



AGENDA
BREVARD CITY COUNCIL - REGULAR MEETING
Monday, December 18, 2023 - 5:30 PM
City Council Chambers

A. Welcome and Call to Order

B. Invocation

Reverend Dr. Pamela Holder

C. Pledge of Allegiance

D. Certification of Quorum

E. Approval of Agenda

F. Approval of Minutes

1. December 4, 2023 Organizational Meeting

G. Public Comments

H. Certificates / Awards / Recognition

1. Proclamation 2023-23 Kwanzaa Week

I. Special Presentation(s)

1. Plusurbia, a Consulting Firm for New Architectural Standards

J. Public Hearing(s)

1. Proposed Amendment to City of Brevard Code of Ordinances Chapter 14, Section 14-32 - Tethering of Animals

K. Consent and Information

1. Times Arcade Alley Project - Budget Amendment No. 24-02
2. Tax Settlement Report - November, 2023
3. Amendment to City Attorney Employment Agreement

4. City Council Public Safety Committee Special Meeting Minutes - September 14, 2023
5. City Council Finance, Human Resources, and Citizen Appointment Committee Minutes - September 25, 2023
6. City Council Public Works and Utilities Committee Minutes - October 4, 2023
7. City Council Public Safety Committee Minutes - October 23, 2023
8. Rosenwald Community Advisory Board Minutes - October 26, 2023
9. City Council Public Works and Utilities Committee Minutes - November 21, 2023

L. Unfinished Business

1. Proposed Text Amendment to City of Brevard Unified Development Ordinance Chapters 2, 3, 10 & 19 - Extraction Uses
2. Proposed Text Amendment to City of Brevard Unified Development Ordinance, Chapters 2, 4, 5, 17 and 19 - Building Line Revisions

M. New Business

1. Lease of Brevard Davidson River Presbyterian Church Property for LMI Housing

N. Remarks / Future Agenda Considerations

O. Closed Session(s)

1. Pending Litigation: GS 143-318.11 (a)(3)

P. Adjourn

Agenda Posted, Website, Sunshine List (December 14, 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.

**MINUTES
BREVARD CITY COUNCIL
Organizational Meeting
December 4, 2023 – 5:30 PM**

The Brevard City Council met for their Organizational meeting on Monday, December 4, 2023 at 5:30 p.m. in the Council Chambers of City Hall with Mayor Maureen Copelof presiding.

Present - Mayor Maureen Copelof, Mayor Pro Tem Gary Daniel, and Council Members Mac Morrow, Maurice Jones, Geraldine Dinkins, and Aaron Baker; Council Members-Elect Pamela Holder and Lauren Wise

Staff Present – City Attorney Mack McKeller, City Clerk Denise Hodsdon, Assistant City Manager/Finance Director Dean Luebbe, Assistant to the City Manager Alex Shepherd, Planning Director Paul Ray, Human Resources Director Kelley Craig, Communications Coordinator Becky McCann, Police Chief Tom Jordan, Fire Chief Bobby Cooper, Community Center Director Tyree Griffin, Acting Public Works Director Wesley Shook, Wastewater Treatment Plant ORC Emory Owen, and Water Treatment Plant ORC Dennis Richardson.

Press – Jonathan Rich, Transylvania Times

A. Welcome and Call to Order – Mayor Copelof called the Organizational Meeting to order and welcomed those present.

B. Invocation – Council Member Maurice Jones offered an invocation.

C. Pledge of Allegiance – Mayor Copelof led the Pledge of Allegiance.

D. Certification of a Quorum – City Clerk Denise Hodsdon certified a quorum present.

E. Approval of Agenda – Mr. Jones moved, seconded by Mr. Baker to approve the agenda as presented. The motion carried unanimously.

F. Approval of Minutes

F-1. November 6, 2023 Regular Meeting – Ms. Dinkins moved, seconded by Mr. Daniel, to approve the minutes of the November 6, 2023 Regular Meeting as presented. The motion carried unanimously.

F-2. November 20, 2023 Regular Meeting – Mr. Jones moved, seconded by Ms. Dinkins, to approve the minutes of the November 20, 2023 Regular Meeting as presented. The motion carried unanimously.

G. Recognition of Departing Council Members

G-1. Resolution No. 2023-54 - A Resolution of Respect and Appreciation for Council Member Geraldine Dinkins – Mayor Copelof read the Resolution aloud and presented it to Council Member Dinkins together with a certificate of a \$250 donation made in her honor to Bracken Preserve. Council Members Jones, Morrow, Daniel, and Baker; Attorney McKeller, City Clerk Denise Hodsdon and Assistant City Manager/Finance Director Dean Luebbe expressed appreciation and well wishes to Ms. Dinkins. Ms. Dinkins shared some farewell remarks and included a list of dos and don'ts for incoming councilmembers and anyone thinking of running in the future. She added that it's been an amazing experience and she would do it all over again. She said it's hard work, but I feel good about having done it and I want to tell everybody who is considering it that it is a worthy thing to do for your hometown.

RESOLUTION NO. 2023-54
A RESOLUTION OF RESPECT AND APPRECIATION FOR
COUNCIL MEMBER GERALDINE DINKINS

WHEREAS, Geraldine Dinkins was elected in November 2019 as a write-in candidate, a feat that speaks to her passion and persistence; and

WHEREAS, Geraldine Dinkins, having served on the Brevard City Council from 2019-2023, is leaving with a record of positive achievements; and

WHEREAS, Councilwoman Dinkins was appointed Chair of the Council Finance and Human Resources Committee and Vice Chair of the Council Public Works and Utilities Committee and served in those roles from 2019-2021. During her tenure as a City Council member over \$11M in grant funding was received to substantially improve infrastructure through the City. This resulted in new stormwater installations; a new \$2M water storage tank; over \$4M in improvements at the water treatment plant; new water lines for several city streets; and replacement of a 60 year-old vehicular bridge; and

WHEREAS, Councilwoman Dinkins was appointed Vice Chair of the Council Downtown Master Plan Committee and served in that role from 2021-2023. During her tenure the first phase of the Downtown Master Plan was implemented improving the safety of key downtown intersections, enhancing the ambiance of Brevard's historic downtown, and increasing usage of the City's outdoor spaces by the public; and

WHEREAS, Geraldine Dinkins served as Co-Chair of the Short-Term Rental Task Force from 2021-2023. Councilwoman Dinkins was instrumental in advocating, creating and providing leadership to this Task Force that looked at how to balance the rights of property owners with the need to maintain community connections as well as encourage long-term rental availability within the community. Her leadership resulted in City Council adopting a new policy increasing regulation of short-term rentals. Her efforts directly supported Council's efforts to increase affordable and workforce housing; and

WHEREAS, during Councilwoman Dinkins', tenure, City Council presided over completion of the Mary C. Jenkins Community Center; installation of new playground equipment and basketball court at Silversteen Memorial Playground; completion of the Clemson Plaza project; completion of two skate park facilities; completion of the City's first dog park; addition of new trail segments connecting neighborhoods to the city-wide Brevard Trail System; adoption of the Brevard Pedestrian and Bicycle Plan; adoption of the *Building Brevard 2030* Comprehensive Land Use Plan; and receipt of nearly \$45M in US DOT Grant Awards for the construction of the Ecusta Trail; and

WHEREAS, Geraldine Dinkins served as a Council Member during the 2020 COVID 19 pandemic when unprecedented safety measures were required throughout the community. Her leadership was instrumental in keeping the public informed of what was required. She actively worked with community groups to provide safety masks for the public before these were available commercially.

WHEREAS, Brevard City Council desires to recognize and express appreciation to Geraldine Dinkins for her invaluable service to the Brevard City Council and to the community which she has served.

NOW THEREFORE BE IT RESOLVED, that the Mayor and City Council of the City of Brevard, North Carolina, express to you, Geraldine Dinkins, on behalf of our citizens and officials, our respect, appreciation and gratitude for your unselfish, devoted and invaluable service and contributions rendered to the City of Brevard and its citizens.

Adopted and approved this the 4th day of December, 2023.

G-2. Resolution No., 2023-55 - A Resolution of Respect and Appreciation for Council Member Maurice Jones- Mayor Copelof read the Resolution aloud and presented it to Council Member Jones together with a canvas print of a photo of Downtown Brevard by Rob Travis of Blue Moon Gallery. Council Members Dinkins, Morrow, Daniel, and Baker, Attorney McKeller, City Clerk Denise Hodsdon and Assistant City Manager/Finance Director Dean Luebbe expressed appreciation to Mr. Jones for his dedication to Brevard and its citizens and wished him well. Mr. Jones shared some farewell remarks and said it was an honor to serve the city for 12 years. He said I'm not going to talk much about myself, but about the people that are sitting next to me because if you respect me for what I did, then you have to thank them as well. It is because of the people you see sitting to the left and right of me that allowed me to be who I am and do what I did. He thanked the citizens for having confidence in him and allowing him to represent them. He expressed his appreciation to current and past councilmembers and to City Staff.

RESOLUTION NO. 2023-55
A RESOLUTION OF RESPECT AND APPRECIATION FOR
COUNCIL MEMBER MAURICE JONES

WHEREAS, Maurice Jones having served from 2011-2023 on the Brevard City Council is leaving with a record of positive achievements. During his twelve years of service he worked tirelessly as a champion and advocate for the Brevard community; and

WHEREAS, Maurice Jones supported the creation of City Council Committees which has improved the decision making process for the betterment of the community; and

WHEREAS, Maurice Jones served as Chair of the Council Public Safety Committee from 2015-2019, and as Vice Chair from 2019-2023. He played an instrumental role in increasing the effectiveness of the Police and Fire Departments, supporting significant organizational changes such as the hiring of a full time fire chief; assumption of medical first response responsibilities by the Brevard Fire Department; creation of the police cadet program; and consolidation of law enforcement communications with the County Sheriff's office. Understanding the complexities and timeframe required for capital expenditures, he helped ensure that critical fire and police vehicles and equipment were programmed in the budget so they could be obtained when needed; and

WHEREAS, Maurice Jones served as Vice Chair of the Council Public Works and Utilities Committee from 2015-2019, and as Chair from 2019-2023. During this timeframe he championed multiple critical upgrades to the City's water and wastewater treatment systems. He supported a multi-million dollar investment in upgrades to the citywide wastewater distribution system resulting in new pump stations at Neely Road and Gallimore Road as well as a new equalization tank at the Wastewater Treatment Plant. He supported a multi-year citywide effort to identify and repair water infiltration into the sewer lines thereby improving the efficiency and resiliency of the system. He supported improvements to the Water Treatment Plant infrastructure with a \$4.9M grant for a new .75 million gallon clearwell and replacement of an aging generator, pumps and power panels; a new 1-million gallon water storage tank, as well as replacement and upgrade of water lines for numerous city streets; and

WHEREAS, Maurice Jones served as Chair of the Mary C. Jenkins Community Center Task Force from 2018-2021, and as Co-Chair of the Rosenwald Community Advisory Board from 2021-2023. He was the primary visionary, advocate and champion for creation of the new \$2M Mary C. Jenkins Community and Cultural Center. He helped facilitate agreements between the City, the Mary C. Jenkins Board of Directors and Bethel A. Baptist Church resulting in the strong partnership that allowed the Community Center, the Silversteen Park and the new parking lot to be constructed. Recognizing the need to better celebrate and memorialize the history of African-Americans in Brevard he worked tirelessly to get Brevard recognized as part of the NC Civil Rights Trail with a plaque honoring the 1963 Brevard High School Football Team as well as a plaque honoring Moms Mabley. He helped establish the first Brevard Juneteenth celebration and helped the City establish Juneteenth as a holiday for city employees; and

WHEREAS, Maurice Jones served as Vice Chair of the Housing Committee from 2021-2023. He recognized the critical need for more affordable and workforce housing and helped lead the effort to expand the role of the Housing Trust Fund, as well as increase funding dedicated in the budget for affordable housing. He served as a community champion working with residents in low income areas who needed assistance for home repairs, advocating that this be a prime area for City investment of funds; and

WHEREAS, Maurice Jones served as Chair of the Human Relations Study Committee from 2014-2019, and as Chair of the Community Relations Committee from 2019-2023. He recognized the importance of diversity in our community and helped ensure open communications existed across the diverse community of Brevard and that everyone had a voice and was heard; and

WHEREAS, During his tenure the City created the Railroad Depot Park, the Brevard Dog Park, the Brevard Community Garden; two skate park facilities; partnered with Transylvania Youth Soccer Association creating a new soccer field, extended the Estatoe Trail from Pisgah National Forest to Main Street, obtained funding for the Ecusta Trail, purchased the Tannery property for the creation of another park and trail connections; created Bracken Mountain Preserve and recently purchased an additional 34 acres to improve this amenity for the community; and

WHEREAS, Maurice Jones, during his tenure made significant and lasting improvements to the safety, health, quality of life, infrastructure, community relations and the efficient operation of the City of Brevard; and

WHEREAS, Brevard City Council desires to recognize and express appreciation to Maurice Jones for his invaluable service to Brevard City Council and to the community which he has served.

NOW THEREFORE BE IT RESOLVED, that the Mayor and City Council of the City of Brevard, North Carolina, express to you, Maurice Jones, on behalf of our citizens and officials, our respect, appreciation and gratitude for your unselfish, devoted and invaluable service and contributions rendered to the City of Brevard and its citizens.

Adopted and approved this the 4th day of December, 2023.

H. Acknowledge Receipt of the Transylvania County Board of Elections Abstract of Votes for the Municipal Election November 7, 2023. Results of the 2023 Municipal Election have been certified and the following were elected to Office of City Council for a term of four years: Gary Daniel, Pamela C. Holder, and Lauren Wise.

I. Induction of Council Members – Oath of Office

I-1 Administration of the Oath of Office to Council Member Gary Daniel – Gary Daniel, accompanied by his wife, was administered the Oath of Office by City Clerk Denise Hodsdon. (An original is deposited with Transylvania County Clerk of Superior Court, and a second original is on file in City Clerk's office.)

