

ATTEST:

_____
Denise Hodsdon
City Clerk

APPROVED AS TO FORM:

_____
Mack McKeller
City Attorney

City of Brevard Capital Project - Rosenwald Capital Project Fund
Mary C Jenkins Center and Parking Lot

Original Ordinance	2019-25	2,157,636	11/6/2019
Amendments	2021-23	192,364	5/15/2021
Amendments	2022-27	180,000	5/16/2022
Amendments	2022-50	55,000	8/15/2022
Amendments	2022-68	75,000	10/17/2022
TOTAL		**2,660,000**	

As of June 30, 2023		Budget	Prior Year	Current Year	Total prior plus current
Expenditures					
82-4100-2910	Mary C Jenkins	2,660,000	2,109,883	543,213	**2,653,096**
Revenues					
82-3920-0040	Mary C Jenkins debt	2,350,000	1,954,792	389,413	2,344,205
82-3250-0100	Transfer from GF	310,000	180,000	130,000	310,000
	Total	**2,660,000**	**2,134,792**	**519,413**	**2,654,205**

Expenditure Detail		Contract Amount	Prior Year Expenses	Current Year Expenditure	Total prior plus current	Amount Remaining on Contract
	Summit	82,000	62,816	13,764	76,580	-
	Matthews	114,857	110,370	2,436	112,806	-
	First Victory	1,876,934	1,852,900	24,034	1,876,934	-
	First Victory	502,355	-	500,180	500,180	-
	Jim Alderman	13,000	13,126	-	13,126	-
	Other	-	70,671	2,800	73,471	-
		2,589,146	**2,109,883**	**543,214**	**2,653,096**	**-**

CITY OF BREVARD
DETAIL ACCOUNT INQUIRY BY MODIFIER

FY 2022-2023 PERIOD: 11/01/2018 TO 06/30/2023

82-4100-2910 MARY C. JENKINS CENTER				BUDGET	PERIOD TO DATE		ENC AMT	REM BAL
				2,660,000.00	2,653,096.34		0.00	2,116,786.38
DATE	MOD	REFERENCE	JE # or VOUCHER#	CHECK#	DEBIT	CREDIT		BALANCE
		BALANCE FORWARD						0.00
11/07/2018	AP	FLEETWOOD DANIELS GROUP, LLC FDG18	51974	261679	9,800.00			9,800.00
11/14/2018	AP	RAMSEY & PRATT & CAMENZIND P A 5632	52104	261779	966.00			10,766.00
11/21/2018	AP	HARRIS ARCHITECTS, PLLC 7	52142	261840	1,264.51			12,030.51
12/12/2018	AP	MCNEELY STORE & RENTAL NOVEMBER 2(	52398	262046	261.68			12,292.19
12/17/2018	AP	FORTILINE, INC. NOVEMBER 2018	52451	262088	690.00			12,982.19
12/17/2018	AP	LBM INDUSTRIES, INC. 117419	52458	262096	2,572.70			15,554.89
12/17/2018	AP	MCNEELY'S STORE & RENTAL NOVEMBER	52461	262099	541.20			16,096.09
12/17/2018	AP	RAMSEY & PRATT & CAMENZIND P A 5642	52472	262104	4,554.00			20,650.09
12/17/2018	AP	TRANSYLVANIA COUNTY NOVEMBER 2018	52477	262108	253.20			20,903.29
12/19/2018	AP	HARRIS ARCHITECTS, PLLC 8	52506	262151	2,383.06			23,286.35
01/16/2019	AP	CASON COMPANIES, INC. DEC 2018	52830	262379	39.75			23,326.10
01/16/2019	AP	HARRIS ARCHITECTS, PLLC 09	52798	262400	1,444.40			24,770.50
01/23/2019	AP	RAMSEY & PRATT & CAMENZIND P A 5651	52916	262504	310.50			25,081.00
02/13/2019	AP	HARRIS ARCHITECTS, PLLC 10	53174	262722	3,454.87			28,535.87
02/20/2019	AP	RAMSEY & PRATT & CAMENZIND P A 5665	53280	262801	79.00			28,614.87
03/13/2019	AP	RAMSEY & PRATT & CAMENZIND P A 5677	53525	263017	1,974.00			30,588.87
03/13/2019	AP	RAMSEY & PRATT & CAMENZIND P A 5677	53526	263017	138.00			30,726.87
04/10/2019	AP	RAMSEY & PRATT & CAMENZIND P A 5676	53879	263326	345.00			31,071.87
04/10/2019	AP	RAMSEY & PRATT & CAMENZIND P A 5676	53879	263326	621.00			31,692.87
04/10/2019	AP	RAMSEY & PRATT & CAMENZIND P A 5686	53882	263326	927.60			32,620.47
04/17/2019	AP	HARRIS ARCHITECTS, PLLC 12	53963	263396	1,723.64			34,344.11
05/15/2019	AP	HARRIS ARCHITECTS, PLLC 13	54292	263685	968.85			35,312.96
05/31/2019	FL	POSTING ERROR: CODE CORRECTION	4744			9,915.10		25,397.86
07/17/2019	AP	MATHEWS ARCHITECTURE, P.A. ARCHIT FI	54941	264276	6,500.00			31,897.86
08/21/2019	AP	HARRIS ARCHITECTS, PLLC 15	55411	264687	4,156.91			36,054.77
09/18/2019	AP	HARRIS ARCHITECTS, PLLC 16	55763	264980	4,459.66			40,514.43
10/03/2019	AP	MATHEWS ARCHITECTURE, P.A. 1	55897	265136	9,796.50			50,310.93
10/14/2019	AP	CAROLINA MOUNTAIN SURVEYING 13032-:	56021	265209	3,200.00			53,510.93
10/23/2019	AP	RAMSEY & PRATT & CAMENZIND P A 5750	56146	265339	297.00			53,807.93
11/20/2019	AP	RAMSEY & PRATT & CAMENZIND P A 5763	56605	265774	1,265.00			55,072.93
12/18/2019	AP	RAMSEY & PRATT & CAMENZIND P A 5773	56949	266169	1,815.00			56,887.93
12/18/2019	AP	RAMSEY & PRATT & CAMENZIND P A 5774	56953	266169	517.50			57,405.43
12/30/2019	AP	ATLAS ENVIRONMENTAL 776	57068	266229	5,000.00			62,405.43
01/31/2020	FL	POSTING ERROR: CODE CORRECTION	5126			3,894.50		58,510.93
02/05/2020	AP	FORTILINE, INC. 4852261	57489	266694	1,242.20			59,753.13
02/12/2020	AP	MATHEWS ARCHITECTURE, P.A. 2-A	57558	266767	30,544.00			90,297.13
02/12/2020	AP	MATHEWS ARCHITECTURE, P.A. 2-B	57559	266768	22,065.00			112,362.13
02/12/2020	AP	MCNEELY'S STORE & RENTAL JANUARY 20	57586	266769	1,441.22			113,803.35
02/12/2020	AP	SOUTHERN CONCRETE MATERIALS 935632	57565	266777	153.50			113,956.85
02/12/2020	AP	VULCAN MATERIALS 41334942	57591	266785	533.23			114,490.08
02/19/2020	AP	CASON COMPANIES, INC. JANUARY 2020	57634	266815	726.25			115,216.33
02/19/2020	AP	CASON COMPANIES, INC.	57635	266816	1,658.40			116,874.73
02/19/2020	AP	LBM INDUSTRIES, INC. 121554	57656	266840	874.40			117,749.13
02/19/2020	AP	VULCAN MATERIALS 41332509	57673	266867	3,677.22			121,426.35
03/11/2020	AP	CASON COMPANIES, INC. FEBRUARY 2020	57880	267000	211.60			121,637.95
03/11/2020	AP	LBM INDUSTRIES, INC. 121872	57851	267034	13,922.84			135,560.79
03/11/2020	AP	MCNEELY'S STORE & RENTAL FEBRUARY :	57906	267035	507.33			136,068.12
03/11/2020	AP	SOUTHERN CONCRETE MATERIALS FEBRU	57868	267051	253.50			136,321.62
03/11/2020	AP	VULCAN MATERIALS 41353261	57910	267059	599.62			136,921.24
03/18/2020	AP	FORTILINE, INC. FEBRUARY 2020	57946	267115	1,199.83			138,121.07
03/18/2020	AP	SUMMIT ENGINEERING GROUP OF NC INC.	58005	267151	2,557.50			140,678.57

82-4100-2910 MARY C. JENKINS CENTER (continued from previous page)

DATE	MOD	REFERENCE	JE # or VOUCHER#	CHECK#	DEBIT	CREDIT	BALANCE
03/18/2020	AP	TRANSYLVANIA COUNTY 501	57960	267153	31.20		140,709.77
03/25/2020	AP	MCNEELY STORE & RENTAL FEBRUARY 20	58076	267192	7.96		140,717.73
04/02/2020	AP	LBM INDUSTRIES, INC. 122117	58152	267269	2,830.87		143,548.60
04/08/2020	AP	MATHEWS ARCHITECTURE, P.A. 3	58199	267324	22,322.85		165,871.45
04/15/2020	AP	CASON COMPANIES, INC. MARCH 2020	58249	267369	1,099.50		166,970.95
05/20/2020	AP	LBM INDUSTRIES, INC. 122587	58670	267705	5,169.16		172,140.11
06/30/2020	FL	POSTING ERROR: CODE CORRECTION	5450			58,657.07	113,483.04
12/02/2020	AP	MCNEELY STORE & RENTAL NOVEMBER 2(	60983	270026	93.30		113,576.34
02/28/2021	FL	POSTING ERROR: CODE CORRECTION	5796			93.30	113,483.04
03/31/2021	AP	MATHEWS ARCHITECTURE, P.A. 7	62172	271243	7,784.70		121,267.74
05/05/2021	AP	ALDERMAN, R. JAMES 04302021	62489	271515	875.00		122,142.74
05/26/2021	AP	MATHEWS ARCHITECTURE, P.A. 8	62731	271759	15,593.01		137,735.75
06/02/2021	AP	ALDERMAN, R. JAMES MARY C JENKINS	62737	271781	1,187.50		138,923.25
06/23/2021	AP	ALDERMAN, R. JAMES 061721	62971	271989	1,625.00		140,548.25
06/23/2021	AP	LOCAL GOVERNMENT COMMISSION LOAN	62988	272007	1,250.00		141,798.25
06/30/2021	FL	ACRRUE FOR CONTRUCTION	6183		205,880.03		347,678.28
06/30/2021	AP	SUMMIT ENGINEERING GROUP OF NC INC.	63136	272176	3,987.94		351,666.22
07/01/2021	FL	REVERSE-AUDITENTRIES-6183/6178	6258			205,880.03	145,786.19
07/21/2021	AP	FIRST VICTORY, INC. 001	63281	272281	205,880.03		351,666.22
07/28/2021	AP	ALDERMAN, R. JAMES MARY C JENKINS	63353	272338	1,250.00		352,916.22
08/04/2021	AP	SUMMIT ENGINEERING GROUP OF NC INC.	63450	272452	4,569.74		357,485.96
08/11/2021	AP	FIRST VICTORY, INC. 002	63508	272491	24,391.32		381,877.28
09/22/2021	AP	ALDERMAN, R. JAMES 09082021	63985	272892	3,312.50		385,189.78
09/22/2021	AP	FIRST VICTORY, INC. 003	63992	272916	308,976.27		694,166.05
09/22/2021	AP	MATHEWS ARCHITECTURE, P.A. 9	63995	272922	6,193.44		700,359.49
10/08/2021	AP	FIRST VICTORY, INC. 004	64168	273081	145,690.08		846,049.57
10/20/2021	AP	CARD SERVICES CENTER 4145	64246	273111	96.82		846,146.39
11/03/2021	AP	ALDERMAN, R. JAMES MARY C JENKINS	64574	273465	1,500.00		847,646.39
11/03/2021	AP	FIRST VICTORY, INC. 005	64597	273479	34,241.58		881,887.97
11/17/2021	AP	MATHEWS ARCHITECTURE, P.A. 11	64712	273611	5,056.45		886,944.42
12/22/2021	AP	ALDERMAN, R. JAMES	65108	273913	2,437.50		889,381.92
01/07/2022	AP	MATHEWS ARCHITECTURE, P.A. 12	65189	274018	11,143.52		900,525.44
01/28/2022	AP	ALDERMAN, R. JAMES FY22JAN19	65360	274126	1,812.50		902,337.94
01/28/2022	AP	FIRST VICTORY, INC. APP#: 006	65361	274145	78,607.09		980,945.03
01/31/2022	FL	FY22JAN31-MCJENKINS-SALESTAX	6333			13,564.18	967,380.85
02/18/2022	AP	FIRST VICTORY, INC. APP#: 007	65619	274295	276,793.79		1,244,174.64
02/25/2022	AP	SUMMIT ENGINEERING GROUP OF NC INC.	65638	274358	7,630.00		1,251,804.64
03/04/2022	AP	FIRST VICTORY, INC. APP#: 008	65707	274384	284,649.37		1,536,454.01
03/04/2022	AP	MATHEWS ARCHITECTURE, P.A. 13	65706	274400	13,433.26		1,549,887.27
03/25/2022	AP	FIRST VICTORY, INC. APP#: 009	65901	274553	136,023.18		1,685,910.45
04/01/2022	AP	SUMMIT ENGINEERING GROUP OF NC INC.	65955	274628	7,120.00		1,693,030.45
04/01/2022	AP	SUMMIT ENGINEERING GROUP OF NC INC.	65956	274628	17,734.04		1,710,764.49
04/01/2022	AP	SUMMIT ENGINEERING GROUP OF NC INC.	66001	274628	5,156.79		1,715,921.28
05/06/2022	AP	FIRST VICTORY, INC. APP: 10	66287	274855	267,757.52		1,983,678.80
05/11/2022	FL	FY22MAY11-MCJENKINS-SALESTAX	6551			2,642.10	1,981,036.70
06/03/2022	AP	SUMMIT ENGINEERING GROUP OF NC INC.	66566	275102	6,250.40		1,987,287.10
06/17/2022	FL	JUN16-MCJENKINS-SALESTAX	6622			2,055.94	1,985,231.16
06/17/2022	AP	FIRST VICTORY, INC. APP: 011	66692	275172	73,776.47		2,059,007.63
06/24/2022	AP	MATHEWS ARCHITECTURE, P.A. 14	66706	275240	2,307.47		2,061,315.10
06/24/2022	AP	MATHEWS ARCHITECTURE, P.A. 15	66707	275240	4,471.02		2,065,786.12
06/29/2022	FL	auditor entry fy22	-1			3,987.94	2,061,798.18
06/29/2022	FL	auditor entry fy22	-1			4,749.72	2,057,048.46
06/29/2022	FL	FY22 CLOSING DEBT	7016		5,900.00		2,062,948.46

82-4100-2910 MARY C. JENKINS CENTER (continued from previous page)

DATE	MOD	REFERENCE	JE # or VOUCHER#	CHECK#	DEBIT	CREDIT	BALANCE
06/29/2022	FL	fy22 closing	7023		9,499.44		2,072,447.90
06/30/2022	FL	FY22 CLEAN UP 06.30.2022	6886			4,749.72	2,067,698.18
06/30/2022	AP	FIRST VICTORY, INC. APP 012	66889	275353	34,374.77		2,102,072.95
06/30/2022	AP	SUMMIT ENGINEERING GROUP OF NC INC.	66886	275375	7,809.77		2,109,882.72
08/19/2022	AP	MATHEWS ARCHITECTURE, P.A. 16	67231	275676	2,051.00		2,111,933.72
08/26/2022	FL	MCJCC TAX	6759			67.12	2,111,866.60
08/26/2022	AP	ALDERMAN, R. JAMES 08/24/2022	67264	275695	3,500.00		2,115,366.60
08/26/2022	AP	FIRST VICTORY, INC. PAY APP 1	67265	275719	37,595.04		2,152,961.64
09/20/2022	FL	OVERPYMT RETD ON MARYCJENKINS	6820			6,099.95	2,146,861.69
10/07/2022	AP	SUMMIT ENGINEERING GROUP OF NC INC.	67648	276026	962.50		2,147,824.19
11/04/2022	AP	ALDERMAN, R. JAMES	68177	276474	4,750.00		2,152,574.19
11/04/2022	AP	MATHEWS ARCHITECTURE, P.A. 17	68139	276496	2,436.10		2,155,010.29
11/23/2022	AP	FIRST VICTORY, INC. APP NO. 013	68314	276617	24,033.51		2,179,043.80
12/09/2022	AP	SIGNS & MORE, INC. 68161	68431	276729	6,422.12		2,185,465.92
01/06/2023	AP	FIRST VICTORY, INC. PAY APP 2	68656	276851	33,146.68		2,218,612.60
01/20/2023	AP	FRANKLIN BRONZE PLAQUES 32833	68786	276925	2,801.20		2,221,413.80
02/03/2023	AP	SUMMIT ENGINEERING GROUP OF NC INC.	68924	277029	2,158.75		2,223,572.55
02/03/2023	AP	SUMMIT ENGINEERING GROUP OF NC INC.	68925	277029	4,887.50		2,228,460.05
03/24/2023	AP	FIRST VICTORY, INC. PAY APP 3	69374	277336	281,137.87		2,509,597.92
03/24/2023	AP	FIRST VICTORY, INC. PAY APP 3	69375	277336	28,702.31		2,538,300.23
03/31/2023	AP	SUMMIT ENGINEERING GROUP OF NC INC.	69438	277389	3,182.50		2,541,482.73
05/19/2023	AP	FIRST VICTORY, INC. PAY APP (PARTIAL)	69860	277682	20,000.00		2,561,482.73
05/19/2023	AP	SUMMIT ENGINEERING GROUP OF NC INC.	69800	277718	2,060.85		2,563,543.58
06/02/2023	AP	FIRST VICTORY, INC. PAY APP 4	69960	277772	6,624.99		2,570,168.57
06/02/2023	AP	FIRST VICTORY, INC. PAY APP 4	69961	277772	74,051.81		2,644,220.38
06/19/2023	FL	FY22 CLOSING ENTRY CORRECTION	7447			9,499.44	2,634,720.94
06/19/2023	FL	FY22 CLOSING ENTRY CORRECTION	7452		18,998.88		2,653,719.82
06/23/2023	AP	FIRST VICTORY, INC. 0006	70179	277920	25,088.23		2,678,808.05
06/30/2023	FL	EXPENSE RECLASSIFICATION	7498			26,222.56	2,652,585.49
06/30/2023	AP	SUMMIT ENGINEERING GROUP OF NC INC.	70367	278083	510.85		2,653,096.34
		SUBTOTALS FOR ACCOUNT 82-4100-2910 :			3,005,175.01	352,078.67	

	DEBIT	CREDIT
SUBTOTALS FOR MODIFIER 2910 :	3,005,175.01	352,078.67
	3,005,175.01	352,078.67

STAFF REPORT
City Council, Monday, August 21, 2023

Title:	Times Arcade Alley Improvements Project - Establish Capital Project Ordinance
Speaker:	Dean Luebbe
Prepared by:	Dean Luebbe, Assistant City Manager/Finance Director
Approved by:	Wilson Hooper, City Manager

Background
The Times Arcade Alley is a heavily used connector between Main and Jordan streets in downtown Brevard. For years, the alley has experienced dangerous flooding conditions during periods of heavy rainfall. The project will construct stormwater infrastructure to better manage the frequent heavy rainfalls. An 18 inch storm drain pipe will be installed through the alley and six trench drains will be installed to capture the stormwater. The project was developed as a part of the Brevard Downtown Masterplan, and adopted by City Council in June of 2021.

Discussion
In the FY23-24 City of Brevard Adopted Budget, $132,000 was allocated to be transferred from the General Fund to the Downtown Masterplan Fund. The City has also received a Stormwater Infrastructure Grant for $700,000 and a $250,000 grant from the Golden Leaf Foundation. Project amendments will be necessary if engineering and construction costs exceed the project budget of $1,082,000.

A discrete capital project ordinance is an accounting best practice that enables staff to better track project expenses, and prevent designated grant funds from accidently intermingling with general purpose funds.

Proposed Action
By motion, adopt establishment of the Times Arcade Alley Infrastructure Capital Project ordinance in the amount of $1,082,000.

Attachments:
1. CPO Establishment - Times Arcade Alley Improvements 8-21-2023
2. Golden LEAF Foundation Times Arcade Grant
3. Letter of Intent to Fund - 700K stormwater

ORDINANCE NO. 2023-XX

CAPITAL PROJECT ORDINANCE TO ESTABLISH PROJECT FOR TIMES ARCADE ALLEY IMPROVEMENTS

BE IT ORDAINED by the City Council of the City of Brevard, North Carolina that pursuant to Section 13.2 of Chapter 159 of the General Statutes of North Carolina, the following capital project ordinance is hereby adopted:

Section 1: The project will improve stormwater management and pedestrian usability of Times Arcade Alley. Keeping with the goals of the downtown master plan, the project is intended to enhance mobility, accessibility, and safety; create an attractive and engaging pedestrian experience; and promote economic vitality.

Section 2: At this time, the project has funding of $1.082,000, which originates from a $700,000 Stormwater Infrastructure Grant received from NCDEQ, Division of Water Infrastructure, a $250,000 grant from the Golden Leaf Foundation, and a $132,000 contribution from the General Fund, as budgeted in the FY23-24 budget. Project amendments will be required if bids received for engineering and construction exceed $1,082,000.

Section 3: The following amounts are appropriated for the project:

Account Number	Account Name	Budget Amount
78-6200-4000	Times Arcade Alley Improvements	$1,082,000
TOTAL PROJECT APPROPRIATION		**$1,082,000**

Section 4: The following revenues are anticipated to be available for project expenses:

Account Number	Account Name	Budget Amount
78-3750-0230	ARPA Stormwater Grant	$700,000
78-3755-5555	Golden Leaf	$250,000
78-3756-0000	Transfer from GF	$132,000
TOTAL PROJECT REVENUE		**$1,082,000**

Section 5: The Finance Director is hereby directed to maintain within the capital project fund sufficient specific detailed accounting records to satisfy the disclosure requirements of all the contractual agreements, if applicable.

Section 6: Funds may be advanced from the General Fund or from any Enterprise Fund as necessary for the purpose of making payments as due. Reimbursement requests shall be made in an orderly and timely manner.

Section 7: The Finance Director is directed to report, on a quarterly basis, on the financial status of each project element in Section 3 and Section 4.

Section 8: The Finance Director is further instructed to include a detailed analysis of past and future revenues and expenses during each annual budget submission made to the Governing Board.

Section 9: Copies of this capital project shall be furnished to the City Clerk, Finance Director and City Manager for direction in carrying out this project.

ADOPTED by the City Council of the City of Brevard, North Carolina, on this 21st day of August, 2023.

_____
Maureen Copelof
Mayor

ATTEST:

_____
Denise Hodsdon, CMC
City Clerk

APPROVED AS TO FORM:

_____
Mack McKeller
City Attorney

City of Brevard
Brevard Times Arcade Alley Flood Mitigation

ID: R-202304-07651
Program Lead: Kasey Ginsberg

Grant Amount:

Status	Under Review

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Organization Information
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Project Activities
Project Time Frame
Grant Term Information
Documents

▼ Organization Information

Organization:	City of Brevard
Primary Contact:	Mary Roderick
Primary Signatory:	Paul Ray

Fiscal Information

Organizations's next fiscal year begins:	7/1/2023
Total current annual operating budget:	$26,149,475.00
Budget figure provided is for fiscal year ending:	6/30/2023
Total current endowment, reserve, or unrestricted fund balance:	$3,471,210.00
Endowment, reserve, unrestricted fund balance is for fiscal year ending:	6/30/2021
Does this grant include a Fiscal Sponsor?	No

▼ Full Application

Project Title:	Brevard Times Arcade Alley Flood Mitigation
Program Area:	Flood Mitigation and Recovery Program

Project Summary:

The project will construct new publicly owned stormwater infrastructure in the Times Arcade Alley, which is located in the heart of Brevard's downtown business district. The alley does not have any drainage infrastructure so frequently floods under any amount of sustained rainfall due to rooftop and surface runoff. The runoff from the alley also floods both W. Main and W. Jordan streets, which lay perpendicular to the alley and are major thoroughfares. Brevard receives 67 inches of rainfall annually, 4-6 inches monthly, and thunderstorms occur about 45 days each year. The new infrastructure to manage the frequent and heavy storms is already designed, and ready to be implemented as soon as funding can be secured.

Amount Requested:	$250,000.00

Total cost of the project including the amount requested from Golden LEAF

Project Budget:	$400,089.60
County where the project is located. Please select one option.	Transylvania
1. To be eligible under this program, a proposed project must fit within the categories below. Select one response that most closely aligns with your project proposal. (All infrastructure must be publicly owned.):	Construction of new stormwater infrastructure (including natural infrastructure)

2. Project term: How long will it take for the project to be completed? Enter a number of months only, e.g. 12:

8

3. Geographic area served by the project. :

The project is located in the center of downtown Brevard. Times Arcade Alley is perpendicular to W. Jordan and W. Main Streets, which are also flooded by the alley's runoff as it leaves the alley and flows toward S. Caldwell Street.

4. Provide a summary of the proposed project.

To mitigate flooding and manage stormwater from rooftops and street surfaces, all of the existing asphalt will be removed from the alley, and curb inlets will be added to flow into a new 18" storm drain pipe installed through the length of the alley. Six trench drains will also be added at intervals through the alley to capture and convey stormwater. The alley will be resurfaced with heavy duty concrete paving.

5. Describe the process by which the proposed project was developed, including what other solutions were evaluated and if any cost / benefit analysis was used. Please include if this proposed project was previously recommended in a stormwater study or other comprehensive storm analysis.

The project was developed as part of the Brevard Downtown Master Plan, which was adopted by City Council in June 2021. The planning committee included elected officials, businesses, residents and city staff. A series of 4 stakeholder meetings were held in addition to a community survey, and the plan was also reviewed by NCDOT and NCDEQ. Infrastructure upgrades, including Times Arcade Alley, was one of the top three priorities for improvements identified by key stakeholders and the general public. Adding stormwater infrastructure to the alley was the only solution explored to mitigate flooding; however, different designs were modeled to both maximize the volume of stormwater managed within the space constraints and to ensure cost efficiency.

6. Provide a detailed description of how you will implement the proposed project including any required permits, easements, or permission from other entities (including the railroad, NCDOT, Army

Required permits, easements, or permission from other entities (including the railroad, NCDOT, Army Corp of Engineers, etc) that will be required and an anticipated timeline to secure each.

The design and detailed engineering plans have been completed and approved by NCDOT. Once the remaining funding is secured, the project is ready to go out for construction bid. Ideally it can be constructed immediately following Christmas to minimize impacts to businesses, and is anticipated to take 3 months to complete.

7. Describe the benefitting population for this project by filling in the appropriate blanks below. If not applicable, please put 0. Supporting documentation for these outcomes must be provided as a required attachment.

Households located in the immediate project area (for multifamiliy housing, each unit is a separate household):	3
Businesses located in the immediate project area:	21
Other public or private entities including public buildings, schools, places of worship, fire and/or rescue facilities located in the immediate project area. Provide detail in the next question.	0
Bed capacity of a hospital or health clinic located in the immediate project area:	0

8. Describe any additional project outcomes or population benefitting from this project.

Due to its central location in downtown and popularity of Times Arcade Alley businesses, the project will greatly improve the accessibility and safety of this area for a much larger number of people than just the immediate businesses and residents. Brevard's population is estimated to be 7,755 (2021) and it is also a popular tourist destination. According to Heart of Brevard (HOB), the downtown business and civic association, there are an estimated 3M overnight and 1M day visitors to Brevard annually. HOB has also collected several letters of support for the project, attached, which describe the business, property, and public safety impacts that are experienced due to the alley flooding, including from businesses on W. Main Street.

The Brevard Fire Department and EMS are located one block west of the project area on W. Main, and while they can typically navigate the street, it does slow down their response time during heavy flooding.

9. Describe how project outcomes will be sustained once the project is complete. For planning projects, this must include a plan for implementation of recommendations if funds through Golden LEAF are unavailable.

Brevard's Downtown Master Plan provides an overarching vision and road map for improving the downtown streetscape, including its environmental quality and multi-modal accessibility. The Times Arcade Alley project will be maintained by City of Brevard Public Works.

10. Identify the local government staff and contractors who will be involved in the project.

Local government staff involved include Planning Director Paul Ray, Public Works Director Wesley Shook, City Manager Wilson Hooper, and Finance Director Dean Luebbe. The design and engineering consultant is Arbor Land Design.

11. How frequently does flooding in this identified area occur? Select one response. Documentation must be provided as a required attachment.	Occurs frequently, during even average rain events or other unnamed storms

12. Provide additional detail regarding the frequency that flooding occurs. Please be as specific as possible.

Brevard receives an average of 67 inches of rainfall annually, 4-6 inches monthly, and thunderstorms occur about 45 days each year. Brevard is in the wettest county in the state, and can receive more than 100 inches of rain in a year. Since there is no drainage infrastructure in the alley, all rainfall produces runoff. Property owners report flooding issues on a weekly basis. A 1-year/24-hour rainfall (3.87") creates 215,403,147 gallons of runoff in the alley.

13. What is the effect of the flooding? Select as many that apply. For purposes of this question, public safety or health services include fire, emergency medical, police, hospitals, urgent care clinics, or similar services.	Increased operating costs for governmental services, Loss of access to public or private property (other than public safety or health services), Damage to public or private property (other than public safety or health services), Increased operating costs for governmental services, Loss of access to public or private property (other than public safety or health services), Damage to public or private property (other than public safety or health services)

14. Provide additional detail regarding the effect of flooding. Please be as specific as possible.

The flooding prevents access to businesses and residences in Times Arcade Alley and on the perpendicular streets (W. Main and W. Jordan), causes property damage including rotten subflooring and mold issues, and affects public safety. Letters from impacted businesses describing these issues in detail are attached.

15. The recent state budget includes various programs to mitigate flooding in North Carolina. Please describe any efforts or intent to pursue funding from any of those programs for this proposed project.

We are not seeking additional funding from state programs for this project. The City will provide the remaining funding needed from local funds.

▼ Project Outcomes

Please select the project outcomes below for them to appear.

Priority Flood Mitigation and Recovery Outcomes:	Households located in the immediate project area (for multifamily housing each unit is a separate household), Businesses located in the immediate project area

Households located in the immediate project area (for multifamily housing, each unit is a separate household).

Target 1:	3
Baseline 1:	3
Target date 1:	3/31/2024
Data source 1:	Transylvania County GIS

Businesses located in the immediate project area

Target 2:	21
Baseline 2:	21

Target date 2: 3/31/2024

Data source 2: Transylvania County GIS

Other Outcomes:

The project will improve access to the businesses in the project area for the entire community (7,755 residents, 4M tourists annually).

▼ Project Activities

Please select project activities below for them to appear.

Flood Mitigation Project Activities : Bidding and Procurement, Begin Construction, Complete Construction

Activity 2: Bidding and Procurement

Activity 2 Target Date: 9/29/2023

Activity 4: Begin Construction

Activity 4 Target Date: 12/27/2023

Activity 5: Complete Construction

Activity 5 Target Date: 3/31/2024

Other key activities:

▼ Project Time Frame

Period of time to complete project outcomes, which may extend beyond the grant term.

Project Begin Date: 8/1/2023

Project End Date: 3/31/2023

Enter the number of months only.

Project Term: 8

▼ Grant Term Information

Period of time over which Golden LEAF funds would be used.

Created By (Date): Terri Adou-Dy (4/14/2023)

Start Date: 7/1/2023

End Date: 5/31/2023

Duration In Months: 11

▼ Documents

[GLF instructions] All attachments are required for submission of an application. The required Certification and Signature Form and Comprehensive Project Budget may be found here, on the Mitigation Program Documents page. If one or more of the items listed below are not available, please upload a document that explains why the attachment is not available. Applications may be updated or added to later as needed. Please be sure to use file names to describe the document uploaded. If you have multiple documents for an attachment, please merge prior to uploading. **Please convert picture files to PDF format to upload or paste into a Microsoft Word document and upload the document.**

Members of Governing Body

Evidence of governmental status

Most recent fiscal year-end financial statements

Organization's budget for the current year

Organization's budget for the period covered by the grant request

Most recent management letter/report on internal controls

REQUEST DOCUMENTS

Platt_TimesArcadeAlleyExpenseReport.pdf

Other Document

Added by Mary Roderick at 4:06 PM on July 14, 2023

Site Visit Followup_v2.docx

Other Document

Current version added by Mary Roderick at 9:28 AM on July 14, 2023

Times Arcade Alley Photos.docx

Photos of flooding

Current version added by Mary Roderick at 4:00 PM on June 21, 2023

Times_Arcade_Alley_ROW_June_2023.pdf

Evidence of control of the property
Added by Mary Roderick at 3:04 PM on June 21, 2023

230615 TAA - COST EST - STORMWATER ONLY.pdf

Opinion of Probable Cost or other similar document
Current version added by Mary Roderick at 3:03 PM on June 21, 2023

Times_Arcade_Alley_April_2023_outcomes_V2.pdf

Supporting documentation for outcomes data
Current version added by Mary Roderick at 3:01 PM on June 21, 2023

202304-07651_FloodMitigation_RecoveryProgram_App_04.21.2023.pdf

Other
Added by Debbie Pennington at 12:35 PM on April 21, 2023

7651-Application Checklist.docx

Other
Added by Debbie Pennington at 12:15 PM on April 21, 2023

AdditionalFloodingDocumentation.pdf

Other
Added by Mary Roderick at 11:35 AM on April 21, 2023

FloodingDocumentation.pdf

Documentation of flooding frequency
Added by Mary Roderick at 11:03 AM on April 21, 2023

Budget_Expense_Financial_Forms_04102023.xlsx

Project budget
Added by Mary Roderick at 10:21 AM on April 21, 2023

Times_Arcade_Alley_April_2023_Project_Location.pdf

Map of project location
Added by Mary Roderick at 12:22 PM on April 19, 2023

Certification_Signature Form.pdf

Certification and Signature Form
Added by Mary Roderick at 12:09 PM on April 19, 2023

ORGANIZATION DOCUMENTS

GoverningBody.pdf

Members of Governing Body
Added by Mary Roderick at 12:57 PM on April 19, 2023

FY22-23 City of Brevard Adopted Budget.pdf

Organization's budget for the current year
Added by Mary Roderick at 12:20 PM on April 19, 2023

BrevardManagementStatement.pdf

Most recent management letter/report on internal controls
Added by Mary Roderick at 12:18 PM on April 19, 2023

Brevard 2022 Audit.pdf

Most recent fiscal year-end financial statements
Added by Mary Roderick at 12:17 PM on April 19, 2023

Evidence of Government.pdf

Evidence of governmental status
Added by Mary Roderick at 12:09 PM on April 19, 2023

ROY COOPER
Governor
ELIZABETH S. BISER
Secretary
SHADI ESKAF
Director

NORTH CAROLINA
Environmental Quality

June 28, 2022

Dean Luebbe, Finance Director
City of Brevard
95 West Main Street
Brevard NC 28712

Subject: Letter of Intent to Fund
Times Arcade Alley Stormwater Improvements
Estatoe Trail Stormwater Improvements
American Rescue Plan-Earmark
Project No.: SRP-SW-ARP-0009

Dear Mr. Luebbe:

The Division of Water Infrastructure has reviewed your *Request for Funding*, and determined your project is eligible to receive American Rescue Plan (ARP) funding from the State Fiscal Recovery Fund established in S.L. 2021-180. Projects funded from the State Fiscal Recovery Fund must meet applicable federal law and guidance for the ARP funds. The ARP Project Grant will be one hundred percent of eligible project costs up to a maximum of $700,000.

The first milestone is the submittal of a Bid and Design Package by February 1, 2022. Please note that this intent to fund is contingent on meeting **all** of the following milestones:

Milestone	**Date**
Apply for all Necessary Permits*	ASAP
Bid and Design Package Submittal (obtain all permits)	February 1, 2023
Bid and Design Package Approval	June 1, 2023
Advertise Project, Receive Bids, Submit Bid Information, and Receive Authority To Award	October 2, 2023
Execute Construction Contract(s)	November 1, 2023
Receive last reimbursement **- Statutory**	December 31, 2026

*An engineering alternatives analysis (EAA) may be required on certain projects

Failure to meet any milestone may result in the forfeiture of funding for the proposed project.

Note that the Division will make no reimbursements of ARP funds after December 31, 2026

North Carolina Department of Environmental Quality | Division of Water Infrastructure
512 N. Salisbury Street | 1633 Mail Service Center | Raleigh, North Carolina 27699-1633
919.707.9160

The State Environmental Policy Act exempts projects funded by the State Reserve (such as this project) from state-mandated environmental review. Federal requirements may still apply. [NCGS 113A-12(2)h.]

Upon detailed review of the project during the funding process, it may be determined that portions of your project are not eligible for funding.

US Treasury Requirements
Projects with an expected total cost of ten million dollars or more must meet US Treasury requirements for prevailing wage rates, project labor agreements, and related requirements. Recipients can either *certify* meeting the requirements or provide *plans* and *reports* as the SLFRF Compliance and Reporting Guidance (treasury.gov) specifies.

Drought Bill Requirements
In accordance with G.S. 143-355.4, a project "for the purpose of extending waterlines or expanding water treatment capacity" must document numerous requirements during the review process. You can find additional information at the following link:
http://www.ncleg.net/enactedlegislation/statutes/html/bysection/chapter_143/gs_143-355.4.html

If you have any questions, please contact Logan M. Kluttz, PE, by phone at (919) 707-9157 or by email at Logan.Kluttz@ncdenr.gov.

Sincerely,

Jon Risgaard

Jon Risgaard, Chief
State Revolving Fund Section

CC: Alvin Fuller, Summit Engineering Group Inc., Spartanburg, SC
Stephanie Livingston, Arbor Land Design, Greenville, SC
Ken Pohlig, PE (DWI, via email)
Logan Kluttz, PE (DWI, via email)
Mark Hubbard, PE (DWI, via email)
ARP Project File (**COM_LOIF**)

MINUTES

COUNCIL DOWNTOWN MASTER PLAN COMMITTEE

Wednesday, June 22, 2023 – 4:00 PM
City Hall Council Chambers

Members Present:	Gary Daniel, Chair, Council Member Geraldine Dinkins, Vice Chair, Council Member Nicole Bentley, Heart of Brevard Executive Director Billy Parrish, Heart of Brevard Representative (via Zoom) Lee McMinn, Citizen Member Parker Platt, Citizen Member
Staff Present:	Wilson Hooper, City Manager Paul Ray, Planning Director Denise Hodsdon, City Clerk Becky McCann, Communications Coordinator
Guests:	Melanie Spreen, DTMP Project Manager
Media:	Jon Rich, *Transylvania Times*

A. Welcome & Call to Order

Committee Chair Gary Daniel welcomed everyone and called the meeting to order at 4:02 PM.

B. Certification of Quorum

Quorum was certified by City Clerk Denise Hodsdon.

C. Approval of Agenda

Motion by Ms. Dinkins, seconded by Mr. Platt to approve the agenda as presented. The motion carried unanimously.

D. Approval of Minutes of May 8, 2023 Meeting

Motion by Mr. McMinn, seconded by Ms. Bentley to approve the minutes of the May 8, 2023 meeting as presented. The motion carried unanimously.

E. Continued Discussion re Clemson Plaza/Public Art

The Committee continued its review and discussion of the draft Call to Artist and

Application for Clemson Plaza Public Art Installation (copy attached).

There was continued discussion about funding of a project. It was noted that public art and a water fountain were both part of the original design plan for Clemson Plaza. Ms. Dinkins felt that the fountain should come before public art. Mr. Daniel noted that if there was an opportunity for private funding of art in Clemson Plaza, without using City funds, it would not be diverting funds from other City projects. Ms. Bentley noted that there are grant opportunities to potentially fund both of those projects. Mr. Ray mentioned that the TDA has expressed willingness to contribute toward the fountain.