State of North Carolina
County of Transylvania
City of Brevard

I, Gary Daniel, do solemnly and sincerely swear that I will support the Constitution and laws of the United States; that I will be faithful and bear true allegiance to the State of North Carolina, and to the constitutional powers and authorities which are or may be established for the government thereof; that I will endeavor to support, maintain and defend the Constitution and laws of said State, not inconsistent with the Constitution of the United States, to the best of my knowledge and ability; and that I will faithfully discharge the duties of my office as a Brevard City Council Member, so help me God.

s/ Gary Daniel

Oath Administered by:
Denise Hodsdon, CMC, City Clerk
December 4, 2023

I-2 Administration of the Oath of Office to Council Member Pamela C. Holder – Pamela C. Holder, accompanied by family members, was administered the Oath of Office by City Clerk Denise Hodsdon. (An original is deposited with Transylvania County Clerk of Superior Court, and a second original is on file in City Clerk's office.)

State of North Carolina
County of Transylvania
City of Brevard

I, Pamela C. Holder, do solemnly and sincerely swear that I will support the Constitution and laws of the United States; that I will be faithful and bear true allegiance to the State of North Carolina, and to the constitutional powers and authorities which are or may be established for the government thereof; that I will endeavor to support, maintain and defend the Constitution and laws of said State, not inconsistent with the Constitution of the United States, to the best of my knowledge and ability; and that I will faithfully discharge the duties of my office as a Brevard City Council Member, so help me God.

s/ Pamela C. Holder

Oath Administered by:
Denise Hodsdon, CMC, City Clerk
December 4, 2023

I-3 Administration of the Oath of Office to Council Member Lauren Wise – Lauren Wise, accompanied by his wife, was administered the Oath of Office by City Clerk Denise Hodsdon. (An original is deposited with Transylvania County Clerk of Superior Court, and a second original is on file in City Clerk's office.)

State of North Carolina
County of Transylvania
City of Brevard

I, Lauren Wise, do solemnly and sincerely affirm that I will support the Constitution and laws of the United States; that I will be faithful and bear true allegiance to the State of North Carolina, and to the constitutional powers and authorities which are or may be established for the government thereof; that I will endeavor to support, maintain and defend the Constitution and laws of said State, not inconsistent with the Constitution of

the United States, to the best of my knowledge and ability; and that I will faithfully discharge the duties of my office as a Brevard City Council Member.

s/ Lauren Wise

Oath Administered by:
Denise Hodsdon, CMC, City Clerk
December 4, 2023

Council Members Seated - Council Members Daniel, Holder and Wise took their seats at the dais.

J. New Business

J-1. Board and Committee Appointments – Mayor Copelof explained that she has prepared a recommended slate for each of the boards and committees for Council’s consideration. Mr. Morrow moved, seconded by Mr. Wise, to approve the slate of appointments as recommended by the Mayor.

Discussion: Mr. Baker said that there are things with this list that I did not agree with and that most of my concerns had to do with some of the major projects coming before us; the Wastewater Treatment Plant, the Ecusta Trail; and the importance of having many voices and opinions and perspectives weighing in on some of those major projects. I am going to be supportive of this slate tonight, but I am interested in how this new Council moves forward on some of those major projects and whether or not some of those projects should have a standalone committee so that we can really dig in on some of the important things that we’re talking about. We don’t exactly know how much a new Wastewater Treatment Plant is going to cost yet, but we’re talking about tens of millions of dollars, on the order of what the Ecusta Trail is going to cost and the Ecusta Trail has its own advisory committee. I am interested in discussions we might have going forward on that, both in the strategic planning session and our budget sessions.

Mr. Daniel said I too have some concerns about some appointments on the list. I have spoken to everyone involved about my concerns. My initial thought was that I would vote against this for those reasons. I feel like my concerns are valid and important. I will be happy to have those concerns allayed in the future, but I think we can move forward with this list today.

Vote on the motion was 4-1 (Daniel). The motion carried.

**RESOLUTION NO. 2023-56
RESOLUTION APPOINTING COUNCIL MEMBERS TO
COMMITTEES AND BOARDS**

WHEREAS, on October 16, 2023 the City of Brevard City Council adopted Ordinance No. 2023-51 amending the process for appointing council members to serve committees and boards; and

WHEREAS, it is the duty of the mayor to recommend appointment of council members to serve on committees and boards, subject to approval by vote of City Council; and

WHEREAS, Mayor Maureen Copelof has presented a recommended slate of council member appointments for City Council’s consideration.

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

Section 1. The Brevard City Council does hereby appoint City Council Members to various committees and boards for a term to be effective immediately and expiring in December 2025 as follows:

Policy Committees:

1. Housing Committee – Chair: Pamela Holder; Vice Chair: Aaron Baker
2. Public Works and Utilities Committee – Chair: Mac Morrow; Vice Chair: Lauren Wise
3. Public Safety Committee – Chair: Aaron Baker; Vice Chair: Mac Morrow

4. Finance, Human Resources and Citizen Appointment Committee – Chair: Lauren Wise; Vice Chair: Gary Daniel

Advisory Committees:

1. Downtown Master Plan Committee: Chair: Gary Daniel; Vice Chair: Pamela Holder
2. Rosenwald Community Advisory Board: Co-chair: Pamela Holder; member Gary Daniel
3. Parks, Trails and Recreation Committee: Chair: Aaron Baker**; Vice Chair Lauren Wise

Outside Boards:

1. Land of Sky Regional Council: Primary: Maureen Copelof; Alternate: Gary Daniel
2. RPO Transportation Committee: Primary: Mac Morrow; Alternate: Lauren Wise
3. Transylvania Economic Alliance: Aaron Baker
4. Heart of Brevard: Maureen Copelof
5. TC Tourism Development Authority: Lauren Wise
6. Chamber of Commerce: Maureen Copelof
7. Community Relations Board: Pamela Holder

Adopted and approved this the 4th day of December, 2023.

J-2. Nomination and Appointment of Mayor Pro Tempore – Mr. Morrow moved to nominate Pamela Holder for Mayor Pro Tem. There was no second to the nomination.

Mr. Baker moved, seconded by Mr. Wise to reappoint Council Member Gary Daniel as Mayor Pro Tem. The motion carried 4-1 (Holder). City Clerk Denise Hodsdon administered the Oath of Office to Mayor Pro Tem Daniel.

State of North Carolina
County of Transylvania
City of Brevard

I, Gary Daniel, do solemnly and sincerely swear that I will support the Constitution and laws of the United States; that I will be faithful and bear true allegiance to the State of North Carolina, and to the constitutional powers and authorities which are or may be established for the government thereof; that I will endeavor to support, maintain and defend the Constitution and laws of said State, not inconsistent with the Constitution of the United States, to the best of my knowledge and ability; and that I will faithfully discharge the duties of my office as Mayor Pro Tem of Brevard, North Carolina, so help me God.

s/ Gary Daniel

Oath Administered by:
Denise Hodsdon, CMC, City Clerk
December 4, 2023

J-3. Approval of City Council 2024 Meeting Schedule – Ms. Holder moved, seconded by Mr. Morrow to approve the 2024 meeting schedule as presented. The motion carried unanimously.

K. Remarks / Future Agenda Considerations

Mr. Wise said thanks y'all.

Ms. Holder said ditto.

Mr. Morrow said Happy Holidays.

Mr. Daniel said Happy Holidays.

Mr. Baker said I am looking forward to working with this Council. I was very pleased to learn about the election results and can't wait to get started.

Mr. Luebbe said congratulations.

Mayor Copelof said let's go celebrate and asked for a motion to adjourn.

L. Adjourn – There being no further business, at 6:42 PM Mr. Morrow moved, seconded by Mr. Baker, to adjourn the Organizational meeting. The motion carried unanimously.

Immediately following the meeting a reception was held at the Pisgah Health Trust Center to extend appreciation to departing Council Members Maurice Jones and Geraldine Dinkins and to welcome incoming Council Members Gary Daniel, Pamela Holder and Lauren Wise.

Maureen Copelof
Mayor

Denise Hodson, CMC
City Clerk

Minutes Approved: December 18, 2023



Proclamation No. 2023-23 Kwanzaa Week Proclamation

WHEREAS, Kwanzaa is an observance week annually celebrated from December 26 to January 1 celebrating African American family, heritage, community contributions and culture throughout the world. The name 'Kwanzaa' translates to "first fruits of the harvest" in the Swahili; and

WHEREAS, Kwanzaa was created by Dr. Maulana Karenga, professor and chairman of Africana Studies at California State University. Since 1966, Kwanzaa has been celebrated for a week with the lighting of a 7 prong candle holder, called a *Kinara*. Kwanzaa is organized with proclamations by mayors and city councils, festivities and events to recognize the significance of values and core principles. The three official colors are black, red and green which are symbolic and representative of Kwanzaa. The green color represents the hope for a better future, the red represents the struggle and barriers throughout history and the single black candle which is placed in the center represents African people; and

WHEREAS, the 7 core principles include Unity, Self-determination, Collective Work and Responsibility, Cooperative Economics, Purpose, Creativity and Faith. Throughout the week there are fundamental activities of the ingathering of people, spiritual worship, commemoration of the past and commitments to positively build proactively for future generations; and

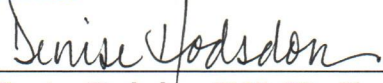
WHEREAS, the City of Brevard, North Carolina, honors cultural diversity, equity and inclusion for all to enjoy. This city upholds a tradition to enrich the community with values, proactively preserve African American historical preservation and welcome all residents to participate in recognizing Kwanzaa as an opportunity to continue to unite; and

WHEREAS, this city will continue to successfully build strong foundations, collectively embracing cultural diversity that empowers people of all faiths, ethnic backgrounds and focus on aspiring towards the future that educates and respects cultural diversity. Diversity strengthens our city socially, economically and improves the quality of life for all residents.

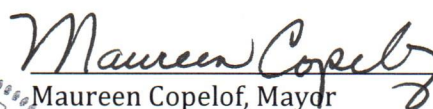
NOW, THEREFORE, I, Maureen Copelof, Mayor of the City of Brevard, North Carolina, do hereby proclaim December 26, 2023 to January 1, 2024, as **KWANZAA WEEK** in the City of Brevard and commend its observance to all citizens.

Signed this 18th day of December, 2023.

Attest:


Denise Hodsdon, CMC, City Clerk




Maureen Copelof, Mayor

STAFF REPORT

City Council, Monday, December 18, 2023

Title: Plusurbia, a Consulting Firm for New Architectural Standards

Speaker: Aaron Bland, Asst Planning Director + Plusurbia Team

Prepared by: Aaron Bland, Asst Planning Director

Approved by: Paul Ray, Planning Director, Wilson Hooper, City Manager

Background

On October 16, 2023 the Planning Department issued a request for qualifications seeking proposals from qualified, professional consultants to assist the City in updating the existing architectural standards of the City's Unified Development Ordinance (UDO), which are primarily found in Chapter 5- Building Types and Architectural Standards. Three responses were received by the November 3rd deadline.

Planning Staff interviewed the project team from each of these firms and ultimately selected Plusurbia Inc., an urban planning and architectural design firm, for the project. The Plusurbia team will make a presentation to Council detailing their experience and vision for this project.

Discussion

The UDO is the City's primary regulatory document guiding all development and land use within the City and its ETJ. While many chapters of the UDO have seen significant changes in the past several years, Chapter 5 remains largely untouched since its original adoption in 2006. Staff believes that the standards and regulations found in Chapter 5 have become outdated and do not accurately reflect the style and form that the City would prefer new construction in Brevard to take.

Ensuring architectural standards codify the appropriate building forms and features is an expertise that is outside the skill set of city planners. Staff is recommending that this work be completed by an outside firm with architectural and code writing experience. Staff was impressed by the Plusurbia team, both in their history of high quality results with similar projects and their firm's overall philosophy and enthusiasm.

Policy Analysis

Updating the City's architectural and building design standards, particularly using a more form-based approach, is mentioned numerous times throughout the Building Brevard 2030 Comprehensive Land Use Plan, such as recommendations LUH-7, LUH-8, LUH-9, LUH-10, and ATCH-3.

Fiscal Impact

In the adopted FY23-24 budget, the Planning Department's Professional Services budget had \$75,000 specifically earmarked for implementation of the Comprehensive Land Use Plan. It is expected that the first phase of this project, to be paid for during this fiscal year, will cost

\$68,500. A second phase of the project would be initiated next fiscal year at a cost of \$56,000; Planning would include this amount in their FY24-25 budget request.

Action

Staff requests that Council adopt the attached resolution authorizing the City Manager to enter into a two-phased contract with Plusurbia to draft new architectural standards for the City of Brevard.

Attachments:

1. RES-23-XXX Authorize Plusurbia Contract

Resolution 2023-XX

A RESOLUTION AUTHORIZING THE CITY MANAGER TO APPROVE A TWO-PART CONTRACT WITH PLUSURBIA, INC. A PLANNING DESIGN CONSULTANT COMMISSIONED TO DRAFT UPDATES TO THE CITY OF BREVARD UNIFIED DEVELOPMENT ORDINANCE, CHAPTER 5 – BUILDING TYPES AND ARCHITECTURAL STANDARDS.

WHEREAS, the 2030 Comprehensive Land Use Plan emphasizes new architectural standards with focus areas that aim to preserve high quality design and improve on other areas of the built environment; and

WHEREAS, architectural standards should consider form-based code for Downtown that supports a human-scaled, pedestrian-friendly environment which preserves and replicates buildings and structures demonstrating aesthetically pleasing elements or historical significance; and

WHEREAS, the architectural standards should help to establish or expand the standards in existing zoning overlay districts for the Asheville Highway Corridor and Pisgah Forest Area to establish stricter standards and improve multimodal safety and convenience when accessing places for goods, services, housing, and employment through a predictable pattern of development and architectural design; and

WHEREAS, the corridor should accommodate a variety of residential and nonresidential uses in addition to highway-oriented commercial uses which are important gateways to the City and the Pisgah National Forest, and aesthetic considerations should be included into overlay district standards and form-based elements may include building form, site access requirements, parking location or design, block structure, frontage, and public space requirements; and

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

Section 1. Plusurbia, Incorporated is a planning design firm with offices in Greenville, SC; Washington DC; Miami, FL; and San Juan, Puerto Rico, and have been selected to study the City's built environment and draft new architectural standards for the City as recommended in the 2030 Comprehensive Land Use Plan.

Section 2. The City Manager, is authorized and directed to sign a multi-phase contract with Plusurbia, Incorporated.