Ms. Dinkins said I think the fountain is a piece of art as well so we should have a call for that too. Mr. Ray thought that was a good idea because First Victory, the general contractor who built Clemson Plaza, was interested in doing the fountain piece, although it was pulled out of the project and would be bid in the future, but they weren't able to find somebody to build that exact design that was originally approved in Clemson Plaza. He thought if we are interested in doing the fountain, we may need to come up with a new design.

Mr. Daniel said what we need now is a motion to accept the Call to Artist. At this moment we are just talking hypothetically about the fountain and the artwork, so we can talk about those further when we actually have something concrete to discuss. Motion by Mr. McMinn, seconded by Ms. Dinkins to send the draft Call to Artist and Application for Clemson Plaza Public Art to Council with a recommendation to approve. The motion carried unanimously.

F. Special Event Committee Update

Ms. Bentley reported that she has had some preliminary conversations with Chief Bobby Cooper and Paul Ray, but they have not yet convened the committee. They will look to meet after July.

G. Update re Main Street Project

Mr. Ray reported that the temporary striping will begin on Sunday morning. Landscaping will continue on Monday, Tuesday and Wednesday of next week, weather permitting. New poles will be installed on Wednesday and the final walkthrough is scheduled for next Thursday. He is still waiting to hear from NCDOT as to when they will start redoing the ADA ramps and the paving. Mr. Hooper said the remaining old trees will be removed by Public Works and they are doing that late at night and early morning. Mr. Hooper mentioned that we need to figure out a way to permanently acknowledge TDA's contribution to the project.

Mr. Hooper gave an update on the Times Arcade Alley project. He explained that last year the City had applied to the State for ARPA grant funds for two stormwater projects; one being Times Arcade Alley and the other was streambank restoration on the Tannery property. This week when we put out our bid for the Norton Creek streambank restoration contract, we realized that the money we had been saving for

the Tannery streambank wasn't going to be nearly enough. Staff has asked the State for approval to reappropriate the $575,000 of ARPA grant funds previously dedicated to Tannery streambank to the Times Arcade Alley, which would give us $700,000 toward that project. Mr. Ray added that Staff has applied for a $250,000 Golden Leaf grant and we expect to hear about that in August.

Ms. Bentley mentioned that a number of businesses and property owners have asked about our plan for downtown weeding. While we have all these new beautiful improvements, it feels like a few things that are part of routine maintenance have gone to the wayside during construction. Mr. Hooper said he plans to work with staff to figure out how we most effectively deploy our resources to keep downtown beautiful. He thinks the ultimate solution will involve City forces, downtown businesses and perhaps an Adopt-a-Green Space group or two.

Mr. Parrish mentioned that at some point we need to communicate to the public what changed in terms of parking downtown and asked when we may be able to do that. Mr. Hooper said it would be his preference to publicly announce the parking management strategy after we get further along with the proposed employee parking, when we get more of a sense of how many spaces we will have after restriping, and when we have a timeframe for implementing our new enforcement measures. He anticipates being able to have information by the end of summer. Ms. Bentley added that she and Paul Ray are looking at some possible solutions, such as street banners, to direct folks to available parking lots. As a reminder, Melanie Spreen noted that the fundamental principle of the design of the Master Plan, especially this first phase, was really trying to direct people to the outer parking lots and get them to walk one or two blocks. She mentioned that a comprehensive signage plan is important and in addition to parking, with her involvement with the Destination Infrastructure Committee for TCTDA, there is also interest in comprehensive signage and strategy about bikes with more bike racks and bike parking. She said that committee will want to come to this committee and help move that forward, as they do have funding for that.

H. Set Date for Next Meeting

The next meeting of the Council Downtown Master Plan Committee was scheduled for Wednesday, August 9, 2023 at 4:00 PM.

I. Adjourn

There being no further business, the meeting was adjourned at 4:43 PM.

Minutes Approved - August 9, 2023

X _____
Gary Daniel
Chair, Council Member

X Denise Hodsdon
Denise Hodsdon
City Clerk

DRAFT: May 8, 2023

Round 1: Call to Artist and Application for Clemson Plaza Public Art Installation

Amateur and Professional Artists ages 18+ located in Western North Carolina are encouraged to apply. Submissions for murals and for another piece of public art will be considered, juried, and final pieces selected by a community panel.

Installation scheduled [Confirm Year]

Applications Due [Insert Date]

The Clemson Plaza Public Art Project aims to bring the Brevard community together through the power of storytelling. The project will feature a public art installation that celebrates diversity and promotes community through any medium. The installation will be placed at the Clemson Plaza, a prominent public space in the heart of downtown Brevard, NC (79 West Main Street Brevard NC).

The City of Brevard is seeking artists to create a public art installation that celebrates Brevard's rich cultural history and incorporates the story of Clemson Plaza while emphasizing storytelling, community and the incorporation of aspects of film and/or theater. The proposed artwork will be designed to be engaging, inviting, beautify public areas, enhance the quality of life for Brevard citizens, attract tourism, promote arts and culture, and encourage businesses to locate within the city.

Clemson Plaza has a rich history, having been used as a theater and community gathering space since the 1930s. We are looking for artists who can help us celebrate this history while also engaging with the broader community.

Proposals should include a detailed description of the proposed artwork, including sketches or renderings, and a budget for the project. Artists should also include a description of their experience and their vision for how the artwork will promote community engagement and celebrate diversity. Applications and proposals are available here [insert URL] and due by [insert date].

The selected artist will work closely with the Public Art Advisory Subcommittee (PAAS) to develop and implement the artwork through a series of discussions and modifications, including meeting with community stakeholders. PAAS will provide support in identifying grant funding, obtaining necessary permits, and promoting the artwork to the community.

The artwork will be designed to reflect the unique history and culture of Brevard. The goal of the project is to create a space where residents and visitors can come together to celebrate the diversity and richness of Brevard's culture.

Artists should consider the following in their proposals:

- Acknowledge and celebrate the history of the Clemson Plaza.
- Include positive images of black, brown, white, and other people of color in our community.
- Incorporate storytelling and community themes that are inclusive of all members of the Brevard community.
- Create an installation that will be accessible to all members of the community, including those with disabilities.
- Creativity counts! Murals, sculptures and use of multimedia elements, such as film or theater, to create an immersive and engaging installation are encouraged!

Interested artists should submit a proposal that includes the following (see application for full details):

- A detailed description of the proposed installation, including materials, dimensions, and a timeline for completion.
- A portfolio of previous work that demonstrates the artist's ability to work with multimedia elements and create engaging and inclusive installations.
- A budget for the proposed installation, including estimated expenses for materials, labor, and other related costs.

Proposals should be submitted to the City of Brevard by [insert deadline]. The selected artist(s) will be notified by [insert date].

We look forward to seeing your creative proposals and working together to create a public art installation that celebrates the history and community of the Clemson Plaza.

Call to Artists Components

- Project Description and Requirements
- Regional restrictions for selection
- Medium Requirements
- Size/Dimension restrictions
- Timeline
- Budget
- Artists Stipend
- Selection Overview
- Contractual Obligations
- City of Brevard Public Art Policy and Guidelines
- City of Brevard Sign Ordinance

Sample Application Questions

1) Artist Contact Information
2) Please attach your artists statement (750 words or less)
3) Artists Website and/or social media handles
4) Do you make your living as an artist? Y/N
5) Do you consider yourself a professional or amateur artists?
6) Project that you are proposing Mural, Sculpture, Other (provide brief description)
7) Have you ever completed a large-scale public art project before? Y/N
   If yes, please provide date of completion, address and photos
8) We intend for the public art to last for many years and to be created in accordance with appropriate industry standards. Are you familiar with these standards? Y/N
9) If proposing a mural, do you have experience in mural techniques? Y/N
   If yes, please describe (750-word limit)
10) Project Proposal: Please describe your proposed project including any images or symbolism (750-word limit)
11) How does your proposal meet the goal of this project, as outline in the Call to Artists (750-word limit)
12) Proposed size of the project (in square feet and any unique requirements).
13) Please provide Sketch 11x14 (or larger) color rendition of the proposal
14) Provide approximate cost and/or budget of the proposal.
    Please note that the compensation will be fairly determined based on standards, size, quality and project budget. If selected a detailed budge will be required and a stipend will be offered in subsequent rounds. This application is initial round to determine the best fit(s) to advance toward the final selection.

15) Provide approximate timeline to compete the project.
16) Do you have liability insurance for such a project?
17) Attach samples of past works (up to 10 images) with brief descriptions

By applying for this project, if selected, you are agreeing to enter discussions about the art pieces, accept some modifications, if needed, and to be contractually obligated to design, install, and fully complete the work, to a standard agreed, by a date agreed, for compensation to be agreed in advance with the panel of jurors. Any art selected will be attributed to the artist and the ownership of the art will belong to the City of Brevard for payment and use in this project. The artist's authorship of design and concept will be acknowledged.

o Yes I understand these requirements or
o I will need more information and will still apply for consideration.

MINUTES
City Council Parks, Trails, & Recreation Committee

Wednesday, July 19, 2023 at 3:30 PM
City Hall Council Chambers

Members Present:	Mac Morrow, Chair, Council Member Aaron Baker, Vice-Chair, Council Member (Arrived at 3:35 pm) Howie Granat, Citizen Member Nancy DePippo, Citizen Member Wyn Birkenthal, Citizen Member Reba Osborne, Citizen Member
Absent:	JD Powers, Citizen Member
Staff Present:	Wesley Shook, Acting Public Works Director Paul Ray, Planning Director Aaron Bland, Assistant Planning Director Becky McCann, Communications Coordinator Alex Shepherd, Assistant to the City Manager
Guests:	Kevin Gallo, Resident
Media:	Jon Rich, Transylvania Times

A. Welcome & Call to Order

Committee Chair Mac Morrow welcomed everyone and called the meeting to order at 3:30 pm.

B. Certification of Quorum

Quorum was certified by Assistant to the City Manager Alex Shepherd.

C. Approval of Agenda

Motion by Mr. Morrow, seconded by Mr. Granat, to approve the agenda as presented. The motion carried unanimously.

D. Approval of Minutes from May 17, 2023 Meeting

Motion by Ms. DePippo, seconded by Ms. Osborne to approve the minutes of the June 21, 2023 meeting as presented. The motion carried unanimously.

E. Estatoe Trail Map

Mr. Ray said the original trail map was complete completed by Susan Evans back in 2016. Portions of the map are incorrect and Main Street does not appear to be on the map as well. The current map would need to be redone because the trail now connects to Main Street.

Ms. DePippo asked the question if it would be possible to get a new map created.

Mr. Bland and Mr. Ray said that we would have to contract and pay someone to design and complete the new map. However, we could provide them with the GIS data plots.

Mr. Granat noted that we should change the name of the map from Brevard Greenways to the Estatoe Trial Map. He mentioned the idea of creating a trifold brochure that included the map, restrictions and uses, and to have the brochures put in bike shops and the visitor center.

Mr. Morrow ask if it would be possible to get the TDA to pay for the completion of the new Estatoe Trail Map.

Mr. Ray said that he would examine the next steps and would have a meeting with Wilson Hooper and Clark Lovelace about the creation of a new map.

F. Unopened Rights of Way

Mr. Bland said that he has received a few responses from some of the committee members on what they would like to do regarding the unopened rights of way. Some of the responses from committee members is that they do not wish to close any of the rights of way. He discussed making a list of Rights of Way that we would like to keep for future potential use in case a property owner petitions to have one of them closed.

Mr. Baker said instead of making a list we should just set them aside for future use and that any petition should come through the Parks, Trails, and Recreation Committee as well as the Planning Board.

Mr. Ray stated that the Planning Board would now also seek consideration from the Parks, Trails, and Recreation Committee involving any petitions to unopened rights of way.

G. Ecusta Trail Update

Mr. Ray explained that the City was awarded $24.5 million from the RAISE Grant for the Ecusta Trail and NCDOT was awarded $21.4 million from the NSFLTP Grant for the trail as well. We anticipate being able to use both grants for the Ecusta Trail. However, we are unsure how these two grants will work together. We are using an entirely different pot of money for the engineering of the Ecusta Trail after receiving a million dollars last

year through the Federal Land Access Program. We hired NCDOT to administer this grant. I have a meeting with our NCDOT representative on Friday, July 21st to go over the 30% engineering fee review. Mr. Ray stated that he does not think the million-dollar grant will be enough to get the entire trail engineered, so we may need to talk with our financial partners, who have pledged matching funds for the Ecusta Trail to see if we can use those funds to cover engineering cost overruns. We will know more about the costs after meeting with NCDOT. If we spend any of our match money prior to being under contract with USDOT, we need permission first because one of the things they look for is to make sure that all the match funds we said we had been still available. Aaron Bland and Mr. Ray attended a webinar on July 18th which was a high-level overview on administering the RAISE Grant. We will be assigned a representative from an operating agency in the next three to four weeks. For our project, our operating agency will either be the Federal Highways Administration or the Federal Railroad Administration. Mr. Ray said that we plan on using NCDOT to administer this grant too because that is what we said we would do on our grant application and that is what USDOT is expecting us to do. It is too soon to talk about the timing of this project, but from everything we are hearing our best-case scenario would be to begin trail construction in two years. Technically, according to the terms of our grant, we have until September 30th, 2027, to obligate the funds and September 30th, 2032, to spend all the funds.

Mr. Birkenthal congratulated the grant writing team on a job well done.

Mr. Baker asked if there would be a design review and if the committee could review the plans before are official.

Mr. Ray said that we will continue to explore way to add amenities to the trail whether that be from the grant dollar or through the matching funds.

Mr. Baker said that the committee should focus on the Estatoe Trail and do our best to ensure that we can make the trail experience perfect because it connects to downtown Brevard. He noted that the Ecusta Trail already has its own advisory committee.

H. Bracken Preserve Update

Mr. Granat informed the committee that Brackenfest is set for Saturday, September 23rd and will start and finish at the Depot. It will include festivities and lunch at 185 King Street. The event last year raised around $25,000. We are working with the TDA and City to help close the gap and purchase the 35 acres of land Conserving Carolina currently owns. Moving forward, we plan to update the trail through three phases. The first phase will fix the existing trail and build an easier climbing trail. To construct an easier climbing trail, we will need a change in the easement from the Brevard Music Center. We have been working with Jason and Keith to review the location of the easement. The second and third phase will be building three to four additional miles of trail. Home Trust Bank has offered to donate two of the four lots on Waterford Place that are still available to help in the trail construction of Phases 2 and 3.

Mr. Baker said that initially the County Attorney stated that TDA funds could not be spent on property acquisition even though this project does impact tourism. However, the County Attorney has said that the TDA can give money for the trail construction. Mr. Baker said he is speaking with Clark Lovelace about whether their funds could be used for the purchase.

Additional Comments

Ms. DePippo said she volunteers at the Ranger Station and people are requesting information about riding their bikes into town. They don't have any map to give people and it would be very helpful to have a map to hand out.

I. Set Date for Next Meeting

The next regular meeting of the Parks, Trails & Recreation Committee was scheduled for Wednesday, August 16, 2023 at 3:30 PM.

J. Adjourn

There being no further business, the meeting was adjourned at 4:31 pm.

X _____

Mac Morrow
Chair, Council Member

Minutes Approved: August 16, 2023

X _____

Alex Shepherd
Assistant to the City Manager

Transylvania County Building Department

City 06/01/2023 thru 06/30/2023

	Permits Issued	Construction Value	Permit Fees	Misc. Sales Fees	Credit Card Fees	Total of All Fees
Residential						
New House	6	3,646,373	3,098.00	0.00	1,941.00	5,039.00
Additions/Alterations	9	476,500	1,350.00	0.00	1,033.00	2,383.00
Elec/Plumb/Mech	29		225.00	0.00	1,952.00	2,177.00
Mobile Home						
Commercial						
New Commercial						
Additions/Alterations	7	4,243,050	3,415.00	0.00	4,295.00	7,710.00
Elec/Plumb/Mech	13		0.00	0.00	900.00	900.00
Miscellaneous						
Signs						
HRF/County			0.00	5.00	6.00	11.00
HRF/State			0.00	45.00	54.00	99.00
Other			600.00	0.00	396.00	996.00
Totals:	64	8,365,923	8,688.00	50.00	10,577.00	19,315.00
					Less HRF Refundable to State:	(99.00)
					Less Cancelled Permits:	0.00
					Total Fees Collected:	**19,216.00**

Mike Owen - Building Director

Transylvania County Building Department

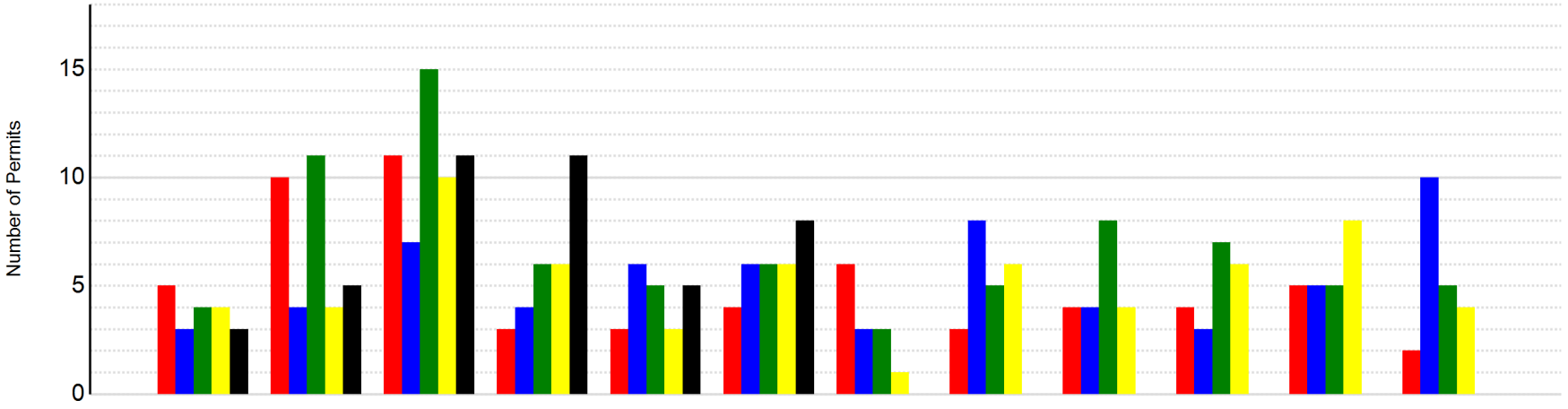
County 06/01/2023 thru 06/30/2023

	Permits Issued	Construction Value	Permit Fees	Misc. Sales Fees	Credit Card Fees	Total of All Fees
Residential						
New House	16	10,824,518	11,260.00	0.00	3,236.00	14,496.00
Additions/Alterations	30	2,954,254	7,502.00	0.00	2,125.00	9,627.00
Elec/Plumb/Mech	68		900.00	0.00	4,425.00	5,325.00
Mobile Home						
Commercial						
New Commercial						
Additions/Alterations	1	29,900	177.00	0.00	0.00	177.00
Elec/Plumb/Mech	8		75.00	0.00	525.00	600.00
Miscellaneous						
Signs						
HRF/County			0.00	17.00	7.00	24.00
HRF/State			0.00	153.00	63.00	216.00
Other			1,242.00	0.00	2,019.00	3,261.00
Totals:	123	13,808,672	21,156.00	170.00	12,400.00	33,726.00
					Less HRF Refundable to State:	(216.00)
					Less Cancelled Permits:	0.00
					Total Fees Collected:	**33,510.00**

Mike Owen - Building Director

Commercial Additions and Alterations

1/1/2019 - 6/30/2023



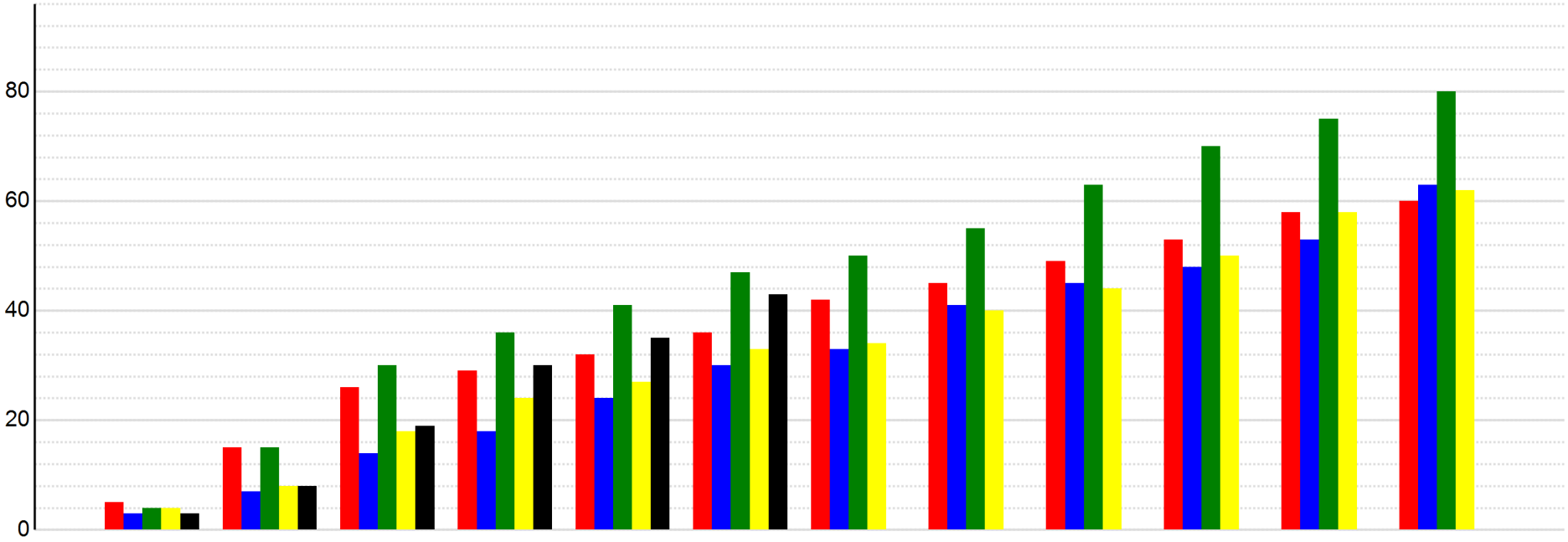
	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
2019	5	10	11	3	3	4	6	3	4	4	5	2
2020	3	4	7	4	6	6	3	8	4	3	5	10
2021	4	11	15	6	5	6	3	5	8	7	5	5
2022	4	4	10	6	3	6	1	6	4	6	8	4
2023	3	5	11	11	5	8						

Jan $	$74,000	**Apr $**	$1,265,905	**Jul $**	$0	**Oct $**	$0	
Feb $	$244,131	**May $**	$588,347	**Aug $**	$0	**Nov $**	$0	
Mar $	$613,710	**Jun $**	$4,272,950	**Sep $**	$0	**Dec $**	$0	

Year End Totals	
2019	$9,763,577
2020	$7,333,887
2021	$12,671,175
2022	$9,923,468
2023	$7,059,043

Commercial Additions and Alterations (Cumulative)

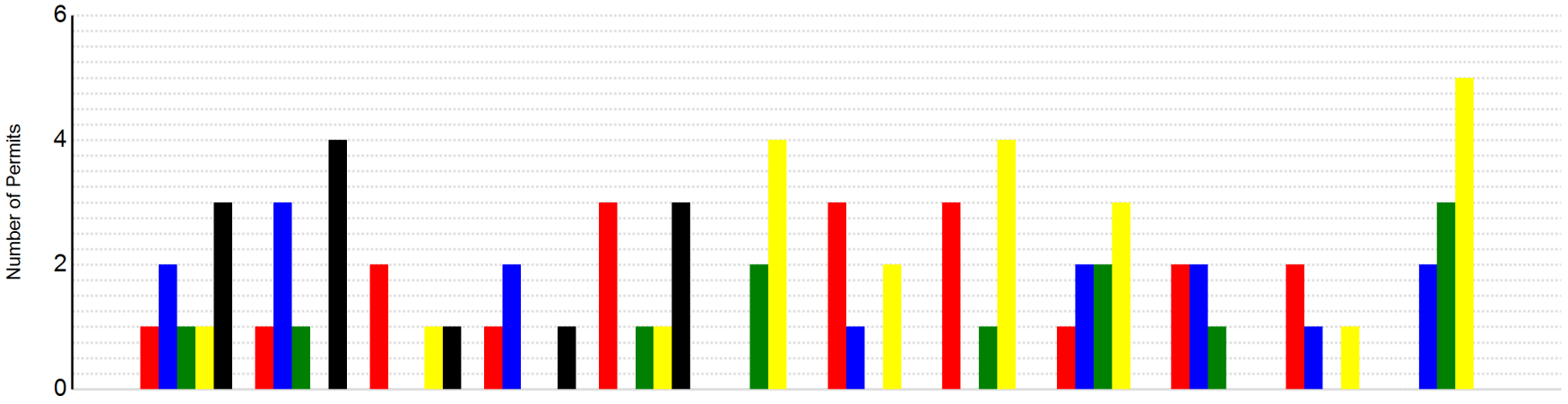
1/1/2019 - 6/30/2023



		Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
	2019	5	15	26	29	32	36	42	45	49	53	58	60
	2020	3	7	14	18	24	30	33	41	45	48	53	63
	2021	4	15	30	36	41	47	50	55	63	70	75	80
	2022	4	8	18	24	27	33	34	40	44	50	58	62
	2023	3	8	19	30	35	43						

New Commercial Permits

1/1/2019 - 6/30/2023



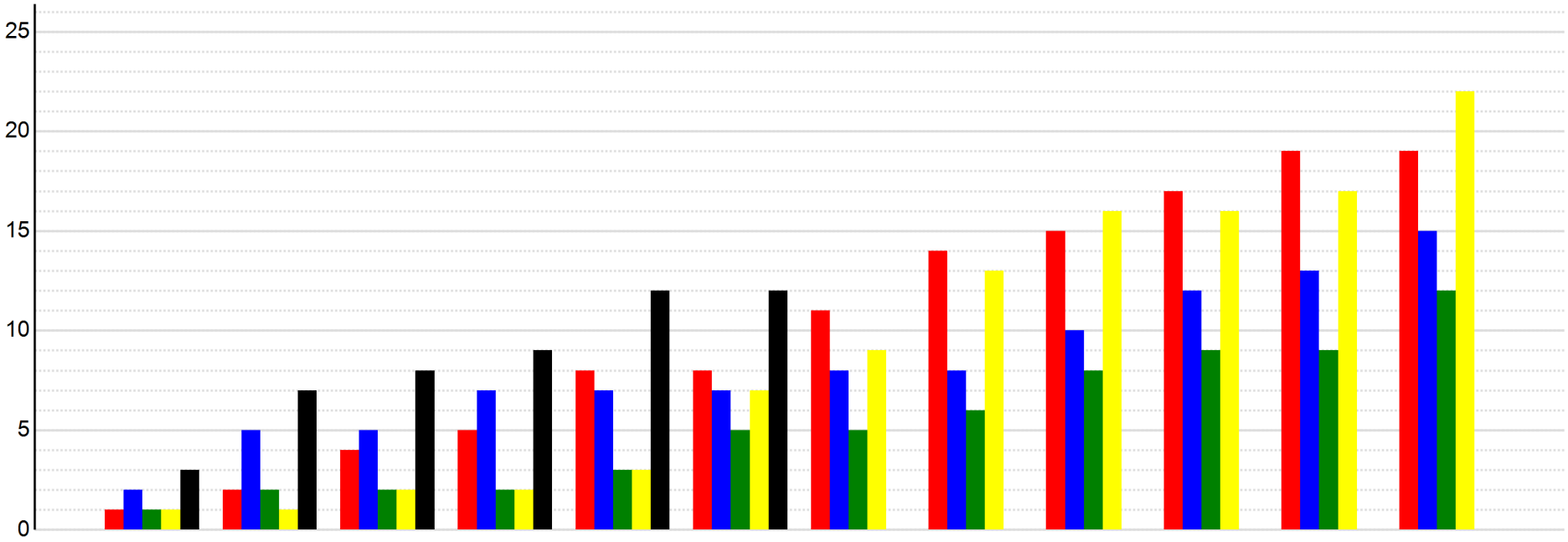
	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
2019	1	1	2	1	3	0	3	3	1	2	2	0
2020	2	3	0	2	0	0	1	0	2	2	1	2
2021	1	1	0	0	1	2	0	1	2	1	0	3
2022	1	0	1	0	1	4	2	4	3	0	1	5
2023	3	4	1	1	3	0						

Jan $	$7,091,711	**Apr $**	$32,000	**Jul $**	$0	**Oct $**	$0	
Feb $	$821,992	**May $**	$1,430,000	**Aug $**	$0	**Nov $**	$0	
Mar $	$3,500,000	**Jun $**	$0	**Sep $**	$0	**Dec $**	$0	

Year End Totals	
2019	$18,194,886
2020	$10,620,303
2021	$12,518,701
2022	$16,242,128
2023	$12,875,703

New Commercial Permits (Cumulative)

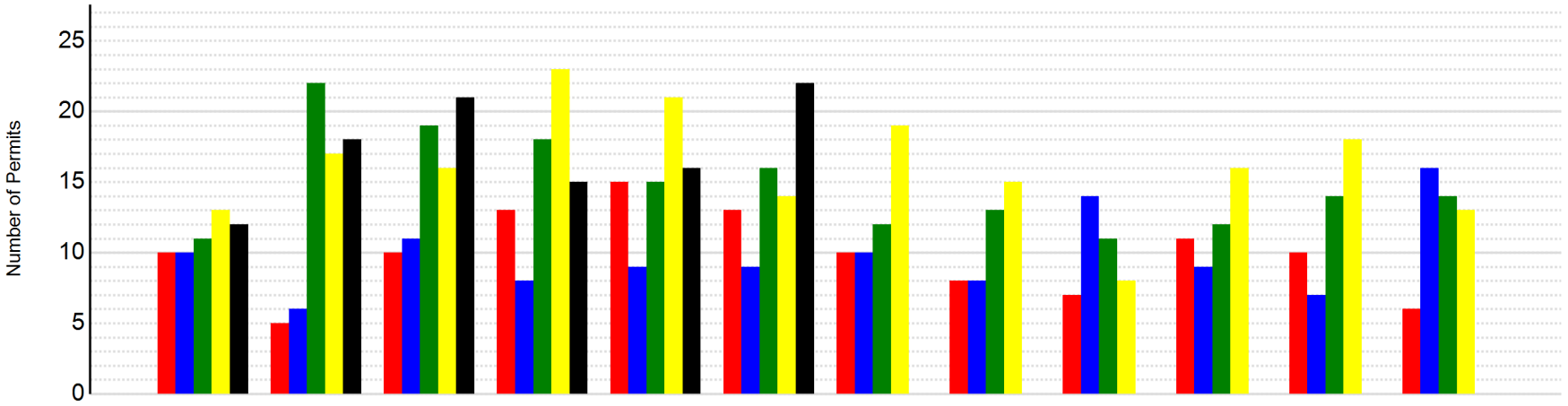
1/1/2019 - 6/30/2023



		Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
	2019	1	2	4	5	8	8	11	14	15	17	19	19
	2020	2	5	5	7	7	7	8	8	10	12	13	15
	2021	1	2	2	2	3	5	5	6	8	9	9	12
	2022	1	1	2	2	3	7	9	13	16	16	17	22
	2023	3	7	8	9	12	12						

Single Family Residential Permits

1/1/2019 - 6/30/2023



	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
2019	10	5	10	13	15	13	10	8	7	11	10	6
2020	10	6	11	8	9	9	10	8	14	9	7	16
2021	11	22	19	18	15	16	12	13	11	12	14	14
2022	13	17	16	23	21	14	19	15	8	16	18	13
2023	12	18	21	15	16	22						

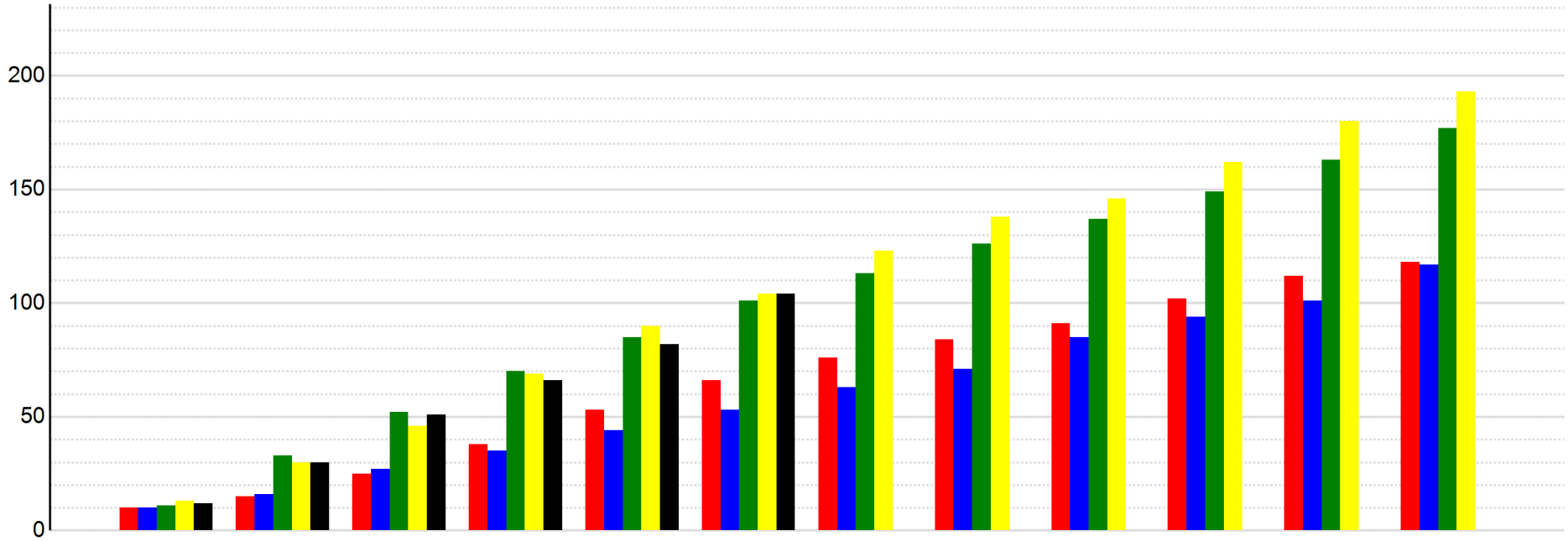
Jan $	$7,878,217	**Apr $**	$6,182,736	**Jul $**	$0	
Feb $	$8,813,574	**May $**	$8,615,487	**Aug $**	$0	
Mar $	$10,709,000	**Jun $**	$14,470,891	**Sep $**	$0	

Oct $	$0
Nov $	$0
Dec $	$0

Year End Totals	
2019	$55,246,587
2020	$45,933,542
2021	$98,878,772
2022	$108,991,347
2023	$56,669,905

Single Family Residential Permits (Cumulative)

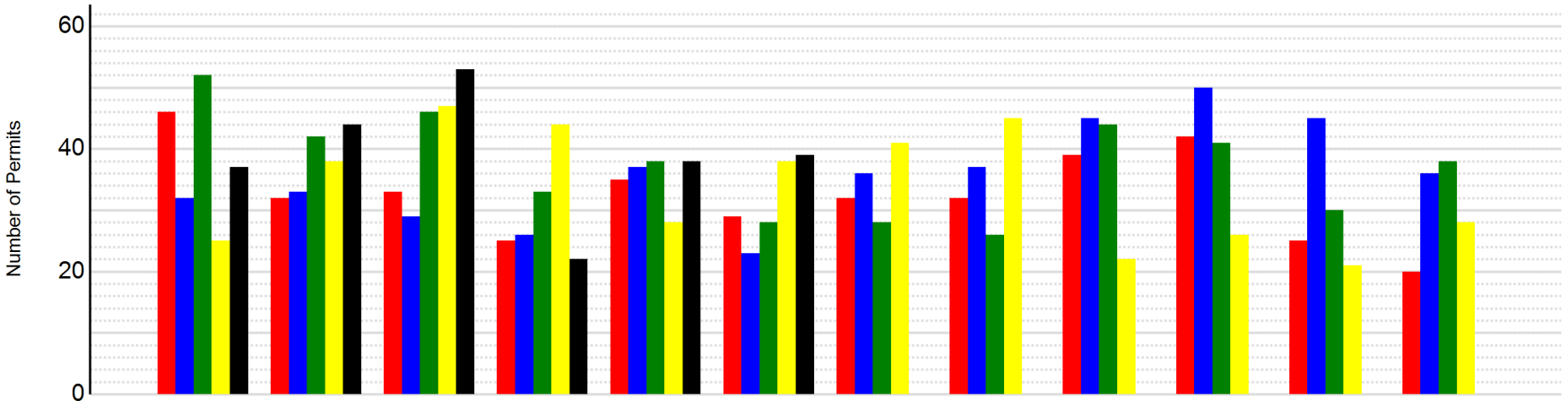
1/1/2019 - 6/30/2023



		Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
	2019	10	15	25	38	53	66	76	84	91	102	112	118
	2020	10	16	27	35	44	53	63	71	85	94	101	117
	2021	11	33	52	70	85	101	113	126	137	149	163	177
	2022	13	30	46	69	90	104	123	138	146	162	180	193
	2023	12	30	51	66	82	104						

Residential Additions and Alterations

1/1/2019 - 6/30/2023



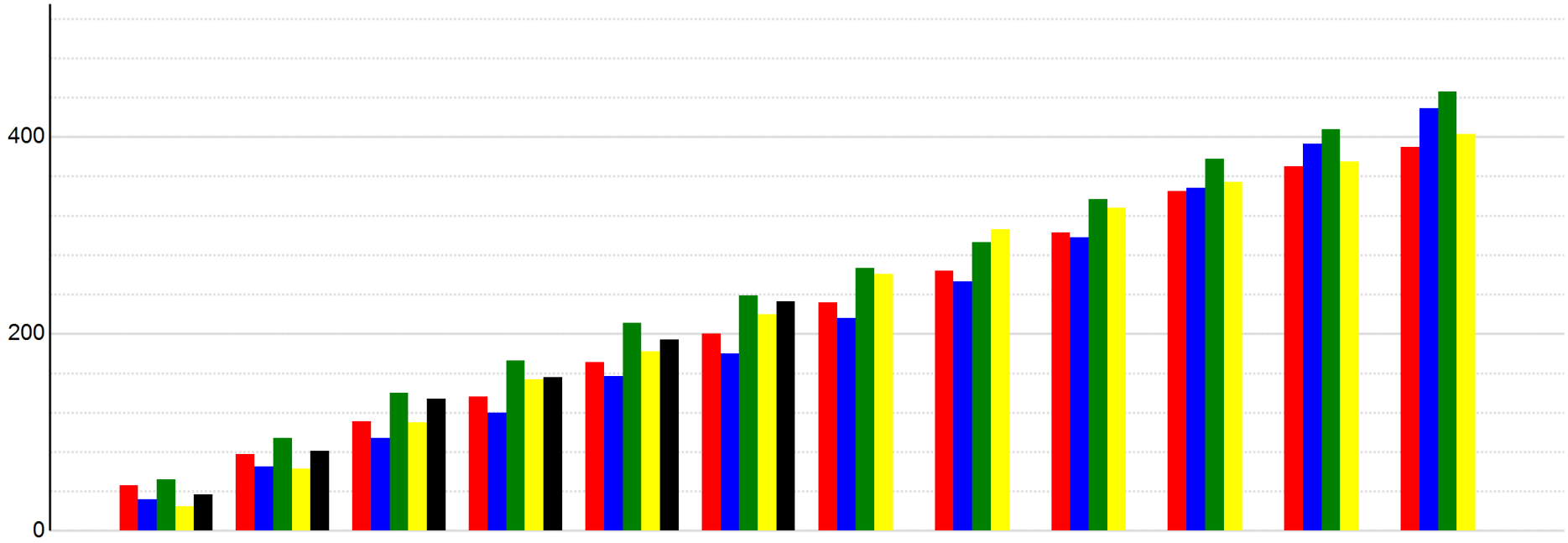
	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
2019	46	32	33	25	35	29	32	32	39	42	25	20
2020	32	33	29	26	37	23	36	37	45	50	45	36
2021	52	42	46	33	38	28	28	26	44	41	30	38
2022	25	38	47	44	28	38	41	45	22	26	21	28
2023	37	44	53	22	38	39						

Jan $	$3,512,708	**Apr $**	$2,905,870	**Jul $**	$0	**Oct $**	$0
Feb $	$5,475,316	**May $**	$3,199,255	**Aug $**	$0	**Nov $**	$0
Mar $	$3,958,669	**Jun $**	$3,430,754	**Sep $**	$0	**Dec $**	$0

Year End Totals	
2019	$21,875,250
2020	$31,993,167
2021	$40,188,093
2022	$34,964,685
2023	$22,482,572

Residential Additions and Alterations (Cumulative)

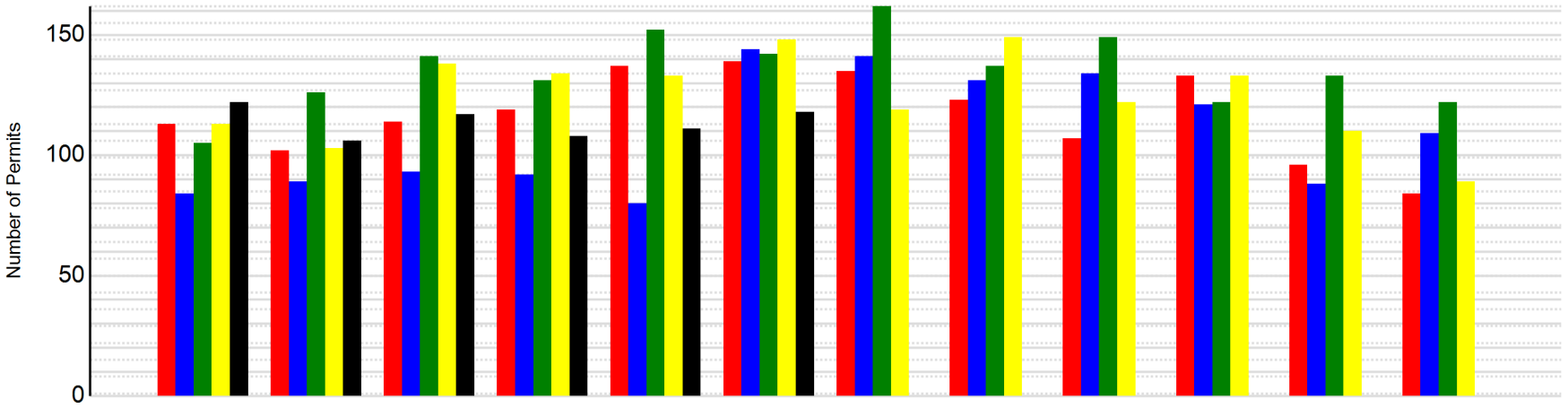
1/1/2019 - 6/30/2023



		Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
	2019	46	78	111	136	171	200	232	264	303	345	370	390
	2020	32	65	94	120	157	180	216	253	298	348	393	429
	2021	52	94	140	173	211	239	267	293	337	378	408	446
	2022	25	63	110	154	182	220	261	306	328	354	375	403
	2023	37	81	134	156	194	233						

Single Trade Permits

1/1/2019 - 6/30/2023



		Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
	2019	113	102	114	119	137	139	135	123	107	133	96	84
	2020	84	89	93	92	80	144	141	131	134	121	88	109
	2021	105	126	141	131	152	142	164	137	149	122	133	122
	2022	113	103	138	134	133	148	119	149	122	133	110	89
	2023	122	106	117	108	111	118						

Transylvania County Building Department

City 07/01/2023 thru 07/31/2023

	Permits Issued	Construction Value	Permit Fees	Misc. Sales Fees	Credit Card Fees	Total of All Fees
Residential						
New House	3	1,735,367	3,888.00	0.00	0.00	3,888.00
Additions/Alterations	10	363,690	1,444.00	0.00	750.00	2,194.00
Elec/Plumb/Mech	28		0.00	0.00	2,175.00	2,175.00
Mobile Home	1	74,518	0.00	0.00	200.00	200.00
Commercial						
New Commercial						
Additions/Alterations	6	1,881,750	10,553.00	0.00	2,935.00	13,488.00
Elec/Plumb/Mech	5		0.00	0.00	300.00	300.00
Miscellaneous						
Signs						
HRF/County			0.00	8.00	2.00	10.00
HRF/State			0.00	72.00	18.00	90.00
Other			580.00	0.00	75.00	655.00
Totals:	53	4,055,325	16,465.00	80.00	6,455.00	23,000.00
					Less HRF Refundable to State:	(90.00)
					Less Cancelled Permits:	0.00
					Total Fees Collected:	**22,910.00**

Mike Owen - Building Director

Transylvania County Building Department

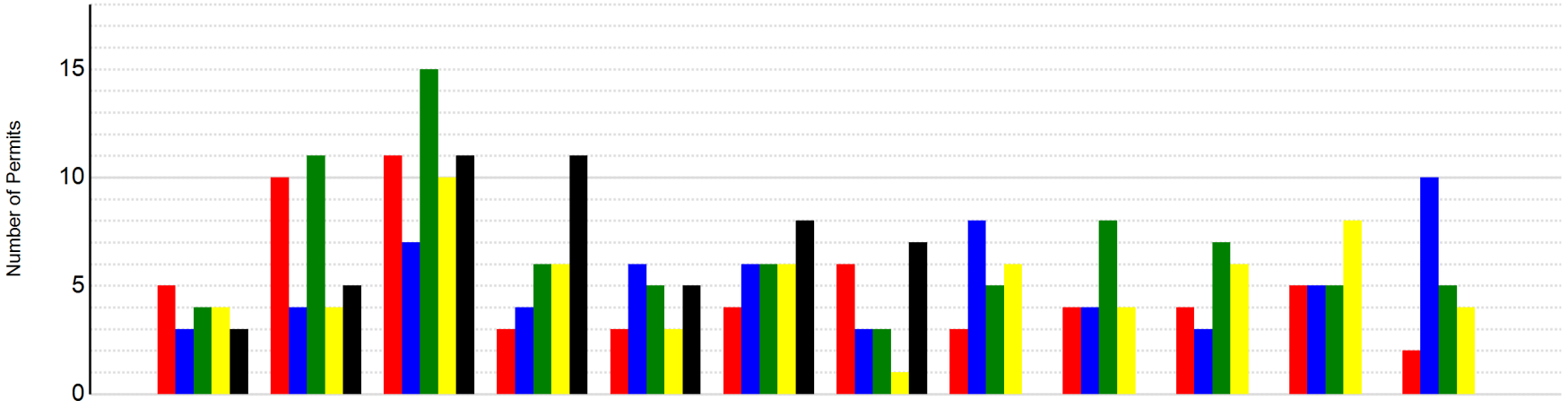
County 07/01/2023 thru 07/31/2023

	Permits Issued	Construction Value	Permit Fees	Misc. Sales Fees	Credit Card Fees	Total of All Fees
Residential						
New House	12	13,365,122	8,125.00	0.00	2,850.00	10,975.00
Additions/Alterations	29	2,722,548	5,450.00	0.00	3,825.00	9,275.00
Elec/Plumb/Mech	87		450.00	0.00	6,075.00	6,525.00
Mobile Home	2	364,990	0.00	0.00	500.00	500.00
Commercial						
New Commercial						
Additions/Alterations	1	22,000	125.00	0.00	0.00	125.00
Elec/Plumb/Mech	15		225.00	0.00	825.00	1,050.00
Miscellaneous						
Signs						
HRF/County			0.00	13.00	8.00	21.00
HRF/State			0.00	117.00	72.00	189.00
Other			2,397.00	0.00	4,192.00	6,589.00
Totals:	146	16,474,660	16,772.00	130.00	18,347.00	35,249.00
					Less HRF Refundable to State:	(189.00)
					Less Cancelled Permits:	0.00
					Total Fees Collected:	**35,060.00**

Mike Owen - Building Director

Commercial Additions and Alterations

1/1/2019 - 7/31/2023



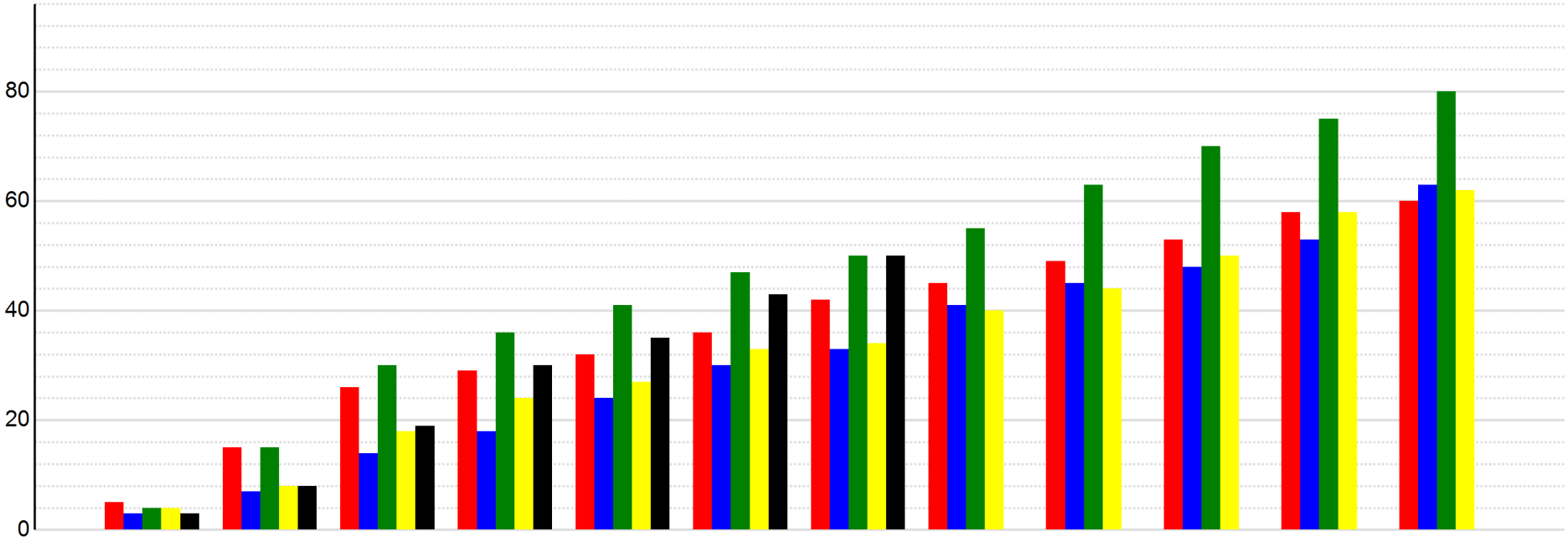
	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
2019	5	10	11	3	3	4	6	3	4	4	5	2
2020	3	4	7	4	6	6	3	8	4	3	5	10
2021	4	11	15	6	5	6	3	5	8	7	5	5
2022	4	4	10	6	3	6	1	6	4	6	8	4
2023	3	5	11	11	5	8	7					

Jan $	$74,000	**Apr $**	$1,265,905	**Jul $**	$1,903,750	**Oct $**	$0	
Feb $	$244,131	**May $**	$588,347	**Aug $**	$0	**Nov $**	$0	
Mar $	$613,710	**Jun $**	$4,272,950	**Sep $**	$0	**Dec $**	$0	

Year End Totals	
2019	$9,763,577
2020	$7,333,887
2021	$12,671,175
2022	$9,923,468
2023	$8,962,793

Commercial Additions and Alterations (Cumulative)

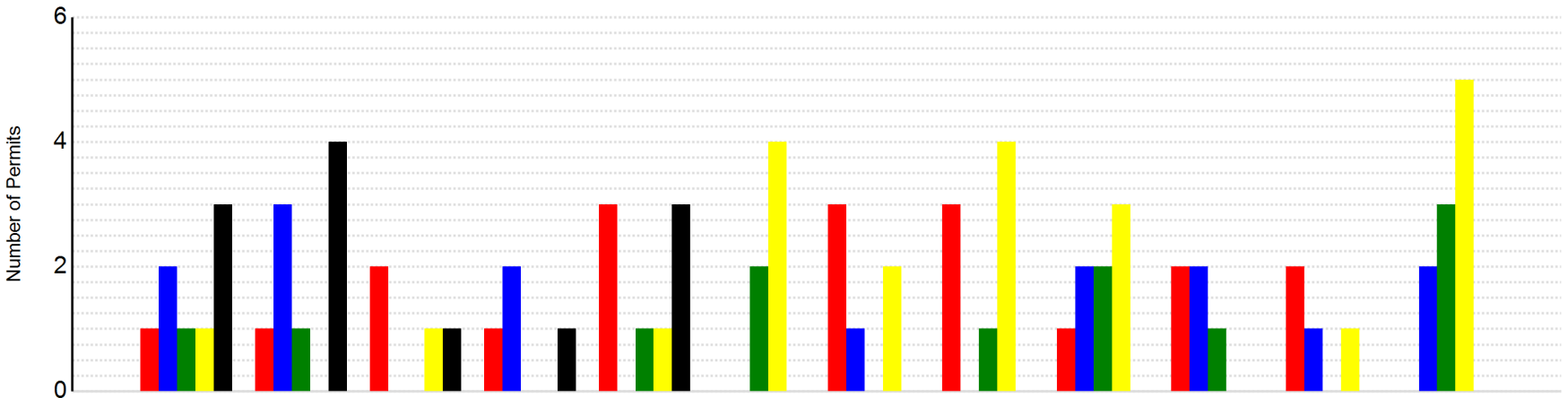
1/1/2019 - 7/31/2023



		Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
	2019	5	15	26	29	32	36	42	45	49	53	58	60
	2020	3	7	14	18	24	30	33	41	45	48	53	63
	2021	4	15	30	36	41	47	50	55	63	70	75	80
	2022	4	8	18	24	27	33	34	40	44	50	58	62
	2023	3	8	19	30	35	43	50					

New Commercial Permits

1/1/2019 - 7/31/2023



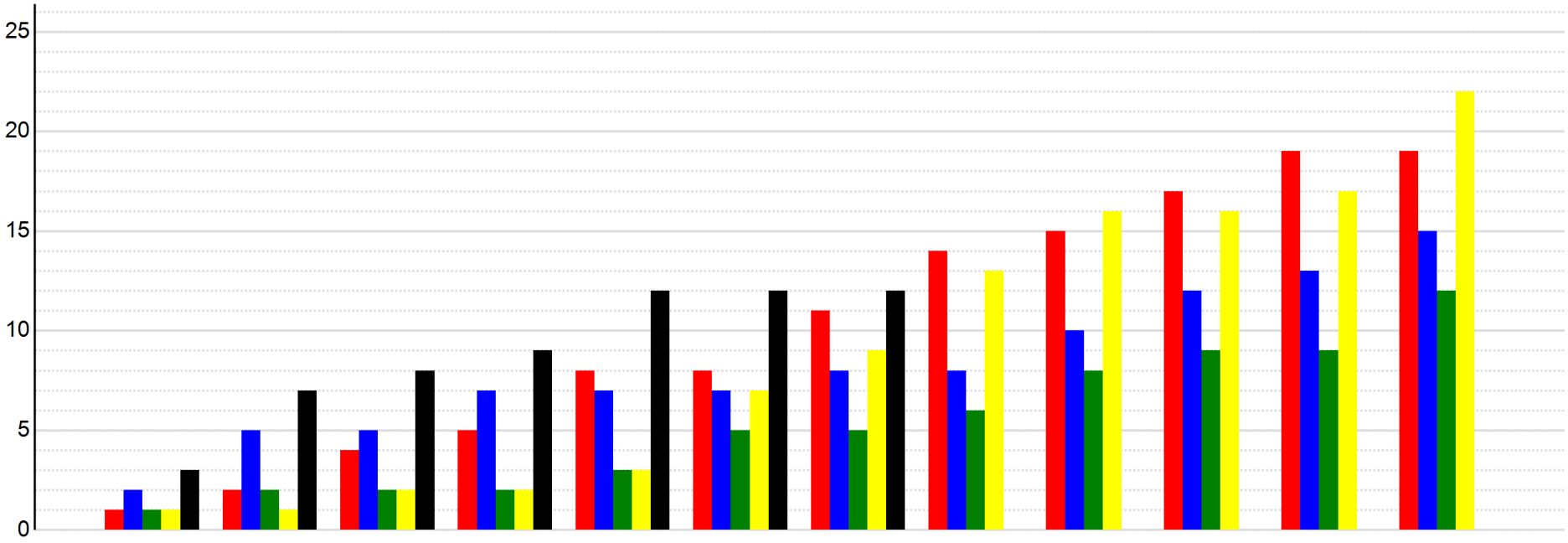
	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
2019	1	1	2	1	3	0	3	3	1	2	2	0
2020	2	3	0	2	0	0	1	0	2	2	1	2
2021	1	1	0	0	1	2	0	1	2	1	0	3
2022	1	0	1	0	1	4	2	4	3	0	1	5
2023	3	4	1	1	3	0	0					

Jan $	$7,091,711	**Apr $**	$32,000	**Jul $**	$0	**Oct $**	$0	
Feb $	$821,992	**May $**	$1,430,000	**Aug $**	$0	**Nov $**	$0	
Mar $	$3,500,000	**Jun $**	$0	**Sep $**	$0	**Dec $**	$0	

Year End Totals	
2019	$18,194,886
2020	$10,620,303
2021	$12,518,701
2022	$16,242,128
2023	$12,875,703

New Commercial Permits (Cumulative)

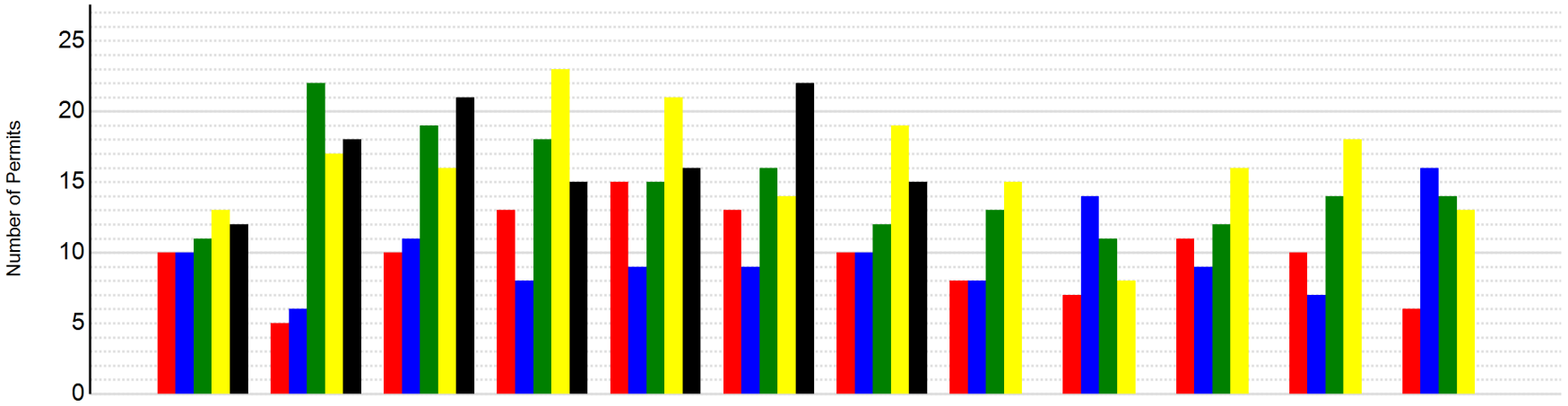
1/1/2019 - 7/31/2023



		Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
	2019	1	2	4	5	8	8	11	14	15	17	19	19
	2020	2	5	5	7	7	7	8	8	10	12	13	15
	2021	1	2	2	2	3	5	5	6	8	9	9	12
	2022	1	1	2	2	3	7	9	13	16	16	17	22
	2023	3	7	8	9	12	12	12					

Single Family Residential Permits

1/1/2019 - 7/31/2023



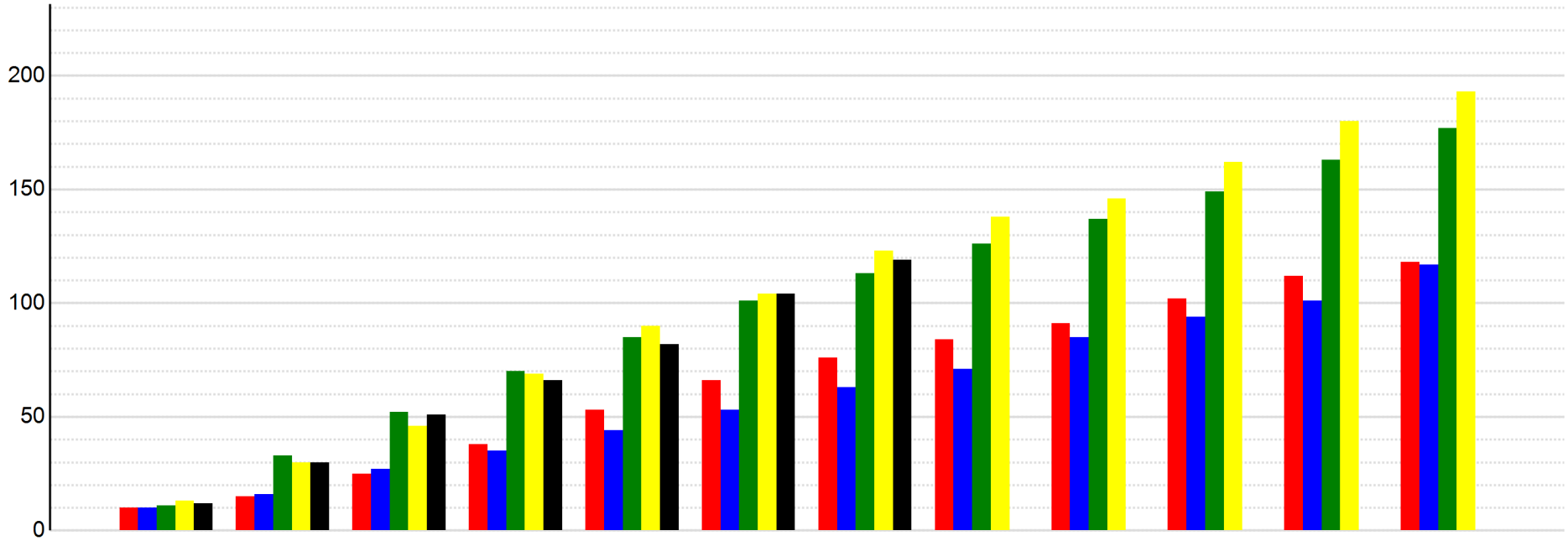
	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
2019	10	5	10	13	15	13	10	8	7	11	10	6
2020	10	6	11	8	9	9	10	8	14	9	7	16
2021	11	22	19	18	15	16	12	13	11	12	14	14
2022	13	17	16	23	21	14	19	15	8	16	18	13
2023	12	18	21	15	16	22	15					

Jan $	$7,878,217	**Apr $**	$6,182,736	**Jul $**	$15,100,489	**Oct $**	$0	
Feb $	$8,813,574	**May $**	$8,615,487	**Aug $**	$0	**Nov $**	$0	
Mar $	$10,709,000	**Jun $**	$14,470,891	**Sep $**	$0	**Dec $**	$0	

Year End Totals	
2019	$55,246,587
2020	$45,933,542
2021	$98,878,772
2022	$108,991,347
2023	$71,770,394

Single Family Residential Permits (Cumulative)

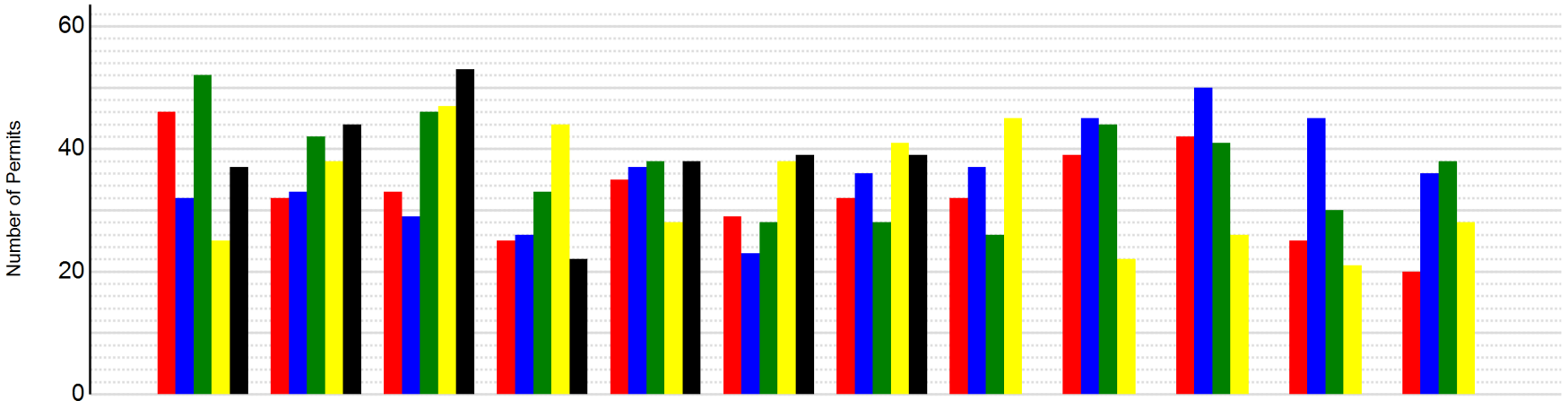
1/1/2019 - 7/31/2023



		Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
	2019	10	15	25	38	53	66	76	84	91	102	112	118
	2020	10	16	27	35	44	53	63	71	85	94	101	117
	2021	11	33	52	70	85	101	113	126	137	149	163	177
	2022	13	30	46	69	90	104	123	138	146	162	180	193
	2023	12	30	51	66	82	104	119					

Residential Additions and Alterations

1/1/2019 - 7/31/2023

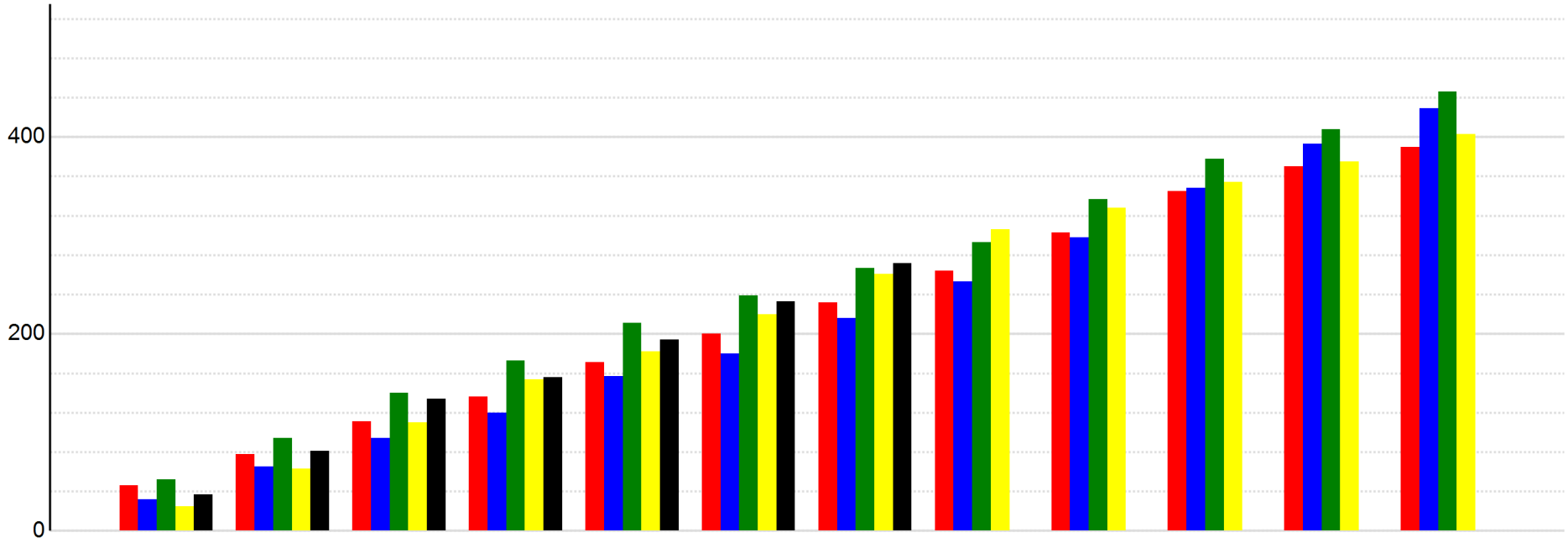


	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
2019	46	32	33	25	35	29	32	32	39	42	25	20
2020	32	33	29	26	37	23	36	37	45	50	45	36
2021	52	42	46	33	38	28	28	26	44	41	30	38
2022	25	38	47	44	28	38	41	45	22	26	21	28
2023	37	44	53	22	38	39	39					

							Year End Totals	
Jan $	$3,512,708	**Apr $**	$2,905,870	**Jul $**	$3,086,238	**Oct $**	$0	
Feb $	$5,475,316	**May $**	$3,199,255	**Aug $**	$0	**Nov $**	$0	**2019** $21,875,250
Mar $	$3,958,669	**Jun $**	$3,430,754	**Sep $**	$0	**Dec $**	$0	**2020** $31,993,167
								2021 $40,188,093
								2022 $34,964,685
								2023 $25,568,810

Residential Additions and Alterations (Cumulative)

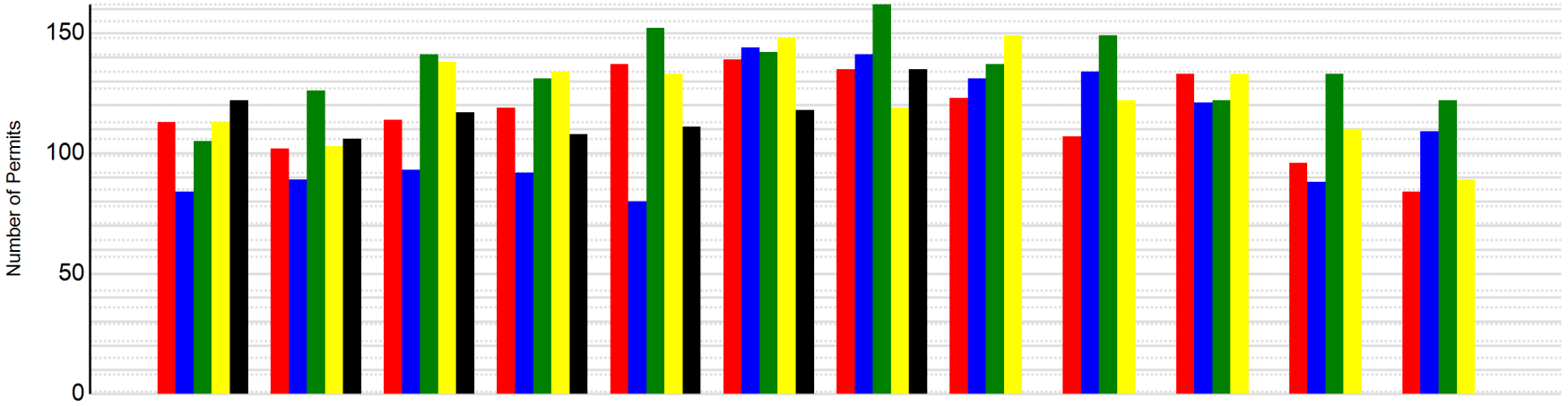
1/1/2019 - 7/31/2023



		Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
	2019	46	78	111	136	171	200	232	264	303	345	370	390
	2020	32	65	94	120	157	180	216	253	298	348	393	429
	2021	52	94	140	173	211	239	267	293	337	378	408	446
	2022	25	63	110	154	182	220	261	306	328	354	375	403
	2023	37	81	134	156	194	233	272					

Single Trade Permits

1/1/2019 - 7/31/2023



		Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
	2019	113	102	114	119	137	139	135	123	107	133	96	84
	2020	84	89	93	92	80	144	141	131	134	121	88	109
	2021	105	126	141	131	152	142	164	137	149	122	133	122
	2022	113	103	138	134	133	148	119	149	122	133	110	89
	2023	122	106	117	108	111	118	135					

STAFF REPORT
City Council, Monday, August 21, 2023

Title:	Proposed Amendment to Brevard Code of Ordinances Sections 42, 43, 46 and 66 - Social Districts
Speaker:	Emily Brewer, AICP, Senior Planner
Prepared by:	Emily Brewer, Senior Planner
Approved by:	Wilson Hooper, City Manager, Paul Ray, Planning Director

Background
On September 8, 2021, North Carolina Session Law 2021-150 was ratified, allowing governments to establish "Social Districts" within their jurisdictions. A social district is an exception to North Carolina's open container law in a designated area during certain times. These social districts allow for establishments with ABC permits (e.g., bars, breweries, restaurants) may sell alcoholic beverages in designated containers to be taken into common areas for consumption. This applies to privately-owned property, including those with and without an ABC permit, and public streets, crosswalks, and parking areas. The act was subsequently amended with Session Law 2022-49, which refined the initial legislation and provides additional details on the operation of social districts.

At least 40 North Carolina municipalities have adopted social districts (see the list in Attachment 4). These range from the large municipalities like Raleigh to small towns like Sylva. Many cities have reported economic growth and revitalization following the establishment of social districts, including new businesses opening up, increased visitors and pedestrian activity, and new opportunities for events. The City of Raleigh recently conduced research to assess the impact of the social district adopted in August 2022. The results show strong support for the social district, with stakeholders reporting increased sales, no increase in litter, and no increase in "bad behavior" in the area. The full survey results are included as Attachment 5.

Social districts have been discussed by many Council members and constituents – first as part of the Comprehensive Land Use Plan, then following a Main Street program conference earlier this spring, and finally at Public Safety Committee meetings. On April 24th and May 22nd, the Public Safety Committee discussed social districts and instructed Staff to continue researching and prepare a proposal for review. The feedback received at each of those meetings informed the attached proposal. Ultimately, the Public Safety Committee unanimously recommended approval of the proposal at their June 26th meeting. On August 7th, City Council conducted a public hearing on this matter.

The following are included as Attachments for City Council's consideration:

- Attachment 1: Proposed social district boundaries
- Attachment 2: Proposed text amendment establishing the social district

- Attachment 3: Proposed social district management and maintenance plan

Discussion
As previously stated, the newly amended North Carolina General Statutes §18B-300.1 authorizes cities to establish these social districts and outlines the rules and regulations required. In order for a City to establish a social district, the following must occur:

1. The City must adopt an ordinance designating the social district, along with the boundaries, days and hours of operation, and rules.
2. The City must establish a management and maintenance plan.

Staff developed the required documentation and the relevant plans for the review by the Public Safety Committee and City Council. Staff also engaged Heart of Brevard stakeholders at four meetings - two for businesses with ABC permits and two for those without. Some key topics, questions and elements of these proposal are discussed below.

Social District Boundaries
In order for a city to establish a social district, the Council must adopt an ordinance designating a social district with the days and hours of operation. The proposed social district boundaries include six blocks of Downtown Brevard that are densely populated by restaurants, bars, and retailers that could benefit from increased foot-traffic and activity. The area is bound by Probart Street, Gaston Street, Jordan Street, and England Street. Many of the businesses with an ABC-permit in this area have already expressed an interest in participating in the social district.

Social District Hours of Operation
Staff is proposing that the social district be operational from 11am to 10pm daily. Consideration included the following:

- Many municipalities with social districts have similar days and hours of operation (see Attachment 4: Summary of Other Social Districts).
- The hours of 11am to 10pm are consistent with most businesses in the area.
- The activity from the social district may encourage/allow businesses to stay open later and/or be open more frequently.
- Consistent times that are in effect daily will be easier for business owners to comply with the regulations and patrons to understand the hours of operation.
- There are no schools, religious institutions, or places of worship located within the proposed boundaries of the social district.

Social District Management and Responsibilities
Because the City is responsible for establishing the social district and ensuring compliance with state law, the City of Brevard will be the lead management entity for the Downtown

Brevard Social District, with Heart of Brevard serving as a project partner. More specifically, the responsibilities of various groups are below:

- The City's Communications Director will ensure the City's website is maintained with all of the relevant information and regulations regarding the social district.
- The City's Planning Department will administer the Social District permits for ABC-permitted businesses choosing to participate.
- The City's Police Department will enforce the requirements of the Social District.
- The City's Public Works Department will provide sanitation and maintenance services.
- Heart of Brevard will serve as liaison with participating businesses and provide marketing and promotional services.

Social District Participation

Participation in the social district is completely optional. Businesses can choose to be included in the Downtown Brevard Social District, or can opt out if they desire. No business is required to participate or to allow customers to bring alcohol onto its premises, but a sign is required to participate. A sample of the window cling signage from the City of Hickory is below for reference.

In order to sell alcohol as part of the Social District, the business must have an ABC permit for on-premises consumption, be located in the Downtown Brevard Social District boundaries, and obtain a Social District Permit from the City of Brevard Planning Department. Permitting allows the City to ensure that those businesses selling alcoholic beverages within the Social District are aware of and in compliance with the requirements of the Management Plan and City Code. As part of the permitting process, the business owner must provide written acknowledgment to abide by the rules, regulations and requirements of the social district. Many other cities use a similar permitting process (a sample permit from the City of Lenoir is included as Attachment 6). The one-time permit fee will be $200. This will cover the cost of a window cling ("Sold Here") and a first round of stickers for cups, which will ensure that all businesses selling alcohol are in compliance at the on-set of the district.

Businesses without an ABC permit may participate in the Social District by allowing alcoholic beverages purchased by an approved ABC-permittee to be consumed in their businesses. Participating businesses that are not selling alcoholic beverages are not required to register with the City. However, they will need a uniform sign in order to allow

those with alcohol onto their premises. The City will provide signage for businesses not selling alcohol that want to participate ("Beverages Welcome"), as well as some signs that indicate that a business is not participating ("Please No Beverages").

Public Safety Considerations
One of the biggest concerns heard by cities across the State is that implementing social districts would cause an uptick in alcohol-related crimes and public disturbances. A representative from Kannapolis, the first City in NC to adopt social districts in October 2021, stated, "I meet regularly with our police department's patrol staff, we have an officer stationed downtown, and we haven't had any issues with security. All of the feedback has been great." Kannapolis' Communications Director concurred, "It's not that people are showing up and just drinking and drinking and drinking. You're having a glass of wine or a beer outside at a table. It's not anything excessive."

The Town of Sylva also had the same conclusion after their own study. According to Sylva Police Chief Chris Hatton, "We compiled statistics for what is now the social district for the past three years to create a baseline. The department then compared all service calls in the designated social district area to calls during the trial period. We have not experienced any significant increase or decrease in these types of calls."

Brevard Police Chief Tom Jordan surveyed other municipalities about the impact of social districts on policing. All of the respondents that have active social districts in their jurisdiction reported negligible changes in alcoholic-related crime and other incidents. In fact, some municipalities reported that a positive impact of social districts was that there is a central place to monitor alcohol use. Chief Jordan's findings are included as Attachment 7.

Pressler, A. (2023, February 1). NC trend: Social districts rev the state's downtowns. Business North Carolina. https://businessnc.com/nc-trend-social-districts-rev-the-states-downtowns/
Connor, S. (2023, March 31). Social districts slow to catch on in WNC. Mountain Xpress. https://mountainx.com/news/social-districts-slow-to-catch-on-in-wnc/

City Liability
One question posed by the Committee was whether the City would be exposed to greater liability with the adoption of a social district. Staff contacted Amy Whisnant, Risk Control Consultant with the NC League of Municipalities, who confirmed that there is no additional liability for the City. Therefore, no additional or special insurance underwriting is required.

Policing and Enforcement
Policing and enforcement of the social district rules are the responsibility of local law enforcement and the local NC Alcohol Law Enforcement (ALE) Division. In Brevard, the City's law enforcement is contracted by State to serve as the local ALE division.