Section 3. This Resolution shall become effective upon its adoption and approval.

Adopted and approved this the 18th day of December 2023.

Maureen Copelof
Mayor

ATTEST:

Denise Hodsdon
City Clerk

STAFF REPORT

City Council, Monday, December 18, 2023

Title: Proposed Amendment to City of Brevard Code of Ordinances
Chapter 14, Section 14-32 - Tethering of Animals

Speaker: Tom Jordan, Chief of Police

Prepared by: Tom Jordan, Police Chief

Approved by: Wilson Hooper, City Manager

Background

Codes governing the treatment of animals and outlining the city's legal enforcement authorities are codified in Chapter 14 of the Brevard Code of Ordinances.

At the October 23, 2023 Public Safety Committee meeting, the committee heard testimony from a resident about the living conditions of dogs in her neighborhood. Her claim was that the dogs were tethered in an abusive fashion in the backyard of a neighborhood house, and that the city's Animal Control Officer was not enforcing the rule. Staff provided evidence that the Animal Control Officer was aware of the situation, but hadn't issued a citation because the code did not address tethering and the other conditions did not rise to the level of abuse/neglect. The Committee asked staff to update the language of the code.

At the November 27, 2023 Public Safety Committee meeting, staff proposed new language. The committee approved the proposal and forwarded it to full Council.

Discussion

A draft of the code with updated tethering language is attached. This language is similar to that of other municipalities with codes governing tethering. The new language adds tethering as an act that can be regulated by the city, and gives examples of proper and improper tethering. Other changes include clarifying that the police department's Code Enforcement Officer is the city's designated enforcement official for these provisions, and that the Chief of Police has the authority to issue permits for the temporary keeping of goats and sheep.

The attached document also presents for your information animal-related provisions in other chapters. Please note that these are for information only and no updates are being proposed to them at this time.

Action

For public hearing and information only. Council will be asked to take action at its next meeting.

Attachments:

1. Proposed updates to Chapter 14, Section 14-32 Tethering of Animals



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:

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.

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.

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

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

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.

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.

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.

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.

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

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

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

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.



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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 owner'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. 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.

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.

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.

Park manager means an employee or employees of the City of Brevard, designated by the city manager, who coordinates management of the Bracken Preserve.

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,

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. *Sentry dog* means a dog that is trained or conditioned to attack or otherwise respond aggressively without command.
- C. *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.



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

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.

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.

(Code 1980, § 1-2, Ord. No. [2023-43](#), § 1(Exh. A), 9-5-23)



CHAPTER 14. ANIMALS AND FOWL

ARTICLE I. IN GENERAL

14-1. Reserved.

(Code 1980, § 4-20; Ord. No. 17-99, § 1, 6-21-99; Ord. No. 9-00, § 1, 4-17-00; Ord. No. 2012-22, § 1(Exh. A), 8-20-12; Ord. No. 2023-43, § 1(Exh. A), 9-5-23)

Editor's Note—Ordinance 2023-43 transferred the contents of this section to City Code § 1-2.

14-2. City designated bird sanctuary.

The entire area embraced within the corporate limits of the city is hereby designated as a bird sanctuary.

(Code 1980, § 4-1)

State law reference(s)—Authority to establish, G.S. 160A-188.

14-3. Shooting, hunting or injuring birds.

It shall be unlawful to trap, hunt, shoot or attempt to shoot or molest in any manner any bird or wild fowl or to rob bird nests or wild fowl nests; provided, however, if pigeons, crows, starlings or English sparrows are found to be congregating in such numbers in a particular locality that they constitute a nuisance or menace to health or property in the opinion of the county health officer, the ~~health officer~~ animal services officer shall meet with the representatives of the Audubon Society, Bird Club, Garden Club or Humane Society, or as many of such clubs as are found to exist in the city, after having given at least three days' actual notice of the time and place of the meeting to the representatives of such clubs. If as a result of the meeting no satisfactory alternative is found to abate such nuisance, the birds may be destroyed in such numbers and in such manner as is deemed advisable by the city council, and this shall be done under the supervision of the chief of police.

(Code 1980, § 4-2)

14-4. Keeping livestock.

It shall be unlawful to keep or maintain any cow, bull, calf, hog, pig, horse, mule, pony, goat or sheep or other livestock within the city, except as provided in Section 14-7; provided that this section shall not prohibit the assembling of livestock for shipment or from the unloading of the livestock within the city, provided the livestock is kept penned and is not located within the city for more than 24 hours; and provided further that Section 14-7 shall not apply to livestock assembled for fairs and expositions.

(Code 1980, § 4-3; Ord. No. 17-99, § 1, 6-21-99)

14-5. Keeping wild animals or dangerous insects.

It shall be unlawful for any person to keep any live reptiles, wild animals or insects likely to be dangerous or injurious to human life within the city, except as provided for in Section 14-7 and Section 14-9.

(Code 1980, § 4-4)



State law reference(s)—Possession or harboring of dangerous animals, G.S. 160A-187.

14-6. Keeping fowl.

- A. *Domestic fowl.* It shall be unlawful to keep geese, ducks, chickens or other domestic fowl within the city, except as provided in subsection 14-6.B and Section 14-7; provided that this section shall not prohibit the assembling of such fowl for shipment or the unloading of such fowl within the city, provided the fowl is kept penned and is not located within the city for more than 24 hours; provided further that this section shall not apply to domestic fowl kept by any merchant for the purpose of resale.
- B. The keeping of chickens may be permitted subject to the conditions set forth in this subsection.
1. *In general.*
 - a. The keeping of roosters is prohibited.
 - b. In no case shall the number of chickens kept by any single household exceed 15 birds, nor shall the number of chicken coops exceed one chicken coop. It is the intention of this section that the term "household" apply to a grouping of residents within a single dwelling unit, which is located upon a parcel of land. In cases where multiple dwelling units exist upon a single parcel of land (i.e., duplex structures, apartment buildings, condominium buildings or other, similar multifamily structures), this provision shall be construed to mean the allowance of 15 birds and one chicken coop for the apartment building, condominium building or other, similar multifamily structure.
 - c. It is the intent of this section that persons within the city be permitted to keep chickens for personal or domestic consumption of eggs and meat. In no case shall this section be construed to mean the authorization of bona fide agricultural operations or commercial enterprises engaged in the production of meat, eggs or live chickens for sale or distribution.
 2. *Permit required; inspections required; violations.*
 - a. Persons keeping chickens within the city shall first secure an annual permit from the code enforcement officer for the City of Brevard, and shall renew such permit each year thereafter, on or before the anniversary of such permit. The code enforcement officer may impose such reasonable conditions as are necessary to protect the health, safety and welfare of the public. Permits may be revoked by the code enforcement officer at any time upon violation of the terms of the permit or any provision of this section.
 - b. Permit fees shall be set forth in the Schedule of Taxes and Fees for the City of Brevard.
 - c. The ~~administrator-code enforcement officer~~ shall have the power to conduct such investigations as the ~~administrator-code enforcement officer~~ may reasonably deem necessary to carry out his or her duties as prescribed in this section and, for this purpose, to enter at reasonable times upon any property, public or private, for the purposes of inspection, determination of plan compliance, and investigating and inspecting the sites of any complaints or alleged violations of this section.
 - d. The ~~administrator-code enforcement officer~~ shall have the power to require written statements, certificates, certifications, or the filing of reports with respect to pertinent questions relating to complaints or alleged violations of this section.
 - e. No person shall obstruct, hamper or interfere with the ~~code enforcement officer administrator~~ while carrying out his or her official duties. If the owner or occupant of any property refuses to permit inspections or otherwise obstructs an investigation or other actions of the ~~administrator-code enforcement officer~~ in the performance of his or her duties, the ~~administrator-code enforcement~~



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officer shall proceed to obtain an administrative search warrant pursuant to G.S. 15-27.2 or its successor.

- f. Persons found to be in violation of this section shall be provided notice of such violation either by personal service or by registered mail, certified mail return receipt requested, and by posting notice conspicuously on the property; and shall comply with this section within 15 days of the date of issuance of such notice.
- g. Persons found to be in violation of this section shall be subject to such remedies as are set forth in subsection 14-6(b)(3).

3. Remedies.

- a. *Criminal penalties.* Persons found to in violation of this section may be found guilty of a class 3 misdemeanor and shall be subject to penalties and remedies as set forth in Brevard City Code, [CHAPTER 1](#), General Provisions, Section 1-8, General penalty; other remedies.
- b. *Civil penalties.* The owner or occupant of any land or building, or part thereof, who creates, or maintains any condition that is in violation of this section may be held responsible for the violation and subject to the civil penalties and remedies provided herein.
 1. *Notice.* No civil penalty shall be assessed until the person alleged to be in violation has been notified in accordance with subsection 14-6(b)(2). If after receiving a notice of violation under [subsection] 14-6(b)(2), the owner or other violator fails to take corrective action, a civil penalty may be imposed under this section in the form of a citation. The citation shall be served in the same manner as of a notice of violation. The citation shall state the nature of the violation, shall state the civil penalty to be imposed upon the violator, and shall direct the violator to pay the civil penalty within 15 days of the date of the citation.
 2. *Continuing violation.* For each day the violation is not corrected, the violator will be guilty of an additional and separate offense and subject to additional civil penalty.

4. Enclosures.

- a. No person shall permit chickens to run at large within the city. Chickens shall be kept in an enclosure at all times and shall not be permitted to range free. Any chicken not contained in an enclosure shall be deemed to be at large and may be captured by animal control officers or officers of the City of Brevard Police Department. After having made a reasonable effort to locate the owner, animal control or police officers may humanely destroy or convey the chicken to any person.
- b. All enclosures employed in the keeping and containment of chickens, whether stationary or portable, shall include chicken coops and chicken runs. Enclosures shall consist of a top and sides comprised of materials of sufficient design and durability as to prevent chickens from exiting the enclosure by horizontal or vertical movement, including but not limited to fencing, netting and solid surfaces.
- c. Chicken coops shall be designed in such a manner as to be secure against inclement weather and invasion by predators.
- d. Chicken coops shall have sufficient ventilation or window openings to allow the circulation of sunlight and air.
- e. The floor and walls of chicken coops shall be constructed of materials conducive to regular cleaning and sanitation.
- f. Chicken coops shall provide a minimum of two and one-half square feet of floor area for each chicken.



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- g. Chicken coops shall not exceed 120 square feet of ground floor area in size.
 - h. Chicken coops shall be set back a minimum of ten feet from all property boundaries and road rights-of-way.
 - i. Chicken runs shall provide a minimum of five square feet of ground area for each chicken.
 - j. Enclosures shall be situated in the side or rear yard of any property containing a principal structure as defined in [UNIFIED DEVELOPMENT ORDINANCE](#), Section 19.3.
5. *Health, sanitation and animal welfare.*
- a. Deceased chickens shall be buried on site or disposed of in a sanitary landfill, and shall not be deposited for collection by city forces, into residential or commercial solid waste receptacles.
 - b. Enclosures shall be kept in a clean, sanitary, healthful condition. chicken coops shall be cleaned regularly, with all droppings and organic waste material managed, removed and disposed of in an appropriate manner, and chicken runs shall be relocated or otherwise managed, so as to prevent erosion and to minimize odors, the breeding of flies, and the occurrence of infectious disease.
 - c. Feed stock shall be stored in a sealed container that is secure against invasion by rodents.
 - d. Chickens shall have continuous access to food and water.
- C. *Wild fowl.* It shall be unlawful for any person to keep any live wild fowl within the city, except as provided in Section 14-7.

(Code 1980, § 4-5; Ord. No. 17-99, § 1, 6-21-99; Ord. No. 2012-22, § 1(Exh. A), 8-20-12)

14-7. Special permission for the temporary keeping of goats or sheep.

Special permission may be granted through a special permit issued by the Chief of Police or designee for the temporary keeping of goats or sheep, which are otherwise prohibited by this article, for the purpose of city grazing; provided that before granting such special permit the Chief of Police shall impose conditions under which the animals may be kept within the City. Such conditions shall be made a part of the special permit.

- A. A special permit issued under this section may be revoked by the ~~Chief of Police~~ ~~administrator~~ for any reason that would have justified denial of the permit. If a permit is revoked, the applicant shall be given a written explanation of the reasons for revocation. Upon the determination of a violation, the owner shall have 14 days in which to bring the property or condition into compliance with this section or to remove the animals from the premises. If the ~~administrator~~ ~~Chief of Police~~ denies or revokes a permit under this section, they shall notify the applicant of their right to appeal such decision to the City Manager.
- B. For the purpose of this chapter, the term "city grazing" shall mean the practice of sustainable lot maintenance by goats or sheep inside the corporate limits of the city, on a temporary and occasional basis, not to exceed 30 cumulative days in a calendar year, where said animal(s) are not permanently kept or maintained. The animals used for this purpose shall be free of disease, properly cared for at all times as determined by the Chief of Police or designee, and contained on the premises for which the permit was granted.
- C. The Chief of Police or designee may deny or revoke a permit for any reason including but not limited to:
 - 1. The applicant has failed to comply with the applicable requirements of any subsection of this ordinance or condition of the permit as determined by the Chief of Police or designee.
 - 2. The animal for which the permit is requested poses a substantial danger of harm to any person, animal or property as determined by the Chief of Police or designee.



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3. The animal for which the permit is requested seriously interferes with the use and enjoyment of neighboring properties because of offensive noise or odor or for other reasons as determined by the Chief of Police or designee.
4. The animal for which the permit is requested otherwise constitutes a threat to the public health or safety as determined by the Chief of Police or designee.

(Code 1980, § 4-6; Ord. No. 2022-73, § 1(Exh. A), 11-21-22)

14-8. Sale of baby fowl or rabbits.

It shall be unlawful for any person to sell, offer for sale, barter or give away baby chickens, ducklings or other fowl under three weeks of age, or rabbits under two months of age, as pets, toys, premiums or novelties, or to color, dye, stain or otherwise change the natural color of baby chickens, ducklings or other fowl, or rabbits, or to bring or transport such animals or fowl into the city; provided, however, this section shall not be construed to prohibit the sale or display of such baby chickens, ducklings or other fowl, or such rabbits, in proper facilities by breeders or stores engaged in the business of selling for the purpose of commercial breeding and raising.