Staff worked with Chief of Police Tom Jordan and City Attorney Mack McKeller to develop the enforcement section of the proposed ordinance, which establishes that violators may

be subject to a civil penalty; permit revocation, suspension, or ban; and/or equitable remedy by the courts. It is important to note that this section only applies to violations of Chapter 43, which covers the establishment and operation of the social district. It does not include enforcement of alcohol-related crimes, such as public intoxication, disorderly conduct, under-age possession of alcohol, etc., as those are crimes with penalties outlined by North Carolina State law.

Sidewalk Dining Areas
Questions arose about how the social district interacts with sidewalk dining permits. Section 42-3 and Section 46-35 of the City Code authorize the City to issue a sidewalk dining permit that would allow for the sale and consumption of alcohol on public sidewalks. Amongst other things, this may only be allowed if:

- Barricades and signage are placed along the perimeter of the sidewalk dining area.
- No preparation of alcoholic beverages occurs on the sidewalk (e.g., there cannot be an outdoor bar, but a waiter may bring alcohol outside to a patron in the approved sidewalk dining area)

The proposed text amendment allows businesses with a sidewalk dining permit located in a social district to serve alcohol on the sidewalks without the barricades / signage *during* the social district's approved days and hours of operation. The stipulation that no preparation can occur on the sidewalk remains.

Again, it is important to note that a business will only be allowed to serve alcohol on the sidewalk as part of an approved sidewalk dining permit.

Special Events
A special event located within a social district can receive a permit for the sale of alcohol within their event area from the ABC Commission. A special event permittee may participate in a social district if they follow the rules. This includes allowing beverages with social district cups to be carried from and into the special event area. Participation in the social district is at the special event holder's discretion, and the event organizers will have the choice to allow social district beverages within their event footprint or not.

Operationalizing the Social District
Once the City has established the social district, in accordance with the procedures outlined above, the social district cannot be operational until the following occurs:

1. All rules and information, including the management and maintenance plan, is readily available to the public and posted on the City's website.
2. The social district is registered with NC ABC Commission.
3. A logo is designed for the district to be placed on all signage, cups, etc.
4. Uniform signage is designed, ordered, and installed.
5. Cups are designed, ordered, and ready for use.

6. Businesses review rules and secure Social District Permits, if applicable.

Because of those steps, Staff anticipates that the Social District would not be operational for approximately six to eight weeks following the adoption of an ordinance by City Council. The draft ordinance provided in Attachment 9 includes an effective date of October 20, 2023.

Fiscal Impact
As the lead management entity, the City will be responsible for the costs associated with operationalizing the social district. These will include ordering and installing the appropriate signage, sidewalk decals, window clings, and stickers for cups, as required by the North Carolina General Statutes. It will also include the purchase of additional trash receptacles.

Ongoing costs, such as refuse collection and law enforcement, will initially be absorbed into the City's current operating budget. None of the city's research indicates the need for significant additional public services within the district boundaries.

To recuperate some of the costs a one-time fee of $200 will be required for a Social District permit. (See agenda item M.2)

Policy Analysis
The *Building Brevard 2030 Comprehensive Land Use Plan* explicitly calls out social districts as a tool for economic development that should be explored by the City:

- ***Goal 7****: Support economic vitality and grow the tax base, cultivate local businesses, and attract sustainable industry.*
- ***Economic Development, Infrastructure & Resiliency - 13****: Consider designation of one or more social districts to encourage the food and beverage cluster.*

Action
Staff requests that Council take one of the following actions:

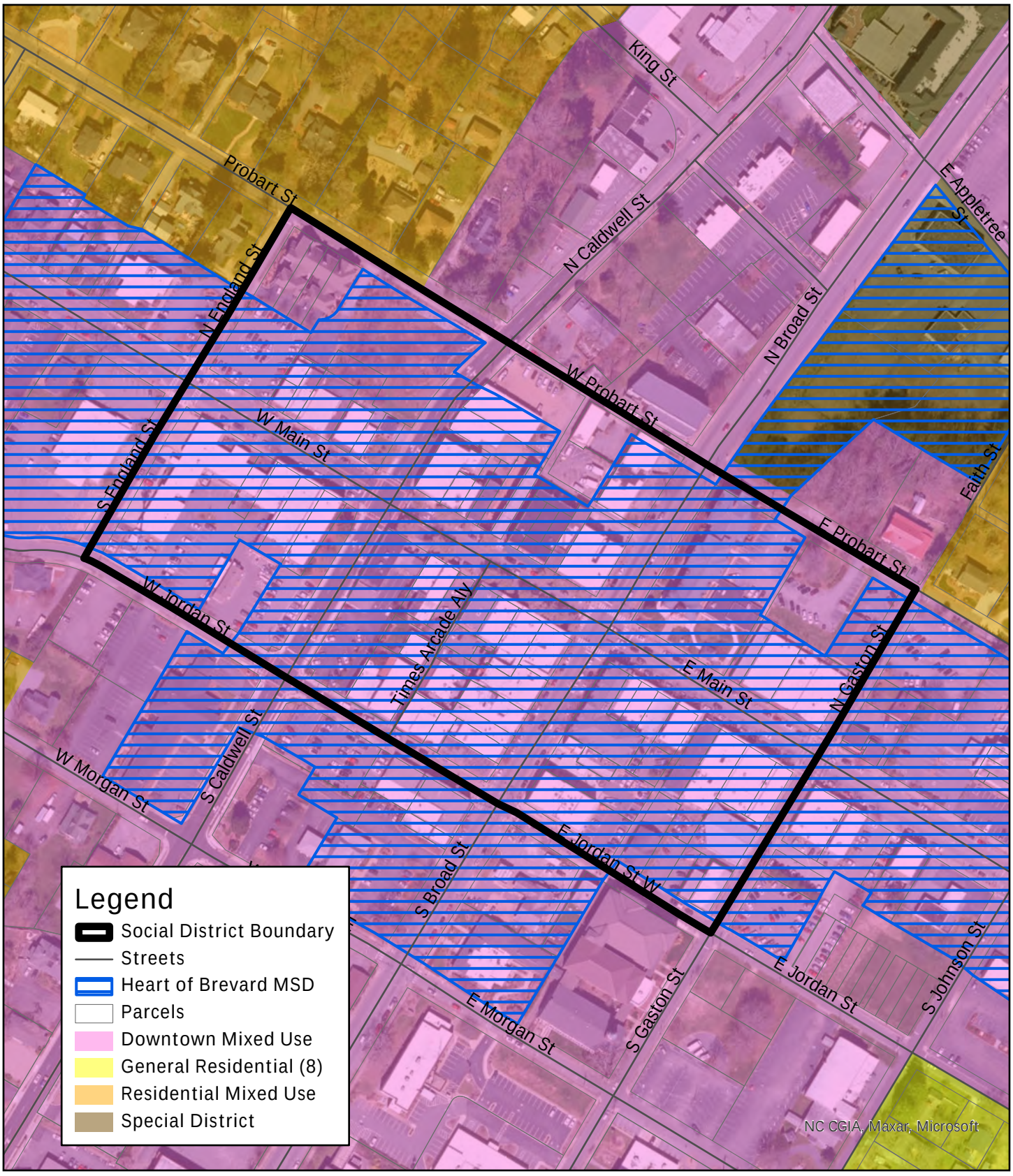
1. Adopt the amendments as written;
2. Adopt the amendments as revised by City Council;
3. Reject the amendments;
4. Table the amendment for further consideration.

Additionally, if the amendments are adopted, the adopting ordinance will instruct Staff to begin preparations for the Social District to be operational. Staff also asked City Council to establish a fee for the social district permit (see agenda item M.2).

Attachments:

1. Proposed Social District Boundaries
2. Proposed Text Amendment
3. Proposed Social District Management Plan
4. Summary of Other Social Districts
5. City of Raleigh Social District Research
6. Chief Jordan's Survey Results
7. City of Lenoir Social District Permit
8. Social Districts Public Hearing Presentation (8/7/23)
9. Draft Enacting Ordinance

Proposed Boundaries for Downtown Brevard Social District



N W E S

0 65 130 260 390 Feet

1 inch = 213 feet

This map was prepared by the City of Brevard Planning Department, June 2023. Disclaimer: The information contained on this page is NOT to be construed or used as a survey or legal description. Map information is believed to be accurate, but accuracy is not guaranteed.

PART II: CODE OF ORDINANCES

CHAPTER 42. OFFENSES AND MISCELLANEOUS PROVISIONS

ARTICLE I. IN GENERAL

42-3. Consumption or possession of alcoholic beverages in public place.

A. It shall be unlawful for any person to consume, sell, serve or drink alcoholic beverages of any kind, or to publicly display alcoholic beverages if the container has been opened or the seal broken, on any property owned, leased or controlled by the city, and any public street, alley, sidewalk or parking lot within the city limits, whether the area is open to vehicular traffic or has been closed to vehicular traffic in connection with a parade or other special event, unless a valid permit is obtained, pursuant ~~to~~ the subsections ~~(A) and (B),~~ below:

1. The city manager (or designee thereof, hereafter, "the administrator") is hereby authorized to issue a special permit that would allow to permit the sale and consumption of alcoholic beverages during special events, which have been permitted pursuant to CHAPTER 66 of Brevard City Code~~,~~ and City of Brevard UNIFIED DEVELOPMENT ORDINANCE. ~~CHAPTER 3.~~
2. The city manager or the administrator is hereby authorized to issue a social district participation permit that would allow the sale of alcoholic beverages for consumption in a designated social district pursuant to Chapter 43 of Brevard City Code.

~~2.~~3. The city manager or the administrator is hereby authorized to issue a sidewalk dining permit that would allow the sale and consumption of alcohol on public sidewalks pursuant to CHAPTER 46 Article II of the Brevard City Code.

~~3.~~4. This permit shall only be valid for a designated area.

~~4. For special events, the sales and consumption of malt beverages and unfortified wine, but no other alcoholic beverages, shall be as authorized on the permit; provided, however, that no such sales shall be allowed earlier or later than during the city permitted timeframe of the festival.~~ ***[Moved to Ch. 66]***

5. The permit holder shall be solely responsible for assuring compliance with all applicable laws of the City of Brevard and the State of North Carolina pertaining to the sales and consumption of alcoholic beverages. Permit holders who demonstrate failure to assure compliance with such laws shall be subject to immediate permit revocation, and may be subject to such civil and criminal penalties as are set forth in Brevard City Code and the North Carolina General Statutes. ~~The administrator shall have the discretion to withhold approval of permits for the sales and consumption of alcohol associated with future special events, when the permit holder has failed to demonstrate compliance with such law in the operation of previous events.~~ ***[Moved to Ch. 66]***

~~6. Special event permit holders shall submit an operational plan demonstrating the procedures and practices that will be employed to assure such compliance with all applicable regulations as set forth in Brevard City Code and the North Carolina General Statutes. Such plan shall specifically address the prevention of the sales of alcohol to minors, and the methods that will be employed to contain the consumption of alcohol within the designated area.~~ ***[Moved to Ch. 66]***

~~7.~~6. In the issuance of a permit, the administrator shall have the authority to impose reasonable conditions to protect the public health, safety welfare.

~~8.~~7. Chief of police, police department event commander on-duty, and the administrator shall have authority to immediately cause alcohol sales and consumption activities to cease and desist upon a determination that the permit holder has failed to maintain compliance with the terms and conditions of the permit or the requirements of Brevard City Code, or that continuation of alcohol sales and consumption at the event would pose an immediate threat to the public health, safety and welfare.

CHAPTER 43. SOCIAL DISTRICTS

ARTICLE I. IN GENERAL

43-1. Purpose and intent.

A. Pursuant to the provisions of N.C.G.S § 160A-205.4, et seq, a municipality may, by ordinance, designate one or more social districts within the City for use in accordance with N.C.G.S. § 18B300.1. The social district(s) established by the City are described herein, along with the days and hours or operation.

B. The social district(s) shall be created, designated, and managed in accordance with the requirements contained in N.C.G.S. § 160A-205.4 and Chapter 18B.

C. The City shall establish and approve a management and maintenance plan for each established and designated social district. The plans are to be maintained and posted, along with a rendering of the boundaries of the social district and days and hours during which alcoholic beverages may be consumed in the social district on the City's website.

43-2. Definitions.

The following words, terms, and phrases, when used in this Chapter, shall have the meanings ascribed to them in this section, except where the context indicates a different meaning:

A. **ABC Permittee** means a person holding any of the following ABC permits:

1. An on-premises malt beverage permit issued pursuant to N.C.G.S. §18B-1001(1).
2. An on-premises unfortified wine permit issued pursuant to N.C.G.S. §18B-1001(3).
3. An on-premises fortified wine permit issued pursuant to N.C.G.S. §18B-1001(5).
4. A mixed beverages permit issued pursuant to N.C.G.S. §18B-1001(10).
5. A wine shop permit issued pursuant to N.C.G.S. §18B-1001(16).
6. A distillery permit issued pursuant to N.C.G.S. §18B-1100(5).

B. **Customer** means a person who purchases an alcoholic beverage from an ABC permittee that is in a social district.

C. **Multi-tenant establishment** means a building or structure, or multiple buildings and structures on the same property, or within the same planned development project, that may be subject to a common declaration of restrictive covenants administered by a common property owners' association, and under common ownership, control, or property owners' association governance, that contains or contain multiple businesses that sell food, goods, services, or a combination of food, goods, and services, and that include or are connected by common areas. The term multi-tenant establishment includes a mixed-use development.

D. **Non-Permittee Business** means a business located in a social district and does not hold any North Carolina Alcoholic Beverage Control Commission (ABC) permit.

E. **Open Container** means a container that has a broken seal or a container other than the manufacturer's unopened original container.

F. **Public Street** means any highway, road, street, avenue, boulevard, or another way within and under the control of the City or State and open to public use, including the sidewalks of any such street.

G. **Person** means an individual, firm, partnership, association, corporation, limited liability company, other organization or group, or other combination of individuals acting as a unit.

H. **Premises** means a fixed permanent establishment, including all areas inside or outside the licensed establishment, where the ABC permittee has control through a lease, deed, or other legal processes.

I. **Social District** means a defined area in which a person may consume alcoholic beverages sold by an ABC permittee, pursuant to N.C.G.S. 18B-300.1 or other applicable state law. A social district may include both indoor and outdoor areas of businesses within or contiguous to the defined area during the days and hours set by the local government by ordinance. A social district may include privately owned property, including ABC permittees and non-permittee businesses, and multi-tenant establishments, and public streets, crosswalks, or parking areas whether or not the streets or parking areas are closed to vehicle traffic.

43-3. Application.

B. The social districts shall operate during the hours and days provided within this article. At all other times, the provisions and terms contained in this article are not in effect and all provisions of state and local laws concerning the possession and consumption of alcohol shall be in full force and effect.

C. Any alcoholic beverage purchased for consumption in a social district established by this ordinance shall:

1. only be consumed in the social district and
2. be disposed of before the person in possession of the alcoholic beverage exits the Social District unless the person is reentering the licensed premises where the alcoholic beverage was purchased.

43-4. Severability.

A. If any section, phrase, sentence or portion of this Chapter is held void, invalid, unconstitutional or unenforceable for any reason by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision; and such holding shall not affect the validity of the remaining portions thereof.

ARTICLE II. DISTRICTS

43-5. Downtown Brevard Social District.

A. The social district established by the City Council pursuant to G.S. §18B-904.1 is described herein, along with the days and hours of operation.

1. *Boundary*. The Downtown Brevard Social District is hereby established as shown on the "Official Downtown Brevard Social District Map," as adopted by the Brevard City Council and certified by the city clerk.
2. *Days and Hours.* The days and hours of operation for this social district shall be Monday to Sunday, from 11 a.m. to 10 p.m. At all other times, the provisions and terms contained in this article are not in effect and all provisions of state and local laws concerning the possession and consumption of alcohol shall be in full force and effect.

43-6 – 43-10. Reserved.

ARTICLE III. PARTICIPATION

43-11. Participation in general.

A. Each ABC permittee and non-permittee located within an established and designated social district and voluntarily wishes to participate shall display a uniform sign, provided by the City or its designee, indicating its inclusion in the Social District, and allows alcoholic beverages on its premises when the social district is active.

B. No business shall be required to participate or be included in the social district or to allow customers to bring alcohol onto its premises.

C. ABC permittees and non-permittee businesses in a multi-tenant establishment located within the Social District may participate in the Social District regardless of whether the multi-tenant establishment has a common area entertainment permit, in accordance with N.C.G.S Chapter 18B.

43-12. Requirements for ABC-permittee participation in a social district.

A. An ABC permittee located in or contiguous to the Social District may sell alcoholic beverages for consumption within the Social District it is located in accordance with the following requirements:

1. The ABC permittee shall obtain a permit from the City of Brevard;
2. The ABC permittee shall only sell and serve alcoholic beverages on its licensed premises;
3. The ABC permittee shall only sell alcoholic beverages for consumption in the social district for which they are located, in a container that meets the following requirements:
    a. The container clearly identifies the ABC permittee from which the alcoholic beverage was purchased.
    b. The container clearly displays a logo or some other mark that is unique to the social district in which it will be consumed.
    c. The container is not comprised of glass.
    d. The container displays, in no less than 12-point font, the statement, “Drink Responsibly – Be 21.”
    e. The container shall not hold more than 16 fluid ounces.

B. Nothing in this section shall be construed to authorize the sale and delivery of alcoholic beverage drinks in excess of the limitation set forth in N.C.G.S. § 18B- 1010.

C. Nothing in this section shall be construed to authorize the sale and delivery of alcoholic beverages without proper license to be obtained by the ABC permittee from the North Carolina Alcoholic Beverage Control Commission.

43-13. Requirements for non-permittee participation in a social district.

A. A non-permittee business that is part of the social district and allows customers to bring alcoholic beverages onto its premises is not responsible for enforcement of N.C.G.S. §18B but must comply with the following requirements:

1. The non-permittee business shall post the uniform signage established by the social district indicating that customers may bring alcoholic beverages onto the premises of the non-permittee business during the days and hours that the social district is active.
2. Clearly, post signage at any exits that do not open to the social district indicating that alcoholic beverages may not be taken past that point.
3. Allow law enforcement officers access to the areas of the premises accessible by customers during the days and hours the social district is active.

43-14. Requirements for possession and consumption of alcoholic beverages within a social district.

A. The possession and consumption of an alcoholic beverage in an established and designated social district is subject to all of the following requirements:

1. Only alcoholic beverages purchased from an ABC permittee located in the social district may be possessed and consumed in the social district.
2. Open container alcoholic beverages purchased in the social district shall only be in the containers meeting the requirements set in Sec. 43-12 of this article. Except for open containers sold by an ABC permittee for consumption on the ABC permittee's premises.
3. Open container alcoholic beverages shall only be possessed and consumed during the days and hours set for in Article II of this Chapter for the social district in which the beverage was purchased from the participating ABC permittee.
4. Nothing in this subsection shall be construed as authorizing the sale and delivery of alcoholic beverage drinks in excess of the limitation set for in N.C.G.S § 18B-1010.
5. All open container alcoholic beverages purchased within the social district shall be disposed prior to a person exiting the social district boundaries, unless the person is reentering the licensed premises where the alcoholic beverage was purchased.

B. As authorized by and subject to the limitations of N.C.G.S. § 18B-300.1 (f), an ABC permittee or non-permittee business may allow a person to possess and consume on the business's premises alcoholic beverages purchased from an ABC permittee in the social district.

C. A person, including a customer who is in possession of an open container of an alcoholic beverage authorized under this Chapter, may possess alcoholic beverages in closed containers in a social district to the extent allowed by law.

43-15. Exceptions.

A. To the extent required by applicable State law, any portion of a social district described within this Chapter that overlaps with a premises subject to a permit for on-premises consumption of alcohol issued by the North Carolina Alcoholic Beverage Control Commission for a special event shall be suspended during the event to the extent the social district and the permitted premises are in conflict.

B. When a special event held pursuant to the issuance of a special event permit, issued by the City, the terms of the special event permit supersede the provisions of this article within the boundaries of the special event.

43-16. Enforcement.

A. *Infraction*. An ABC permittee, non-permittee business or person who violates or fails to comply with the provisions of this Chapter shall be subject to one or a combination of the following methods:

1. *Permit revocation, suspension, or permanent ban*. Any ABC permittee, non-permittee business or person who violates any provision of this article may be subject to its Social District Permit being revoked or suspended, or permanently banned from participating in City of Brevard social districts. Any permit revocation or permanent ban shall be reported to the North Carolina ABC Commission.

2. *Civil penalty.* Any ABC permittee, non-permittee business, or person who violates any provision of this article may be fined by a civil penalty of $100.00 per occurrence which may be recovered by the City in a civil action in the nature of a debt if the violator does not pay the penalty within 30 days from the date the violator is notified of the penalty. Any other service charges imposed by this article may be collected by the City as a civil penalty in a civil action.

3. *Equitable remedy*. The City may apply to a court of competent jurisdiction for an injunction, abatement order or any other appropriate equitable remedy.

B. *Notice.* The City of Brevard Police Department shall serve written notice of any violation of this Chapter to the offender.

C. *Appeal*. Any offender so assessed a violation under this Chapter shall have the right to appeal upon serving written notice of appeal on the Police Chief within 10 days of issuance of the notice of violation.

CHAPTER 46. PEDDLERS AND SOLICITORS

ARTICLE II. SIDEWALK DINING AREAS

46-35. Alcoholic beverages.

Notwithstanding any other provisions of this Code, alcoholic beverages may be served in approved sidewalk dining areas provided that the following requirements are met:

A. The sidewalk dining area shall be a part of a restaurant and shall otherwise be authorized permitted, or licensed under the state law and this Code to serve and sell alcoholic beverages for on-premises consumption.

B. The sidewalk dining area must be included as part of the premises for which an ABC permit is issued pursuant to state law, for the purpose of applying and enforcing state laws regarding the sale or consumption of alcoholic beverages.

C. Signs shall be posted, visible at all exit point from the sidewalk dining area, that it is unlawful to remove alcoholic beverages from the premises, unless the area is located within a social district during the days and hours of operation pursuant to Chapter 43 of this Code. If the sidewalk dining area is in operation within a social district's boundaries but outside of the social district's days and hours of operation established in Chapter 43, the signs shall be required.

D. No outdoor bar is allowed within the sidewalk dining area, nor shall outdoor preparation of alcoholic beverages be permitted except that unfortified wine may be decanted or beer poured at a table as part of a meal.

E. Barricades shall be placed along the perimeter of the sidewalk dining area, unless the area is located within a social district during the days and hours of operation pursuant to Chapter 43 of this Code. If the sidewalk dining area is in operation within a social district's boundaries but outside of the social district's days and hours of operation established in Chapter 43, barricades shall be required. ~~and~~

1. Barricades shall be a minimum height of 3' and maximum height of 4'2".
2. The barrier must be detectable by the visually impaired.
3. Sidewalk dining barricade stanchions/posts must not be a tripping hazard.
4. If a stanchion or other vertical element is attached to a base, that base must be flat and must measure no more than 1" above the sidewalk surface.
5. Sidewalk dining stanchions/posts must be constructed of metal (aluminum, steel, wrought iron, etc.), wood (wood must be painted or stained) or commercial grade planters.
    a. Commercial planters used as vertical support posts may not exceed 3' in height and vegetation within the planter may not exceed 6' from ground level.

~~1.~~6. Sidewalk dining railings must be steel chain coated with black plastic, heavy duty black plastic chain, heavy duty black rope, or black velour rope.

CHAPTER 66. TRAFFIC

ARTICLE I. IN GENERAL

66-13. Special events.

A. *Application of regulations.* This section shall apply to all street fairs, festivals, carnivals, parades, marches, rallies, demonstrations, and other activities or public events that require the temporary closing or obstruction of or that substantially hinders or prevents the normal flow of vehicular or pedestrian traffic on all or a portion of any city owned property, street, or other public right-of-way. Any such activity covered by this chapter shall hereafter be referred to as a "special event".

B. *Permit required.* No "special event" is permitted on any city owned property, street or other public right-of-way of the city unless a permit has been issued by the city manager; however, nothing in this section shall be construed to prevent the peaceful assembly of any group for orderly expression or communication between those assembled.

1. No parade of vehicles or march of pedestrians or animals or combination thereof upon the streets or sidewalks of the city shall be allowed except as approved by the city manager. All holders of permits granted and approved by the city manager pursuant to this section shall indemnify and hold harmless the city in all respects against any and all claims and liabilities arising out of or related to the issuance of a special event permit.
2. Any person denied a special event permit under this section may appeal to the city council at the next regularly scheduled meeting.

C. *Permit application.* Applications for a "special event" permit authorized by this section that require the closure of a public street, sidewalk or other city facility shall be submitted to the city manager not less than 60 days before the parade or event is proposed to commence, excluding recognized holidays, on a form provided by the office of the city manager and shall contain the following information:

1. Name, address, and telephone number of the person, organization or entity seeking to conduct or sponsor the event.
2. Name, address, and telephone number of the individual contact person in charge of the event.
3. The proposed date and time period when the event will be conducted.
4. The estimated number of people expected to attend the event.
5. Sufficient proof of liability insurance in accordance with the city's standard requirements.
6. Any other information determined by the city manager to be necessary to insure compliance with these provisions.
7. A sketch map showing;
    a. The area where the event is to take place.
    b. Names of any streets to be closed or obstructed.
    c. Location of any barriers or traffic control devices that will be erected.
    d. Location of any concession stand, booth, or other temporary structures or facilities.
    e. Location of any proposed fences, stands, platforms, benches or bleachers.

8. The number and type of animals included as part of the event, if applicable. Approval of animals involved in any special event is subject to 66-13.M, and the animals' location must be specified on the sketch map.

   Applications for a "special event" permit as authorized by this section not requiring the closure of a public street or sidewalk shall be submitted to the city manager not less than two working days before the parade or event is proposed to commence, excluding recognized holidays, on a form provided by the office of the city manager and shall contain the items listed above, excluding subsections (5), (7)b. through e., and (8).

   Applications must be accompanied by an application fee, shall be set forth in the schedule of taxes, fees and charges of the annually adopted Budget Ordinance for the City of Brevard, before being reviewed and considered.

D. *Permit revocation.* Upon violation of the terms of a permit issued under this section by the applicant or participants the city manager and/or the chief of police or his designee is authorized to revoke the permit and direct those participating to disperse.

E. *Staff review.* Upon receipt of the permit application, it shall be circulated to the chief of police, fire chief, public works director, and other appropriate persons for their comment. The city manager may require a conference on the application between the applicant and one or more department heads.

F. *Insurance requirement.* The city manager shall require as a condition precedent or subsequent to the issuance of the permit that the applicant obtain a comprehensive general liability insurance policy providing coverage that includes the entire area described in the permit for events requiring the closure of a public street, sidewalk or city facility. If such a policy is required, under the provisions of this section, the city shall be named as an additional insured on the policy. A certificate of insurance shall be provided to the city as proof of coverage. Such policy shall conform to the minimum coverage requirements as set forth by the city manager.

G. *Fees; costs incurred by the city.* If the city is requested to provide extraordinary services or equipment or the city manager determines that extraordinary services or equipment for reasons related to protection of the public health and safety, he/she may require the applicant to pay to the city a fee sufficient to reimburse it for the costs of any extraordinary services or equipment provided to the event unless sufficient funding has been included in the city budget as adopted by city council.

H. *Standards for issuance of permit.*

1. The city manager shall issue the permit authorizing the "special event" unless it is found that:
   a. Insufficient funding and/or resources necessary to provide extraordinary services or equipment for the event are not available; or
   b. The event will interfere with the movement of emergency vehicles to such an extent that adequate police, fire, or other emergency services cannot be provided throughout the city; or
   c. The applicant has failed to obtain any necessary permits or licenses, including any required building permit or privilege license; or
   d. The applicant is in violation of any city ordinance; or
   e. The applicant fails to obtain liability coverage and show proof of said insurance as required by the city; [or]
   f. The event will create a severe hardship on persons occupying property adjacent to the site, location, or route of the event as a result of the denial of access to property; or
   g. The event, if held at the time or at the location or along the route proposed will cause an unreasonable and unwarranted disruption to vehicular or pedestrian traffic; or

h. The applicant has failed to comply with any of the provisions of the special events ordinance, including but not limited to payment of any required fees and costs; or

i. A special events permit has previously been applied for or issued for substantially the same location and time requested in the application.

2. In considering the matters listed above and the question of whether or not to issue the permit, the public safety and health shall be given paramount importance.

I. *Conditions upon issuance of permit.* If a permit is issued the city manager may attach any reasonable conditions that serve to promote the protection of the public safety and health. Any event held pursuant to a permit issued under this section shall be conducted within the applicable terms including any attached conditions.

J. *Right of appeal.* If the city manager denies or revokes a special event permit this action shall be final unless the applicant or permit holder files, within three working days, a written appeal with the city clerk. Such written appeal will be placed for consideration by city council at its next regularly scheduled meeting. The city council shall review the matter and its decision shall be final.

K. *Street closing.*

1. The city manager is authorized to permit the temporary closing of a street or other public right-of-way except as otherwise provided for in subsection (I) below if the provisions of the section are adequately complied with. Any temporary closing of a street or part thereof owned and/or maintained by the State of North Carolina shall require concurrence by the N.C. Department of Transportation.

   The city manager may only permit the temporary closing of any portion of U.S. Highway 64, US Highway 64 Business, U.S. Highway 276, SR 1349 (West Main Street) for city recognized special events. An event shall be considered to be city recognized upon the adoption of a resolution by city council making such designation. In order to qualify for recognition an event must have received a commitment of funding and/or resources from the city for any necessary public safety and traffic control measures prescribed by the city manager for the special event.

2. The city clerk shall, by any adequate means, notify persons occupying property abutting the street where the event is to take place as soon as possible once a permit is issued.

L. *Temporary parking restrictions.* The chief of police, or his duly appointed representative, is authorized to prohibit, on a temporary basis, the parking of vehicles under the following circumstances:

1. Along permitted parade routes or on streets closed pursuant to the issuance of a special events permit for a period of two hours before any special event begins, during the entire event and up to one hour after the completion of the event.

M. *Permit for special events involving animals.* No special event in which animals are involved shall be conducted without a special permit from the city manager. The city manager shall require a bond in the amount of $50.00 (where five or less animals are involved) or $100.00 (where more than five animals are involved), which will provide that the person obtaining the special permit will be responsible for cleaning the city streets or property after the parade, exhibition, demonstration or experiment. All holders of special permits granted and approved by the city manger pursuant to this section shall indemnify and hold harmless the city in all respects against any and all claims and liabilities arising out of or related to the behavior of such animals or issuance of such a special permit.

N. *Animals prohibited.* It shall be unlawful for any person to have or keep any animal at any event requiring the issuance of a special event permit except as otherwise provided within this section.

O. *Permit for special event involving the sale and consumption of alcoholic beverages.* No special event in which the sale and consumption of alcoholic beverages shall be conducted without a special permit from the city manager or the administrator, pursuant to Chapter 42 Article I of the Brevard City Code.

1. Special event permit holders shall submit an operational plan demonstrating the procedures and practices that will be employed to assure such compliance with all applicable regulations as set forth in Brevard City Code and the North Carolina General Statutes. Such plan shall specifically address the prevention of the sales of alcohol to minors, and the methods that will be employed to contain the consumption of alcohol within the designated area. ***[Moved from Ch. 42]***
2. For special events, the sales and consumption of malt beverages and unfortified wine, but no other alcoholic beverages, shall be as authorized on the permit; provided, however, that no such sales shall be allowed earlier or later than during the city permitted timeframe of the festival. ***[Moved from Ch. 42]***
3. The administrator shall have the discretion to withhold approval of permits for the sales and consumption of alcohol associated with future special events, when the permit holder has failed to demonstrate compliance with all applicable laws of the City of Brevard and the State of North Carolina pertaining to the sales and consumption of alcoholic beverages in the operation of previous events. ***[Moved from Ch. 42]***

City of Brevard

The mission of the City of Brevard is to promote a high quality of life, support economic prosperity, and cultivate community while honoring its heritage and culture.

City of Brevard Downtown Social District Plan

Introduction

On September 8, 2021, North Carolina Session Law 2021-150 was ratified, allowing governments to establish "Social Districts" within their jurisdictions. These Social Districts allow for common areas where licensed establishments (e.g., bars, breweries, restaurants) may sell alcoholic beverages in designated containers to be taken into common areas for consumption. The act was subsequently amended with Session Law 2022-49, which refined the initial legislation and provides additional details on the operation of social districts.

The City of Brevard adopted ORDINANCE NUMBER on DATE establishing the ***Downtown Brevard Social District***. In accordance with N.C.G.S Chapter 18B, this Plan outlines how the social district will be management, maintained and operated. This Plan will be submitted to the North Carolina ABC Commission and placed on the City's website (cityofbrevard.com/socialdistrict) and the Heart of Brevard website (brevardnc.org/XXXX).

Management & Responsibilities

The Downtown Brevard Social District will be managed and maintained by the City of Brevard with support from the Heart of Brevard. Specific responsibilities are outlined herein.

District Boundaries

Boundaries of the Social District will be clearly marked with signs affixed to all entrance/exit points.

DRAFT

Days and Hours of Operation

The Downtown Brevard Social District will operate 11 a.m. to 10 p.m. daily. At all other times, open containers of alcohol cannot leave the premises of the ABC-permitted business where it was purchased.

General Rules

- Only alcoholic beverages purchased from a participating business with an ABC permit may be consumed in the Downtown Brevard Social District. No outside alcohol is permitted.
- Alcoholic beverages may not be brought into a business that does not display the Downtown Brevard Social District signage (see below).
- Any alcoholic beverage purchased for consumption in the Downtown Brevard Social District must also be in a specifically labeled cup (see below).
- All open-container alcoholic beverages must be disposed of prior exiting the Social District boundaries or entering a vehicle (including a bicycle).
- Businesses can choose to be included in the Downtown Brevard Social District, or can opt out if they desire. No business is required to participate or to allow customers to bring alcohol onto its premises.
- The sale and delivery of alcoholic in a social district is subject o the same limitations for sales and deliveries of alcoholic in North Carolina (e.g., no more than two malt beverage or wine drinks at one time to a single patron; no more than one mixed beverage or spirituous liquor drink at one time to a single patron).

Participating Businesses with an ABC Permit

In order to participate, ABC-permitted establishments must be located in the Downtown Brevard Social District boundaries and obtain a Social District Permit from the City of Brevard Planning Department.

Permitting allows the City to ensure that those businesses selling alcoholic beverages within the Social District are aware of and in compliance with the requirements of this Plan and Chapter 43 of the Brevard City Code. As part of the permitting process, the business owner must provide written acknowledgment to abide by the rules, regulations and requirements of this Plan and Chapter 43 of the Brevard City Code.

Alcoholic beverages that are sold for consumption in the Social District must be in a container that meets all the following requirements:

- The container clearly identifies the ABC permittee from which the alcoholic beverage was purchased.
- The container clearly displays the Downtown Brevard Social District Logo.
- The container is not made of glass.
- The container displays, in no less than 12-point font, the statement, "Drink Responsibly – Be 21."
- The container cannot hold more than 16 fluid ounces.

DRAFT

An example contain is depicted below.

INSERT CUP RENDERING

Participating Businesses without an ABC Permit

Businesses without an ABC permit may participate in the Social District by allowing alcoholic beverages purchased and possessed in accordance with this Plan and Chapter 43 of the Brevard City Code to be consumed in their businesses. Participating businesses that are not selling alcoholic beverages are not required to register with the City.

The City and Heart of Brevard will provide information and materials to participating businesses to ensure that the businesses understand their obligations under this Plan and the Social District Ordinance and communicate their participation or non-participation to the public.

During the days and hours when the social district is active, participating businesses must allow law enforcement officers access to all areas of the premises accessible by customers.

Non-Participating Businesses

Nothing in this Plan or Chapter 43 of Brevard City Code shall be construed as requiring any business, regardless of whether or not it holds a valid ABC permit, to participate in the Downtown Brevard Social District.

District Logo and Required Signage

The Downtown Brevard Social District will use a newly created logo (depicted below).

INSERT LOGO

The uniform signage below must be displayed in businesses participating in the Downtown Brevard Social District to inform visitors that they are allowed to bring alcoholic beverages inside. Businesses electing to not participate in the Social District are not required to display signage, but the signage is available upon request.

INSERT SIGNAGE (SEE EXAMPLE BELOW)

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Enforcement

City of Brevard Police will enforce the requirements of the Downtown Brevard Social District. The City of Brevard reserves the right to prohibit a permit holder from participating in the district due to violations of this Plan or Chapter 43 of Brevard City Code.

ABC permit holders accept liability for patrons they serve the same as they do now and will enforce the same rules and regulations as they currently do.

To report potential violations please call the Brevard Police Department at 828-883-2212 or the N.C. Alcohol Law Enforcement Division (1-877-ALE-AGENT).

Sanitation and Maintenance

The City's Public Works Department provides sanitation services within the Downtown Brevard Social District boundaries, including trash removal and litter pick up. This will continue with the operation of the Social District. Trash/recycling receptacles are located within the boundaries of the Social District to encourage patrons to properly dispose of their used cups and unconsumed alcohol. ABC-permitted establishments and other participating businesses within the boundary will have trash/recycling receptacles available to patrons at the door.

Marketing and Promotion

Marketing and promotion of the Social District will be provided by the Heart of Brevard in collaboration with the City of Brevard and participating businesses included in the Social District.