(Code 1980, § 4-7)

14-9. Keeping bees.

- A. It shall be unlawful for any person to locate, construct, reconstruct, alter, maintain or use, on any lot or parcel of land within the corporate limits of the city, any hives or other enclosures for the purpose of keeping any bees or other such insects unless every part of such hive or enclosure is located at least 75 feet from a dwelling house located on the adjoining property.
- B. On lot sizes of 15,000 square feet or less, no more than five hives (colonies of bees) will be permitted. The hives shall be no closer than 15 feet from any property line, and all hives shall be placed at ground level or securely attached to an anchor or stand. On lots larger than 15,000 square feet, additional hives will be permitted on the basis of one hive for each 3,000 square feet in excess of 15,000.
- C. This section shall pertain only to honey bees maintained in movable frame hives and it does not authorize the presence of hives with nonmovable frames or feral honey bee colonies (honey bees in trees, sides of houses, etc.).
- D. The city may require the removal of a hive, or hives, if the owner no longer maintains the hive(s), or if removal is necessary to protect the health, safety, and welfare of the public, as allowed by N.C.G.S. 106-645(b)(4).

(Code 1980, § 4-8; Ord. No. 2016-27, § 01(Exh. A), 9-19-16)

14-10. City designated squirrel sanctuary.

The entire area embraced within the corporate limits of the city is hereby designated as a sanctuary for all species of squirrel (family Sciuridae), and in particular the Brevard White Squirrel. It shall be unlawful for any person to hunt, kill, trap or otherwise take any protected squirrels within the city limits except pursuant to authority and permit of the state wildlife resources commission. This section may not protect any squirrels classed as a pest by the General Statutes, except that the Brevard White Squirrel shall always be protected by this section.

(Code 1980, § 4-9)

14-11—14-30. Reserved.



ARTICLE II. DOGS AND OTHER ANIMALS

14-31. Animal control officers.

The city manager is hereby authorized, in his discretion, to appoint one or more animal control officers for purposes of establishing and maintaining an animal control program and enforcing the provisions of this article. This authority shall include the right to contract with the county for the enforcement of this article and the delegation of authority to the county, contractually, to grant authority to establish and maintain an animal control program, employ necessary personnel, enforce laws and ordinances, investigate animal abuse and bites, quarantine animals, operate an animal shelter, seize and impound animals, levy fees and fines, and do all necessary things associated with the enforcement of this article.

(Code 1980, § 4-21)

14-32. Cruelty to animals.

- A. It shall be unlawful for any person to molest, torture, torment, deprive of necessary sustenance, cruelly beat, needlessly mutilate or kill, wound, injure, poison, or abandon subject to conditions detrimental to its health or general welfare any animal, or to cause or produce such action.
- B. The words "torture" and "torment," as used in this section, shall be held to include every act, omission or neglect whereby unjustifiable physical pain, suffering or death is caused or permitted; but such terms shall not be construed to prohibit lawful taking of animals under the jurisdiction and regulation of the state wildlife resources commission, or to prohibit animal control officers or duly authorized persons or veterinarians from destroying dangerous, unwanted or injured animals in a humane manner, or to prohibit the lawful use of animals in scientific research, or legitimate pest control activities.
- C. It shall be unlawful for any owner or keeper to fail to provide his animal with proper shelter and protection from the weather, sufficient and wholesome food and water to keep his animal in good health and comfort, the opportunity for vigorous daily exercise, veterinary care when needed to prevent suffering, and humane care and treatment.
- D. It shall be unlawful for any dog owner, keeper of any dog or any person to tie and/or leave unattended any dog upon a public right-of-way or city property.
- E. It shall be unlawful to tether an animal to a stationary object for a period of time or under conditions that an officer or animal cruelty investigator deems harmful or potentially harmful to the animal. Tethering may be allowed in certain cases if there is no sign of obvious neglect and the animal is not exhibiting health or temperament problems. Examples of improper tethering include, but are not limited to the following:
- a. Using a length or weight of tether that is not appropriate for the size, weight and age of the animal. An appropriate restraint must be a minimum of four times the length from the tip of the animal's nose to the tip of the animal's tail and shall be no less than 10 feet.
- b. Using tether that does not have swivels on both ends. All tethers must be attached to the animal by means of a properly fitting harness or collar of not less than one inch in width made of nylon or leather.
- c. Allowing an animal to be tethered such that the animal is not confined to the owner's property or such that the tether can become entangled and prevent the animal from moving about freely, lying down comfortable or having access to adequate food, water and shelter.
- F. Violation punishable as a misdemeanor with fine up to \$500.00 per G.S. 14-4(a).

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(Code 1980, § 4-22; Ord. No. 28-04, § 1, 11-15-04; Ord. No. 2021-48, § 1(Exh. A), 11-15-21)

State law reference(s)—Similar provisions, G.S. 14-360.

14-33. Registration of dogs required.

All dogs kept, harbored or maintained in the city shall be registered with the county tax assessor and the animal control officer. In addition to the name and address of the owner, such registration shall include the dog's name, breed, color, sex and rabies vaccination number. The provisions of this section shall not be intended to apply to dogs the owners of which are nonresidents temporarily within the city for not more than 30 days, or to dogs brought into the city for the purpose of participating in any dog show, or to seeing eye dogs properly trained to assist blind persons for the purpose of aiding them in going from place to place.

(Code 1980, § 4-23)

14-34. Fee for dog registration.

There shall be no annual fee or tax for dog registration except as prescribed by the county commission in accordance with state law.

(Code 1980, § 4-24)

14-35. Dogs running at large.

- A. It shall be unlawful for any dog owner or keeper of any dog to permit such dog to run at large. All dogs must be restrained by fencing, leash or other physical, electronic or mechanical restraint at all times.
- B. It shall be unlawful for any owner or keeper of any dog to allow said dog, whether on leash or not, to be present within the following areas of the property of the City of Brevard:
 - 1. Within 50 feet of the fence surrounding the Franklin Park Pool;
 - 2. Within 50 feet of the improved playground area at Franklin Park; or
 - 3. Within 50 feet of the community building known as the "Scout Hut" located at Franklin Park;

Provided, however, that this section does not prohibit leashed dogs on the public roadways or sidewalks around the circumference of Franklin Park so long as the owner or keeper complies with the City Code of Ordinances, and specifically, with section 35-92(b), seeing eye dogs in service to the visually impaired or dogs in service to law enforcement personnel.

- 4. Dogs are prohibited from the Brevard Youth Sports Complex property during all sporting events, including ball practice. However, this section does not prohibit leashed dogs on the public roadways, sidewalks or the multi-use pedestrian/bikeway so long as the owner or keeper complies with the [CITY CODE OF ORDINANCES](#), and specifically, with section 35-92(b), seeing eye dogs in service to the visually impaired or dogs in service to law enforcement personnel.
- C. Violation punishable as an Infraction with fine up to \$50.00 per G.S. 14-4(b).

(Code 1980, § 4-25; Ord. No. 9-00, § 2, 4-17-00; Ord. No. 9-01, § 1, 8-20-01; Ord. No. 6-09, § 1, 4-6-09; Ord. No. 2021-48, § 1(Exh. A), 11-15-21)

State law reference(s)—Permitting dogs to run at large, G.S. 67-12.



14-36. Control of dangerous dogs or potentially dangerous dogs.

- A. An owner of a dangerous or potentially dangerous dog shall take precautions against attacks by such dogs resulting in serious bodily injury to a person. Determination of a dangerous or potentially dangerous dog shall be in accordance with G.S. 67-4.1. The City of Brevard Police Chief, or his designee, shall have the authority to declare a dog to be a dangerous/potentially dangerous dog. Any determination that a dog is dangerous/potentially dangerous shall be made in writing summarizing the available evidence that led to the determination and shall be delivered or mailed by registered or certified mail to the owner/keeper of the dog.
- B. An appellate board will be designated by council to hear any appeals. The dangerous dog appellate board shall be composed of a practicing veterinarian and two public citizens as appointed by city council. The owner/keeper of a dog that has been declared dangerous/potentially dangerous may appeal the declaration in writing to the dangerous dog appellate board within three business days of the receipt of notice of the original declaration. While any appeal is pending, the owner/keeper of the dog shall comply with the dangerous/potentially dangerous dog confinement measures set forth in City Code section 14-36 and G.S. 67-4.2. If the declaration made by the police chief, or his designee, is upheld by the appellate board, the owner of the dog may appeal the decision to superior court by filing notice of appeal and a petition for review within ten days of the decision made by the appellate board. Appeals from the final decisions of the appellate board shall be heard in the superior court of the county.

(Code 1980, § 4-26; Ord. No. 2017-07, § 1, 3-20-17; Ord. No. 2018-15, § 1, 6-18-18)

State law reference(s)—Authority to regulate, restrict and prohibit the possession or harboring of dangerous animals, G.S. 160A-187.

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.



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- 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).

(Code 1980, § 4-27; Ord. No. 2021-48 , § 1(Exh. A), 11-15-21; Ord. No. [2023-43](#), § 1(Exh. A), 9-5-23)

14-38. Barking dogs.

- A. It shall be unlawful for any person to own, keep or have within the city any dog that habitually or repeatedly barks or makes other sounds that tend to annoy or disturb one or more citizens so as to interrupt the sleep or tranquility of one or more persons in the general neighborhood on a regular basis. An animal control officer shall make this determination based on an investigation, and the complaint must be jointly signed by the complainant and the investigating officer. For convenience and efficiency in documenting the complaint, a form substantially similar to *Exhibit A may be used by the complainant, and the investigation will be deemed complete when the form is signed by the investigating officer.
- B. Second and subsequent violations of the prohibition against barking dogs in subsection (a) above shall be deemed to occur for each separate barking event which may be complained of, occurring within 30 days of the date the initial complaint form (*Exhibit A) is signed by the investigator, or within 30 days of the last previous complaint after the signing of the initial complaint form by the investigator, whichever last occurs.
- C. Violation punishable as a misdemeanor with fine up to \$500.00 per G.S. 14-4(a).

(Code 1980, § 4-28; Ord. No. 9-00, § 3, 4-17-00; Ord. No. 2021-48 , § 1(Exh. A), 11-15-21)

**Exhibit A is not included herein but is available for public inspection in city offices.*

14-39. Luring, seizing, molesting or teasing animal.

It shall be unlawful for any person to entice or lure any animal out of an enclosed area or off the property of its owner or keeper, or to seize, molest or tease any animal while the animal is held or controlled by its owner or keeper or while the animal is on the property of its owner or keeper. Violation punishable as a misdemeanor with fine up to \$500.00 per G.S. 14-4(a).

(Code 1980, § 4-29; Ord. No. 2021-48 , § 1(Exh. A), 11-15-21)

14-40. Compliance with state rabies laws.

- A. It shall be unlawful for any animal owner or other person to fail to comply with the state laws relating to the control of rabies.
- B. It is the purpose of this article to supplement state laws by providing a procedure for the enforcement of state laws relating to rabies control, in addition to the criminal penalties provided by state law.

(Code 1980, § 4-30)

State law reference(s)—Rabies, G.S. 130A-184 et seq.

14-41. Vaccination of dogs and cats required; vaccination of other pets.

- A. It shall be unlawful for an owner or keeper to fail to provide current vaccination against rabies (hydrophobia) for any dog or cat four months of age or older. Should it be deemed necessary by the local health director or the local board of health that other pets be vaccinated in order to prevent a threatened epidemic or to control



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an existing epidemic, it shall be unlawful for any owner or keeper to fail to provide current vaccination against rabies for that pet.

- B. A rabies vaccination shall be deemed current for a cat or dog if two vaccinations have been given one year apart and booster doses of rabies vaccine administered every three years thereafter.
- C. All antirabic vaccines shall be administered by a licensed veterinarian or a certified rabies vaccinator.
- D. Violation punishable as an infraction with fine up to \$25.00 per G.S. 14-4(b).

(Code 1980, § 4-31; Ord. No. 2021-48 , § 1(Exh. A), 11-15-21)

14-42. Vaccination tag and certification.

- A. Upon complying with the provisions of Section 14-41, there shall be issued to the owner or keeper of the dog or cat vaccinated a rabies tag, stamped with the number and the year for which issued, and a rabies vaccination certificate.
- B. It shall be unlawful for any dog owner or keeper to fail to provide the dog with a collar or harness to which a current rabies tag issued under this section is securely attached. The collar or harness, with attached tag, must be worn at all times. All cat owners or keepers must maintain in their possession all rabies tags and vaccination certificates for official proof and documentation of rabies vaccination.
- C. In addition to all other penalties as prescribed by law, a dog or cat is subject to impoundment in accordance with the provisions of this article If the dog is found not to be wearing a currently valid rabies tag, or the cat owner cannot produce rabies tags and/or vaccination certificates when requested by a duly authorized official.
- D. It shall be unlawful for any person to use for any animal a rabies vaccination tag issued for an animal other than the one using the tag.
- E. All dogs or cats shipped or otherwise brought into the city from a state other than North Carolina, except for exhibition purposes where the dogs or cats are confined and not permitted to run at large, shall be securely confined and vaccinated within one week after entry, and shall remain confined for two additional weeks after vaccination unless accompanied by a certificate issued by a licensed veterinarian showing that the dog or cat is apparently free from rabies, and has not been exposed to rabies, and that the dog or cat has received a proper dose of rabies vaccine within the past 12 months prior to the date of the issuing the certificate.
- F. Violation punishable as an infraction with fine up to \$25.00 per G.S. 14-4(b).

(Code 1980, § 4-32; Ord. No. 2021-48 , § 1(Exh. A), 11-15-21)

14-43. Notice to local health director when person bitten by dog or cat; confinement of animal.

- A. When a person has been bitten by a dog or cat, it shall be the duty of such person, or his parent or guardian if such person is a minor, and the person owning such animal or having the animal in his possession or under his control, to notify the local health director, or person duly authorized by the local health director, immediately and give their names and addresses. The owner or person having such animal in his possession or under his control shall immediately and securely confine the animal for ten days at the expense of the owner in such place as may be designated by the local health director. It shall be the duty of every physician, after his first professional attendance upon a person bitten by an animal known to be a potential carrier of rabies, to report to the local health director the name, age and sex of the person so bitten, and the precise location of the bite wound, within 24 hours after first having knowledge that the person was bitten. Non-bite exposures, as defined by the Center for Infectious Diseases, CDC, should be reported to the local health director and post-exposure



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treatment should be consistent with the immunization practices advisory committee recommendations, as may from time to time be promulgated. If the owner of or a person who has in his possession or under his control an animal having rabies, or suspected of having rabies, refuses to confine the animal as required by this section or by G.S. 130A-198, the local health director may order seizure of the animal and its confinement for ten days in such place as the local health director designates.

- B. Law enforcement agencies investigating animal bites shall report such bites immediately to the local health director or person duly authorized by the local health director and give the names and addresses of the person bitten and the owner of the animal.
- C. Animals confined in accordance with Subsection A of this section shall not be released from confinement except by permission from the local health director.
- D. Animals confined in accordance with Subsection A of this section shall be confined at the expense of the owner or keeper.
- E. In the case of an animal whose owner or keeper is not known, the animal shall be kept for the supervised confinement period required by this section at the animal shelter.
- F. Badly wounded, diseased or suffering animals which are suspected of having rabies may be humanely destroyed immediately and the head forwarded for examination by the laboratory services division of the state department of environment, health and natural resources.

(Code 1980, § 4-33)

14-44. Destruction or confinement of animal bitten by known rabid animal.

Animals not vaccinated against rabies which are bitten by a known rabid animal shall be immediately destroyed, unless the owner or keeper agrees to strict isolation of the animal at a veterinary hospital for a period of six months at the expense of the owner or keeper. If the animal has a current rabies vaccination, it shall be revaccinated and returned to the owner or keeper.

(Code 1980, § 4-34)

14-45. Areawide emergency rabies quarantine.

- A. When reports indicate a positive diagnosis of rabies to the extent that lives of persons are endangered, the local health director may declare an area-wide quarantine for such period as the director deems necessary. Upon invoking such emergency quarantine, no dog or cat may be taken or shipped from the city without written permission of the local health director. During such quarantine, the local health director, law enforcement officers or persons duly authorized by the local health director may seize and impound any dog or cat found running at large in the county. During the quarantine period the local health director shall be empowered to provide for a program of mass immunization by the establishment of temporary emergency rabies vaccination facilities strategically located throughout the city.
- B. If there are additional positive cases of rabies occurring during the period of quarantine, such period of quarantine may be extended at the discretion of the local health director.

(Code 1980, § 4-35)

14-46. Postmortem diagnosis of rabies.



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- A. If an animal dies while under observation for rabies, the head of such animal shall be submitted to the local health department for shipment to the laboratory services division of the state department of environment, health and natural resources for rabies diagnosis.
- B. The carcass of any animal suspected of dying of rabies shall be surrendered to the local health department. The head of such animal shall be shipped to the laboratory services division of the state department of environment, health and natural resources for rabies diagnosis.

(Code 1980, § 4-36)

14-47. Failure to surrender animal for confinement or destruction.

It shall be unlawful for any person to fail or refuse to surrender any animal for confinement or destruction as required in this article, when demand is made by the local health director. Violation punishable as a misdemeanor with fine up to \$500.00 per G.S. 14-4(a).

(Code 1980, § 4-37; Ord. No. 2021-48, § 1(Exh. A), 11-15-21)

14-48. Impoundment authorized.

- A. Any animal which appears to be lost, stray or unwanted, or not wearing a currently valid rabies vaccination tag as required by state law or this article, or not under restraint in violation of this article, may be seized, impounded and confined in a humane manner in an animal shelter.
- B. Impoundment of such an animal shall not relieve the owner or keeper thereof from any penalty which may be imposed for violation of this article.

(Code 1980, § 4-38)

14-49. Posting of notice of impoundment; notice to owner or keeper.

- A. Upon impounding an animal, notice of such impoundment shall be posted for a minimum of five calendar days, beginning with the time the animal enters the animal shelter, or until the animal is disposed of. Reasonable effort shall be made to identify the owner or keeper and inform such owner or keeper of the conditions whereby the animal may be redeemed.
- B. Such notice shall be prominently displayed at the animal shelter, and shall include the time and place of the taking of such animal.

(Code 1980, § 4-39)

14-50. Redemption of impounded animal by owner.

- A. The owner or keeper of an animal impounded under this article may redeem the animal and regain possession thereof within five calendar days after notice of impoundment is posted as required by this article, by paying any applicable fees as determined by the local board of health.
- B. No animal owner or keeper may be permitted to adopt his own animal under the provisions of this article, but he must comply with the provisions of this article in order to reclaim an animal that has been impounded pursuant to state law or this article.
- C. The provisions of this section shall have no application with respect to animals surrendered by the owner or keeper to the local health department for immediate adoption or destruction as provided in Section 14-54.



(Code 1980, § 4-40)

14-51. Adoption of impounded animals.

- A. Any person adopting a dog or cat from the animal shelter shall be required to sign an adoption/medical contract with the animal shelter in accordance with the provisions of this article.
- B. All animals adopted from the animal shelter shall be required to be spayed or neutered as specified in this section. All dogs or cats over six months of age shall be spayed or neutered by a licensed veterinarian within 30 days of the date of the adoption/medical contract. All puppies or kittens under six months of age shall be spayed or neutered within 30 days after the animal becomes six months of age.
- C. The board of health shall establish uniform fees for adoption.
- D. An adopting party shall be required to pay any boarding or redemption fee for adopting a dog, and shall not be required to pay the normal applicable rabies license fee for the first year. The rabies fee is included in the adoption fee.
- E. All adopting parties shall be required to pay the adoption fee provided for in subsection (c) of this section prior to possession of the animal. Payment of this fee shall entitle the adopting party to visit any participating veterinarian and receive for the adopted animals the medical services listed in the adoption/medical contract.
- F. Payment for the services by the city, or the county when animal control services are contracted, to the local veterinarian shall be processed by the animal shelter upon receipt of a completed and signed adoption/medical contract, which will be provided by the animal shelter for each animal that is adopted.
- G. An exchange may be acceptable for any animal that requires major medical treatment or dies from natural causes within 30 days from the date of adoption under the following conditions only:
 - 1. Any major medical treatment must be certified as being necessary by a licensed veterinarian.
 - 2. If the adopted animal dies during the 30 days following adoption, the adopting party must present satisfactory evidence (i.e., the carcass of the animal or a veterinarian's certification) of the date of the death of the animal.
- H. The request for an exchange must be made within 30 days from the date of the adoption contract.
- I. The adopting party must bring the animal to a licensed veterinarian in accordance with the provisions of Subsection B of this section within ten working days of the execution of the adoption contract.

(Code 1980, § 4-41)

14-52. Disposition of impounded animals not redeemed by owner.

- A. If an impounded animal is not redeemed by the owner or keeper within the period prescribed in Section 14-50, it may be destroyed in a humane manner or shall become the property of the animal shelter and offered for adoption to a responsible adult who is willing to comply with this article and with policies promulgated by the board of health.
- B. No animal which has been impounded by reason of its being a stray, unclaimed by its owner or keeper, shall be allowed to be adopted from the animal shelter during a period of emergency rabies quarantine invoked pursuant to this article, except by special authorization of the local health director.

(Code 1980, § 4-42)

14-53. Rabies vaccination for redeemed or adopted dogs and cats.



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- A. Unless proof of a current rabies vaccination can be furnished, every person who either adopts or redeems a dog or cat at the animal shelter will be given a rabies vaccination notice at the time of the redemption or adoption. This notice will be dated and will indicate the maximum time limit allowed to take the dog or cat to the veterinarian of such person's choice for rabies vaccination. The time limit for dogs and cats four months of age and older will be ten working days (Sundays and holidays excluded). The time limit will be according to age for puppies and kittens under four months.
- B. The rabies vaccination notice will be completed by the veterinarian and returned to the animal shelter.
- C. Payment for rabies vaccination as provided in this section will be the responsibility of the person redeeming or adopting the animal.

(Code 1980, § 4-43)

14-54. Disposition of animals surrendered to animal shelter by owner.

- A. Any animal surrendered by its owner to animal control may be immediately placed for adoption or humanely destroyed when:
 - 1. The owner directs in writing that the animal be placed for adoption or humanely destroyed;
 - 2. The owner affirmatively represents in writing that he is in fact the legal owner of the animal;
 - 3. The owner agrees that he will indemnify and hold animal control harmless from any loss or damage it may sustain, including attorneys' fees, by reason of the destruction or placement for adoption of the animal; and
 - 4. The owner transfers ownership of the animal to animal control and releases animal control from any and all future claims with respect to the animal.
- B. Upon receiving these assurances, animal control may rely on such assurances and place the animal for adoption, or destroy the animal, at its discretion. The waiting periods provided in Sections [14-49](#) and [14-50](#) shall not apply to immediate adoption or destruction as provided in this section.

(Code 1980, § 4-44)

14-55. Destruction of wounded, diseased or unweaned impounded animals.

Notwithstanding any other provision of this article, any animal seized and impounded which is badly wounded, diseased (not a rabies suspect) or unweaned and has no identification shall be destroyed immediately in a humane manner. If the animal has identification, the local health department shall attempt to notify the owner or keeper before disposing of such animal. If the owner or keeper cannot be readily reached, and the animal is suffering, the local health department may destroy the animal at its discretion in a humane manner.

(Code 1980, § 4-45)

14-56. Destruction of animals that cannot be seized by reasonable means.

Notwithstanding any other provision of this article, an animal which cannot be seized by reasonable means may be humanely destroyed as set forth in G.S. 130A-192, by order of the local health director or person duly authorized by the local health director.

(Code 1980, § 4-46)



14-57. Duties of person injuring animal.

It shall be unlawful for any person injuring an animal to fail to notify immediately the owner or keeper of the animal, or an animal control officer, a local law enforcement agency or the local Humane Society. Violation punishable as an infraction with fine up to \$50.00 per G.S. 14-4(b).

(Code 1980, § 4-47; Ord. No. 2021-48, § 1(Exh. A), 11-15-21)

14-58. Keeping stray animals.

- A. It shall be unlawful for any person in the city to knowingly and intentionally harbor, feed, keep in possession by confinement, or otherwise allow to remain on his property any animal which does not belong to him, unless he has, within 72 hours from the time such animal came into his possession, notified animal control. The local health director or designee shall within seven days, but no sooner than four days, after receiving notification, unless the person requests earlier pickup, take such animal, place it in the animal shelter, and deal with it as provided by local policy. Notwithstanding the provisions of this subsection, if the local health director has a report from such animal's owner that the animal is lost, the animal may be picked up immediately by animal control. Violation punishable as an Infraction with fine up to \$50.00 per G.S. 14-4(b).
- B. It shall be unlawful for any person to refuse to surrender any such stray animal to the local health director or animal control upon demand. Violation punishable as an infraction with fine up to \$50.00 per G.S. 14-4(b).

(Code 1980, § 4-48; Ord. No. 2021-48, § 1(Exh. A), 11-15-21)

14-59. Security dogs—Generally; permit required.

- A. *Dogs on nonresidential property.* It shall be unlawful to keep, maintain or use any dog in the city for the purpose of protecting any commercially or industrially used property, or person on such property, unless a permit for keeping, maintaining or using such dog shall have been obtained from the local health director in accordance with the provisions of this section and such permit shall remain unsuspended and unrevoked.
- B. *Dogs on residential property.* It shall be unlawful to keep, maintain or use any patrol or sentry dog in the city for the purpose of protecting any residentially used property, or person on such property, unless a permit for keeping, maintaining or using such dog shall have been obtained from the local health director in accordance with the provisions of this section, and unless such permit shall remain unsuspended and unrevoked.
- C. *Additional regulations.* The board of health shall promulgate regulations for the issuance of permits for security dogs and compliance with provisions of this article and applicable laws. The board of health may amend such regulations from time to time as deemed desirable for public health and welfare.
- D. *Revocation of permit.* The local health director may revoke any permit if the person holding the permit refuses or fails to comply with this article, the regulations promulgated by the board of health, or any law governing the protection and keeping of animals.

(Code 1980, § 4-49)

14-60. Exception for commercial animal establishments.

Section 14-59 shall not apply to those specific areas of operation of a commercial animal establishment which are licensed and regulated under G.S. ch. 19A, or by an agency of the United States government.

(Code 1980, § 4-50)



14-61. Keeping nondomestic animals or dangerous animals.

No person shall possess or harbor any nondomestic animal, animals which are dangerous to persons or property, or animals which have the potential of being dangerous to persons or property, except as may be otherwise provided by this chapter. This section shall not apply to bona fide circuses, petting zoos and other traveling commercial animal exhibitions of limited duration. Violation punishable as a misdemeanor with fine up to \$500.00 per G.S. 14-4(a).

(Code 1980, § 4-51; Ord. No. 2021-48 , § 1(Exh. A), 11-15-21)

14-62. Confinement of female dogs in heat.

The owner or keeper of any female dog shall, when such dog is in heat, confine such dog in a building or secure enclosure in such manner that she will not be in contact with another dog or create a nuisance by attracting other dogs; provided, however, this section shall not be construed to prohibit the intentional breeding of animals within an enclosed area on the premises of the owner or keeper of an animal being bred.

(Code 1980, § 4-52)

14-63. Abandonment of dog or cat.

It shall be unlawful for the owner of any dog or cat, or any other person, to abandon any dog or cat within the city.

(Code 1980, § 4-53)

14-64. Responsibility of owner or keeper for acts of dogs and cats.

Owners and keepers of dogs and cats are responsible for the acts of their dogs and cats. When any dog or cat commits a nuisance upon the property of another person or damages another person's property or person, the owner and/or keeper of the dog or cat is fully responsible and accountable for the action of the dog or cat.

(Code 1980, § 4-54)

14-65. Interference with enforcement officers.

It shall be unlawful for any person to interfere with, hinder or molest the employees of the health department, animal control or persons duly authorized by this article. It shall also be unlawful for any person to seek to release any animal in the custody of such persons, except as otherwise specifically provided.

(Code 1980, § 4-55)

14-66. Penalties; additional remedies.