DRAFT

SOCIAL DISTRICTS RESEARCH

DRAFT FOR DISCUSSION ONLY

City	District Name	Adopted	Expanded?	Dates/Times	Management
Albemarle	Downtown Albemarle Social District	10/26/2022	-	10AM - 10 PM Daily	City of Albemarle
Asheboro	Zoo City Social District	5/15/2022	Yes	11 AM - 11 PM Thurs- Sat	City of Asheboro & Downtown Asheboro, Inc.
Charlotte*	PENDING				
Claremont	Claremont Downtown Social District	3/6/2023	-	"City Event Hours"	City of Claremont
Cornelius	Lake Norman Social District	2/23/2022	Yes	12 PM - 10 PM Daily	Town of Cornelius
Cramerton	Center Street Social District	7/14/2023	-	11 AM - 10 PM Daily	Town of Cramerton
Currituck County	Corolla Light Social District	7/15/2023	-	11:30 AM - 11:00 PM Daily	Currituck County
Davidson	Main Street Social District	5/9/2023	-	11 AM - 11 PM Daily	Town of Davidson
Davidson	Circles	5/9/2023	-	11 AM - 11 PM Daily	Town of Davidson
Durham	The Bullpen	12/1/2022	-	11 AM - 10 PM Daily	City of Durham & Downtown Durham, Inc.
Elkin	Downtown Elkin Social District	4/10/2023	-	10 AM - 10 PM Daily	Town of Elkin
Elon	Downtown Elon Social District	9/26/2022	-	10 AM - 10 PM Daily	Town of Elon
Garner	Downtown Garner Social District	3/1/2023	-	12 PM - 10 PM Mon - Sat 12PM - 5 PM Sun	Town of Garner
Gastonia	Downtown Gastonia Social District	4/28/2023	-	11 AM - 12 PM Mon - Sat 11 AM - 10 PM Sun	City of Gastonia
Greensboro	Downtown BORO (Border of Refreshments Outdoors)	12/21/2021	-	12 PM - 9 PM Daily	City of Greensboro
Greenville	Uptown Social District	8/18/2022	Yes	11AM - 10PM Thurs - Sun	City of Greenville
Fayetteville	Downtown Fayetteville Social District	11/24/2022	-	12PM - 10PM Mon - Sat 10AM - 10PM Sun	City of Fayetteville & Cool Spring Downtown District
Hickory	Downtown Social District	3/8/2022	-	10AM - 10 PM Daily	City of Hickory
High Point	Catalyst Social District	3/21/2022	Yes	11AM - 11 PM Daily	City of High Point
Huntersville	Birkdale Social District	6/6/2022	-	11AM - 10 PM Daily	Birkdale Village, LLC
Kannapolis	West Avenue District	9/29/2021	-	10AM - 12AM Mon - Sat 12PM - 12AM Sun	City of Kannapolis
Laurinburg	Downtown Laurinburg Social District	?	?	10AM - 10PM Mon - Sat 12PM - 10PM Sun	City of Laurinburg
Lenoir	Downtown Lenoir Social District	10/4/2022	-	12PM - 10PM Wed - Sun	City of Lenoir & Downtown Lenoir
Madison	Downtown Madison Social District	6/30/2022	-	5PM - 11PM Thurs - Fri 12PM - 11PM Sat 1PM - 8PM Sun	Town of Madison
Manteo	Manteo Downtown Social District	4/5/2023	-	10 AM - 10 PM Daily	Town of Manteo
Monroe	Monroe Social District	6/10/2022	-	8 AM - 12AM Mon - Sat 10 AM - 12 AM Sun	City of Monroe
Mooresville	DTM Social District	6/11/2022	-	12 PM - 10 PM Daily	Town of Mooresville
Newton	Downtown Newton Social District	12/17/2021	-	5 PM - 11 PM Thurs - Fri 12 PM - 11 PM Sat	City of Newton

SOCIAL DISTRICTS RESEARCH

DRAFT FOR DISCUSSION ONLY

City	District Name	Adopted	Expanded?	Dates/Times	Management
Norwood	Downtown Norwood Social District	12/6/2021	-	10 AM - 12 PM Daily	Town of Norwood
North Wilkesboro	Downtown Social District	2/23/2023	-	11 AM - 10 PM Mon - Sat	Town of North Wilkesboro
Oxford	Downtown Oxford Social District	6/1/2022	-	12 PM - 9 PM Wed - Sat 1PM - 9PM Sun	City of Oxford
Pilot Mountain	Downotwn Pilot Mountain Social District	8/8/2022	Yes	10AM - 11PM Tues - Sun	Town of Pilot Mountain
Raleigh	Sip n' Stroll Downtown	8/15/2022	Yes	11 AM - 10 PM Daily	City of Raleight
Salisbury	Downtown Salisbury Social District	4/5/2022	-	12 PM - 12 AM Daily Bell Tower Green Park: 5 PM - Park Closure	City of Salisbury
Selma	Downtown Selma Social District	9/15/2022	-	?	Town of Selma
Statesville	The 'Ville	9/19/2022	-	12 PM - 10 PM Daily	Downtown Statesville Development Corporation
Sylva	Social District of Sylva	2/10/2022	-	8 AM - 9 PM Mon - Sat 1 PM - 9 PM Sun	Town of Sylva
Washington	Washington Downtown Social District	12/12/2022	-	5 PM - 10 PM Thurs - Fri 12 PM - 10 PM Sat	City of Washington
Wendell	Downtown Wendell Social District	1/9/2023	-	11 AM - 10 PM Mon - Sat 1 PM - 9 PM Sun	Town of Wendell
Whiteville	Downtown Whiteville Social District	9/12/2022	-	11AM - 12AM Mon - Sat 10AM - 8PM Sun	City of Whiteville
Wilson	Downtown Wilson Social District	10/26/2022	-	11 AM - 11 PM Daily	City of Wilson
Youngsville	Youngsville Downtown Social District	6/9/2022	-	4 PM - 9 PM Thurs - Fri 12 PM - 9 PM Sat	Town of Youngsville

Research Shows Strong Support for Social District

DOWNTOWN VOICES

Downtown Raleigh Alliance launched extensive research on Social Districts in spring 2022 to capture the feedback of downtown businesses, residents, and the overall community for implementation in Downtown Raleigh. The Social District Pilot Program launched in August of 2022, providing a designated area for the alcoholic beverage consumption purchased from participating establishments. The district allows patrons to "sip and stroll" with their drink purchased from a participating business within the footprint during specific hours.

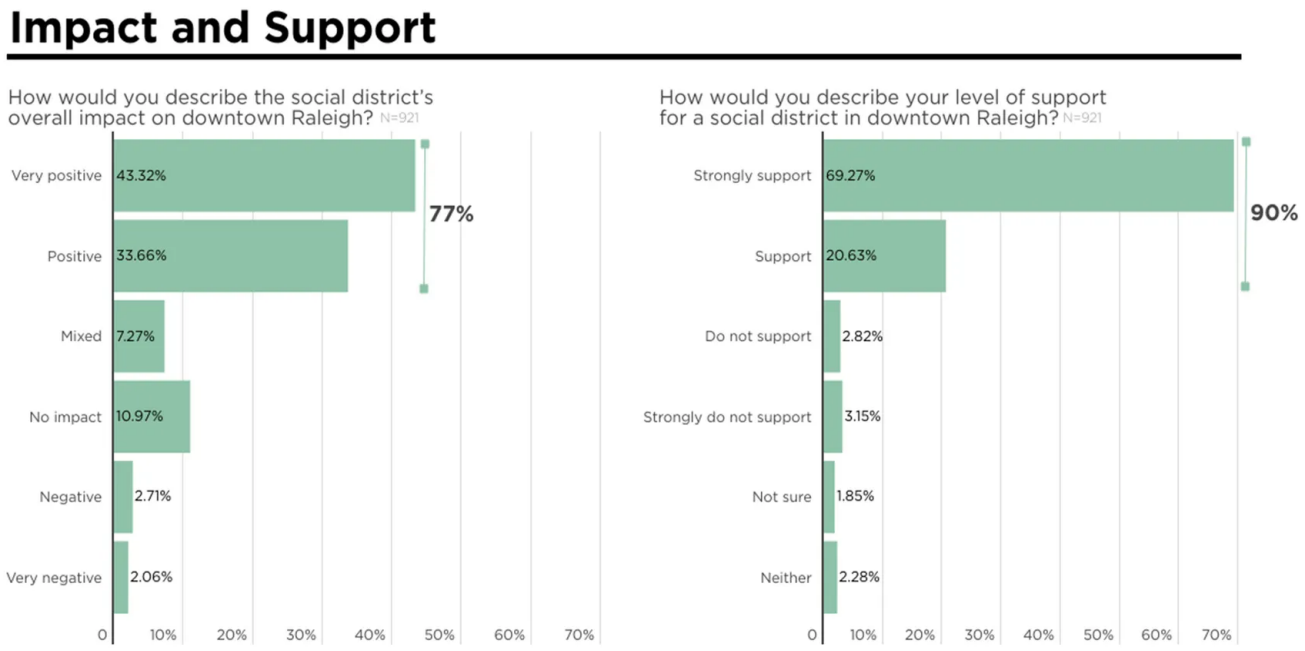
Photo credit: Brian Mullins

As a follow up to measure success and provide feedback to Raleigh City Council on this pilot, **DRA recently conducted three (3) online survey tools, resident & business feedback sessions and conducted peer city research.** Given strong interest in the program, **our community survey received 921 responses** with over a **third of respondents as downtown residents** *and* residents who live within the social district. In addition to the online surveys, dedicated business and resident feedback sessions were held to facilitate in-depth conversations.

KEY FINDINGS

One of the key findings of the research was that the Social District has increased sales and led to new sales that would not otherwise have occurred. The program has been well-received by business owners and patrons, with very few minor issues of misuse and no misbehavior reported. Here are some other findings:

- Strong Support for Social District: **77% believe the district has had a positive/very positive impact and 90% support or strongly support the district.**

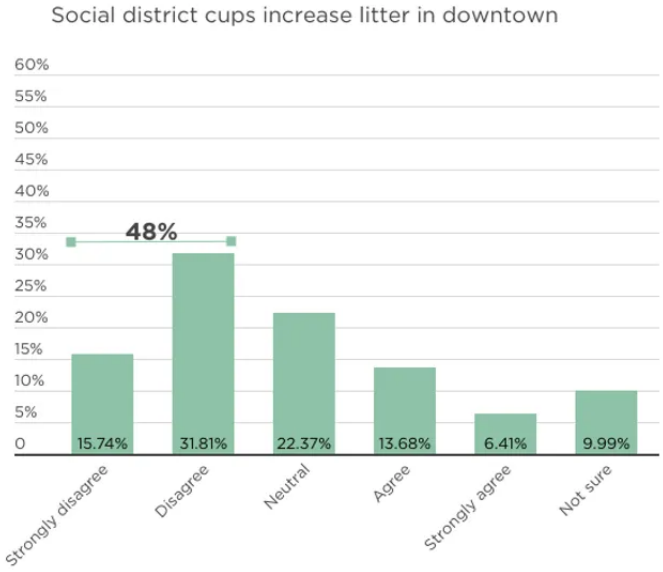


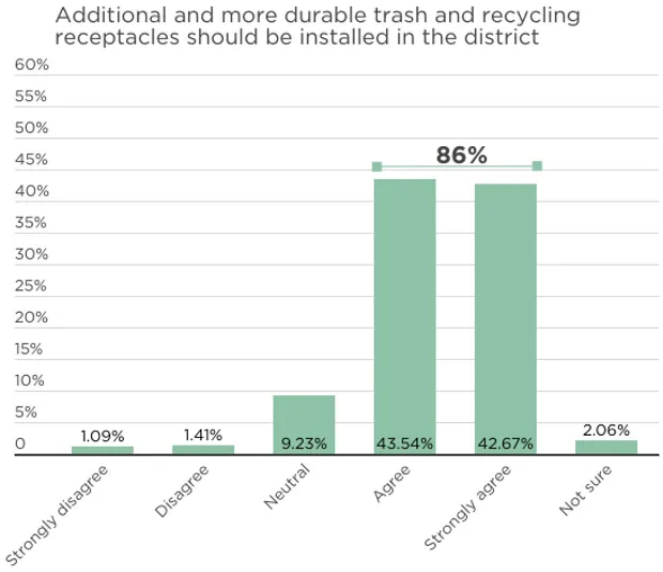
- **Social District does not increase litter** and more trash & recycling receptacles should be installed in the district

Litter and Additional Receptacles

Please rate your level of agreement with the following statements:

N=921



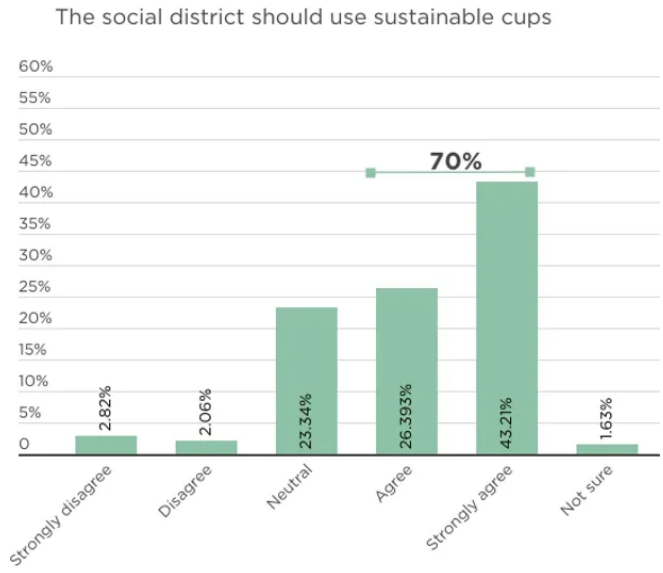


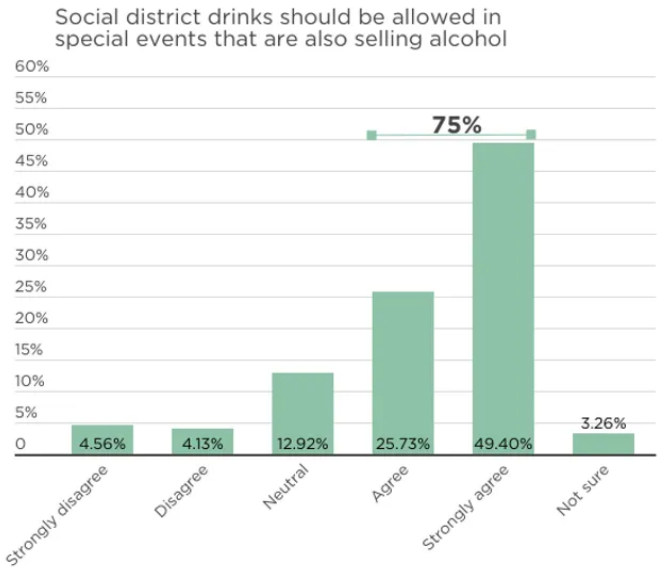
- Strong interest in use of **sustainable cups** and allowing social district drinks in **special events** that sell alcohol

Sustainable Cups and Events

Please rate your level of agreement with the following statements:

N=921



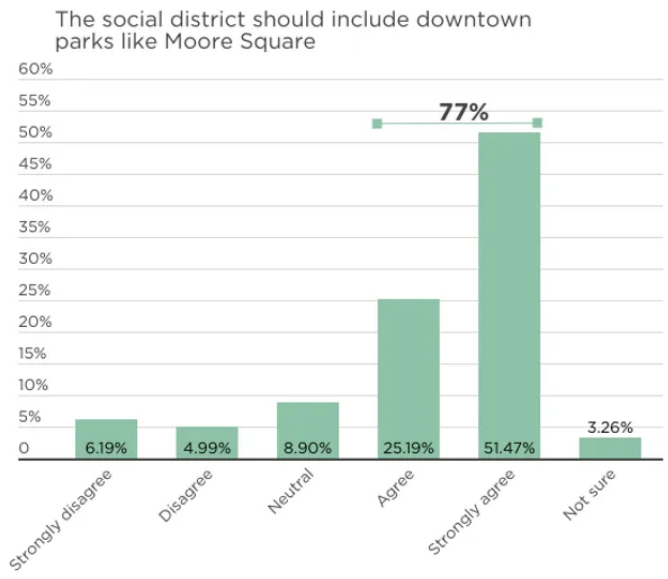


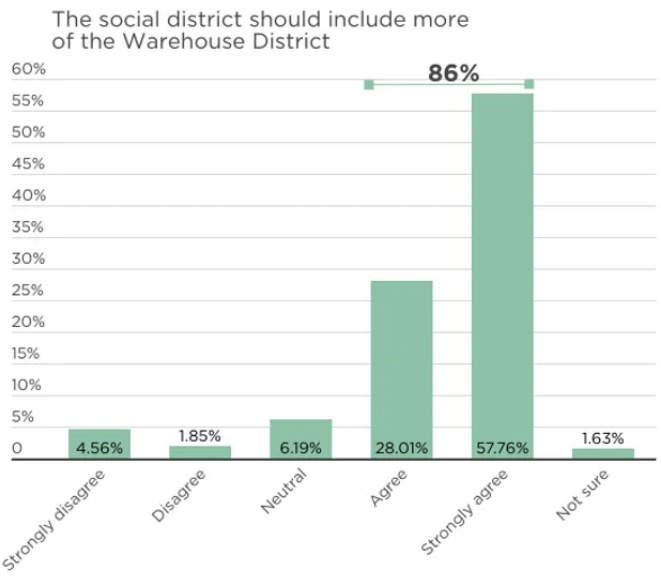
- Strong interest in **expansion of boundaries**

Including Moore Square and Warehouse District

Please rate your level of agreement with the following statements:

N=921



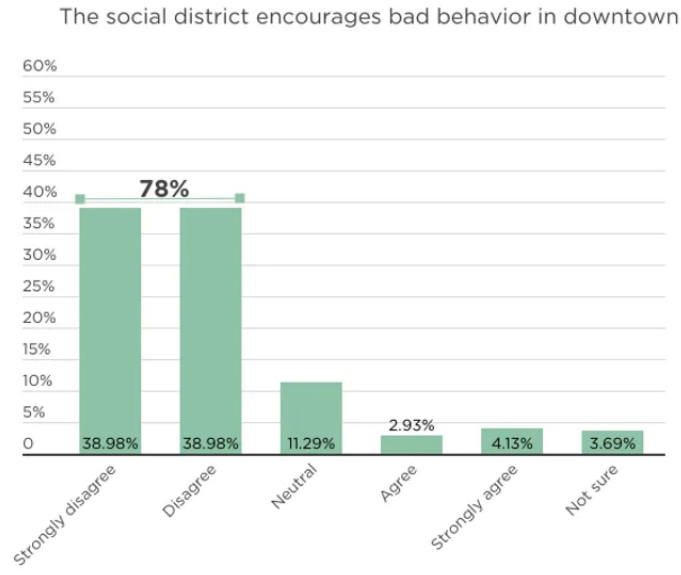


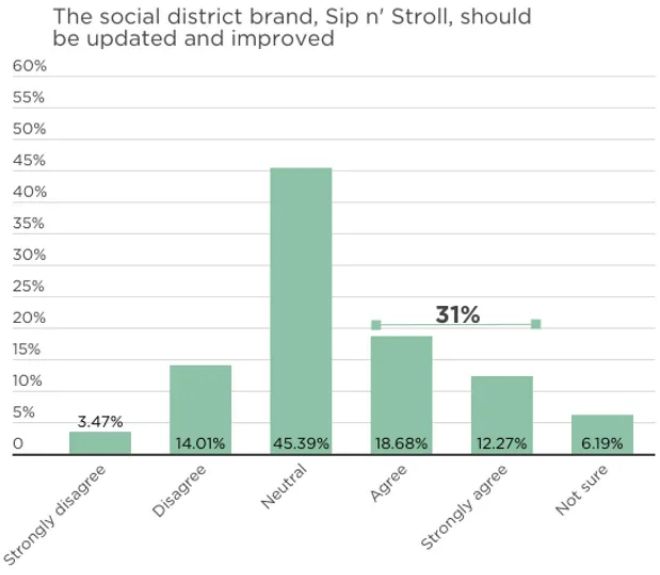
- Social District has not led to bad behavior downtown and a neutral response on need to rebrand

Bad Behavior and Brand

Please rate your level of agreement with the following statements:

N=921





AREAS OF IMPROVEMENT

The **feedback sessions also revealed some areas of improvement** that could be made to the Social District:

- The **website** is not user-friendly for finding participating businesses

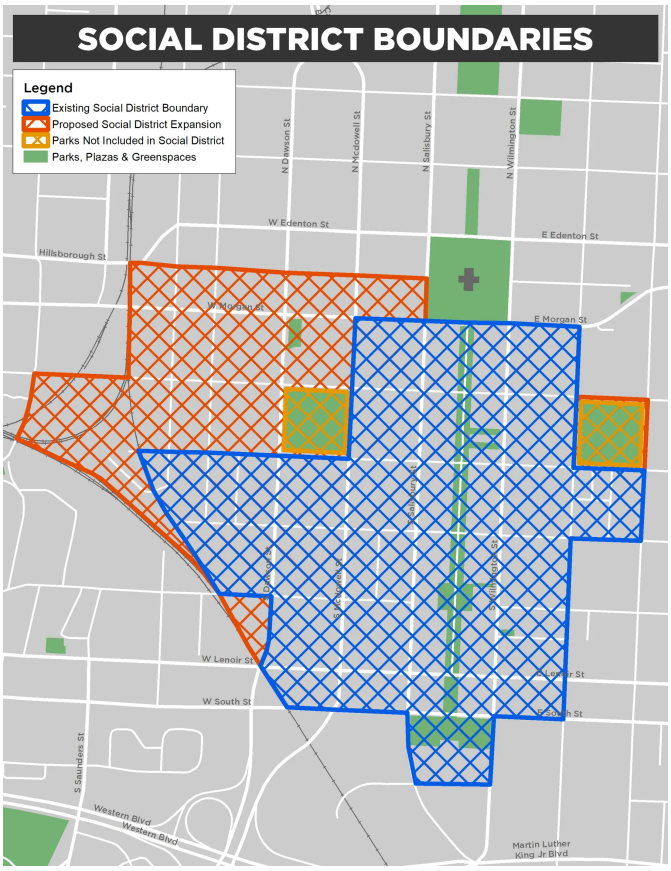
- The **signage on businesses** identifying them as participants is small, difficult to find, and inconsistently displayed
- **Street pole signage** is temporary-looking and needs to be updated
- The temporary "x-frame" waste receptacles (pictured) should be replaced with **permanent trash and recycling receptacles**
- Writing the time and date on the cups added time for staff, and some businesses would like the **option for district-branded cups**
- Concerns raised about the **conflict with special events' ability to sell and shut off business sales**.
- Businesses appreciated being able to pick their suppliers for cups and stickers.
- Interest in **expanding the program's hours** modestly to align with brunch (10am) and some interest in extending the program until 11 pm, but opinions varied among stakeholders.

Using these results and additional research, **DRA recommended:** expansion of boundaries, an additional hour of operation, mandating use of recyclable cups, addition of solid waste and recycling receptacles, more permanent and durable signage, option for use of a branded cup (in addition to stickers), a re-designed logo, adjusting the ability for Special Events to sell into district while simultaneously suspending business sales, and for DRA to take on hosting the webpage and the business participant signage with a QR code.

NEW SOCIAL DISTRICT CHANGES APPROVED BY CITY COUNCIL

In the May 16th meeting of Raleigh City Council, the Council heard recommendations from DRA and City staff and adopted the following changes to be effective August 15th, 2023:

- **Expansion of boundaries to include the rest of the Warehouse District (but not include Parks at this time)**
- **Additional of hour of operation to 10am with hours to be 10am-10pm, 7 days a week**
- **Add permanent signage on street poles**



Though included in the mapped boundary area, Raleigh City Hall, Moore and Nash Squares will be non-participating locations (i.e. you will not be able to take a social district beverage into these properties.)

- **Add permanent trash & recycling receptacles**
- **Make changes to Social District webpage and business signage**

Inclusion of downtown parks was a part of the community feedback we shared and was discussed during the May 16th City Council meeting. At this time, City of Raleigh chose not to include parks in this expansion of the district for several reasons articulated in that meeting. For more context, the full presentation and Raleigh City Council discussion on the topic can be viewed and listened to as part of the May 16th Council meeting available on the City of Raleigh website. We remain very enthusiastic about this expansion and other changes made to the program, as well as continuing a program that is strongly supported by our community.

In summary, the Social District Pilot Program has had a positive impact on Downtown Raleigh, leading to increased sales and new business opportunities. DRA's research highlights both the successes and details opportunities for improvement to ensure this tool is maximized. We are excited about how the district might evolve given these new changes, providing an even more positive experience for businesses, residents, and visitors alike in downtown.

Brevard Police Department

C. Thomas Jordan
Chief of Police
e-mail: Tom.Jordan@CityofBrevard.com

Social Districts Survey Findings
2023

Overall Responses: 22

Q1: Has your jurisdiction considered creating any social districts?

We have not considered creating social districts:	9	40.91%
We have considered social districts but decided against it:	4	18.18%
We are in the process of creating social districts:	2	9.09%
We currently have social districts	7	31.82%

Q2: If you considered creating social districts but decided against it, what were the main concerns shaping that decision?

- Concerns regarding being able to police the social districts
- Public opposition and the cost of implementation
- Achieving compliance with existing regulations
- Streets being closed

Q3: If your jurisdiction is implementing of has already created social districts, what were the positive factors and considerations that led to the approval of forming the social district?

- Boosting the local economy
- Increasing business opportunities downtown & event hosting
- Central place to monitor alcohol use, decreases driving with alcohol
- Support local business
- Initial concerns of public intoxication that never manifested to date
- Tourism draw

Q4: If your jurisdiction created social districts, what challenges have you encountered in relation to enforcement, ABC compliance, underage drinking, and over-service incidents?

- None to speak of, we are a college town
- Trash placement and potential littering incidents
- No new incidents
- No major incidents, voluntary compliance when approached by police

---

Q5: If your jurisdiction has social districts, what impacts have you seen?

Property crimes have increased	0	
Alcohol related incidents increased	0	
Persons crimes have increased	0	
Negligible increases/decreases in alcohol relate or crime incidents	7	100%

Q6: If you have social districts, have they impacted your personnel requirement and overtime budgets?

- We expect them to at some point, but businesses have been doing a good job of policing themselves
- We have voluntary OT sign-up resulting in some slight additional overtime costs
- We expect at the downtown develops more, it will impact personnel and the budget

---

Q7: Additional comments

- I had our local ALE agent meet with our Manager and Attorney to explain and discuss the regulations. He cleared up any misconceptions and gave accurate information they used to make their decision.
- Franklinton, NC social District has been active since 2021 and no major problems to this day.

CITY OF LENOIR
PLANNING & COMMUNITY DEVELOPMENT
CITY HALL (3RD FLOOR) • 801 WEST AVENUE NW

APPLICATION & REGISTRATION AS A
PARTICIPATING BUSINESS:

ABC PERMIT HOLDER

GENERAL BUSINESS INFORMATION

Business Name _____

Physical Address _____

Mailing Address _____

Primary Contact _____

Primary Contact Number _____ Text Messages OK? ☐

Alternative Contact _____

Alt. Contact Number _____ Text Messages OK? ☐

ABC Permitee Name _____

ABC Permit Number _____

ACKNOWLEDGEMENTS

By signing below, I, _____ (print name) attest that I am an authorized representative of the above listed business, I have received a copy of the Social District Management Plan, and I have read and understand the requirements for participating in the Downtown Lenoir Social District. Furthermore, I understand that failure to comply with said requirements may result in the revocation of this registration.

I understand that the City reserves the right to temporarily or permanently suspend the Social District.

As a condition of my participation as an ABC permitee selling alcoholic beverages for consumption within the Social District, I agree to only sell/serve alcoholic beverages in an approved social district container, with appropriate time/date stamps and meeting all state and local requirements for such containers.

I agree to indemnify, defend and hold the City of Lenoir and its departments, elected and appointed officials, employees, agents and volunteers, harmless from and against any and all claims arising out of participation in the Social District.

Authorized Signature: _____ Date: _____

Witnessed by: _____ (signature)
_____ (print name)

RULES FOR PARTICIPATION

GENERAL RULES FOR ALL SOCIAL DISTRICT PARTICIPANTS

- ☑ Alcoholic beverages may only be consumed in the Social District Wednesday – Saturday from 12:00 PM to 10:00 PM.
- ☑ No outside alcohol is permitted within the district. All alcoholic beverages must be purchased from establishments located within or contiguous to the district and must be consumed within the District.
- ☑ Participating businesses only — beverages may not be brought into a business that does not display the Downtown Lenoir Social District decal.
- ☑ Any alcoholic beverages consumed in the social district must be served and consumed from the required social district container.
- ☑ Upon leaving an establishment where an alcoholic beverage is purchased, the beverage must be consumed or discarded before entering a different business that serves alcohol.
- ☑ All alcohol in open containers must be disposed of before exiting the District or entering a vehicle.
- ☑ The sale and delivery of alcohol in a social district is subject to the same limitations for sales and deliveries of alcohol in North Carolina:
  - No more than two malt beverage or wine drinks at one time to a single patron
  - No more than one mixed beverage or spiritous liquor drink at one time to a single patron

ADDITIONAL RULES FOR PARTICIPATING ABC PERMIT HOLDERS

- ☑ An ABC Permittee may only sell and serve alcoholic beverages on its licensed premises.
- ☑ The ABC Permittee must display the blue Downtown Lenoir Social District "Beverages Sold Here" decal during all hours that social district beverages are sold.
- ☑ Alcoholic beverages that are being sold to be consumed within the social district must be sold in a container that meets all of the rules for social district containers (see page 5 of the Management Plan).
- ☑ ABC Permittees are responsible for supplying their own social district containers.
- ☑ Each social district container must have the date and time of sale clearly marked.
- ☑ ABC Permittees must uphold all of the laws of the Social District, including ensuring that patrons do not enter or re-enter their establishments with alcohol purchased elsewhere.
- ☑ Participation in the Social District does not create any special relationship between the ABC permittee and the City. The City shall not be held liable for any claim arising out of participation in the Social District.

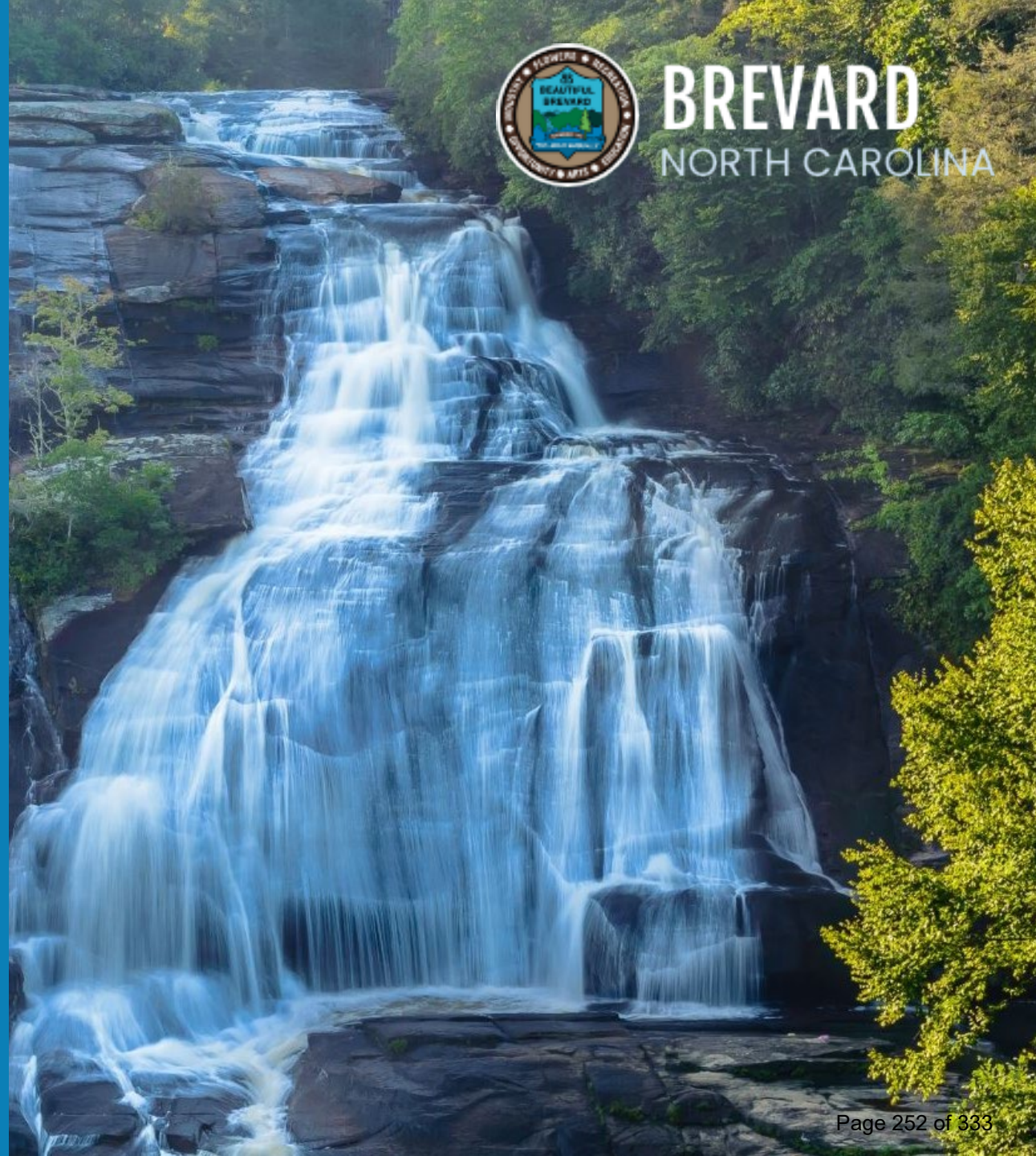
ADDITIONAL RULES FOR PARTICIPATING BUSINESSES (WITHOUT ABC PERMITS)

- ☑ The non-permittee participating business must display the green Downtown Lenoir Social District "Participating Business" decal during all hours that social district is active and the business is allowing alcohol on their premises.
- ☑ The participating business must clearly post signage on any exits that do not open to the social district footprint indicating that alcoholic beverages may not be taken past that point.
- ☑ During the days and hours when the social district is active, participating businesses must allow law enforcement officers access to all areas of the premises accessible by customers.

Social Districts Discussion

City Council Public Hearing

August 7, 2023



Agenda

- What is a Social District?
- Proposed Downtown Brevard Social District
- Commonly Asked Questions
- Next Steps

Image Source: David Oppenheimer, via Pixels.com

What is a Social District?

A social district is an exception to NC's open container law in a designated area during certain times.

- This applies to privately-owned property, including those with and without an ABC permit, and public streets, crosswalks, and parking areas.
- The alcohol being consumed in the district must be sold by an ABC permittee located in the district and in a specific cup

Other Social Districts

40+ North Carolina municipalities have adopted social districts:

- Albemarle
- Asheboro
- Claremont
- Cornelius
- Cramerton
- Currituck Co.
- Davidson
- Durham
- Elkin
- Elon
- Garner
- Gastonia
- Greensboro
- Greenville
- Fayetteville
- Hickory
- High Point
- Huntersville
- Kannapolis
- Laurinburg
- Lenoir
- Madison
- Manteo
- Monroe
- Mooresville
- Newton
- Norwood
- North Wilkesboro
- Oxford
- Pilot Mountain
- Raleigh
- Salisbury
- Selma
- Statesville
- Sylva
- Washington
- Wendell
- Whiteville
- Wilson
- Youngsville

Social District Requirements

The Social District must have…

- Boundaries clearly defined with signs, noting:
  - Geographic area of the district (some cities use a QR Code with a link)
  - Days and hours allowed to consume alcohol
  - Contact information for the NC ALE Division and local law enforcement
  - Statement that all beverages must be consumed in the social district and needs to be disposed of before exiting the district
- Uniform signs indicating how/if the business is participating in the social district

Designated Cups

Alcohol sold to be consumed in the district must be in a cup that:

- Identifies the ABC-permittee from which the alcoholic beverage was purchased
- Displays the Social District logo
- Is not made of glass
- Displays, in no less than 12-point font, the statement, "Drink Responsibly – Be 21"
- Cannot hold more than 16 fluid ounces

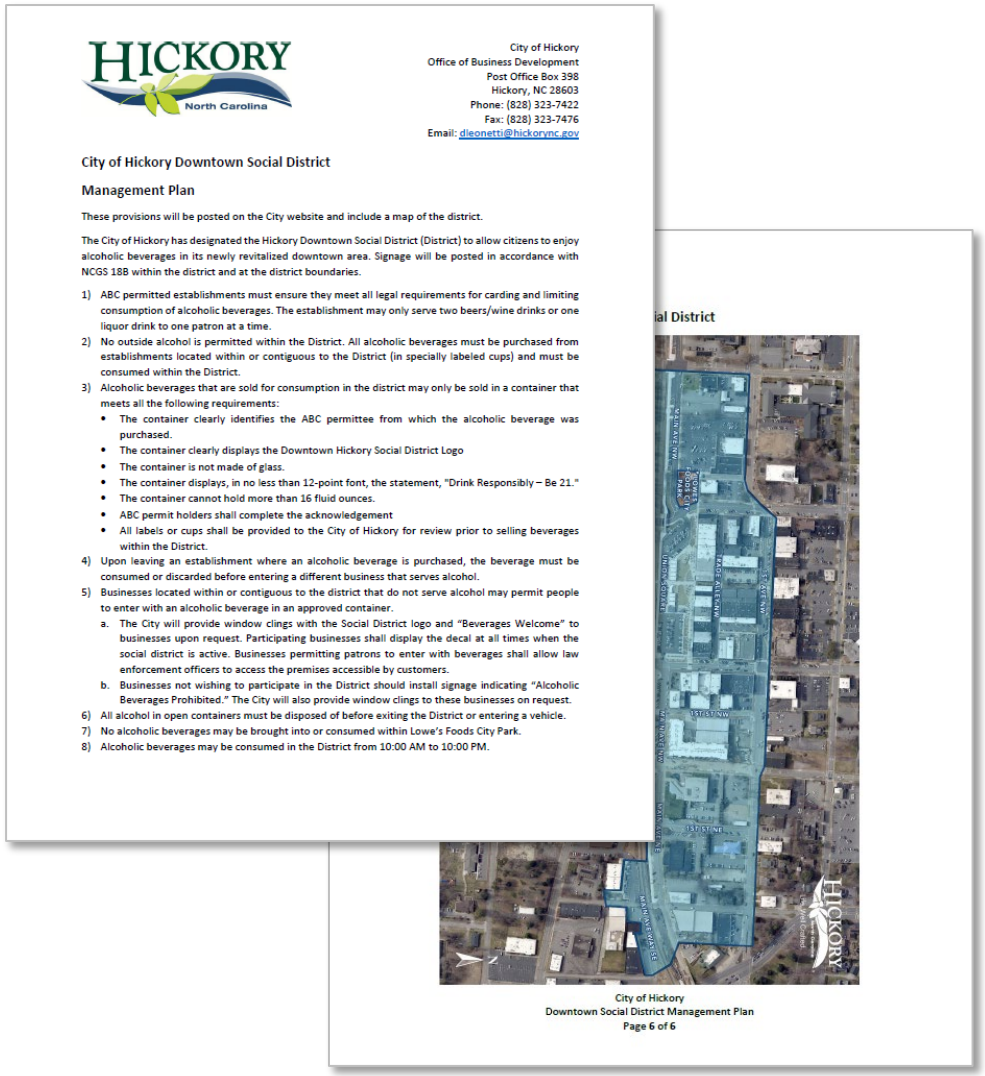
Operations

Management & Maintenance Plan

- Outlines the rules, boundaries, signage and cup requirements, etc. in a concise document
- Can delegate responsibilities to a private entity, such as a downtown organization, local chamber of commerce or owner of a shopping center.

Enforcement

- Local police officers will enforce the requirements of the Social District.
- Violations are reported to the local police and/or to the NC ALE



HICKORY
North Carolina

City of Hickory
Office of Business Development
Post Office Box 398
Hickory, NC 28603
Phone: (828) 323-7422
Fax: (828) 323-7476
Email: dleonetti@hickorync.gov

City of Hickory Downtown Social District

Management Plan

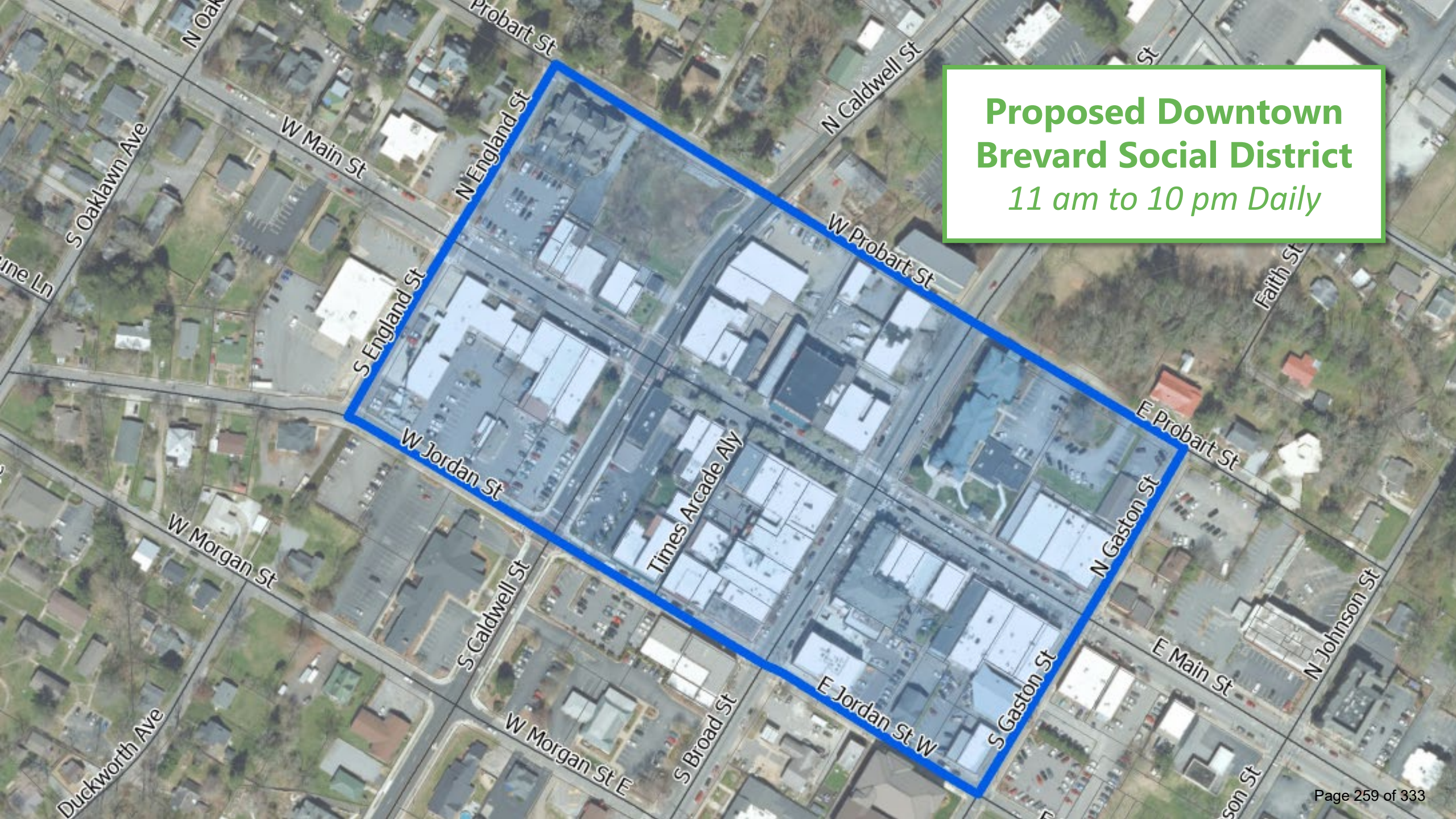
These provisions will be posted on the City website and include a map of the district.

The City of Hickory has designated the Hickory Downtown Social District (District) to allow citizens to enjoy alcoholic beverages in its newly revitalized downtown area. Signage will be posted in accordance with NCGS 18B within the district and at the district boundaries.

1) ABC permitted establishments must ensure they meet all legal requirements for carding and limiting consumption of alcoholic beverages. The establishment may only serve two beers/wine drinks or one liquor drink to one patron at a time.
2) No outside alcohol is permitted within the District. All alcoholic beverages must be purchased from establishments located within or contiguous to the District (in specially labeled cups) and must be consumed within the District.
3) Alcoholic beverages that are sold for consumption in the district may only be sold in a container that meets all the following requirements:
   - The container clearly identifies the ABC permittee from which the alcoholic beverage was purchased.
   - The container clearly displays the Downtown Hickory Social District Logo
   - The container is not made of glass.
   - The container displays, in no less than 12-point font, the statement, "Drink Responsibly – Be 21."
   - The container cannot hold more than 16 fluid ounces.
   - ABC permit holders shall complete the acknowledgement
   - All labels or cups shall be provided to the City of Hickory for review prior to selling beverages within the District.
4) Upon leaving an establishment where an alcoholic beverage is purchased, the beverage must be consumed or discarded before entering a different business that serves alcohol.
5) Businesses located within or contiguous to the district that do not serve alcohol may permit people to enter with an alcoholic beverage in an approved container.
   a. The City will provide window clings with the Social District logo and "Beverages Welcome" to businesses upon request. Participating businesses shall display the decal at all times when the social district is active. Businesses permitting patrons to enter with beverages shall allow law enforcement officers to access the premises accessible by customers.
   b. Businesses not wishing to participate in the District should install signage indicating "Alcoholic Beverages Prohibited." The City will also provide window clings to these businesses on request.
6) All alcohol in open containers must be disposed of before exiting the District or entering a vehicle.
7) No alcoholic beverages may be brought into or consumed within Lowe's Foods City Park.
8) Alcoholic beverages may be consumed in the District from 10:00 AM to 10:00 PM.

ial District

City of Hickory
Downtown Social District Management Plan
Page 6 of 6


Proposed Downtown
Brevard Social District
11 am to 10 pm Daily
W Probart St
E Probart St
N England St
S England St
N Caldwell St
W Main St
S Oaklawn Ave
W Jordan St
E Jordan St W
Times Arcade Aly
N Gaston St
S Gaston St
E Main St
N Johnson St
Faith St
W Morgan St
W Morgan St E
S Caldwell St
S Broad St
Duckworth Ave
Probart St

Management and Responsibilities

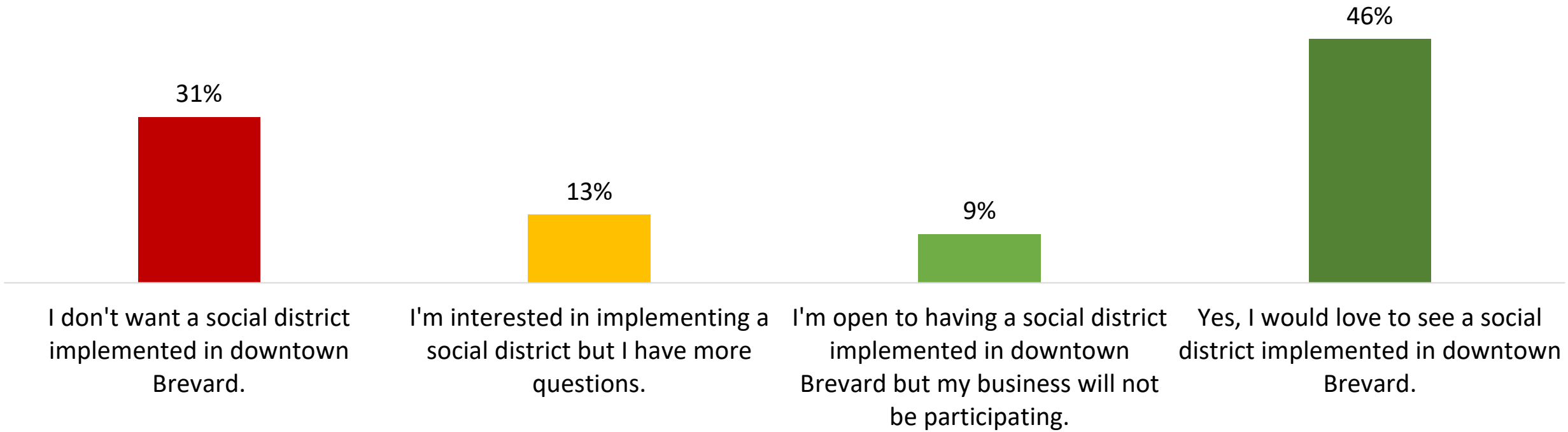
The City of Brevard will be the lead management entity, with Heart of Brevard serving as key project partner.

- City Planning Department – administer the Social District permits for ABC-permitted businesses choosing to participate.
- City Police Department – police and enforce the requirements of the Social District.
- City Public Works Department – provide sanitation and maintenance services.
- Heart of Brevard – serve as liaison with participating businesses and provide marketing and promotional services.

Heart of Brevard Stakeholder Survey Results

Are you interested in implementing a social district in Downtown Brevard?

Responses from 108 Heart of Brevard Stakeholders



**Note: This survey was sent to all HOB stakeholders. Much of the HOB MSD is not included in the proposed social district boundaries.*

Business "Opt-In" Participation

- There is no requirement to participate – ***businesses must opt-in***
- To participate, a business must display the appropriate uniform signage.

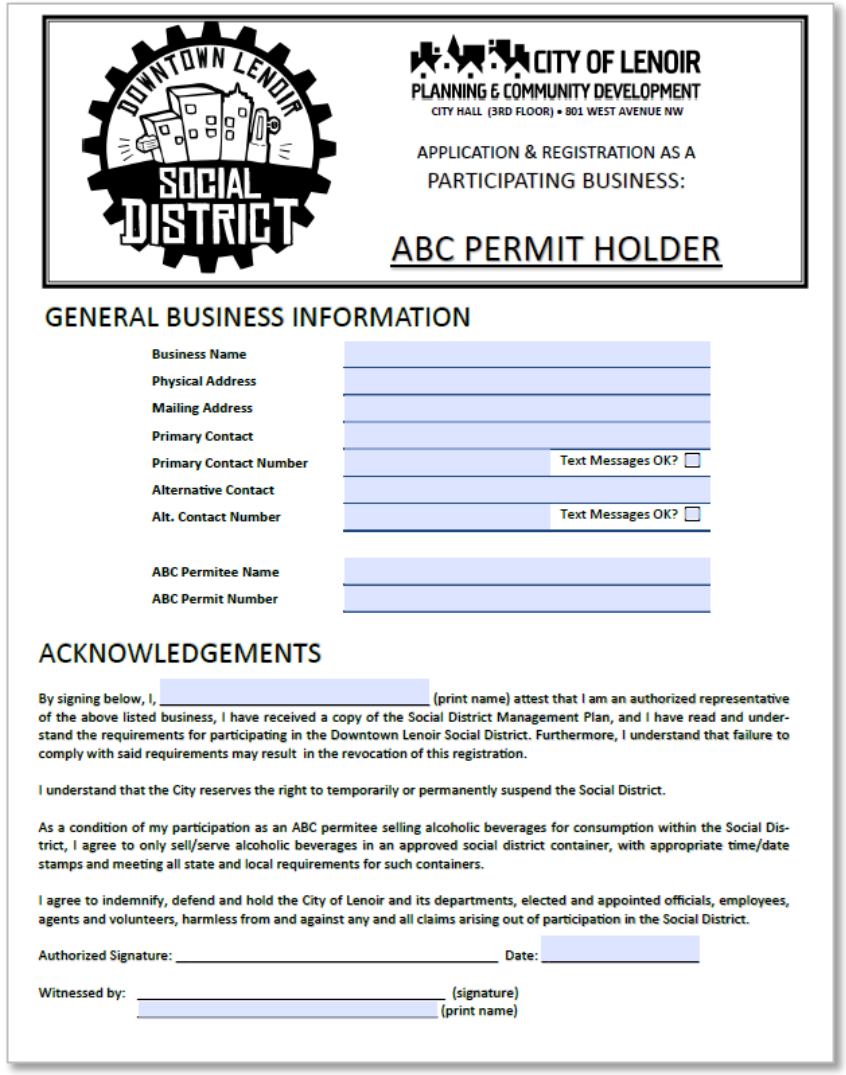
Businesses selling alcohol in the social district must obtain a permit and put up a sign.

Businesses allowing alcohol into their store must put up a sign, and it will be provided by the City.

Businesses that aren't participating do not need a sign, but if they would like to have one it will be provided by the City.

ABC-Permittee Participation

- To participate, ABC-permitted establishments must:
  - Be located in the district boundaries
  - Be permitted for on-site consumption
  - Obtain a Social District Permit from the City Planning Department
- Permitting process will include written acknowledgement to abide by the rules and regulations of the Social District
- The permit fee will cover the cost of signage and the first round of cups or stickers



DOWNTOWN LENOIR SOCIAL DISTRICT

CITY OF LENOIR
PLANNING & COMMUNITY DEVELOPMENT
CITY HALL (3RD FLOOR) • 801 WEST AVENUE NW

APPLICATION & REGISTRATION AS A PARTICIPATING BUSINESS:

ABC PERMIT HOLDER

GENERAL BUSINESS INFORMATION

Business Name
Physical Address
Mailing Address
Primary Contact
Primary Contact Number — Text Messages OK? ☐
Alternative Contact
Alt. Contact Number — Text Messages OK? ☐

ABC Permitee Name
ABC Permit Number

ACKNOWLEDGEMENTS

By signing below, I, _____ (print name) attest that I am an authorized representative of the above listed business, I have received a copy of the Social District Management Plan, and I have read and understand the requirements for participating in the Downtown Lenoir Social District. Furthermore, I understand that failure to comply with said requirements may result in the revocation of this registration.

I understand that the City reserves the right to temporarily or permanently suspend the Social District.

As a condition of my participation as an ABC permitee selling alcoholic beverages for consumption within the Social District, I agree to only sell/serve alcoholic beverages in an approved social district container, with appropriate time/date stamps and meeting all state and local requirements for such containers.

I agree to indemnify, defend and hold the City of Lenoir and its departments, elected and appointed officials, employees, agents and volunteers, harmless from and against any and all claims arising out of participation in the Social District.

Authorized Signature: _____ Date: _____

Witnessed by: _____ (signature)
_____ (print name)

How will this affect public safety?

- One of the biggest concerns is that implementing social districts would cause an uptick in alcohol-related crimes and public disturbances.
- Outreach and research conducted by Brevard Police Chief Tom Jordan, City Staff and Heart of Brevard
- Cities report ***negligible changes*** in alcohol-related crime and other incidents in cities with social districts.
- Brevard's Public Safety Committee reviewed the proposal multiple times and recommended approval on June 26th.

KANNAPOLIS WEST AVENUE™ DISTRICT

"It's not that people are showing up and just drinking and drinking and drinking. You're having a glass of wine or a beer outside at a table. It's not anything excessive."

How will the rules be enforced?

- Policing and enforcement of the social district rules are the responsibility of local law enforcement and the local NC Alcohol Law Enforcement (ALE) Division.
- In Brevard, the City's law enforcement is contracted by State to serve as the local ALE division.
- Social district ordinance establishes penalties for violating the rules of the district (e.g. improper signage, not using the approved cups, etc.)
- Does not effect enforcement of alcohol-related crimes under NC Criminal Code (e.g. public intoxication, disorderly conduct, under-age possession of alcohol, etc.)

Other Commonly Asked Questions

- Who can sell alcohol for consumption in the social district?
  - Alcoholic beverages must be sold by a permittee located within the social district
  - Participating locations must have **an ABC permit for on-site consumption**
  - No personal beer, wine, or liquor can be brought into the social district.
- What happens if I leave the social district boundaries?
  - Individuals who leave the district with alcohol can be **criminally charged**.
  - Cups should be **disposed of prior to exiting the district**.
  - Open containers of alcohol are still prohibited for people driving or riding in a vehicle/bicycle.
- How many alcoholic drinks can I purchase at one time in a social district?
  - The maximum amount of beverages that a patron can purchase at once is unchanged.
  - A single patron can't buy more than 2 alcoholic beverage drinks at one time of beer or wine and more than 1 alcoholic beverage at one time of a drink containing liquor.

Next Steps

- ✓Public Safety Committee Review – *unanimously recommended approval June 26th*
- City Council Public Hearing – *Tonight*
- City Council Vote to adopt text amendment – *earliest possible date August 21st*
- Social District preparation
  - City registers Social District with NC ABC Commission
  - Businesses secure permits
  - Logo is designed
  - Cups are ordered and ready for use
  - Signs are ordered and installed
- Social District opens – *earliest possible opening in October*

ORDINANCE NO. 2023-____

AN ORDINANCE AMENDING THE CITY OF BREVARD CODE OF ORDINANCES: CHAPTER 42 – OFFENSES AND MISCELLANEOUS PROVISIONS, CHAPTER 46 – PEDDLERS AND SOLICITORS, AND CHAPTER 66 – TRAFFIC AND ESTABLISHES A NEW CHAPTER 43 – SOCIAL DISTRICTS TO CREATE THE DOWNTOWN BREVARD SOCIAL DISTRICT

WHEREAS, the North Carolina General Assembly enacted legislation in 2021 allowing municipalities to designate social districts within their jurisdiction to allow alcoholic beverages sold by licensed premises to be consumed within the district, outside of the establishment where the beverage was purchased; and

WHEREAS, the City of Brevard and the Heart of Brevard have worked together to propose a social district in downtown Brevard in accordance with North Carolina General Statutes 160A-205.4 and Chapter 18B; and,

WHEREAS, the City of Brevard and the Heart of Brevard believe that a social district is a valuable tool to increase economic activity and the vibrancy of downtown Brevard; and,

WHEREAS, the City of Brevard Public Safety Committee discussed these recommendations on April 24, 2023, May 22, 2023, and June 26, 2023 and has unanimously recommended in favor of the amendments; and,

WHEREAS, the City Council of the City of Brevard finds that the proposed amendment is consistent with the following adopted plans and policies:

Building Brevard 2030 Comprehensive Land Use Plan

- ***Goal 7:*** *Support economic vitality and grow the tax base, cultivate local businesses, and attract sustainable industry.*
- ***Economic Development, Infrastructure & Resiliency - 13:*** *Consider designation of one or more social districts to encourage the food and beverage cluster.*

and,

WHEREAS, a public hearing was conducted on Monday, August 7, 2023, by the Brevard City Council, and, after hearing all persons wishing to comment, and upon review and consideration of the proposed amendments, it is the desire of the City Council of the City of Brevard Unified Development Ordinance be amended as outlined below.

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

SECTION 01. City of Brevard Code of Ordinances is hereby amended as depicted in Exhibit A, which is attached hereto and incorporated herein by reference.

SECTION 02. The Official Downtown Brevard Social District map is hereby established as depicted herein as Exhibit B which is attached hereto and incorporated herein by reference.

SECTION 03. Staff is hereby directed to create a management and maintenance plan for the Downtown Brevard Social District that establishes policies and procedures for enforcement of this Ordinance. The management and maintenance plan and the social district boundaries map shall be posted on the City's website.

SECTION 04. Staff is hereby instructed to submit a detailed map of the Downtown Brevard Social District, the days and hours during which the Social District shall be in

operation, and all other necessary documentation to the North Carolina Alcoholic Beverage Control Commission.

SECTION 05. As to any conflict between this Ordinance and any parts of existing ordinances, the provisions of this Ordinance shall control.

SECTION 06. If any section, subsection, paragraph, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed severable and such holding shall not affect the validity of the remaining portions hereof.

SECTION 07. This Ordinance shall be in full force and in effect from and after October 20, 2023.

Adopted and approved upon first reading this the 21st day of August 2023.

_____
Maureen Copelof
Mayor

ATTEST:

_____
Denise Hodsdon CMC
City Clerk

APPROVED AS TO FORM:

_____
Mack McKeller
City Attorney

EXHIBIT A

CHAPTER 42. OFFENSES AND MISCELLANEOUS PROVISIONS

42-3. Consumption or possession of alcoholic beverages in public place.

A. It shall be unlawful for any person to consume, sell, serve or drink alcoholic beverages of any kind, or to publicly display alcoholic beverages if the container has been opened or the seal broken, on any property owned, leased or controlled by the city, and any public street, alley, sidewalk or parking lot within the city limits, whether the area is open to vehicular traffic or has been closed to vehicular traffic in connection with a parade or other special event, unless a valid permit is obtained, pursuant the subsections below:

1. The city manager (or designee thereof, hereafter, "the administrator") is hereby authorized to issue a special permit that would allow to permit the sale and consumption of alcoholic beverages during special events, which have been permitted pursuant to CHAPTER 66 of Brevard City Code and City of Brevard UNIFIED DEVELOPMENT ORDINANCE.
2. The city manager or the administrator is hereby authorized to issue a social district participation permit that would allow the sale of alcoholic beverages for consumption in a designated social district pursuant to Chapter 43 of Brevard City Code.
3. The city manager or the administrator is hereby authorized to issue a sidewalk dining permit that would allow the sale and consumption of alcohol on public sidewalks pursuant to CHAPTER 46 Article II of the Brevard City Code.
4. This permit shall only be valid for a designated area.
5. The permit holder shall be solely responsible for assuring compliance with all applicable laws of the City of Brevard and the State of North Carolina pertaining to the sales and consumption of alcoholic beverages. Permit holders who demonstrate failure to assure compliance with such laws shall be subject to immediate permit revocation, and may be subject to such civil and criminal penalties as are set forth in Brevard City Code and the North Carolina General Statutes.
6. In the issuance of a permit, the administrator shall have the authority to impose reasonable conditions to protect the public health, safety welfare.
7. Chief of police, police department event commander on-duty, and the administrator shall have authority to immediately cause alcohol sales and consumption activities to cease and desist upon a determination that the permit holder has failed to maintain compliance with the terms and conditions of the permit or the requirements of Brevard City Code, or that continuation of alcohol sales and consumption at the event would pose an immediate threat to the public health, safety and welfare.

CHAPTER 43. SOCIAL DISTRICTS

ARTICLE I. IN GENERAL

43-1. Purpose and intent.

A. Pursuant to the provisions of N.C.G.S § 160A-205.4, et seq, a municipality may, by ordinance, designate one or more social districts within the City for use in accordance with N.C.G.S. § 18B300.1. The social district(s) established by the City are described herein, along with the days and hours or operation.

B. The social district(s) shall be created, designated, and managed in accordance with the requirements contained in N.C.G.S. § 160A-205.4 and Chapter 18B.

C. The City shall establish and approve a management and maintenance plan for each established and designated social district. The plans are to be maintained and posted, along with a rendering of the boundaries of the social district and days and hours

during which alcoholic beverages may be consumed in the social district on the City's website.

43-2. Definitions.

The following words, terms, and phrases, when used in this Chapter, shall have the meanings ascribed to them in this section, except where the context indicates a different meaning:

A. **ABC Permittee** means a person holding any of the following ABC permits:
    1. An on-premises malt beverage permit issued pursuant to N.C.G.S. §18B-1001(1).
    2. An on-premises unfortified wine permit issued pursuant to N.C.G.S. §18B-1001(3).
    3. An on-premises fortified wine permit issued pursuant to N.C.G.S. §18B-1001(5).
    4. A mixed beverages permit issued pursuant to N.C.G.S. §18B-1001(10).
    5. A wine shop permit issued pursuant to N.C.G.S. §18B-1001(16).
    6. A distillery permit issued pursuant to N.C.G.S. §18B-1100(5).

B. **Customer** means a person who purchases an alcoholic beverage from an ABC permittee that is in a social district.

C. **Multi-tenant establishment** means a building or structure, or multiple buildings and structures on the same property, or within the same planned development project, that may be subject to a common declaration of restrictive covenants administered by a common property owners' association, and under common ownership, control, or property owners' association governance, that contains or contain multiple businesses that sell food, goods, services, or a combination of food, goods, and services, and that include or are connected by common areas. The term multi-tenant establishment includes a mixed-use development.

D. **Non-Permittee Business** means a business located in a social district and does not hold any North Carolina Alcoholic Beverage Control Commission (ABC) permit.

E. **Open Container** means a container that has a broken seal or a container other than the manufacturer's unopened original container.

F. **Public Street** means any highway, road, street, avenue, boulevard, or another way within and under the control of the City or State and open to public use, including the sidewalks of any such street.

G. **Person** means an individual, firm, partnership, association, corporation, limited liability company, other organization or group, or other combination of individuals acting as a unit.

H. **Premises** means a fixed permanent establishment, including all areas inside or outside the licensed establishment, where the ABC permittee has control through a lease, deed, or other legal processes.

I. **Social District** means a defined area in which a person may consume alcoholic beverages sold by an ABC permittee, pursuant to N.C.G.S. 18B-300.1 or other applicable state law. A social district may include both indoor and outdoor areas of businesses within or contiguous to the defined area during the days and hours set by the local government by ordinance. A social district may include privately owned property, including ABC permittees and non-permittee businesses, and multi-tenant establishments, and public streets, crosswalks, or parking areas whether or not the streets or parking areas are closed to vehicle traffic.

43-3. Application.

B. The social districts shall operate during the hours and days provided within this article. At all other times, the provisions and terms contained in this article are not in effect and all provisions of state and local laws concerning the possession and consumption of alcohol shall be in full force and effect.

C. Any alcoholic beverage purchased for consumption in a social district established by this ordinance shall:
    1. only be consumed in the social district and

2. be disposed of before the person in possession of the alcoholic beverage exits the Social District unless the person is reentering the licensed premises where the alcoholic beverage was purchased.

43-4. Severability.

A. If any section, phrase, sentence or portion of this Chapter is held void, invalid, unconstitutional or unenforceable for any reason by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision; and such holding shall not affect the validity of the remaining portions thereof.

ARTICLE II. DISTRICTS

43-5. Downtown Brevard Social District.

A. The social district established by the City Council pursuant to G.S. §18B-904.1 is described herein, along with the days and hours of operation.

1. *Boundary*. The Downtown Brevard Social District is hereby established as shown on the "Official Downtown Brevard Social District Map," as adopted by the Brevard City Council and certified by the city clerk.
2. *Days and Hours.* The days and hours of operation for this social district shall be Monday to Sunday, from 11 a.m. to 10 p.m. At all other times, the provisions and terms contained in this article are not in effect and all provisions of state and local laws concerning the possession and consumption of alcohol shall be in full force and effect.

43-6 – 43-10. Reserved.

ARTICLE III. PARTICIPATION

43-11. Participation in general.

A. Each ABC permittee and non-permittee located within an established and designated social district and voluntarily wishes to participate shall display a uniform sign, provided by the City or its designee, indicating its inclusion in the Social District, and allows alcoholic beverages on its premises when the social district is active.

B. No business shall be required to participate or be included in the social district or to allow customers to bring alcohol onto its premises.

C. ABC permittees and non-permittee businesses in a multi-tenant establishment located within the Social District may participate in the Social District regardless of whether the multi-tenant establishment has a common area entertainment permit, in accordance with N.C.G.S Chapter 18B.

43-12. Requirements for ABC-permittee participation in a social district.

A. An ABC permittee located in or contiguous to the Social District may sell alcoholic beverages for consumption within the Social District it is located in accordance with the following requirements:

1. The ABC permittee shall obtain a permit from the City of Brevard;
2. The ABC permittee shall only sell and serve alcoholic beverages on its licensed premises;
3. The ABC permittee shall only sell alcoholic beverages for consumption in the social district for which they are located, in a container that meets the following requirements:
    a. The container clearly identifies the ABC permittee from which the alcoholic beverage was purchased.
    b. The container clearly displays a logo or some other mark that is unique to the social district in which it will be consumed.
    c. The container is not comprised of glass.
    d. The container displays, in no less than 12-point font, the statement, "Drink Responsibly – Be 21."

e. The container shall not hold more than 16 fluid ounces.

B. Nothing in this section shall be construed to authorize the sale and delivery of alcoholic beverage drinks in excess of the limitation set forth in N.C.G.S. § 18B- 1010.

C. Nothing in this section shall be construed to authorize the sale and delivery of alcoholic beverages without proper license to be obtained by the ABC permittee from the North Carolina Alcoholic Beverage Control Commission.

43-13. Requirements for non-permittee participation in a social district.

A. A non-permittee business that is part of the social district and allows customers to bring alcoholic beverages onto its premises is not responsible for enforcement of N.C.G.S. §18B but must comply with the following requirements:

1. The non-permittee business shall post the uniform signage established by the social district indicating that customers may bring alcoholic beverages onto the premises of the non-permittee business during the days and hours that the social district is active.
2. Clearly, post signage at any exits that do not open to the social district indicating that alcoholic beverages may not be taken past that point.
3. Allow law enforcement officers access to the areas of the premises accessible by customers during the days and hours the social district is active.

43-14. Requirements for possession and consumption of alcoholic beverages within a social district.

A. The possession and consumption of an alcoholic beverage in an established and designated social district is subject to all of the following requirements:

1. Only alcoholic beverages purchased from an ABC permittee located in the social district may be possessed and consumed in the social district.
2. Open container alcoholic beverages purchased in the social district shall only be in the containers meeting the requirements set in Sec. 43-12 of this article. Except for open containers sold by an ABC permittee for consumption on the ABC permittee's premises.
3. Open container alcoholic beverages shall only be possessed and consumed during the days and hours set for in Article II of this Chapter for the social district in which the beverage was purchased from the participating ABC permittee.
4. Nothing in this subsection shall be construed as authorizing the sale and delivery of alcoholic beverage drinks in excess of the limitation set for in N.C.G.S § 18B-1010.
5. All open container alcoholic beverages purchased within the social district shall be disposed prior to a person exiting the social district boundaries, unless the person is reentering the licensed premises where the alcoholic beverage was purchased.

B. As authorized by and subject to the limitations of N.C.G.S. § 18B-300.1 (f), an ABC permittee or non-permittee business may allow a person to possess and consume on the business's premises alcoholic beverages purchased from an ABC permittee in the social district.

C. A person, including a customer who is in possession of an open container of an alcoholic beverage authorized under this Chapter, may possess alcoholic beverages in closed containers in a social district to the extent allowed by law.

43-15. Exceptions.

A. To the extent required by applicable State law, any portion of a social district described within this Chapter that overlaps with a premises subject to a permit for on-premises consumption of alcohol issued by the North Carolina Alcoholic Beverage Control Commission for a special event shall be suspended during the event to the extent the social district and the permitted premises are in conflict.

B. When a special event held pursuant to the issuance of a special event permit, issued by the City, the terms of the special event permit supersede the provisions of this article within the boundaries of the special event.

43-16. Enforcement.

A. *Infraction*. An ABC permittee, non-permittee business or person who violates or fails to comply with the provisions of this Chapter shall be subject to one or a combination of the following methods:

1. *Permit revocation, suspension, or permanent ban*. Any ABC permittee, non-permittee business or person who violates any provision of this article may be subject to its Social District Permit being revoked or suspended, or permanently banned from participating in City of Brevard social districts. Any permit revocation or permanent ban shall be reported to the North Carolina ABC Commission.
2. *Civil penalty.* Any ABC permittee, non-permittee business, or person who violates any provision of this article may be fined by a civil penalty of $100.00 per occurrence which may be recovered by the City in a civil action in the nature of a debt if the violator does not pay the penalty within 30 days from the date the violator is notified of the penalty. Any other service charges imposed by this article may be collected by the City as a civil penalty in a civil action.
3. *Equitable remedy*. The City may apply to a court of competent jurisdiction for an injunction, abatement order or any other appropriate equitable remedy.

B. *Notice.* The City of Brevard Police Department shall serve written notice of any violation of this Chapter to the offender.

C. *Appeal*. Any offender so assessed a violation under this Chapter shall have the right to appeal upon serving written notice of appeal on the Police Chief within 10 days of issuance of the notice of violation.

CHAPTER 46. PEDDLERS AND SOLICITORS

46-35. Alcoholic beverages.

Notwithstanding any other provisions of this Code, alcoholic beverages may be served in approved sidewalk dining areas provided that the following requirements are met:

A. The sidewalk dining area shall be a part of a restaurant and shall otherwise be authorized permitted, or licensed under the state law and this Code to serve and sell alcoholic beverages for on-premises consumption.

B. The sidewalk dining area must be included as part of the premises for which an ABC permit is issued pursuant to state law, for the purpose of applying and enforcing state laws regarding the sale or consumption of alcoholic beverages.

C. Signs shall be posted, visible at all exit point from the sidewalk dining area, that it is unlawful to remove alcoholic beverages from the premises, unless the area is located within a social district during the days and hours of operation pursuant to Chapter 43 of this Code. If the sidewalk dining area is in operation within a social district's boundaries but outside of the social district's days and hours of operation established in Chapter 43, the signs shall be required.

D. No outdoor bar is allowed within the sidewalk dining area, nor shall outdoor preparation of alcoholic beverages be permitted except that unfortified wine may be decanted or beer poured at a table as part of a meal.

E. Barricades shall be placed along the perimeter of the sidewalk dining area, unless the area is located within a social district during the days and hours of operation pursuant to Chapter 43 of this Code. If the sidewalk dining area is in operation within a social district's boundaries but outside of the social district's days and hours of operation established in Chapter 43, barricades shall be required.

1. Barricades shall be a minimum height of 3' and maximum height of 4'2".
2. The barrier must be detectable by the visually impaired.
3. Sidewalk dining barricade stanchions/posts must not be a tripping hazard.
4. If a stanchion or other vertical element is attached to a base, that base must be flat and must measure no more than 1" above the sidewalk surface.

5. Sidewalk dining stanchions/posts must be constructed of metal (aluminum, steel, wrought iron, etc.), wood (wood must be painted or stained) or commercial grade planters.
    a. Commercial planters used as vertical support posts may not exceed 3' in height and vegetation within the planter may not exceed 6' from ground level.
6. Sidewalk dining railings must be steel chain coated with black plastic, heavy duty black plastic chain, heavy duty black rope, or black velour rope.

66-13. Special events.

A. *Application of regulations.* This section shall apply to all street fairs, festivals, carnivals, parades, marches, rallies, demonstrations, and other activities or public events that require the temporary closing or obstruction of or that substantially hinders or prevents the normal flow of vehicular or pedestrian traffic on all or a portion of any city owned property, street, or other public right-of-way. Any such activity covered by this chapter shall hereafter be referred to as a "special event".

B. *Permit required.* No "special event" is permitted on any city owned property, street or other public right-of-way of the city unless a permit has been issued by the city manager; however, nothing in this section shall be construed to prevent the peaceful assembly of any group for orderly expression or communication between those assembled.

1. No parade of vehicles or march of pedestrians or animals or combination thereof upon the streets or sidewalks of the city shall be allowed except as approved by the city manager. All holders of permits granted and approved by the city manager pursuant to this section shall indemnify and hold harmless the city in all respects against any and all claims and liabilities arising out of or related to the issuance of a special event permit.
2. Any person denied a special event permit under this section may appeal to the city council at the next regularly scheduled meeting.

C. *Permit application.* Applications for a "special event" permit authorized by this section that require the closure of a public street, sidewalk or other city facility shall be submitted to the city manager not less than 60 days before the parade or event is proposed to commence, excluding recognized holidays, on a form provided by the office of the city manager and shall contain the following information:

1. Name, address, and telephone number of the person, organization or entity seeking to conduct or sponsor the event.
2. Name, address, and telephone number of the individual contact person in charge of the event.
3. The proposed date and time period when the event will be conducted.
4. The estimated number of people expected to attend the event.
5. Sufficient proof of liability insurance in accordance with the city's standard requirements.
6. Any other information determined by the city manager to be necessary to insure compliance with these provisions.
7. A sketch map showing;
    a. The area where the event is to take place.
    b. Names of any streets to be closed or obstructed.
    c. Location of any barriers or traffic control devices that will be erected.
    d. Location of any concession stand, booth, or other temporary structures or facilities.
    e. Location of any proposed fences, stands, platforms, benches or bleachers.
8. The number and type of animals included as part of the event, if applicable. Approval of animals involved in any special event is subject to 66-13.M, and the animals' location must be specified on the sketch map.

Applications for a "special event" permit as authorized by this section not requiring the closure of a public street or sidewalk shall be submitted to the city manager not less than two working days before the parade or event is proposed to commence, excluding

recognized holidays, on a form provided by the office of the city manager and shall contain the items listed above, excluding subsections (5), (7)b. through e., and (8). Applications must be accompanied by an application fee, shall be set forth in the schedule of taxes, fees and charges of the annually adopted Budget Ordinance for the City of Brevard, before being reviewed and considered.

D. *Permit revocation.* Upon violation of the terms of a permit issued under this section by the applicant or participants the city manager and/or the chief of police or his designee is authorized to revoke the permit and direct those participating to disperse.

E. *Staff review.* Upon receipt of the permit application, it shall be circulated to the chief of police, fire chief, public works director, and other appropriate persons for their comment. The city manager may require a conference on the application between the applicant and one or more department heads.

F. *Insurance requirement.* The city manager shall require as a condition precedent or subsequent to the issuance of the permit that the applicant obtain a comprehensive general liability insurance policy providing coverage that includes the entire area described in the permit for events requiring the closure of a public street, sidewalk or city facility. If such a policy is required, under the provisions of this section, the city shall be named as an additional insured on the policy. A certificate of insurance shall be provided to the city as proof of coverage. Such policy shall conform to the minimum coverage requirements as set forth by the city manager.

G. *Fees; costs incurred by the city.* If the city is requested to provide extraordinary services or equipment or the city manager determines that extraordinary services or equipment for reasons related to protection of the public health and safety, he/she may require the applicant to pay to the city a fee sufficient to reimburse it for the costs of any extraordinary services or equipment provided to the event unless sufficient funding has been included in the city budget as adopted by city council.

H. *Standards for issuance of permit.*

1. The city manager shall issue the permit authorizing the "special event" unless it is found that:
    a. Insufficient funding and/or resources necessary to provide extraordinary services or equipment for the event are not available; or
    b. The event will interfere with the movement of emergency vehicles to such an extent that adequate police, fire, or other emergency services cannot be provided throughout the city; or
    c. The applicant has failed to obtain any necessary permits or licenses, including any required building permit or privilege license; or
    d. The applicant is in violation of any city ordinance; or
    e. The applicant fails to obtain liability coverage and show proof of said insurance as required by the city; [or]
    f. The event will create a severe hardship on persons occupying property adjacent to the site, location, or route of the event as a result of the denial of access to property; or
    g. The event, if held at the time or at the location or along the route proposed will cause an unreasonable and unwarranted disruption to vehicular or pedestrian traffic; or
    h. The applicant has failed to comply with any of the provisions of the special events ordinance, including but not limited to payment of any required fees and costs; or
    i. A special events permit has previously been applied for or issued for substantially the same location and time requested in the application.
2. In considering the matters listed above and the question of whether or not to issue the permit, the public safety and health shall be given paramount importance.

I. *Conditions upon issuance of permit.* If a permit is issued the city manager may attach any reasonable conditions that serve to promote the protection of the public safety and health. Any event held pursuant to a permit issued under this section shall be conducted within the applicable terms including any attached conditions.

J. *Right of appeal.* If the city manager denies or revokes a special event permit this action shall be final unless the applicant or permit holder files, within three working days, a

written appeal with the city clerk. Such written appeal will be placed for consideration by city council at its next regularly scheduled meeting. The city council shall review the matter and its decision shall be final.

K. *Street closing.*

1. The city manager is authorized to permit the temporary closing of a street or other public right-of-way except as otherwise provided for in subsection (l) below if the provisions of the section are adequately complied with. Any temporary closing of a street or part thereof owned and/or maintained by the State of North Carolina shall require concurrence by the N.C. Department of Transportation.

The city manager may only permit the temporary closing of any portion of U.S. Highway 64, US Highway 64 Business, U.S. Highway 276, SR 1349 (West Main Street) for city recognized special events. An event shall be considered to be city recognized upon the adoption of a resolution by city council making such designation. In order to qualify for recognition an event must have received a commitment of funding and/or resources from the city for any necessary public safety and traffic control measures prescribed by the city manager for the special event.

2. The city clerk shall, by any adequate means, notify persons occupying property abutting the street where the event is to take place as soon as possible once a permit is issued.

L. *Temporary parking restrictions.* The chief of police, or his duly appointed representative, is authorized to prohibit, on a temporary basis, the parking of vehicles under the following circumstances:

1. Along permitted parade routes or on streets closed pursuant to the issuance of a special events permit for a period of two hours before any special event begins, during the entire event and up to one hour after the completion of the event.

M. *Permit for special events involving animals.* No special event in which animals are involved shall be conducted without a special permit from the city manager. The city manager shall require a bond in the amount of $50.00 (where five or less animals are involved) or $100.00 (where more than five animals are involved), which will provide that the person obtaining the special permit will be responsible for cleaning the city streets or property after the parade, exhibition, demonstration or experiment. All holders of special permits granted and approved by the city manger pursuant to this section shall indemnify and hold harmless the city in all respects against any and all claims and liabilities arising out of or related to the behavior of such animals or issuance of such a special permit.

N. *Animals prohibited.* It shall be unlawful for any person to have or keep any animal at any event requiring the issuance of a special event permit except as otherwise provided within this section.

O. *Permit for special event involving the sale and consumption of alcoholic beverages.* No special event in which the sale and consumption of alcoholic beverages shall be conducted without a special permit from the city manager or the administrator, pursuant to Chapter 42 Article I of the Brevard City Code.

1. Special event permit holders shall submit an operational plan demonstrating the procedures and practices that will be employed to assure such compliance with all applicable regulations as set forth in Brevard City Code and the North Carolina General Statutes. Such plan shall specifically address the prevention of the sales of alcohol to minors, and the methods that will be employed to contain the consumption of alcohol within the designated area.
2. For special events, the sales and consumption of malt beverages and unfortified wine, but no other alcoholic beverages, shall be as authorized on the permit; provided, however, that no such sales shall be allowed earlier or later than during the city permitted timeframe of the festival.
3. The administrator shall have the discretion to withhold approval of permits for the sales and consumption of alcohol associated with future special events, when the permit holder has failed to demonstrate compliance with all applicable laws of the City of Brevard and the State of North Carolina pertaining to the sales and consumption of alcoholic beverages in the operation of previous events.

EXHIBIT B

Boundaries for Downtown Brevard Social District

0 65 130 260 390 Feet

1 inch = 213 feet

This map was prepared by the City of Brevard Planning Department in August 2023.
Disclaimer: The information contained on this page is NOT to be construed or used as a survey or legal description. Map information is believed to be accurate, but accuracy is not guaranteed.