- A. *Additional remedies.* In addition, enforcement of this article may be by appropriate equitable remedy, injunction or order of abatement issuing from a court of competent jurisdiction pursuant to G.S. 160A-175.
- B. *Civil penalties.* In addition to and not in lieu of the criminal penalties and other sanctions provided in this article, a violation of this article may also subject the offender to the civil penalties set forth in this subsection.
 - 1. Such civil penalties may be recovered by the city in a civil action in the nature of debt or may be collected in other amounts as prescribed in this section within the prescribed time following the issuance of notice for such violation.



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2. Such notice shall, among other things:
 - a. Notify such offender that a failure to pay the penalties within the prescribed time shall subject such offender to a civil action in the nature of debt for the stated penalty plus the cost of the action to be taxed by the court.
 - b. Further state that such offender may answer the notice by mailing the notice and the stated penalty to the local health director, at the health department's mailing address, or by making payment to the local health director, health department or animal shelter at the appropriate address, and that, upon payment, such case or claim and right of action by the city will be deemed compromised and settled.
 - c. State that such penalties must be paid within 72 hours from issuance of such notice. Such notice shall further state that, if such notice of violation is not paid within the 72-hour period, court action by the filing of a civil complaint for collection of such penalty shall be taken.
3. The local health director is authorized to accept such payments in full and final settlement of the claims or rights of action which the city may have to enforce such penalty by civil action in the nature of debt. Acceptance of such penalty shall be deemed a full and final release of any and all such claims or rights of action arising out of such contended violations.
4. The civil penalty for violation of this article is determined by the board of health and approved by the city council. The penalty shall be paid within 72 hours from and after the issuance of the notice referred to in this subsection.
5. The notice of violation referred to in this subsection may be delivered to the person violating the provisions of this article in person, or may be mailed to the person at his last known address.
6. All penalties paid to the local health director or as may be recovered in a civil action in the nature of debt as provided in this subsection for purposes of enforcement of this article shall be paid into the general fund of the city.

(Code 1980, § 4-56; Ord. No. 2021-48 , § 2(Exh. B), 11-15-21)

14-67. Authority of police officers.

In addition to the authorities granted the local health department and animal control officers by this article, officers of the city police department shall have equal authority to act under the authority of this article when, in the discretion of the city manager, law enforcement action is necessary for the protection of public safety. This shall include discretionary authority to slay any animal which is deemed a threat to public safety.

(Code 1980, § 4-57)



CHAPTER 38. HEALTH AND SANITATION

ARTICLE II. NUISANCES

DIVISION 2. NOISE

38-71. Generally.

The creation of any unreasonably loud, disturbing and unnecessary noise in the city is prohibited. Noise of such character, intensity and duration as to be detrimental to the life or health of any individual is prohibited.

(Code 1980, § 8-39)

38-72. Specific prohibitions.

The following acts, among others, are declared to be loud, disturbing and unnecessary noises in violation of section 38-71, but such enumeration shall not be deemed to be exclusive:

- A. The sounding of any horn or signal device on any automobile, motorcycle, bus or other vehicle while not in motion, except as a danger signal if another vehicle is approaching apparently out of control, or if in motion only as a danger signal after or as brakes are being applied and deceleration of the vehicle is intended; the creation by means of any such signal device of any unreasonably loud or harsh sound; and the sounding of such device for an unnecessary and unreasonable period of time.
- B. The use of any gong or siren upon any vehicle, other than on police, fire or other emergency vehicles.
- C. The playing of any radio, phonograph or other musical instrument in such a manner or with such volume, particularly during the hours between 10:00 p.m. and 7:00 a.m., as to annoy or disturb the quiet, comfort or repose of any persons in any dwelling, hotel or other type of residence. No speaker or amplifier of any radio, phonograph or other musical instrument on which music is played shall be located outside of any private or commercial public building or temporary structure, including tents, or inside such enclosed spaces so that the sound is directed primarily to the outside; except that this provision shall not apply to small amplifying systems located at these places used for placing orders for meals or merchandise so long as the amplifiers or speakers are not over four inches in diameter and do not use over six watts of electricity.
- D. The keeping of any animal or bird which by causing frequent or long-continued noise shall disturb the comfort and repose of any person in the vicinity.
- E. The use of any automobile, motorcycle, go-carts, mini bikes, dirt bikes and all terrain vehicles or other unlicensed toy or recreational vehicles or devices powered by an internal combustion engine, so loaded or in such a manner as to create loud or unnecessary grating, grinding, rattling or other noise is prohibited.
- F. The blowing of any steam whistle attached to any stationary boiler except to give notice of the time to begin or stop work or as a warning of danger.
- G. The discharge into the open air of the exhaust of any steam engine, stationary internal combustion engine, motor vehicle or motorboat engine except through a muffler or other device which will effectively prevent loud or explosive noises therefrom.
- H. The use of any mechanical device operated by compressed air unless the noise created thereby is effectively muffled and reduced.



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- I. The erection (including excavation), demolition, alteration or repair of any building in a residential or business district, including the operation of construction equipment operated for such purposes, other than between the hours of 7:00 a.m. and 9:00 p.m., Monday through Saturday, except in the case of urgent necessity in the interest of public safety and then only with a permit from the City of Brevard Zoning Administrator or Code Enforcement Officer, which permit may be renewed for a period of three days or less while the emergency continues.
- J. The creation of any excessive noise on any street adjacent to any school, institution of learning or court while the school, institution of learning or court is in session, or within 150 feet of any hospital, which unreasonably interferes with the working of such institution, provided conspicuous signs are displayed in such streets indicating that the street is a school, court or hospital street.
- K. The creation of any excessive noise on Sundays on any street adjacent to any church, provided conspicuous signs are displayed in such streets adjacent to churches indicating that the street is a church street.
- L. The creation of loud and excessive noise in connection with loading or unloading any vehicle or the opening and destruction of bales, boxes, crates and containers.
- M. The sounding of any bell or gong attached to any building or premises which disturbs the quiet or repose of persons in the vicinity thereof.
- N. The shouting and crying of peddlers, barkers, hawkers and vendors which disturb the quiet and peace of the neighborhood.
- O. The use of any drum, loudspeaker or other instrument or device for the purpose of attracting attention by creation of noise to any performance, show or sale of merchandise, except that this provision shall not apply to parades approved by the city council.
- P. The use of any mechanical loudspeakers or amplifiers on trucks or other moving vehicles for advertising or other purposes except where specific license is received from the police department.
- Q. The conducting, operating or maintaining of any garage or filling station in any residential district so as to cause loud or offensive noises to be emitted therefrom between the hours of 10:00 p.m. and 7:00 a.m.
- R. The firing or discharging of a gun, squibs, crackers, gunpowder or other combustible substances in the streets or elsewhere for the purpose of making noise or disturbance, except by permit from the police department.

(Code 1980, § 8-40; Ord. No. 7-01, § 1, 6-18-01; Ord. No. 2012-03, § 2, 2-20-12)

Cross reference(s)—Animals and fowl, [CHAPTER 14](#).

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:



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- 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).



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(Ord. No. 2012-03, § 1, 2-20-12; Ord. No. 2021-48, § 1(Exh. A), 11-15-21; Ord. No. [2023-43](#), § 1(Exh. A), 9-5-23)

Editor's Note—Ordinance 2023-43 transferred the definitions previously found in this section to City Code § [1-2](#).

38-73. Permits for exceptions.

Upon application, the city manager, chief of police, zoning administrator or code enforcement officer may approve a request for an exception to the provisions of this section. Such exceptions shall be granted only to educational institutions, bona fide non-profit organizations, governmental organizations or other public/quasi public agencies serving the entire community events. Such exceptions may be limited in a manner to provide the least possible variance from the terms of the section as may be necessary to allow the proposed event to take place. The exception shall require the applicant to agree to necessary terms and conditions and, in no case, shall it extend the time limits in section 8-40(3) to beyond midnight.

(Ord. No. 4-97, § 1, 3-3-97; Ord. No. 2012-03, § 3, 2-20-12)

38-74—38-90. Reserved.



CHAPTER 62. STREETS, SIDEWALKS AND OTHER PUBLIC WAYS

ARTICLE VI. PEDESTRIAN/BICYCLE PATHWAY

62-141. Reserved.

(Ord. No. 9-03, § 2, 6-6-03; Ord. No. 2023-43, § 1(Exh. A), 9-5-23)

Editor's Note—Ordinance 2023-43 transferred the contents of this section to City Code § 1-2.

62-142. Bikeways (bike routes, bike lanes and bike paths as indicated) established.

The following bicycle paths are established for the use of bicycles and pedestrians within the jurisdiction of the City of Brevard.

- A. City of Brevard Sports Complex trailhead to north side of its intersection with Allison Road.

(Ord. No. 9-03, § 3, 6-6-03)

62-143. Regulated uses.

The following provisions shall apply upon the established bikeways of the City of Brevard.

- A. Motorized vehicles are strictly prohibited on all bikeways. Emergency vehicles and those maintenance vehicles specifically authorized by the city manager are exempted.
- B. Cyclists and pedestrians using bikeways before dawn or after dusk shall be equipped with proper lights. Including a white light that is visible from 500 feet to the front, and a red or amber light that is visible from 500 feet to the rear. Pedestrians should use white lights visible 250 feet to the front, and wear light or reflective clothing.
- C. Blocking of a bikeway by any user is strictly prohibited.
- D. Possession and use of alcoholic beverages and/or drugs are strictly prohibited.
- E. Littering is strictly prohibited.
- F. Pets are permitted upon bikeways however they must be leashed at all times and the owner or responsible party must remove all animal waste.
- G. Camping and campfires are strictly prohibited.
- H. Smoking is strictly prohibited.
- I. The cutting or damaging of any tree or plant is strictly prohibited unless specifically authorized by the city manager.
- J. Horses and/or other equines are strictly prohibited on all bikeways.

(Ord. No. 9-03, § 4, 6-6-03)

62-144. Applicability of traffic regulations.



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All bicycles used and operated upon and across designated bikeways within the City of Brevard's jurisdiction shall be considered vehicles and the riders of such bicycles shall be subject to all provisions of the Brevard City Code and Ch. 20 of the North Carolina General Statutes applicable to the driver of vehicles except those which by their nature can have no application. Bicyclists using bike paths shall comply with all traffic regulations posted along the path and shall stop or otherwise yield the right-of-way before entering or crossing a public street.

(Ord. No. 9-03, § 5, 6-6-03)

62-145. Shared facilities.

While roadways are provided for the safety and convenience of motorists, sidewalks are provided for the safety and convenience of pedestrians and bikeways are provided for the safety and convenience of bicyclists, it is recognized that in many instances such facilities may be shared. On shared facilities, the following regulations shall apply:

- A. When using bike paths and bike trails, pedestrians shall walk as far to the right as practicable; shall walk no more than two abreast; and shall exercise due care. Bicyclists shall give an audible signal before passing a pedestrian on a bike path or trail.
- B. Persons riding bicycles upon a bikeway shall ride single file except when passing another bicycle.
- C. On and across bikeways upon which pedestrian traffic is also permitted bicycles shall at all times yield the right-of-way to pedestrians.

(Ord. No. 9-03, § 6, 6-6-03)

62-145—62-160. Reserved.



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.



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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



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- 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 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 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.



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- 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.

(Ord. No. 4-03, § 1, 4-21-03; Ord. No. 24-04, § 1, 11-1-04; Ord. No. 12-2011, § 6(Exh. F), 6-20-11, eff. 7-1-11; Ord. No. 2022-74, 11-21-22; Ord. No. [2023-36](#), § 1(Exh. A), 8-21-23)

Cross reference(s)—Animals and fowl, [CHAPTER 14](#).

66-14—66-40. Reserved.



CHAPTER 77. PARKS AND RECREATION

ARTICLE I. BRACKEN PRESERVE MANAGEMENT RULES

77-6. Hunting and fishing.

- A. A person shall not hunt or fish within the Bracken Preserve, nor shall a person discharge a firearm or bow and arrow within the Bracken Preserve.
- B. A person who has a valid North Carolina Hunting License may carry a firearm or bow through the Bracken Preserve for the purpose of accessing game lands within Pisgah National Forest; provided, however, that a firearm shall be emptied of any ammunition and breached (if applicable) and bow shall have no arrows or bolts in place, with arrows or bolts in a quiver.
- C. A person who has a valid North Carolina Hunting License may transport game that has been legally harvested within Pisgah National Forest, through the Bracken Preserve. However a person shall not field dress harvested game within the Bracken Preserve, nor shall a person dispose of or discard the remains of any game within the Bracken Preserve.
- D. Any individual legally carrying a concealed handgun as identified in North Carolina General Statutes, unless prohibition is specifically identified or is allowed by North Carolina General Statutes, is allowed to carry firearms concealed in the Bracken Preserve.

(Ord. No. 2012-19, § 2(Exh. A), 7-16-12; Ord. No. 2013-18, § 2, 12-16-13)

77-7. Animals at large.

- A. No person shall have any dog, cat or other pet upon the Bracken Preserve unless the animal is on a leash and under the control of the owner or some other person.

(Ord. No. 2012-19, § 2(Exh. A), 7-16-12)

77-10. Horses.

- A. No person shall use, ride or drive a horse within the Bracken Preserve.

(Ord. No. 2012-19, § 2(Exh. A), 7-16-12)

77-25. Flowers, plants, minerals, etc.

- A. A person shall not remove, destroy, cut down, scar, mutilate, take, gather or injure any tree, flower, artifact, fern, shrub, rock or other plant or mineral, or forage or collect plants, animals, minerals or other artifacts within the Bracken Preserve. Park management activities performed in accordance with an approved forest management plan and consistent with the conservation easement are exempt from this rule.
- B. Groups organized for educational or research purposes may, after first having obtained a temporary use or special event permit, forage or collect plants, animals, minerals or other artifacts from the Bracken Preserve.

(Ord. No. 2012-19, § 2(Exh. A), 7-16-12; Ord. No. 2021-20, § 1(Exh. A), 5-17-21)

77-29. Enforcement and administration.