STAFF REPORT
City Council, Monday, August 21, 2023

Title:	Proposed Amendment to City of Brevard Unified Development Ordinance - Short Term Rentals
Speaker:	Aaron Bland, Planning
Prepared by:	Aaron Bland, Asst Planning Director
Approved by:	Paul Ray, Planning Director, Wilson Hooper, City Manager

Background
On September 20, 2021, the Brevard City Council adopted Resolution Number 2021-47 establishing the Short-Term Rental Task Force. The purpose of the Task Force was to obtain data on short-term rentals (STRs) in the City of Brevard, assess positive and negative impacts, and provide recommendations to City Council. Short-term rentals are defined, for the purposes of the Task Force, as private residential properties that are rented, either in whole or in part, for periods of less than 30 days for compensation.

The Task Force has met monthly since its inception, with all meetings open to the public and publicly advertised as all Council committee meetings are. Several meetings saw significant attendance by the public, with many people speaking during the public comment portion of the meetings. In the course of its consideration, the Task Force commissioned an economic impact analysis and a representative survey of city residents. The results of these were discussed at the previous meeting.

After nearly two years of consideration, on June 15, 2023, the Task Force voted to recommend a draft amendment to the City's Unified Development Ordinance, specifically Sections 2.2 and 3.6.1.C, to update the regulations that pertain to short-term rentals. The Planning Board reviewed the recommended amendments at their June 27, 2023 meeting and City Council held a public hearing on the proposed changes on August 7, 2023.

Council held a public hearing regarding these amendments at their August 7, 2023 meeting.

Discussion
The Task Force's draft ordinance seeks to preserve the character of Brevard's residential neighborhoods and to address the area's ongoing housing crisis by ensuring new housing that is built is utilized as traditional long-term residential housing. The new regulations still allow for many properties to operate as STRs while also taking into consideration the housing needs of local workers and area residents who have been particularly impacted by the shortage of available housing and long-term rental options. In their discussions, members of the Task Force emphasized the importance of ensuring new construction focuses on residential housing instead of contributing to increased STR stock, but also respected that existing STRs are an important source of income for residents, some of whom wouldn't be able to live in Brevard otherwise.

Policy Analysis
The recommended ordinance was drafted in coordination with the City Attorney, who kept the Task Force apprised of changes to state statutes and case law as discussions progressed. The Land Use & Housing chapter of the Building Brevard Comprehensive Land Use Plan makes mention of the impact STRs have on available housing stock. And recommendation LUH-17 is specific to STRs: "Monitor impacts and consider additional regulations for short-term rentals. Follow recommendations from the City's Short Term Rental Task Force."

Fiscal Impact
The proposed ordinances would be enforced by the Planning Department the same as all other zoning/permitting issues. However, if the inspection and enforcement of STRs becomes a large burden on the Planning Department, additional staffing may be required.

Recommendation
The Planning Board considered this matter at their June 27, 2023 meeting and voted to recommend the amendments as presented by a 6-1 vote. In accordance with North Carolina General Statutes, the Planning Board also submits the attached statement analyzing the consistency and reasonableness of this proposal with regards to existing policies or plans of the City of Brevard.

Action
City Council is asked to take one of the following actions:

1. Adopt the amendments as written;
2. Revise and adopt the amendments as revised;
3. Reject the amendments; or
4. Table the amendments for further public hearings and/or consideration.

Attachments:
1. Task Force Recommended Ordinance
2. Consistency Statement
3. Enacting Ordinance

Proposed:

Lodging		GR	RMX	NMX	DMX	CMX	IC	GI
Overnight accommodations	All overnight accommodations, except as listed below	—	—	—	P	P	P	—
	Bed and Breakfast	PS	PS	PS	PS	PS	PS	—
	Short-Term Rental (STR)	~~PS~~ —	PS	PS	PS	~~—~~ PS	~~—~~ PS	—

3.6.1.C. Short-term rental

a. Purpose: The regulation of short-term rentals, as defined below, is intended to maintain the predominantly residential character of traditional neighborhoods in the City of Brevard and the extra-territorial jurisdiction thereof, and to encourage an increase in housing stock available within the City and its ETJ.

~~a.~~b. Definition: A private residential property that is rented, either in whole, or part, for periods of less than 30 days for compensation. The following activities shall not be considered as a Short-Term Rental use for the purposes of this ordinance:

i. Dwelling units rented, in whole or in part, where a permanent resident lives on-site on the property. This shall include attached or detached accessory dwelling units where the operator lives elsewhere on the property.

~~i.~~ii. Incidental residential vacation rentals, defined to mean no more than two such rentals in any calendar year where the total number of nights rented does not exceed 14.

iii. Rentals of property in any permitted hotel, motel, inn, rooming or boarding house, or bed and breakfast establishment.

c. Existing STRs in GR Districts:

~~ii.~~i. Existing STRs in General Residential zoning districts in operation at the time of the effective date of this ordinance shall be allowed to continue operations, in accordance with Section 14.2 – Nonconforming Uses.

~~b.~~d. Additional Standards:

i. ~~No permits are required for short-term rentals, per N.C.G.S. 160D-1207.~~A typical zoning permit shall be required solely to verify notification and agreement to comply with the additional standards contained herein.

ii. Overnight occupancy shall not exceed two persons per bedroom plus two additional persons. The number of "bedrooms" used in calculating occupancy limits shall be taken from the property tax records. For example: a two-bedroom rental would have an occupancy limit of 6 (2 × 2 bedrooms = 4 + 2 additional = 6 total).

iii. Existing ~~D~~dwelling units used as short-term rentals in GR zoning districts shall maintain their residential character and outside appearance.

iv. No signs shall be permitted.

~~iii.~~v. All exterior lighting shall be residential in nature and shall not be directed towards adjacent properties.

~~iv.~~vi. Parking requirements shall be provided for the type of dwelling unit, per Chapter 10 of this ordinance.

DRAFT

COMMENT OF CONSISTENCY WITH COMPREHENSIVE PLAN AND ANY OTHER OFFICIALLY ADOPTED APPLICABLE PLANS

NCGS 160D-605 requires that the Planning Board shall advise and comment on whether the proposed amendment is consistent with any comprehensive plan prior to consideration by the Governing Board. The Planning Board shall provide a written recommendation to the Governing Board that addresses plan consistency and other matters as deemed appropriate by the Planning Board, but a comment by the Planning Board that a proposed amendment is inconsistent with the Comprehensive Plan shall not preclude consideration or approval of the proposed amendment by the Governing Board.

The Brevard Planning Board forwards this recommendation to City Council with a finding that the proposed zoning map amendment is **consistent** with the following elements of the City's adopted plans and policies:

Building Brevard Comprehensive Land Use Plan:

LUH- 16: Provide support for the preservation and rehabilitation of existing affordable housing.

LUH-17: Monitor impacts and consider additional regulations for short-term rentals. Follow recommendations from the City's Short-Term Rental Task Force.

ORDINANCE NO. 2023-____

AN ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE: CHAPTER 2 – DISTRICT PROVISIONS AND CHAPTER 3 – USE DEFINITIONS AND STANDARDS, SPECIFICALLY AMENDING REGULATIONS FOR SHORT-TERM RENTALS

WHEREAS, on September 20, 2021 the City of Brevard City Council adopted Resolution Number 2021-47 establishing the Short-Term Rental Task Force for the purposes of obtaining data about short-term rentals in the City of Brevard, assessing their positive and negative impacts, and providing recommendations to City Council; and,

WHEREAS, the Task Force has worked diligently since its inception, including initiating data-gathering endeavors such as an economic impact analysis and representative public survey; and,

WHEREAS, on June 15, 2023, the Task Force recommended that the Brevard Unified Development Ordinance, Chapters 2 & 3 be amended to update the City's regulations of short-term rentals; and,

WHEREAS, the City of Brevard Planning Board discussed these recommendations on June 27, 2023 and has recommended in favor of the amendments as recommended by the Task Force; and,

WHEREAS, the City Council of the City of Brevard finds that the proposed amendment is consistent with the following adopted plans and policies:

Building Brevard 2030 Comprehensive Land Use Plan

> ***LUH-16****: Provide support for the preservation and rehabilitation of existing affordable housing.*
>
> ***LUH-17:*** *Monitor impacts and consider additional regulations for short-term rentals. Follow recommendations from the City's Short-Term Rental Task Force.*
>
> and,

WHEREAS, a public hearing was conducted on Monday, August 7, 2023, by the Brevard City Council, and, after hearing all persons wishing to comment, and upon review and consideration of the proposed amendments, it is the desire of the City Council of the City of Brevard Unified Development Ordinance be amended as outlined below.

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

SECTION 01. Brevard City Code, Unified Development Ordinance is hereby amended as depicted in Exhibit A, which is attached hereto and incorporated herein by reference.

SECTION 02. The Short-Term Rental Task Force, its purpose being completed, is hereby dissolved.

SECTION 03. As to any conflict between this Ordinance and any parts of existing ordinances, the provisions of this Ordinance shall control.

SECTION 04. If any section, subsection, paragraph, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed severable and such holding shall not affect the validity of the remaining portions hereof.

SECTION 04. This Ordinance shall be in full force and in effect from and after the date of its adoption and approval.

Adopted and approved upon first reading this the 21st day of August 2023.

_____
Maureen Copelof
Mayor

ATTEST:

_____
Denise Hodsdon CMC
City Clerk

APPROVED AS TO FORM:

_____
Mack McKeller
City Attorney

STAFF REPORT
City Council, Monday, August 21, 2023

Title:	Proposed Amendment to City of Brevard Traffic Schedule - Code of Ordinance Chapter 66 Section 5 - No Parking Areas
Speaker:	Wilson Hooper
Prepared by:	Wilson Hooper, City Manager
Approved by:	Wilson Hooper, City Manager

BACKGROUND:
The current Brevard traffic calming policy (herein "policy") adopted in May 2022 permits residents to make traffic calming requests to the city. The policy calls for the City Manager to make an initial assessment of the appropriateness of the request and, if deemed appropriate, forward the matter to the council's Public Safety Committee for further consideration.

The City Manager forwarded a request by a Mills Avenue resident to the Committee in January with the recommendation that any further study be postponed until the realignment of the street (at the time still under construction) was complete, and the city had procured a professional traffic engineer to consult with on traffic matters. The Committee availed themselves of the option in the policy to "gather additional information" once, per the Manager's request, the realignment was completed.

The realignment was completed in March and the engineer procured soon after, and city staff set up the city's radar sign to collect data on traffic speeds and volumes along Mills Ave. near the Mary C Jenkins Community Center. The recommendation discussed below was approved by the Public Safety Committee at its June 2023 meeting and referred to Council for approval. A public hearing on the proposed ordinance change was held on August 7, 2023.

DISCUSSION:
The citizen request was to make the parts of Mills Ave. parallel to Georgia Hill Rd. "no parking areas." The resident claimed that the high speeds on Mills Ave. made streetside parking there dangerous.

The radar sign indicated that the vast majority of vehicles traveling on Mills Ave. did indeed exceed the posted 15 MPH speed, but that the average speed was only about 20 MPH.

The city's traffic consultant -Transportation Planning & Design- performed a field assessment measuring the road's width, assessing its grade, evaluating its sight lines, and taking stock of the type of land uses along its length.

With these factors in mind, the traffic consultant concluded that the streetside parking

near Georgia Hill Rd. actually serves to retard speeds, and that the section of the road where a parking prohibition would enhance safety was along the unlandscaped hillside across from MCJCC. For a motorist traveling southbound on Mills, this section is behind a blind curve, where a parked car may pose a hazard to the moving vehicle.

ACTION:
Council is asked to take one of the following actions:

1.) Approve the attached resolution amending the Code of Ordinances as proposed
2.) Revise the proposed amendments and adopt the revisions
3.) Reject the amendment
4.) Table the amendment for further consideration.

Attachments:
1. Resolution 2023-XX Add to Chapter 66 Section 5 Schedule I

ORDINANCE NO. 2023-XX

AN ORDINANCE AMENDING CHAPTER 66, SECTION 5, SCHEDULE I OF THE CODE OF ORDINANCES OF THE CITY OF BREVARD

WHEREAS, Chapter 66, Section 5, Schedule I, "No Parking Areas" of the Code of Ordinances of the City of Brevard is updated periodically when conditions warrant; and

WHEREAS, city staff and a professional traffic engineer recommend that the area described below be added to Schedule I as a "No Parking Area" to increase safety for motorist, cyclists, and pedestrians on the road.

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

The following language is added to Chapter 66, Section 5, Schedule I of the Code of Ordinances of the City of Brevard:

> "North side of Mills Avenue from intersection with Hillview Circle to a point approximately 300 feet northeast of said intersection."

The City Manager or his designee is instructed to post signs in accordance with Section 41 of this chapter.

Approved and adopted this ___ day of _____, 2023.

_____
Maureen Copelof
Mayor

ATTEST:

_____
Denise Hodsdon
City Clerk

APPROVED AS TO FORM:

_____
Mack McKeller
City Attorney

STAFF REPORT
City Council, Monday, August 21, 2023

Title:	Proposed Amendment to Brevard Code of Ordinance Chapter 66 Section 90 - Unmuffled Engine Compression Brakes
Speaker:	Wilson Hooper, City Manager
Prepared by:	Wilson Hooper, City Manager
Approved by:	Wilson Hooper, City Manager

BACKGROUND
At its June 26, 2023 meeting, the Council's Public Safety Committee (PSC) heard a request from Mayor Copelof to prohibit the use of unmuffled engine compression brakes within the city limits. Her request stemmed from feedback received by constituents whose residences are adjacent to state roads frequently used by heavy trucks. Commonly known as "Jake Brakes", unmuffled engine compression brakes may cause excessive noise and vibration. Though the full procedure to implement a Jake Brake ban involves a number of collaborative actions with NCDOT (see below), the PSC recommended the passage of the necessary enabling ordinance to the full Council. A public hearing was held at the August 7, 2023 meeting.

DISCUSSION
NCDOT's Transportation Mobility and Safety Division has published a "Standard Practice" document for municipalities wishing to install signs prohibiting the use of unmuffled compression engine braking. It states that to be eligible for signs on state-maintained roadways in and around the jurisdiction, a municipality must first adopt an ordinance prohibiting the use of unmuffled engine brakes.

The next step listed in the "Standard Practice" document is to negotiate encroachment agreements with NCDOT for the placement of the signs. The "Standard Practice" document also makes clear that the cost of manufacturing and installing the sign will be the responsibility of the municipality. Staff recommends approving the ordinance giving the city the legal authority to prohibit compression braking, but returning to PSC at a later time with more information on the cost and requirements of implementing the ban.

ACTION
City Council is asked to take one of the following actions:

1.) Approve the attached resolution amending the Code of Ordinances as proposed
2.) Revise the proposed amendments and adopt the revisions
3.) Reject the amendment
4.) Table the amendment for further consideration.

Attachments:
1. Draft Ordinance 2023-XX Add Chapter 66 Section 90

ORDINANCE NO. 2023-XX

AN ORDINANCE ADDING CHAPTER 66, SECTION 90 "UNMUFFLED ENGINE COMPRESSION BRAKE" TO THE CODE OF ORDINANCES OF THE CITY OF BREVARD

WHEREAS, Chapter 66, Article III, Section 71-89, of the Code of Ordinances of the City of Brevard is entitled "Operation of Vehicles" updated periodically when conditions warrant; and

WHEREAS, engine compression brakes are defined as devices primarily on large trucks for the conversion of the engine from an internal combustion engine to an air compressor for the purpose of braking without the use of wheel brakes. They are often referred to as "Jake Brakes"; and

WHEREAS, when not muffled, engine compression brakes may cause excessive noise and vibration in violation of Federal Motor Carrier Safety Regulations 40 CFR 2002.10 and North Carolina G.S. 20-128; and

WHEREAS, to respond to concerns about the noise created by unmuffled compression braking devices, the City Council wishes to establish an ordinance enabling the City of Brevard to prohibit their use where appropriate.

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

Chapter 66, Section 90 is hereby added to the Code of Ordinances of the City of Brevard, and it shall read:

(A) Definitions. For the purposes of this section, the following definition shall apply unless the context clearly indicates or requires a different meaning.

"UNMUFFLED ENGINE COMPRESSION BRAKE." A motor vehicle brake which is activated or worked by the compression of the engine of a motor vehicle, and which is not effectively muffled to prevent excessive noise."

(B) Prohibition

(1) No person shall use an engine braking system within the corporate limits of the City of Brevard which is in any way activated or operated by the compression of the engine of any such motor vehicle or any such unit or part thereof, except in cases of emergency or necessary for the protection of persons and/or property. Such braking is commonly referred to as compression braking or a "jake brake."

DRAFT

(2) The City of Brevard will identify areas in which engine braking is prohibited and signs shall be conspicuously posted in such areas stating: “No engine braking” or its equivalent.

(C) Emergency vehicle exemption. All emergency vehicles are exempt from this order

City staff is hereby directed to work with the North Carolina Department of Transportation on additional measures required by the latter to implement such a prohibition, and brief City Council as to the cost and resources required to implement at a later time.

Approved and adopted this ___ day of _____, 2023.

_____
Maureen Copelof
Mayor

ATTEST:

_____
Denise Hodsdon
City Clerk

APPROVED AS TO FORM:

_____
Mack McKeller
City Attorney

DRAFT

STAFF REPORT
City Council, Monday, August 21, 2023

Title:	Employee Wellness Center Agreement
Speaker:	Kelly Craig, Human Resources
Prepared by:	Kelley Craig, Human Resources Director
Approved by:	Wilson Hooper, City Manager

Background
As a benefit to employees, Brevard provides an employee wellness clinic for employees and their dependents covered by the city's health insurance. The center provides basic medical services typically with less wait time than a primary care physician. The clinic is staffed by a third party provider. It serves both the City of Brevard and Transylvania County agencies.

Earlier this year, a notification was received from Anthony Fisher, MD of Blue Mountain Medicine that he intended to end the contracts with both the County and City, to provide healthcare at the Employee Wellness Center, effective September 1, 2023.

Mark III Employee Benefits worked with county and city staff to draft a request for proposals that was issued to identify a new provider to assume responsibility for this operation.

The RFP was issued in April with a deadline of May 14, 2023 for responses. A total of five responses were received and Mark III Employee Benefits helped analyze the proposals.

This issue was discussed with the Finance, Human Resources and Citizen Appointment Committee at its June 26, 2023 meeting. However, as the contract was not ready for review until early August, they were not able to review it at that time. To ensure there isn't a gap in service, this matter is being brought directly to Council for consideration.

Discussion
The lowest bid was submitted by UNC Health – PARDEE and a follow up meeting was held with city and county to further discuss their proposal. The proposed services and offerings are equivalent to and/or greater that what is currently in place.

Staff support Transylvania County entering into a contract with UNC Health – PARDEE effective September 1, 2023 through August 31, 2024.

Transylvania County interprets the state's purchasing law as requiring that this type of agreement only have two parties. Therefore, Transylvania County agrees to share the services with the City of Brevard via a Memorandum of Understanding (MOU).

Fiscal Impact
The City of Brevard's financial liability is broken into three categories: Brevard's portion of Pardee's fee ($42,500), Brevard's payment to the County for facility, technology, and administrative costs ($6,375), and the cost of labs and other services not covered in the contract (TBD, see below).

The fixed expenses are expected to be within the current planned budget. The variable expenses (diagnostic tests, lab work, and some supplies) are still to be determined as those are billed directly and staff could not get a comparison of lab costs but it is expected they will be comparable.

The Pardee contract includes an automatic 6% increase in FY24/25, and a 2% increase the following year. The contract expires in 2026.

Action
Staff is asked to adopt a resolution authorizing the City Manager or his designee to negotiate and approve an MOU with Transylvania County for the provision of employee wellness center services.

Due to the time sensitive nature of this item, Council is asked to take action this evening.

Attachments:
1. Resolution Authorizing City Manger to Execute Employee Wellness Center Agreements
2. Draft Transylvania Co./City of Brevard Employee Wellness Center MOU
3. Transylvania Co./Pardee Hospital Employee Wellness Center Contract

RESOLUTION NO. 2023-XX

AUTHORIZING CITY MANAGER TO EXECUTE AGREEMENTS WITH TRANSYLVANIA COUNTY REGARDING EMPLOYEE WELLNESS CENTER

WHEREAS, on August 21, 2023 the Brevard City Council heard a presentation from staff, summarized in the affixed staff report, on the terms of a contract between Transylvania County and Pardee Hospital for the provision of an Employee Wellness Center for County employees;

WHEREAS, Transylvania County has agreed to enter into an agreement with the City of Brevard making those services available to City employees under certain terms.

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

The City Manager (or his designee) is hereby authorized to negotiate and execute necessary agreements with Transylvania County and/or Pardee Hospital for the purposes described in the above referenced staff report.

Approved and adopted this _____ day of _____, 2023.

_____
Maureen Copelof
Mayor

ATTEST:

_____
Denise Hodsdon, CMC
City Clerk

Draft

Memorandum of Understanding
Related to Employee Wellness Clinic

This agreement, entered into as of the _____day of _____, 20___ is by and between Transylvania County, a body politic and subdivision of the State of North Carolina, and the City of Brevard, a politic of Transylvania County, North Carolina, hereafter referred to in this document as “the County” and “the City”.

Whereas, the purpose of this Memorandum of Understanding is to guide and direct the parties respecting their affiliation, cooperation, working relationship and respective authorities, inclusive of anticipated future arrangements in furtherance thereof; and

Whereas, the County operates an Employee Wellness Clinic, located at 150 South Gaston Street, Brevard, NC 28712 (“Clinic”). The Clinic provides primary care wellness and occupational health services for County employees.

Whereas, the City wishes to provide access for its employees to the Clinic; and
Whereas, the County agrees to allow the City to partner with the County’s Clinic and to allow for Employees of the City, and eligible dependents, to receive the same types of medical services and care as County Employees except for Behavioral Health Services.

Whereas, the Clinic will be available Monday, Wednesday and Friday from 8 am – 12 pm and 1 pm – 5 pm; Tuesday and Thursday from 8 a.m. until 12 p.m. with the exception of designated holidays or weather-related closings. All County and City employees will have access during all hours in which the Clinic is open prioritized by emergencies, confirmed appointments and then first come and first serve. Any patient care services and/or ancillary services provided to an Employee outside of the Clinic shall not be subject to or covered by this Agreement; and

Whereas, as a part of the services the City agrees to pay the County for 25% of the total of the annual contracted price plus supplies; and 100% of the costs related to bloodwork and/or specialized services of City of Brevard Employees and eligible dependents as set forth in and the fee schedule set out in Section 4 and subsequent Exhibits of the Employee Wellness Services Agreement for Provisions of Services at Pardee@Work Location; and

Whereas, annually the County and City representatives will meet to discuss the outcomes of the Employee Wellness Clinic and determine the initiatives for the following year. For 2023/2024 and until modified, the City has agreed to follow the pre-determined health insurance initiatives set forth by the County;”. Such discussions/reporting will not include patient information which would violate HIPAA and/or North Carolina General Statute § 8-53; and

Whereas, in exchange for the County providing space, maintenance, upkeep, technology, housekeeping services, utilities, phones and operational needs, the City will pay to the County, a fee equal to 15% of the City’s portion of the annual contracted

amount. The amount will be determined annually based on that agreement and shall be paid in one lump sum by September 30th of each year; and

Whereas, the County will bill the City monthly for the annual contract price, the city agrees to pay the County within 30 days. The city will be billed directly for lab services from the clinic provider and are responsible for payment of those fees directly to the provider; and

Whereas, this agreement has a term of one year beginning September 1, 2023 ending August 31, 2024 and shall be automatically renewed annually unless written notice is given by June 1st of the year by either party of the intent to terminate this agreement. Notwithstanding the foregoing, either party may terminate this MOU in the event the other party defaults in the performance of its obligations and fails to cure the default within a reasonable time after receiving written show cause notice. Upon expiration or termination of this Agreement for any reason, the City will pay for any services rendered up to and including the date of termination. The City or County may, from time to time, request modifications to the Memorandum of Understanding. Such changes which are mutually agreed upon by and between the City and the County shall be incorporated in written amendments; and

Whereas, interpretation and enforcement of this Memorandum of Understanding shall be pursuant to the law of the State of North Carolina.

IN WITNESS WHEREOF, the parties have caused this Memorandum of Understanding to be executed by their duly authorized officers as of the day and date first above written.

City of Brevard

By: _____
Wilson Hooper,
City Manager

Attest: _____

Transylvania County

By: _____
Jaime Laughter,
County Manager

Attest: _____

EMPLOYEE WELLNESS SERVICES AGREEMENT
FOR PROVISION OF SERVICES AT PARDEE@WORK LOCATION

THIS EMPLOYEE WELLNESS SERVICES AGREEMENT FOR PROVISION OF SERVICES AT PARDEE@WORK LOCATION (this "Agreement") is made this 1st day of September 2023 (the "Effective Date") by and between **HENDERSON COUNTY HOSPITAL CORPORATION** d/b/a Margaret R. Pardee Memorial Hospital, a North Carolina nonprofit corporation, ("Hospital") and **TRANSYLVANIA COUNTY,** a body politic and political subdivision of the State of North Carolina (the "Employer").

RECITALS

WHEREAS, Employer operates a wellness center located at 150 South Gaston Street, Brevard, NC 28712 (the "Clinic"); and

WHEREAS, Employer is one of the counties in North Carolina; and

WHEREAS, Employer desires to obtain the services of Hospital to provide primary care wellness services and occupational health services for Employer's Employees and Eligible Dependents as defined in Section 1.1.2 and Section 1.1.3 hereof ("Employee") at the Clinic, and Hospital desires to provide such services to Employer in accordance with the terms and conditions of this Agreement.

NOW THEREFORE, in consideration of the foregoing premises and the covenants herein made and exchanged, with the intent to be legally bound, the Parties hereby agree as follows:

Section 1. Engagement of Services.

1.1 **Services**. Subject to the terms of this Agreement, Hospital shall provide primary care wellness services and occupational health services, as more particularly set forth in Exhibit A hereof (the "Covered Services" or "Services"), for Employer's Employees, subject to Employer's discretion, at the Clinic, or at such other location as may be mutually agreed upon by the parties. The Clinic shall have a minimum of one (1) fully equipped patient examination room, a reception area and an entrance, which shall be respectful of patient confidentiality.

1.1.1 **Definition of Covered Services**. Covered Services shall mean those primary care wellness, occupational health and minor medical care services, which shall include the provision of written prescriptions related to such Services, and which shall be provided by Hospital to Employer's Employees under this Agreement.

1.1.2 **Definition of Employee**. Employee shall mean any individual employed by the Employer on a full-time or part-time basis, or an individual who has contracted with Employer, and any Eligible Dependent who is eligible to receive Covered Services. If a separate agreement is reached between Employer

and the City of Brevard, then "Employee" shall also include any individual employed by the City of Brevard on a full-time or part-time basis, or an individual who has contracted with City of Brevard, and any Eligible Dependent who is eligible to receive Covered Services. Employer shall notify Hospital if such a separate agreement is reached. In such an event, the definition of "Employer" shall include the City of Brevard throughout this Agreement unless the plain reading of the provision shows the intent for "Employer" to be solely Transylvania County.

1.1.3 **Definition of Eligible Dependent.** Eligible Dependent shall mean any spouse of an Employee, or any dependent of an Employee that is at least age seven (7) years old and who is under the age of twenty-six (26) years of age and identified by Employer in accordance with Section 3.1 hereof.

1.1.4 **Definition of Payor**. Payor shall mean health insurance maintained by Employer, or in the case of a self-insured Employer, the Employer and its agents and representatives.

Section 2. Obligations of Hospital

2.1 **Provision of Covered Services**. Hospital agrees to provide Covered Services at the Clinic consistent with the quality standards offered by the Hospital at its other Pardee@Work locations. The Clinic will be open as a walk-in clinic 32 hours per week on Mondays, Wednesdays, and Fridays from 8:00 am to Noon and from 1:00 pm to 4:00 pm; and on Tuesdays and Thursdays from 8:00 am to noon for Employees to receive the Covered Services. The Clinic will be available by appointment and for walk-ins during open clinic hours for Employees. Covered Services at the Clinic shall be provided by physicians, physician's assistants, and advanced registered nurse practitioners, who shall be supervised by a physician. Any direct patient care physician services and/or ancillary services provided to an Employee outside of the Clinic and/or at Hospital shall not be subject to or covered by this Agreement, and shall be billed separately by Hospital to Employee's insurer or to Employee as appropriate. This Clinic will provide Worker's Compensation initial care or follow-up care to the Employer.

2.2 **Branding**. The Clinic has been in operation for some time and the Parties will not change the name or location of the Clinic. Hospital shall be allowed to reference "clinical services happily provided by Pardee@Work, a department of UNC Health Pardee" or similar language on a plaque or sign at the Clinic and on advertising. Employer will review each such request for advertising and approval shall not be unreasonably denied.

2.3 **Clinic Reports**. Hospital shall provide Employer with reports detailing the utilization of the Clinic, monthly and quarterly. Such reports shall not include patient health information which would violation HIPAA and/or

North Carolina General Statute § 8-53.

2.4 **Preauthorization**. Employer shall establish a timely and reliable system for identifying Employees. Hospital shall use reasonable efforts to confirm each Employee's status with Employer, and Employer shall not be obligated to pay for the costs of Services for any person who is not an Employee, except as set forth in 3.1 hereof.

2.5 **Medical Records**. Hospital shall maintain a personal and confidential medical record for each Employee receiving Services pursuant to this Agreement. Such medical record shall contain such information as is required by state and federal laws and regulations. Such medical record shall be and remain the property of Hospital and shall not be accessed, removed, or transferred from Hospital, except in accordance with applicable state and federal statutes, rules and regulations, and Hospital rules and regulations. To the extent permitted by law and Hospital rules and regulations, and provided that Employer has obtained the written consent from the applicable Employee or otherwise permitted by law, Hospital shall permit Employer to inspect and make copies of Employee's medical records. Employer shall pay Hospital the Hospital's standard charges for providing copies of patient's medical records. With the exception of Workers Comp injuries, the hospital may share the injured employees work status and current medical status as it pertains to the work injury only, but no other medical records shall be shared with the employer without the written consent of the employee or court order.

2.5.1 **Return of Data**. Upon the expiration or termination of this Agreement for any reason, the parties shall cooperate in good faith to transfer any patient records and similar data of Employer stored on the Electronic Medical Record System (EMR) to Employer. In connection with such data transfer, Hospital shall: (i) work with Employer to provide Employer with a tape(s) or disk(s) with files containing a copy of Employers' patient data, a listing of all open accounts and a listing of all future scheduled appointments within thirty (30) days after Employer's written request; and (ii) explore options for providing patient-specific EMR data to assist with Employer's transition to another EMR solution. Hospital does not guarantee that the data extracted from the EMR will be compatible with or suitable for use in Employer's alternative EMR solution and shall have no obligation to reformat or restructure such data in a manner that exceeds the standard data export capabilities and options provided in the EMR system. The return of data by Hospital under this section shall be without charge. Any resources dedicated by Hospital (or UNCHCS the cost of which is passed on to Hospital) and/or EPIC personnel to data transfer, migration and conversion beyond that specified in this section will be billed to and payable by Employer, at the then current rates of each entity.

Section 3. **Employer's Obligations**.

3.1 **Employee Identification**. On or after August 1, 2023 and prior to the Effective Date of this Agreement, Employer shall provide Hospital with a list of all of its Employees and shall update such list as often as is necessary to ensure that Hospital has current information regarding the Employees. Before providing Covered Services to an Employee, Hospital shall obtain preauthorization for such Services pursuant to Section 2.4. hereof; provided, however, that Hospital shall be entitled to rely upon the list provided by Employer. If Hospital is unable to reasonably preauthorize Service to an individual, but the individual is listed on the list of Employees provided by Employer, then Hospital may provide Covered Services to such individual, and Employer shall be obligated to pay for such Services, even if it is subsequently determined that such individual was not an eligible Employee at the time of Service.

Section 4. **Billing and Payment**.

4.1 **Fee Schedule**. Employer shall pay Hospital for Covered Services according to the fee schedule set forth on Exhibit B hereof (the "Fee Schedule"). If Employer reaches a separate agreement with the City of Brevard to allow the City's employees to obtain Covered Services, then two invoices indicating the costs of Employer's Employees and the City's Employees shall be submitted to Employer for consideration and payment. Payment of the City's costs shall be governed by the separate agreement, if one is reached, between Employer and the City.

4.2 **Invoice**.

Hospital shall submit to Employer a monthly invoice for the onsite clinic to Transylvania County, Attention: Sheila Cozart, 101 South Broad, Brevard NC 28712 and Employer shall pay Hospital within thirty (30) days following receipt of a complete and undisputed invoice.

Section 5. **Compensation**.

5.1 **Fee**. Employer shall pay Hospital a monthly fee for the onsite Clinic in accordance with Exhibit B hereof. Upon expiration or termination of this Agreement for any reason, Employer shall pay Hospital for Services rendered up to and including the effective date of termination.

Section 6. **Term.**

6.1 **Term**. This Agreement shall commence on the Effective Date and continue until August 31, 2026 (the "Term"), unless earlier terminated pursuant to Section 7 hereof. This Agreement will automatically renew for successive one (1) year Terms, unless one of the parties gives the other party not less than thirty (30) days written notice prior to the end of the then current Term.

Section 7. Termination.

7.1 **Termination Without Cause**. Either party may terminate this Agreement, at any time, with or without cause, upon one hundred eighty (180) days prior written notice to the other party. Hospital stipulates, acknowledges, and agrees Employer is a public entity, governed by certain fiscal laws and constraints, and, therefore, funds available for payments to be made under this Agreement are not available beyond the fiscal year in which such funds are budgeted and appropriated. Hospital agrees in the event funds necessary for payments to be made under this Agreement are not budgeted by Employer's governing body for any succeeding fiscal year; or in the event funds, once budgeted, are limited or withdrawn by said governing body due to financial constraints, shortfall of public funds, or for any other reason which, in the governing body's discretion, requires that said funds be limited or withdrawn; then this Agreement shall be deemed to have been terminated for convenience of Employer, and Employer shall not be deemed to be in default or breach.

7.2 **Termination With Cause**. Employer shall have the right to terminate this Agreement upon written notice to Hospital in the event Hospital's license to provide Services is terminated, suspended, or restricted in any material way that would affect the ability of Hospital to furnish Covered Services to Employees. Hospital shall have the right to terminate this Agreement immediately upon written notice to Employer if Employer files or has filed against it a petition for bankruptcy, or if Employer otherwise becomes insolvent. In addition, either party shall have the right to terminate this Agreement immediately in the event the other party commits a material breach of this Agreement if said breach is not corrected within sixty (60) days of written notice of such breach.

7.3 **Continuation of Obligations**. In the event of termination of this Agreement, Employer shall pay Hospital in accordance with the terms of this Agreement within thirty (30) days of the effective date of termination for all Services rendered to Employees.

7.2 **Effect of Termination**. Upon termination of this Agreement, neither party shall have any further obligations hereunder except for: (i) obligations accruing prior to termination; and (ii) obligations, promises or covenants contained herein which are expressly made to extend beyond the Term.

Section 8. Insurance and Indemnification.

8.1 **Insurance**. Hospital shall, throughout the Term of this Agreement and as otherwise provided herein, maintain, at its sole cost and expense, policies of insurance or self-insurance providing coverage for its general liability, automobile liability, commercial liability insurance, and statutory Workers' Compensation insurance which are sufficient to protect their business against all

applicable risks, and if applicable, professional liability with minimum limits of liability of One Million Dollars ($1,000,000) per occurrence and Three Million Dollars ($3,000,000) in the aggregate. Hospital shall name Employer and, if a separate agreement is reached, the City of Brevard as additional insureds on the relevant policies, and shall provide proof of such insurance policies upon written request by Employer and/or the City.

Section 9. **Independent Contractor**.

9.1 **Nature of Relationship**. Hospital and Employer are independent contractors and nothing in this Agreement shall be deemed or construed to create a partnership, joint venture, association, employment, or agency relationship between the parties. Hospital and its employees shall not be deemed to be employees or agents of Employer for any reason nor shall any employee or agent of Employer be deemed an employee or agent of Hospital, and neither shall have the right to employ, discharge or discipline the employees of the other. Hospital shall not be responsible or have authority to supervise or control the activities of Employer or its Employees, which shall remain the sole obligation and responsibility of Employer. Likewise, Employer shall not have responsibility to supervise or control the activities of Hospital or its employees, which shall remain the sole obligation and responsibility of Hospital. Hospital and Employer shall each be liable for their debts, obligations, acts and omissions, including the payment of all required withholding, social security and other taxes and benefits. Hospital shall be responsible for payment of all federal, state, and local taxes as well as business license fees arising out of the performance of this Agreement.

Section 10. **General Provisions.**

10.1 **Controlling Law**. This Agreement has been entered into in the State of North Carolina and shall be construed and interpreted in accordance with the laws of the State of North Carolina. In the event of any dispute arising out this Agreement, the Parties agree to attempt in good faith to resolve the dispute through negotiation, mediation and/or termination of this Agreement. Thereafter, the General Court of Justice in Transylvania County, North Carolina shall have exclusive jurisdiction.

10.2 **Provisions Separable**. The provisions of this Agreement are independent of and separable from each other, and no provision shall be affected or rendered invalid or unenforceable by virtue of the fact that for any reason any other or others of them may be invalid or unenforceable in whole or in part.

10.3 **Waivers**. Except as provided herein, neither the failure nor any delay on the part of any party to exercise any right, remedy, power, or privilege ("Right") under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any Right preclude any other or further exercise of the same or of any other Right, nor shall any waiver of any Right with respect to any

occurrence be construed as a waiver of such Right with respect to any other occurrence. No waiver shall be effective unless it is in writing and is signed by the party asserting to have been granted such waiver.

10.4 **Binding Nature of Agreement**. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective permitted successors and assigns. Hospital shall have the right to assign this Agreement in connection with a merger involving Hospital or a sale or transfer of substantially all of the business and assets of Hospital, and Employer agrees to be obligated by this Agreement to any successor, assignee or surviving entity. Employer may not assign its rights or obligations hereunder without the prior written consent of Hospital.

10.5 **Compliance With Laws**. The parties shall comply with all applicable laws, ordinances, rules, regulations, and other requirements, now or hereafter in effect, of any governmental authority having jurisdiction.

10.6 **Notices**. All notices, requests, demands, and other communications required or permitted under this Agreement shall be in writing and shall be deemed to have been duly given, made and received only when personally delivered or upon actual receipt of registered or certified mail, postage prepaid, return receipt requested, or by a nationally recognized overnight courier service, addressed as set forth below

To Hospital:
Margaret R. Pardee Memorial Hospital
800 North Justice Street
Hendersonville, North Carolina 28791
Attention: Johnna Reed,
Chief Administrative Officer

To Employer:
Transylvania County
101 South Broad Street
Brevard, NC 28712
Attention: Sheila Cozart (or Jamie Laughter, County Manager)

10.7 **Entire Agreement**. This Agreement contains the entire understanding between the parties hereto with respect to the subject matter hereof, and supersedes all prior and contemporaneous agreements and understandings, inducements or conditions, express or implied, oral or written. The express terms hereof control and supersede any course of performance or usage of the trade inconsistent with any of the terms hereof. This Agreement may not be modified or amended other than by a written agreement signed by the parties.

10.8 **Execution in Counterparts**. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original as

against any party whose signature appears thereon, and all of which shall together constitute one and the same instrument. This Agreement shall become binding when one or more counterparts hereof, individually or taken together, shall bear the signatures of all the parties reflected herein as the signatories.

10.9 **Employee Privacy**. The parties shall maintain the privacy and security of individually identifiable patient health information of all Employees in accordance with all relevant state and federal laws and regulations, including, but not limited to, the privacy and security standards of the Health Insurance Portability and Accountability Act of 1996 set forth at 45 CFR parts 160, 162, and 164, and agree to take such actions as necessary and appropriate in connection therewith. The parties agree that this Section shall survive the termination of this Agreement.

10.10 **Books and Records**. The parties hereby agree to make available for a period of ten (10) years after furnishing of Services under this Agreement, upon written request of the Secretary of the U.S. Department of Health and Human Services, or upon request of the Comptroller General, or any of their duly authorized representatives, this Agreement and any of the parties' books, documents, and records that are necessary to certify the nature and extent of costs incurred by Hospital pursuant to this Agreement. Further, if the parties carry out any of their duties under this Agreement through subcontract with a value and cost of Ten Thousand and No/100 Dollars ($10,000) or more over a 12-month period with a related organization, such contract must contain a clause to the effect that the related organization shall furnish its books, documents and records upon request as described above to verify the nature and extent of this cost.

10.11 **E-Verify.**

Pursuant to North Carolina General Statute § 143-133.3, Hospital understands it is a requirement of this Agreement that Hospital and its subcontractors must comply with the provisions of Article 2 of Chapter 64 of the North Carolina General Statutes. In doing so, Hospital agrees that, unless it is exempt by law, it shall verify the work authorization of its employees utilizing the federal E-Verify program and standards as promulgated and operated by the United States Department of Homeland Security, and Hospital shall require its subcontractors to do the same. Upon request, Hospital agrees to provide Employer with an affidavit of compliance or exemption.

In this E-Verify Compliance Section, the words contractors, subcontractors, and comply shall have the meanings intended by applicable provisions of North Carolina General Statute Chapters §153A and 160A.

10.12 **NC State Treasurer's List.**

Hospital covenants it has not been identified on a list created by the North Carolina State Treasurer's office as an entity engaging in investment activities in Iran pursuant to North Carolina General Statute §147-86.60. Hospital further covenants

it has not been identified on a list created by the North Carolina State Treasurer's office as a restricted entity pursuant to North Carolina General Statute §147-86.82.

10.13 **Anti-Discrimination.**

In consideration of the signing of this Agreement, the parties hereto for themselves, their agents, officials, employees and servants agree not to discriminate in any manner on the basis of race, color, creed, national origin, sex, age, handicap, or sexual orientation with reference to the subject matter of this Agreement, no matter how remote. The parties further agree in all respects to conform to the provisions and intent of any applicable Ordinances of Transylvania County. This provision is hereby incorporated into this Agreement for the benefit of Transylvania County and its residents, and may be enforced by action for specific performance, injunctive relief, or other remedy as provided by law.

10.14 **Immunity.**

All of Employer's duties and obligations required in this Agreement are traditional governmental functions. As such, nothing in this Agreement is intended to waive Employer's governmental immunity or any other affirmative defenses which are otherwise available to it.

SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, the parties hereto have executed this Employee Wellness Services Agreement for Provision of Services at Pardee@Work Location on the date(s) set forth below.

HOSPITAL:

HENDERSON COUNTY HOSPITAL CORPORATION
d/b/a Margaret R. Pardee Memorial Hospital,
a North Carolina non-profit corporation

By: _____
Johnna Reed, Chief Administrative Officer

Date: _____

EMPLOYER:

TRANSYLVANIA COUNTY

By: _____

Title: _____

Date: _____

This instrument has been pre-audited in manner required by the Local Government Budget and Fiscal Control Act.

EXHIBIT A
COVERED SERVICES

Clinic located at 150 South Gaston Street, Brevard, NC 28712

• Clinic shall be staffed by a combination of medical providers that include:
Physician, and/or Advanced Practice Provider (Nurse Practitioner or Physician Assistant) Licensed Practical Nurse or Certified Medical Assistant or Occupational Health tech, and receptionist/coordinator. Hospital shall be responsible for the costs of all staff of the Clinic. Hospital shall be responsible for all salaries, FUTA, FICA, unemployment insurance taxes, employee benefits, licensing fees, and liability insurance for the staff as applicable.

Clinic shall provide the following services to Employer's Employees:

Fixed Monthly Expenses

- **General wellness services and examinations**
  - Routine Physical/Well Check
  - Wellness counseling
  - Vital Signs
  - Temperature
  - Blood pressure
  - Respiratory rate
  - Heart rate
  - Behavioral Health and Social Services referral coordination via Pardee BlueMD
- **Identification and referral of Emergency Situations**
- **Medical care for minor episodic events**
  - CONSTITUTIONAL/GENERAL
    - Fever
    - Vertigo/Dizziness
    - Headaches
    - Allergies
    - Anemia
    - Pulse oximetry
  - HEAD AND NECK
    - Conjunctivitis
    - Sore and Strep Throat
    - Ear ache/infection
    - Audiometry*
    - Vision testing – wall chart is standard*
  - RESPIRATORY
    - Cold/influenza
    - Bronchitis
    - Laryngitis

    - Sinusitis
    - Pulmonary Function Test*
  - CARDIOVASCULAR
    - Auscultation
  - MUSCULOSKELETAL
    - Muscle strain/sprain
    - Splints/braces
    - Repetitive use/cumulative trauma
  - GASTROINTESTINAL
    - Reflux disease
    - Constipation
    - Diarrhea
  - GENITOURINARY
    - Urinary tract infection
  - SKIN
    - Abrasions/Contusions: non-complex wound care,
    - Simple laceration cleaning & repair, and suture removal
    - Rashes: Shingles, Contact dermatitis, Allergic
    - Dermatitis, Eczema, and Hives
    - Burns
    - Cellulitis
    - Ingrown nails
    - Insect or minor animal bites
    - Fungal infections
    - Puncture wounds
    - Splinter removal
- **Diagnostic tests** deemed necessary for diagnosis and treatment such as: urinalysis, streptococcus, influenza,
  - Communicable Conditions: Provider will follow CDC guidelines
- **Laboratory Services** Pardee will assist in negotiating external Lab vendor.
- **Chronic Conditions: New diagnosis of chronic conditions** that qualify for the Pardee Health Management Program will be coordinated with the Pardee Pharmacy team and the employee's Primary Care Physician. *Examples of eligible chronic conditions include diabetes, high cholesterol, high blood pressure, asthma, COPD, anticoagulation therapy and depression (optional).* Any referrals will be coordinated in concert with Employer Health Plan, previously established primary care relationship and in cooperation with the employee or dependent.
- **Chronic Conditions: Ongoing Management** is integrated and in partnership with the employee's primary care provider. The care plan is managed by the employee's primary care provider who will be responsible for providing ongoing prescriptions for chronic conditions and medication management, including opioids. Chronic conditions include, but are not limited to,

arthritis, asthma, cardiac health, diabetes, GERD, hyperlipidemia, hypertension, metabolic disorder, and obesity.

- Administration of Health Risk Assessment (HRA) reporting and services
  - Biometric clinic (supplies billed separately) and well care counseling follow-up visits based upon HRA results
    - Trend reporting on biometrics such as blood pressure, cholesterol and weight
    - Recording and reporting participation data for incentive programs
    - Providing program materials for health and wellness program
- OTC medications can be dispensed from the onsite clinic, if requested. Employees who decline the opportunity to be evaluated by the provider will be asked to complete a short questionnaire prior to obtaining the medication.
- Wellness education programming and/or screenings
  - Health challenge coordination (health Information Lunch n Learns done at no cost to the Employer and do not take away from paid hours included in this contract)
- All occupational health services are scheduled when the appropriate health personnel are present in the clinic. Occupational health services include:
  - annual and pre-employment DOT physicals and non-DOT physicals
- UNC Health Pardee medical personnel can attend monthly wellness and safety issue meetings at as requested by Employer. Work Comp injury triage, analysis will occur in the onsite clinic and, if deemed necessary, referred to the appropriate facility.
  - Pardee @ Work work comp specialist will assist in managing any claims that falls outside the onsite clinic
  - Employer work status form/report will be forwarded to the appropriate Employer personnel from the Pardee Work Comp Specialist. Legal records can be sent upon request from Employer.
  - Manageable injuries will be scheduled for injury rechecks during the onsite clinic hours and monitored in the onsite clinic
- Whenever medically appropriate, employees will be seen onsite without referring patients off-site, resulting in substantial reductions in costs by avoiding traditional off-site medical claims
- Other Medical Services Provided

Variable Expenses

• Provision of any lab work or specific diagnostic tests per negotiated vendors and fee schedules

- • drug screening, breath alcohol testing, TB skin tests
- Provision of supplies for cultures and swabs for minor episodic treatment (i.e. strep throat and other minor illnesses)

• Provision of suture supplies for minor cuts

• Provision of radiology services for minor falls requiring x-rays

- • Provision of flu-shot clinics for supplies and personnel if needed. Vaccinations (optional, at add'l cost)

• Supplies for immunizations or titers (i.e. Hepatitis B and Tetanus, etc.)

- Optional service if population assessment warrants: Pulmonary Function Test spirometry is available at Pardee Urgent Care Hendersonville (if CDC and OSHA guidelines allow). Preferred pricing discount is available for contracted clients.
- Optional Audiometry is available through Pardee Urgent Care Mills River. Preferred pricing discount is available for contracted clients. PFT exams and audiograms will be reviewed by Pardee @Work Medical Director and handled according to the medical directors finding.

All supplies and tests will be billed separately. Rates for supplies and specific tests can be

Services outside of the Clinic, including but not limited to the following can be provided by UNC Health Pardee and will be billed to Employee's insurer, Employee, or Eligible Dependent as appropriate. Outside Services include, but shall not be not limited to:

- Radiology, Laboratory, Diagnostic Testing, Physical Therapy, Infusion Therapy
- The Pardee@Work team will facilitate efficient, timely access to Pardee BlueMD, Pardee Urgent Care, Pardee Specialists, and Pardee Hospital and Emergency Services.
- On site Mobile Mammography services
- Immunizations desired by the Employee, not required by employer
- UNC Health Pardee will provide a Pharmacist for condition management and medication management
- An optional service to consider is Pardee Outpatient Pharmacy. Various services are available and range from online, telephone counseling, to significant discounts savings through mail order or pickup.

EXHIBIT B
COMPENSATION

1. Employer shall pay Hospital $14,166.67 per month for the provision of the Services hereunder. Beginning September 1, 2024 the monthly payment shall increase 6% to $15,016.67 per month for the Services. Thereafter on September 1 of each succeeding year the monthly payment shall increase by 2% for the Services.

2. Services outside of the Clinic, including but not limited to the following will be billed to Employee's insurer, or Employee, as appropriate. Outside Services include, but shall not be limited to:

- Radiology
- Laboratory
- Primary Care Physician visit and follow-up (outside of the onsite clinic setting)
- Immunizations desired by the Employee, not required by employer.
- On site Mobile Mammography services.
- Pharmacist for condition management and medication management.

3. Services rendered specific to treatment, will be billed to Employer or Employee's insurer, as appropriate.

STAFF REPORT
City Council, Monday, August 21, 2023

Title:	Amendment to Fee Schedule - Social District Permit Fee
Speaker:	Emily Brewer, Senior Planner Wilson Hooper, City Manager
Prepared by:	Emily Brewer, Senior Planner, Wilson Hooper, City Manager
Approved by:	Wilson Hooper, City Manager

Background
Each year the City publishes as part of its budget a "Fee Schedule" for all city services. This schedule includes everything from the city's solid waste collection fee to the cost of renting a community garden plot.

In order to implement the recently discussed social district, the City will incur some costs. Therefore, staff is proposing an addition to the "Fee Schedule", to be paid by ABC permittees who wish to participate in the social district of $200.

Discussion
Fees are intended to defray the cost of certain services, usually those that have greater benefit to an individual than they do to the community. All General Fund fee-based services are subsidized by the general taxpayer to some degree, as even a service that mainly benefits an individual -like a permit- has some public benefit. The fees are set by Council and reassessed periodically as part of the budget process, who weigh the public benefit when considering to what degree the service is subsidized.

In the case of the social district, staff identified quantifiable costs and considered the social benefit of the district to come up with a proposed fee. Quantifiable costs include street signs/poles, sidewalk decals, window stickers, and the initial set of stickers for cups. Social benefit includes increased foot traffic downtown that will likely induce commerce.

Fiscal Impact
An estimate of anticipated costs and potential permit fee revenues is included as Attachment 1 for reference. These numbers are subject to change with finalized quotes from printers and the approved social district boundaries.

Per North Carolina General Statues, signage is required at all entrance / exit points of the social districts. These estimates provided by Staff assume a generous amount of signage with the entrance / exit points having both posted signage and sidewalk decals on both sides of the street. This is not necessarily required by North Carolina General Statutes but can be helpful in ensuring compliance with social district regulations.

Action
Should Council adopt the social district ordinance, Staff requests that Council adopt a

permit fee to recuperate some of the cost of the social district. The draft ordinance included as Attachment 2 includes Staff's recommendation of a one-time $200 permit fee.

Attachments:
1. Social District Cost Estimates
2. Draft Ordinance

Social District Cost Estimates *DRAFT 8/17/23*

Item	Cost Per Unit	Amount	Total	Notes
Street Signs	$260	16	$4,160	To Place on Street to Educate Citizens and Tourist (Based on 18"x30" "No Overnight Parking" Sign Invoice from Signs & More)
Sidewalk Decals Placed on Concrete	$40	16	$640	To Place on Sidewalks as a Boundary to the Social District - 20"x20" Circle
Window Clings for Businesses	$15	150	$2,250	To Place on Store Front: Businesses Will Either Need Alcohol Sold Here, Beverages Welcome, or Please No Beverages) - 12" x 12"
Initial Round of Stickers Provided to ABC Permittees for Cups	$65	10	$650	To Place on Cups; Required by NC ABC Laws - 1,000 Stickers per roll
Total Costs			**$7,700**	
AVG Split Across 18 Businesses			$428	

Permit Fee Revenue Model

Permit Fee Cost	Amount	Total	Notes
$100	18	$1,800	18 ABC Permittees
$150	18	$2,700	18 ABC Permittees
$200	18	$3,600	18 ABC Permittees
$250	18	$4,500	18 ABC Permittees

Net Costs Incurred (Total Cost - Total Revenue)

Based on the Permit Fee Cost and Number of ABC Permittees that Participate

Permit Fee Cost	100% Participation of ABC Permittees	75% Participation of ABC Permittees	50% Participation of ABC Permittees
$100	$5,900	$6,350	$6,800
$150	$5,000	$5,675	$6,350
$200	$4,100	$5,000	$5,900
$250	$3,200	$4,325	$5,450

ORDINANCE NO. 2023-____

AN ORDINANCE AMENDING THE FEE SCHEDULE OF THE FY 2023-2024 CITY OF BREVARD BUDGET

WHEREAS, the City of Brevard adopted the FY 2024 budget on June 5, 2023, including a schedule of fees; and,

WHEREAS, the City Council of Brevard adopted Ordinance No. 2023-XX establishing social districts, in accordance with North Carolina General Statutes; and,

WHEREAS, the amendments to Brevard City Code require a permit for ABC-permitted establishments electing to participate in a social district; and,

WHEREAS, it is the desire of the City Council of the City of Brevard that the FY 2024 budget fee schedule be amended as outlined below.

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

SECTION 01. The City of Brevard FY 2024 fee schedule is hereby amended as described below:

SECTION 02. Add a one-time Social District Permit Fee of $200.

SECTION 03. The City Manager of the City of Brevard is hereby authorized to amend the official FY 2024 budget to reflect the change as set forth herein.

SECTION 04. This Ordinance shall become effective upon its adoption and approval.

Adopted and approved upon first reading this the 21st day of August 2023.

_____
Maureen Copelof
Mayor

ATTEST:

_____
Denise Hodsdon
City Clerk

APPROVED AS TO FORM:

_____
Mack McKeller
City Attorney

STAFF REPORT
City Council, Monday, August 21, 2023

Title:	EDA Grant Application
Speaker:	Burton Hodges, Transylvania Economic Alliance
Prepared by:	Wilson Hooper, City Manager
Approved by:	Wilson Hooper, City Manager

Background
Earlier this year the United States Economic Development Administration (EDA) opened a disaster relief grant program for communities impacted by Tropical Storm Fred in August 2021. Eligible projects must lead to economic recovery through the creation or retention of full-time employment. Applicants must be units of local government.

Discussion
The city manager recommends that the City of Brevard, in partnership with Transylvania County, Land of Sky Regional Council, and Transylvania Economic Alliance submit an application. The most promising project for job creation, and thus a grant award, is the Pisgah Labs utility extension. Phase 1 of Pisgan Labs' expansion will utilize the campus's existing well and septic, but Phase 2 will benefit from access to municipal utilities. The extension of utilities out to the Pisgah Labs campus will open up further economic development opportunities, and perhaps even benefit the Ecusta Trail.

For this project, the City must be the applicant because it will operate the asset (utility infrastructure) funded by the grant.

Policy
If the grant is awarded, the City would likely be asked to permit Pisgah Labs to become a utility customer without annexing into the city limits. The Code of Ordinances permits this in Chapter 2-292 under certain conditions, most importantly a joint economic development agreement between the City and another political jurisdiction. No such agreement has yet been developed between the City and County for the Pisgah Labs project, but would be prior to the project's execution.

Fiscal Impact
The cost of the project is estimated to be about $3.5M. The grant requires a 20% local match, but has few restrictions on where the match can come from. Although no local funding source for the match has yet been identified, it will likely come from other readily available economic development dollars at the state and county levels.

The city will take ownership of the lines, and therefore the cost of operating and maintaining them. This cost will be folded into future operating budgets, and be offset by the new fee revenue Pisgah Lab (and perhaps others) will pay.

Action
Adopt a resolution authorizing the City Manager to partner with the aforementioned agencies and submit an EDA grant application for the Pisgah Labs utility extension.

Attachments:
1. Resolution Authorizing City Manager to Pursue US EDA Grant

RESOLUTION NO. 2023-XX

AUTHORIZING CITY MANAGER TO PURSUE US DEPARTMENT OF COMMERCE ECONOMIC DEVELOPMENT ADMINISTRATION GRANT

WHEREAS, on August 21, 2023 the Brevard City Council heard a presentation from staff, summarized in the affixed staff report, on a grant opportunity from the US Department of Commerce's Economic Development Administration;

WHEREAS, if awarded, the grant will offer significant funding towards the extension of municipal utilities to an industrial expansion project that will enhance the local economy by producing well-paying jobs.

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

The City Manager (or his designee) is hereby authorized to partner with appropriate agencies to write and apply for the aforementioned grant; and

The City Manager (or his designee) is hereby authorized to begin negotiations with Transylvania County and Pisgah Labs for the purposes of connecting the latter to municipal utilities per the conditions of the Brevard Code of Ordinances.

Approved and adopted this _____ day of _____, 2023.

_____
Maureen Copelof
Mayor

ATTEST:

_____
Denise Hodsdon, CMC
City Clerk

STAFF REPORT
City Council, Monday, August 21, 2023

Title:	Burrell Mountain Water Tank Additional Funding Request
Speaker:	Jeffrey Brown, Brown Engineering Dean Luebbe, Assistant City Manager/Finance Director
Prepared by:	Dean Luebbe, Assistant City Manager/Finance Director
Approved by:	Wilson Hooper, City Manager

Background
The City has contracted with Brown Consultants PA and M.B. Kahn Construction Company on the replacement of a one million gallon water tank at the Burrell Mountain Tank site. The project was designed to replace an aging tank with a failing cap. Unexpected change orders have increased the cost of the project and the City wishes to request an additional $225,000 in funding from NCDEQ. The City expects this funding to be in identical proportion to the original funding, meaning $168,750 would be loan forgiveness and $56,250 would be debt.

Discussion
The City has previously approved change orders in the amount of $47,905.40. These change orders were small enough that they could be absorbed by the Utility Department's budget. The most recent change, however, is more significant. It involves substandard soil and is in the amount of $129,525. If the request to the state is granted, the additional money will cover both sets of change orders. If the request is not granted, funds for completion will need to be pulled from Water/Sewer fund balance.

Proposed Action
By motion, approve the City Manager and the Assistant City Manager to request additional funding from NCDEQ on the Burrell Mountain Water Tank in the amount of $225,000 and to approve change order #2.

Attachments:
1. Draft Letter to NCDEQ
2. Burrell Mtn Tank - Authority to Award
3. Change Order #1 - signed
4. Change Order #2 - unsigned

City of Brevard

The mission of the City of Brevard is to promote a high quality of life, support economic prosperity, and cultivate community while honoring its heritage and culture.

August 21, 2023

To: Mr. Mark L. Hubbard, PE
NCDEQ
Grant Management Unit
1633 Mail Service Center
Raleigh, NC 27699-1633

From: Dean Luebbe, CPA, NCCLGFO
Assistant City Manager/Finance Director
City of Brevard
95 West Main Street
Brevard, NC 28712

Re: Finished Water Storage Tank, WIF 2000
Additional Funds Request

Dear Mark:

Please find this letter as a request for additional funds for the City of Brevard's Finished Water Storage Tank Project, WIF - 2000. The project is progressing nicely, however during the site grading phase of the project, there were significant amounts (nearly 2,500 cubic yards) of unsuitable soils that were underneath the existing tank that was demolished. S&ME, along with our Engineer, Brown Consultants, PA, determined that those unsuitable soils would need to be removed and select backfill be brought in. There was also an additional 1,727 cubic yards removed due to unforeseen site conditions including poor soil quality, and buried concrete bunker blocks were discovered and removed, causing an expansion of the grading area.

It is my understanding that the Eligible amount approved by NCDEQ was $2,920,550 (see attached). The City of Brevard would like to request and additional $225,000 for the above work as discussed.

Should you have any questions, please do not hesitate to contact myself or our Engineer.

Dean M. Luebbe
dean.luebbe@cityofbrevard.com

ROY COOPER
Governor
ELIZABETH S. BISER
Secretary
SHADI ESKAF
Director

NORTH CAROLINA
Environmental Quality

December 22, 2022

Mr. Wilson Hooper, City Manager
City of Brevard
95 West Main Street
Brevard, NC 28712

SUBJECT: Authority to Award
Project No. WIF-2000
Finished-Water Storage Tank
City of Brevard

Dear Mr. Hooper:

The Project Bid Information documents, including the Disadvantaged Business Enterprise (DBE) solicitations, have been reviewed for the subject project. The negotiated project budget is approved as follows:

Project Expenses	**Total Amount**	**Eligible Amount**
M. B. Kahn Construction Co., Inc	$2,372,500	$2,372,500
Planning & Design	$273,200	$273,200
Construction Phase Engineering	$274,850	$274,850
Contingency	$0	$0
Real Property Acquisition Costs.		
Closing Costs (on Loan)	$57,161	
Total Costs	**$2,977,711**	**$2,920,550**

**Subject to further review*

Please note that the loan funding is limited to $2,858,050 with a principal forgiveness of $2,143,538.

If costs increase during construction, please contact the Division regarding the possibility of increasing the loan. Loan increases will only be considered to cover

North Carolina Department of Environmental Quality | Division of Water Infrastructure
512 N. Salisbury Street | 1633 Mail Service Center | Raleigh, North Carolina 27699-1633
919.707.9160

unforeseen conditions and will not be considered for any increases to the scope. Please use the attached invoice to remit payment.

You may award the contract and issue work orders to begin construction. Please provide Pam Whitley of this office with an original executed bound contract with specifications and Notice to Proceed. The approval of contracts is not required prior to issuance of work orders, but no payments can be made until the contract documents have been approved. Additionally, please note that this office will not process any payments until we receive the executed loan agreement. The loan agreement will be processed once the Local Government Commission approves the loan.

Laughlin-Sutton Construction Company			
TRADE	**SUBCONTRACTOR**	**PRICE**	**DBE CERTIFICATION**
Prestress Tank	Precon Corporation	$1,145,000	N/A
Demolition	4-Seasons Demolition	$ 48,500	N/A

All Payment requests must be supported by adequate documentation of costs. Your attention is directed to the special loan conditions included with your loan agreement regarding items that must be addressed prior to payments being made for construction costs.

The assigned inspector for your project is Dee Browder. Please contact her prior to scheduling the preconstruction conference. She will need to attend this first meeting. Her contact information is dee.browder@ncdenr.gov. Please be advised that all change orders must be forwarded to the inspector for review and a funding eligibility determination. Your construction of this project is a step forward in protecting our valuable water resources.

If you have questions regarding this matter, you can contact Fred Oelrich at fred.oelrich@ncdenr.gov.

Sincerely,

Mark L. Hubbard, P.E.
Grant Management Unit

cc: Jeffrey T. Brown, PE, Brown Consultants PA (jtbrown@brownpa.net)
Jennifer House
Email: Pam Whitley
Dee Browder
SRF (P_ATA)

SECTION 00608

CHANGE ORDER

A. Change Order Form:

Date: May 23,2023 Change Order #: 1 Project #: WIF 2000

Project Name: Finish Water Storage Tank

Owner: City of Brevard, NC

Contractor: M.B. Kahn Construction Co. Inc.

Reason for and Description of Change (Attach any pertinent information):

See attached COP #,2,#3,#5

Summary of Revised Contract Costs:

1.	Original Contract Price	$2,372,500.00
2.	Sum of all previous change orders	$0
3.	Price of this change order – itemize details below	$47,905.40
4.	Revised Contract Price	$2,420,405.40
5.	Original Contract Completion Date	March 5, 2024
6.	Sum of all previous contract extension days	0
7.	Extension for this change order (days)	17
8.	Revised contract completion date	March 22, 2024

Itemized description of work and costs for change order:

ITEM #	DESCRIPTION	QUANTITY	UNIT PRICE	TOTAL
COP#2	Undercut Soils at Tank	486 CY	$75/CY	$36,450.00
COP#3	Feedline Fittings	LS	-	$2,915.80
COP#5	Waterline Conflict	LS	-	$8,539.60

Total Amount of Change Order: $47,905.40

Enter this amount on line 3 of summary above

B. Change Order Execution:

The adjustment in Contract Sum or Price and/or Contract Time or Times stated in this Change Order shall comprise the total price and/or time adjustment due or owed the CONTRACTOR for the work or changes defined in this Change Order. By executing the Change Order, the CONTRACTOR acknowledges and agrees that the stipulated price and/or time adjustments include the costs and delays for all work contained in the Change Order, including costs and delays associated with the interruption of schedules, extended overheads, delay, and cumulative impacts or ripple effect on all other non-affected work under this Contract. Signing of the Change Order constitutes full and mutual accord and satisfaction for the adjustment in Contract Sum or Price or Contract Time or Times as a result of increases or decreases in costs and time of performance caused directly and indirectly from the change, subject to the current scope of the entire work as set forth in the Contract Documents. Acceptance of the waiver constitutes an agreement between OWNER and CONTRACTOR that the Change Order represents an equitable adjustment to the Contract, and that CONTRACTOR waives all rights to file a claim on this Change Order after it is properly executed.

TN WITNESS WHEREOF, the undersigned have caused the execution hereof:

This Change Order Accepted and Agreed to By:

Contractor: MATTHEW R LANDING PM

Name Title Signature

Note: Must be same person who signed contract or duly authorized representative.

Engineer: JEFFREY T. BROWN President JTB PE.

Name Title Signature

Owner: Dean Luebbe Asst City Manager Dean Luebbe

Name Title Signature

Division of Water Infrastructure
Change Order Checklist

To be considered for eligibility, the following information must be submitted for an eligibility determination (approval). The Division will send a letter indicating what costs are eligible for funding to the project owner and engineer.

Owner:	City of Brevard
Project Name:	Finish Water Tank Replacement
Funding Project No.:	WIF-2000
Change Order No.:	2
Contract No.:	1
Contractor Name:	M. B. Kahn Construction Co. Inc.

CHANGE ORDER DOCUMENTATION:

A copy, scan or original of one properly executed change order with **Owner's and Contractor's signatures including each signatory's printed name and title is required.** An unexecuted copy may be submitted for a preliminary eligibility determination. All supporting documentation must be provided including the following, as applicable:

- X Federal and/or State Project number(s) shown on the change order.
- X Clear description of **each** change.
- X Detailed justification to identify the need for **each** change.
- X Summary and cost documentation which may include:
  - Unit price cost,
  - Lump sum for item or task,
  - Contractors cost breakdown,
  - Equipment invoices, and
  - Engineer's independent cost estimate, as applicable based on complexity of change order.

  Copy of the new, revised or noted, highlighted and/or red-lined contract drawings and/or specifications showing and describing the change.

SECTION 00608

CHANGE ORDER

A. Change Order Form:

Date: August 3, 23 Change Order #: 2 Project #: WIF 2000

Project Name: Finish Water Storage Tank

Owner: City of Brevard, NC

Contractor: M.B. Kahn Construction Co. Inc.

Reason for and Description of Change (Attach any pertinent information):

See attached COP # 6

Summary of Revised Contract Costs:

1.	Original Contract Price	$2,372,500.00
2.	Sum of all previous change orders	$ 47,905.40
3.	Price of this change order – itemize details below	$ 129,525.00
4.	Revised Contract Price	$2,549,930.40
5.	Original Contract Completion Date	March 5, 2024
6.	Sum of all previous contract extension days	17
7.	Extension for this change order (days)	0
8.	Revised contract completion date	March 22, 2024

Itemized description of work and costs for change order:

ITEM #	DESCRIPTION	QUANTITY	UNIT PRICE	TOTAL
COP#6	Excavation Quantity	1,727 CY	$75/CY	$129,525.00

Total Amount of Change Order: $ 129,525.00

Enter this amount on line 3 of summary above

B. Change Order Execution:

The adjustment in Contract Sum or Price and/or Contract Time or Times stated in this Change Order shall comprise the total price and/or time adjustment due or owed the CONTRACTOR for the work or changes defined in this Change Order. By executing the Change Order, the CONTRACTOR acknowledges and agrees that the stipulated price and/or time adjustments include the costs and delays for all work contained in the Change Order, including costs and delays associated with the interruption of schedules, extended overheads, delay, and cumulative impacts or ripple effect on all other non-affected work under this Contract. Signing of the Change Order constitutes full and mutual accord and satisfaction for the adjustment in Contract Sum or Price or Contract Time or Times as a result of increases or decreases in costs and time of performance caused directly and indirectly from the change, subject to the current scope of the entire work as set forth in the Contract Documents. Acceptance of the waiver constitutes an agreement between OWNER and CONTRACTOR that the Change Order represents an equitable adjustment to the Contract, and that CONTRACTOR waives all rights to file a claim on this Change Order after it is properly executed.

TN WITNESS WHEREOF, the undersigned have caused the execution hereof:

This Change Order Accepted and Agreed to By:

Contractor:	MATTHEW LANDING	PM	
	Name	Title	Signature

Note: Must be same person who signed contract or duly authorized representative.

Engineer:	JEFFREY Brown	Pres.	
	Name	Title	Signature
Owner:			
	Name	Title	Signature

M. B. Kahn Construction Co., Inc.

April 27, 2023

Mr. Jeffrey Brown
Brown Consultants
30 Lippen School Rd
Asheville, NC 28806

RE: Finish Water Tank Replacement (DWSRF Project No: WIF-2000)
MBK Job No. 1696

SUBJECT: Change Order Proposal No. 6 (COP#6) – Excavation Quantity

Dear Mr. Brown:

M. B. Kahn Construction Co., Inc. (MB Kahn) requests compensation for additional excavation quantities beyond the contract..

As notified via RFI-009 and email dated 3/8/23 attached, MB Kahn collected topographical information for the excavation compared to topographical information of the existing site. In comparison and accounting for the volume of the existing reservoir, M.B. Kahn has removed 4,227 CY has been removed from the excavation which is required to construct the new reservoir.

Pursuant to Section 00310 Paragraph 1.3 Measurement and Payment of the Contract Documents, MB Kahn requests $129,525 and 21 additional Contract Days for this additional work. As required by the referenced Contract Documents, MB Kahn cannot proceed filling the excavation without receiving a formal approval. To support this amount requested, attached is the following:

- Cost Recapitulation Worksheet
- Topographical Information
- RFI-009
- Email dated 3/8/23

Best regards,

M. B. KAHN CONSTUCTION CO., INC.
Matthew Landing
Project Manager

Enclosure

COST RECAPITULATION: COP#6

SECT.	ITEM	QTY	UOM	U.P.	Material	U.P.	Labor	U.P.	Equip	U.P.	Other	U.P.	Sub	TOTAL
	TOTAL CY REMOVED	4227	CY		$ -		$ -		$ -		$ -		$ -	$ -
	Original Bid Quantity	2500	CY		$ -		$ -		$ -		$ -		$ -	$ -
	Over Run of Bid Item	1727	CY		$ -		$ -		$ -	$ 75.00	$ 129,525.00		$ -	$ 129,525.00
					$ -		$ -		$ -		$ -		$ -	$ -
					$ -		$ -		$ -		$ -		$ -	$ -
					$ -		$ -		$ -		$ -		$ -	$ -
					$ -		$ -		$ -		$ -		$ -	$ -
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					$ -		$ -		$ -		$ -		$ -	$ -
					$ -		$ -		$ -		$ -		$ -	$ -
	TOTAL				$ -		$ -		$ -		$ 129,525.00		$ -	$ 129,525.00

Per Diem	$ -	
License	$ -	
P&P Bonds	$ -	0.00%
Builders Risk	$ -	0.00%
GLI	$ -	0.00%
Salary Fringe	$ -	3.5%
Hourly Fringe	$ -	8.0%
Sales Tax	$ -	6.75%
Labor T&I	$ -	45.0%
Sub Bond	$ -	1.2%
Sub Total	$ 129,525.00	
Fee (15%)	$ -	0.0%
Sub Fee (5%)	$ -	5.0%
Total	$ 129,525.00	

Brevard Tank

Job: 3886 Section: 04 Drone Quantity

Area Cut and Fill Report

04/27/2023 08:16:08

Screen Name	k
Grid/Subgrid	2.00/1.00
Section size (Ft)	701.80 x 480.98
Total Work Area (SF)	19,634
Area of Cut (SF)	16,039
Area of Fill (SF)	3,471

Cut Area Threshold 0.01 Ft

Fill Area Threshold 0.01 Ft

All units in Cubic Yards

	Bank	Compacted	Expanded	Comp / Exp (%)
Stripping				
Stripping Total				
Cut				
	4,227	4,227	4,227	
Cut Total	**4,227**	**4,227**	**4,227**	

Total Export (Stripping and Cut)

Fill

In Place Fill Required

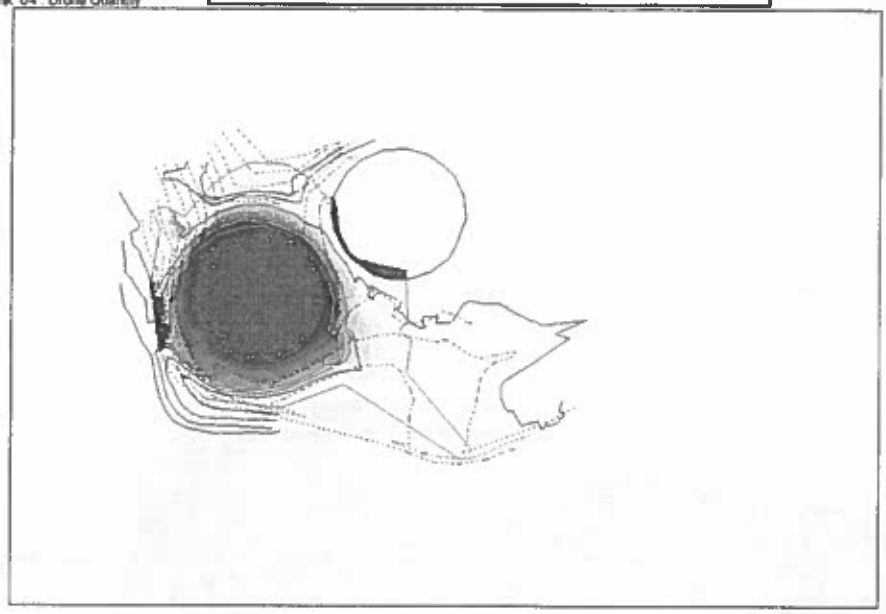
Topsoil Replacement

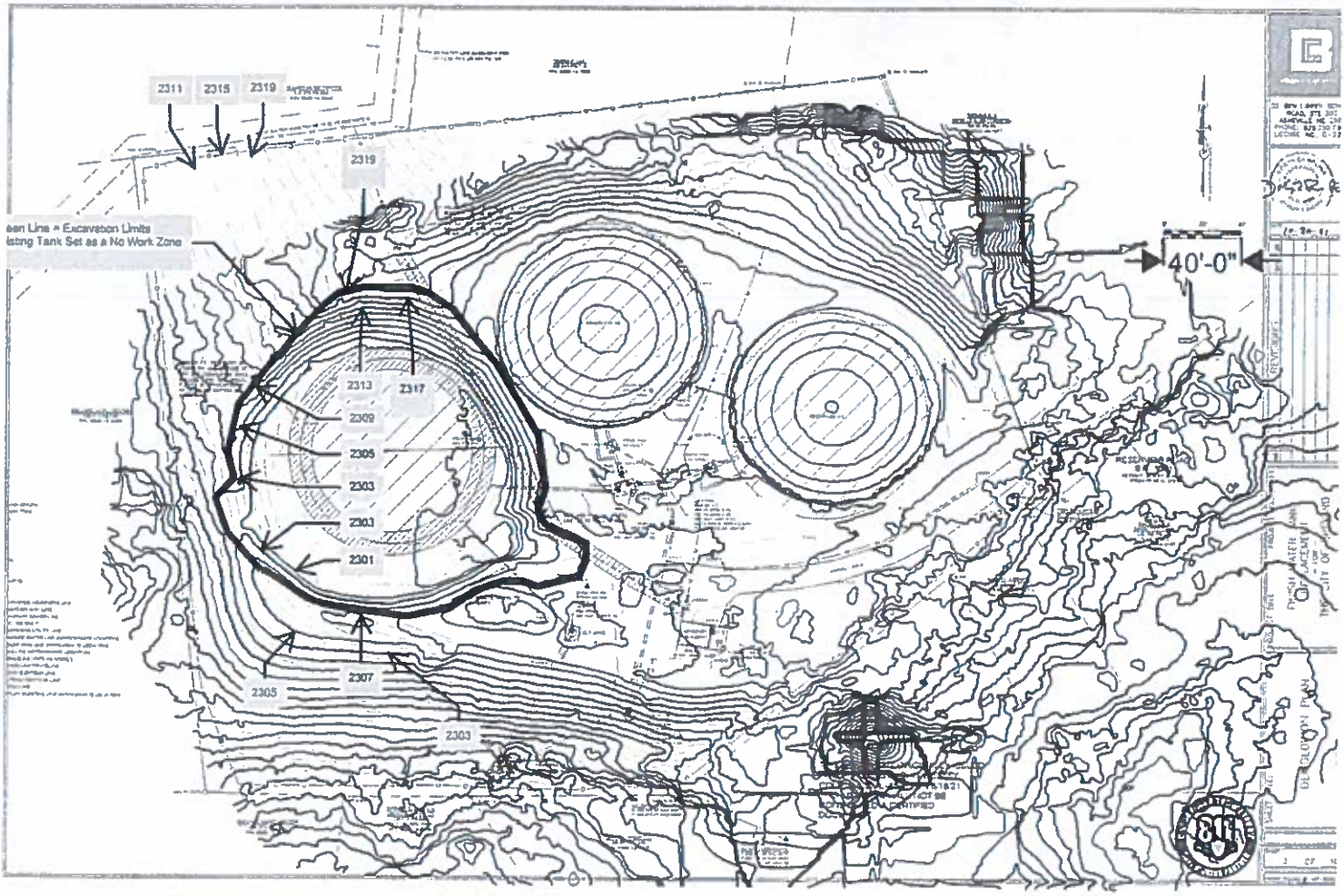
Topsoil Replacement Required

Key:
Green Dashed: Existing Contours
Red Solid: Excavation Contours
Green Solid: Limits of Disturbance
Black Areas: No Work Zones

3886: Brevard Tank 04 - Drone Quantity

Run Date 04-27-2023




2311
2315
2319
2319
een Line = Excavation Limits
isting Tank Set as a No Work Zone
40'-0"
2313
2317
2309
2305
2303
2303
2301
2307
2305
2303