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- A. The city manager may appoint park managers, who may enact such administrative rules and procedures, and issue such orders as are necessary to effectuate the purpose of this article, the conservation easement, the forest management plan, and protect the general health, safety and welfare of the public.
- B. Park managers and sworn law enforcement may enforce this article.
- C. Violation of any rule in this article shall be punishable as a misdemeanor or infraction with fine up to \$500.00 per G.S. 14-4 and subject to further civil penalties as set forth in the North Carolina General Statutes.
- D. Pursuant to G.S. 160A-286, as otherwise modified by state or federal law, the City of Brevard Police Department shall be the primary law enforcement agency in command within and upon the Bracken Preserve.
- E. Except as modified by state or federal law, the City of Brevard Fire Department shall be the primary fire and rescue agency in command within and upon the Bracken Preserve.
- F. For violation of any rule in this article, the City of Brevard may withdraw the right of a person or persons to remain on or within the Bracken Preserve.

(Ord. No. 2012-19, § 2(Exh. A), 7-16-12; Ord. No. 2021-48, § 1(Exh. A), 11-15-21)

77-30—77-39. Reserved.

ARTICLE II. SKATE PARK

77-42. Duties of users.

- A. While engaged in hazardous recreational activities, irrespective of where such activities occur, a participant is responsible for doing all of the following:
 - 1. Acting within the limits of his or her ability and the purpose and design of the equipment used.
 - 2. Maintaining control of his or her person and the equipment used.
 - 3. Refraining from acting in any manner that may cause or contribute to death or injury of himself or herself or other persons.
- B. Any person using or riding a skateboard in a skate park or in any parks and recreation facility in which a skate park is located shall wear a protective helmet with the chin strap securely fastened under the chin, and protective elbow pads and knee pads.
- C. Failure to comply with the requirement of 77-42.A constitutes negligence.
- D. It shall be unlawful for the parent or guardian of any minor child to knowingly permit such minor child to use the skate park in violation of this section.
- E. No person shall have any dog, cat or other pet on or near the skate park unless the animal is on a leash and under the control of the owner or some other person.

(Ord. No. 2019-15, § 1(Exh. A), 6-17-19)

77-46. Enforcement and administration.

- A. The city manager may appoint park managers, who may enact such administrative rules and procedures, and issue such orders as are necessary to effectuate the purpose of this article and to protect the general health, safety and welfare of the public.
- B. Park managers and sworn law enforcement may enforce this article.



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- C. Violation of any rule in this article shall be punishable as a misdemeanor or infraction with fine up to \$500.00 per G.S. 14-4 and subject to further civil penalties as set forth in the North Carolina General Statutes.
- D. For violation of any rule in this article, the City of Brevard may withdraw the right of a person or persons to remain on or within the skate park.

(Ord. No. 2019-15, § 1(Exh. A), 6-17-19; Ord. No. 2021-48, § 1(Exh. A), 11-15-21)

ARTICLE IV. BREVARD DOG PARK RULES AND CONDUCT

77-51. Scope.

- A. This article regulates the use of the City of Brevard Dog Park, within the Brevard Sports Complex, which is hereby established as a City of Brevard public park. This article hereby establishes the rules of conduct and is in keeping with the city's efforts to ensure safe and responsible use of recreational parks and public amenities.
- B. Any person who participates in dog park use and activities does so at their own risk and assumes the known and unknown inherent risks in these activities, irrespective of age, and is legally responsible for all damages, injury, or death to himself or herself or other persons or property that result from these activities.
- C. Sworn law enforcement officers shall enforce the safety regulations in this article as a part of their day-to-day duties. Nothing in the provision of this article shall prevent a sworn law enforcement officer from exercising judgment and issuing warnings to offenders as deemed appropriate.

(Ord. No. 2021-14, § 1(Exh. A), 4-19-21)

77-52. Reserved.

(Ord. No. 2021-14, § 1(Exh. A), 4-19-21; Ord. No. 2023-43, § 1(Exh. A), 9-5-23)

Editor's Note—Ordinance 2023-43 transferred the contents of this section to City Code § 1-2.

77-53. Regulations: Negligence.

For violations of the following regulations or any other type of activity deemed "negligence" as defined in this article, the violator shall be required to pay a civil penalty of \$100.00 and may be permanently banned from using the City of Brevard's Dog Park or overarching park facilities.

- A. The City of Brevard Dog Park is open from dawn to dusk as published in the most recent sunrise/sunset table of the North Carolina Wildlife Resources Commission. No person, except City of Brevard employees and authorized persons, shall be allowed within the park facility between closing and opening hours.
- B. No animals other than dogs shall be brought into the fenced area of the dog park.
- C. All dogs shall be leashed until safely inside the dog park fenced area and returned to a leash prior to exiting.
- D. Dog owners or keepers shall remain in the fenced area while their dogs are using the dog park. Owners or keepers shall be in view of their dogs and have voice control over them at all times.
- E. Aggressive dogs and female dogs in heat are prohibited for entering the dog park. Owners or keepers shall leash and remove dogs at the first sign of aggressive behavior.
- F. Owners or keepers shall dispose of waste properly in the designated on-site containers.
- G. Bite-sized training treats are allowed, but food in bowls, long-lasting chews and toys other than balls and frisbees are prohibited.



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- H. Smoking, and eating are prohibited.
- I. The maximum limit shall be two dogs per person, per visit.
- J. Puppies less than four months old are prohibited.
- K. Owners or keepers shall be liable for any injury or damage caused by their dog.
- L. All dog bites shall be reported to the Brevard Police Department and dog owners or keepers shall be required to assist investigations of incidents of aggression or biting by providing appropriate identification and information to the police and to all dog owners who are involved.
- M. Children accompanying dog owners or keepers inside shall be strictly supervised and at least 12 years old. Spectators should remain outside the fenced area.
- N. Sick dogs are prohibited from entering the City of Brevard Dog Park.
- O. Dogs shall be vaccinated for rabies and DHLPP and shall display current identification and rabies tag on the dog's collar at all times.

(Ord. No. 2021-14 , § 1(Exh. A), 4-19-21)

77-54. Regulations: Grossly reckless.

For violations of an ordinance in this article deemed "grossly reckless" as defined in this article, the violation shall be punishable as a misdemeanor or infraction with fine up to \$500.00 per G.S. 14-4 and subject to further civil penalties as set forth in the North Carolina General Statutes.

(Ord. No. 2021-14 , § 1(Exh. A), 4-19-21; Ord. No. 2021-48 , § 1(Exh. A), 11-15-21)

STAFF REPORT

City Council, Monday, December 18, 2023

Title: Times Arcade Alley Project - Budget Amendment No. 24-02

Speaker: Dean Luebbe

Prepared by: Dean Luebbe, Assistant City Manager/Finance Director

Approved by: Wilson Hooper, City Manager

Background

In August of 2023, City Council approved project ordinance 2035-35 in the amount of \$1,082,000 for improvements to the Times Arcade Alley. On November 20, 2023, City Council awarded the construction contract for this project to Tennaco Construction in the amount of \$1,071,070. The City had previously engaged with Arbor Land Design on contracts in the amount of \$82,000, and the project includes \$53,553.50 in contingency costs.

Staff Report

The Project budget needs to be increased by \$125,000 to balance this Capital Project. The Downtown Masterplan Fund has an unreserved fund balance of \$40,000 and the City will be reimbursed \$32,000 from a private property owner in the Alley for waterproofing and other improvements. \$53,000 will be recorded as a General Fund transfer.

The City is anticipating cost savings in the Public Works Department because of vacancies, so the \$53,000 transfer will not affect fund balance. This project also includes contingency of \$53,553.50, so that if the project stays within the current budget, the \$53,000 transfer could be returned to the General Fund.

Both a project ordinance and a FY24 budget amendment are needed in this situation, as the \$53,000 transfer originates from the General Fund.

Proposed Action

By motion, adopt the project amendment for the Times Arcade Alley Improvement Project in the amount of \$125,000, and adopt the budget amendment for \$53,000 as presented.

Attachments:

1. Budget Amendment 53K Times Arcade
2. CPO Amendment - Times Arcade Alley
3. 53K budget amendment for Times Arcade

ORDINANCE NO. 2023-XX
AN ORDINANCE AMENDING THE FY2023-2024 BUDGET.
BUDGET AMENDMENT NUMBER 24-02

SUBJECT: Budget Amendment to transfer \$53,000 from the General Fund to the Times Arcade Alley Improvement Project.

AGENDA INFORMATION

Agenda Location: **Consent**
Department: **Finance**
Contact: **Dean Luebbe, Assistant City Manager and Finance Director**

BRIEF SUMMARY: Recent changes to the Times Arcade Alley Improvement Project have increased costs from the original budget of \$1,082,000 (approved on August 21, 2023, Project Ordinance 2023-35) to \$1,207,000). The Project Budget will be increased by \$125,000, (\$1,207,000 less \$1,082,000). \$40,000 of this amount will come from fund balance of the Downtown Masterplan Fund. \$32,000 is being reimbursed to the City from a property owner in the Times Arcade Alley, for waterproofing and other improvements related to the project. The remaining \$53,000 will be transferred from the General Fund, as the City has cost savings in the Public Works Administration department due to vacancies. It should be noted that this project has \$53,553 of contingency budgeted into the overall project cost, so that if the project stays on budget, the \$53,000 transfer could be returned to the General Fund

MOTION FOR CONSIDERATION: To approve Budget Amendment 24-02 as submitted, increasing the budget in expenditure account:

10-6600-9265 (Transfer to Times Arcade Alley Project) \$53,000

And decreasing the budget in the expenditure account:

10-5450-0200 (Salaries - Regular) \$53,000

ATTACHMENTS: None

MANAGER'S RECOMMENDATION: Adopt as presented

Approved and adopted this 18th day of December, 2023.

Maureen Copelof
Mayor

ATTEST:

Denise Hodsdon, CMC
City Clerk

APPROVED AS TO FORM:

ORDINANCE NO. 2023-XX

CAPITAL PROJECT ORDINANCE TO AMEND ORDINANCE
NO. 2023-35, TIMES ARCADE ALLEY IMPROVEMENT 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 amended:

Section 1: The budgeted expenditures and revenues listed under the ordinance 2023-35 will be increased from \$1,082,000 to \$1,207,000. This increase will allow the City to complete needed stormwater repairs in the Times Arcade Alley.

Funding will come from \$40,000 of fund balance remaining in the Downtown Masterplan Fund, and \$32,000 of reimbursement from a property owner, and a \$53,000 transfer from the General Fund. The City has received two grants which total \$950,000 to fund the large majority of this project.

Section 2: The Project will construct new publicly owned stormwater infrastructure in the Times Arcade Alley to capture runoff from rooftops and street surfaces. All of the existing asphalt will be removed from the alley, two curb inlets and storm drainpipes will be added to the alley's parking area, which will flow into a new 18" storm drainpipe 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 and disturbed parking areas will be resurfaced. The new infrastructure will handle the runoff from a 25-year storm (7.69"/24 hours), which will significantly mitigate flooding in the alley and on Main Street and Jordan Street that receive the alley's runoff. The project is designed and ready to be implemented

Section 3: The following amounts are appropriated for the project:

Account Number	Account Name	Budget Amount
83-4900-4550	Times Arcade Alley	\$1,082,000
83-4990-4550	Times Arcade Alley	\$72,000
83-4990-4560	Times Arcade Contingency	\$53,000
TOTAL PROJECT APPROPRIATION		\$1,207,000

Section 4: The following revenues are anticipated to be available for project expenses:

Account Number	Account Name	Budget Amount
83-3750-0230	ARPA Stormwater Grant	\$700,000
83-3750-0240	Golden Leaf Grant	\$250,000
83-3020-0150	Transfer from General Fund	\$132,000
83-3750-0250	Reimbursement	\$32,000
83-3990-0000	Fund Balance - Fund 83	\$40,000
83-3020-0200	Transfer from General Fund	\$53,000
TOTAL PROJECT REVENUE		\$1,207,000

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 18th day of December, 2023.

Maureen Copelof
Mayor

ATTEST:

Denise Hodsdon
City Clerk

APPROVED AS TO FORM:

Mack McKeller
City Attorney

Budget Amendment Number 24-02
Fiscal Year 2023-2024

	ACCOUNT NUMBER	ACCOUNT DESCRIPTION	DEBIT	CREDIT
	10-6600-9265	Transfer to Times Arcade	53,000.00	
	10-5450-0200	Salaries - Regular		53,000.00
		TOTAL DEBITS/CREDITS	53,000.00	53,000.00

EXPLANATION:

To fund increases in the Times Arcade Alley project.

JE# _____ SYSTEM # _____ Date Posted _____ BY: _____

Fiscal Year _____ **Month** _____ **Finance Director Signature** _____ **Date** _____



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 NOVEMBER 30, 2023

Tina Tanner, Tax Collector

CITY OF BREVARD TAX SETTLEMENT REPORT
MONTH ENDING NOVEMBER 30, 2023

UPDATED: 12.8.2023

YEAR JULY AUGUST SEPTEMBER OCTOBER NOVEMBER DECEMBER

2023		\$ 3,999,226.23	\$ 423,200.72	\$ 153,930.97	\$ 103,115.62
2022-2011	\$ 8,264.83	\$ 22,421.57	\$ 1,772.62	\$ 2,221.69	\$ 1,183.95
2010 - Prior	\$ -	\$ -	\$ -	\$ -	\$ -
TOTAL:	\$ 8,264.83	\$ 4,021,647.80	\$ 424,973.34	\$ 156,152.66	\$ 104,299.57



JANUARY FEBRUARY MARCH APRIL MAY JUNE TOTAL

2023							\$ 4,679,473.54
2022-2011							\$ 35,864.66
2010 - Prior	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
TOTAL:	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 4,715,338.20

HEART OF BREVARD TAX SETTLEMENT REPORT
MONTH ENDING, NOVEMBER 30, 2023

UPDATED: 12.08.2023

YEAR	JULY	AUGUST	SEPTEMBER	OCTOBER	NOVEMBER	DECEMBER	TOTAL
2023		\$ 84,666.91	\$ 4,920.46	\$ 2,272.69	\$ 2,148.37		
2022-2011		\$ 4,227.80	\$	\$ 535.70			
2010 - Prior	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
TOTAL:	\$ -	\$ 88,894.71	\$ 4,920.46	\$ 2,808.39	\$ 2,148.37	\$ -	
2023							\$ 94,008.43
2022-2011							\$ 4,763.50
2010 - Prior	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
TOTAL:	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 98,771.93

STAFF REPORT

City Council, Monday, December 18, 2023

Title: Amendment to City Attorney Employment Agreement

Speaker: Mack McKeller, City Attorney

Prepared by: Denise Hodsdon

Approved by: Wilson Hooper, City Manager

Background

Mack McKeller was named City Attorney on April 2021. The terms and conditions of his employment were the same as the previous city attorney. At the time of his hiring Mr. McKeller was employed by the firm Carr, Blackwell, and Associates P.C.

Discussion

As of January 1, 2024 Mr. McKeller will be changing firms to McKeller Wall P.C. He is requesting an amendment to his employment agreement reflecting this change. No other changes to the terms and conditions of his employment are being requested.

Action

Approve a resolution authorizing Mayor Copelof to execute an amended employment agreement with the City Attorney McKeller.

Attachments:

1. Resolution Amending City Attorney Employment Agreement

RESOLUTION NO. 2023-XX

RESOLUTION AMENDING CITY ATTORNEY EMPLOYMENT AGREEMENT

WHEREAS, the City named Mack McKeller City Attorney in April 2021;

WHEREAS, at the time of his appointment Mr. McKeller was employed by Carr, Blackwell, and Associates P.C.;

WHEREAS, as of January 1, 2024 Mr. McKeller will be employed by McKeller Wall P.C.;

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

Mayor Maureen Copelof is authorized to execute an amendment to the City Attorney employment agreement reflecting the change described above. No other changes are necessary at this time.

Approved and adopted this ____ day of _____, 2023.

Maureen Copelof
Mayor

ATTEST:

Denise Hodsdon, CMC
City Clerk

MINUTES
City Council Public Safety Committee
Special Meeting

Thursday, September 14, 2023 – 3:30 PM
City Hall Council Chambers

Members Present: Mac Morrow, Chair, Council Member
Maurice Jones, Council Member
Kevin Gallo, Citizen Member

Staff Present Wilson Hooper, City Manager
Tom Jordan, Police Chief
Bobby Cooper, Fire Chief
Alex Shepherd, Assistant to the City Manager
Becky McCann, Communications Coordinator
Wesley Shook, Interim Public Works Director

Guests: Mayor Maureen Copelof
Residents: Linda Gallo, Diane Brown

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

Assistant to the City Manager Alex Shepherd certified that a quorum was present.

C. Approval of Agenda

Motion by Mr. Jones, seconded by Mr. Gallo to approve the agenda as presented. The motion carried unanimously.

D. Traffic Calming Measures – Gaston St.

Mr. Hooper informed the committee that we have a traffic calming policy that was adopted in May 2022. One of the provisions of that policy permits residents and citizens to register a request for traffic calming measures, and so we have one here. To begin, a request must be made through the City Manager who will then review and receive their concerns. If the City Manager deems the request appropriate, then they will forward the request to the Public Safety Committee.

Ms. Brown first thanked the committee for hearing her request. There has been speeding up and down Gaston St. that affects our W.E.E. School program. The City installed a crosswalk in front of the church, and we are thankful for that. We operate our preschool Monday through Friday, and staff report as early as 7:15 am. Our families start to come at 7:45 am, and the school ends at noon. As we noticed cars speeding on Gaston St. during drop-off and pick-up, the church placed a temporary speed bump, and now this is why we are here today.

Mr. Morrow said we appreciate your concerns and request, and this is an issue that we take very seriously. We are trying to address this issue not only near your location but all across the city.

Mr. Hooper mentioned that he and Chief Jordan spoke to Ms. Brown earlier in the week and offered a compromise that I would like to present to the committee now. Currently, our policy offers a couple of options: further analysis of the request, implementation of non-physical traffic calming, recommendation of a physical traffic calming tool, or no action. However, what I recommend to the committee is to direct staff to do further analysis because we need to collect traffic and speed counts to know what we are dealing with. Furthermore, it will help us determine what traffic calming tools to effectively use. In the meantime, the City has agreed to negotiate a temporary encroachment agreement with the church that permits them to place a temporary pedestrian crossing device in the middle of the crosswalk during drop-off and pickup hours for their daycare. I have asked our attorney to draft an encroachment agreement that we can enter with the church until our traffic study is complete, and we can come up with a more permanent solution.

Mr. Jones asked, have you noticed when the most traffic occurs.

Ms. Brown said that it is split between drop-off and pickup. However, my concern happened one day while it was raining, and there was a family using the crosswalk, and three vehicles passed by without yielding to them.

Mr. Jones asked about how many students you have.

Ms. Brown responded and said around 64 students as of right now. I also want to mention that we recently had a fire drill, and our safety plan tells us to cross the road and go into the parking lot. However, we cannot do that because of the unpredictability of the traffic.

Mr. Hooper said the collection of data is important for us because not only does it help us determine the types of traffic calming measures, but it helps us determine which ones go in first. We think that in your case, the data will reflect a higher priority due to the heavy pedestrian traffic and vehicle traffic, but first, we must collect the data.

Mr. Gallo mentioned that he encountered the same issue around Rosenwald near Probart St. If you read the fine print on the crosswalk signs it states that individuals must be in the crosswalk, apparently as a State Law requirement, for vehicles to stop prior to the crosswalk. I believe that installing the traffic calming device in the crosswalk should help.

Ms. Brown said that it is important to realize there are a lot of public buildings in the area, and a lot of people are rushing to work.

Mayor Copelof said that she has noticed cars speeding up to get around pedestrians and she worries that small children could potentially be hit. She asked how long we would need to collect data before we can implement a traffic calming measure.

Mr. Hooper said we would collect data until we have the temporary pedestrian crosswalk tool installed, which should be around ten days.

E. Reminder of Next Regular Meeting

The next meeting of the Public Safety Committee will be on Monday, September 25, 2023 at 3:30 pm at City Hall.

F. Adjourn

There being no further business, the meeting was adjourned at 3:53 PM.

Minutes Approved: November 27, 2023

X 

Mac Morrow,
Chair, Council Member

X 

Alex Shepherd,
Assistant to the City Manager

MINUTES

COUNCIL FINANCE, HUMAN RESOURCES and CITIZEN APPOINTMENT COMMITTEE

Monday, September 25, 2023 – 11:00 AM
City Hall Planning Department Conference Room

Members Present: Aaron Baker, Chair, Council Member
Susan Miller, Citizen Member

Staff Present: Wilson Hooper, City Manager
Dean Luebbe, Finance Director
Kelley Craig, Human Resources Director
Becky McCann, Communications Coordinator
Alex Shepherd, Assistant to the City Manager

A. Welcome & Call to Order

Committee Chair Aaron Baker welcomed everyone and called the meeting to order at 11:05 AM.

B. Certification of Quorum

Quorum was certified by Assistant to the City Manager Alex Shepherd.

C. Approval of Agenda

Motion by Ms. Miller, seconded by Mr. Baker to approve the agenda as presented. The motion carried unanimously.

D. Approval of Minutes of August 28, 2023 Meeting

Motion by Mr. Miller, seconded by Mr. Baker to approve the minutes of the August 28, 2023 meeting as presented. The motion carried unanimously.

E. Planning Board Applications

Ms. Miller informed the committee that Mr. Carli is the incumbent planning board member who has reapplied for the open position.

Mr. Baker mentioned that he knows Mr. Carli and added that Mr. Carli is well-versed in planning issues.

Ms. Miller also observed this during a recent planning board meeting, noting that Mr. Carli was articulate on the issues of concern to the board.

Mr. Baker further informed the committee that he had reviewed another candidate's application and found them to be a strong candidate as well.

Mr. Hooper asked about the residence of the second candidate.

Mr. Baker stated that he was unsure but clarified that he is a resident of Brevard for half the year and is a retired urban planner. He mentioned that his ability to attend meetings for half the year might be affected due to splitting his residency, which could be an issue. Mr. Bland also suggested that, if candidates are not selected, we should recommend them for openings on county boards.

Motion to recommend to City Council the reappointment of James Carli to serve for another term on the planning by Ms. Miller, seconded by Mr. Baker. The motion carried unanimously.

Mr. Hooper updated the committee on the employee survey, noting that it has been distributed to all employees. He has been encouraging staff in various departments to participate in the survey, which has received a decent response rate thus far. The survey will close at the end of the week and includes comprehensive questions that will provide baseline information for future surveys. It aims to gather valuable information about how employees feel working for the city.

Mr. Baker asked about the target response rate.

Ms. Craig mentioned that they are aiming for an 80% response rate and have encouraged departments to strive for 100% participation by offering incentives like breakfast or lunch.

Ms. Miller inquired about the specific information they hope to gather from the survey.

Mr. Hooper explained that the survey aims to gauge employee perceptions of the City of Brevard as a workplace, covering topics such as their opinions of supervisors, city leadership, professional development opportunities, whether they feel heard, team functionality, work-life balance, and more. The survey focuses on organizational culture and environment rather than just compensation, with each question rated on a scale of one to five and offering an open-ended response option. We are using the subscription-based service Culture Amp, supported by workplace experts who will provide solutions based on the survey results. A report will be compiled and presented to the council at the survey's conclusion.

Mr. Bland asked for an update on the city engineer position.

Mr. Hooper reported that they have contacted a firm and are awaiting their contract. Information, including the previous job posting and the vision for the position, has been shared with them.

Mr. Bland inquired about the timeline for hiring the candidate.

Mr. Hooper responded that they have not set a specific timeline yet.

Ms. Miller asked when city staff will begin preparing for the budget season.

Mr. Hooper mentioned that city staff typically begin budget preparations shortly after the first of the year, around January. However, they may start a bit earlier, around the holidays, to identify their needs for the upcoming budget year. The council's priority-setting retreat is scheduled for late February, followed by a budget retreat in April, with the budget presentation set for May. He intends to present the budget calendar to this committee for approval.

F. Set Date for Next Meeting

The next meeting of the Finance & Human Resources Committee will be on Monday, October 23, 2023, at 11:00 AM.

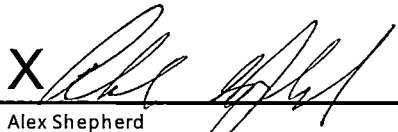
G. Adjourn

There being no further business, the meeting was adjourned at 11:23 AM.

X 

Aaron Baker
Chair, Council Member

Minutes Approved: November 27th, 2023

X 

Alex Shepherd
Assistant to the City Manager

MINUTES

City Council Public Works & Utilities Committee

Wednesday, October 4, 2023 – 3:30 PM
City Council Chambers

Members Present: Maurice Jones, Chair, Council Member
Mac Morrow, Vice-Chair, Council Member
Owen Carson, Citizen Member
Mayor Maureen Copelof, Ex-Officio

Staff Present: Dean Luebbe, Finance Director
Wesley Shook, Acting Public Works Director
Dennis Richardson, Water Treatment Plant Supervisor
Emory Owen, Wastewater Treatment Plant Supervisor
Alex Shepherd, Assistant to the City Manager
Becky McCann, Communications Coordinator (Arrived 4:03 pm)
Aaron Winans, WWTP Staff

Guests: Monica Driscoll, Nora Jean Montgomery

A. Welcome and Call to Order

Committee Chair Maurice Jones called the meeting to order at 3:35 pm.

B. Certification of Quorum

Assistant to the City Manager Alex Shepherd certified that a quorum was present.

C. Approval of Agenda

Motion by Mr. Morrow, seconded by Mr. Carson to approve the agenda as amended.
The motion carried unanimously.

D. Approval of Minutes

1. September 6, 2023 Meeting

Motion by Mr. Morrow, seconded by Mr. Carson to approve the minutes of the September 6, 2023 meeting as presented. The motion carried unanimously.

2. September 13, 2023 Meeting

Motion by Mr. Morrow, seconded by Mr. Carson to approve the minutes of the September 13, 2023 meeting as presented. The motion carried unanimously.

E. City Trash Routes

Mr. Shook informed the committee that he had mapped all city trash routes to count the houses outside the city limits that our trucks drive by but don't provide trash service. There are approximately 214 houses in this category.

Mr. Morrow inquired about the potential for increased revenue if we were to start providing service to these homes.

Mr. Luebbe responded that indeed, we would generate more revenue. However, our current challenge is scheduling, as we would need to reshuffle employees to fill shifts. This could complicate the recruitment and retention of full-time employees in the public works department if we were to add these additional homes to our routes.

Mr. Shook said our trash trucks are currently operating at full capacity, so adding service to more homes would be difficult to accomplish.

Mr. Luebbe continued, explaining that to service the additional homes, we would need to purchase another garbage truck. We recently purchased one, costing the city approximately \$300,000. Additionally, we would need to hire more employees to operate the new truck and perform an analysis to determine the rates we would need to charge. It's worth noting that the sanitation fund is intended to break even, but it currently operates at a deficit and is subsidized by general fund revenues.

Mr. Jones inquired about how much the fees fall short.

Mr. Luebbe estimated that it's approximately \$50,000 to \$100,000 each year.

Mr. Carson raised the possibility of needing to increase fees and asked when the last fee increase occurred.

Mr. Luebbe stated that we increased sanitation fees by \$1 per month, from \$19 to \$20, during the first year of employment with the city.

Mr. Jones asked if all the garbage trucks are consistently at full capacity.

Mr. Shook clarified that we do have spare trucks, but the ratio of trucks to drivers and operators is already maximized. Additional staff would be required to operate more trucks. When a truck reaches capacity, we occasionally drive it back to the city lot and deploy one of the spare trucks to complete the trash route.

Mr. Luebbe stated that he would conduct a more comprehensive financial analysis to determine the feasibility of adding employees and additional trucks in relation to the required fee adjustments.

F. Dominion Gas Franchise Agreement

Mr. Shepherd informed the committee that the existing 30-year franchise agreement with Dominion Gas, signed in 1992, has expired. A new 30-year agreement has been reviewed and approved by City Attorney Mack McKeller. Wilson would like to address any questions or concerns from the committee before seeking city council approval.

Mr. Luebbe emphasized that the rates remain unchanged, and this agreement grants Dominion Gas access to our rights-of-way to supply gas to our citizens.

Additional Comments

Mayor Copelof mentioned that a recurring issue is the increasing number of residential houses experiencing stormwater problems, and the situation is worsening. She stated that she has been receiving complaints from citizens. Currently, we are addressing this matter on a case-by-case basis, but there is a need to fix or improve the entire system. Mayor Copelof suggested that we begin evaluating this at the committee level.

Mr. Jones agreed and added that this is not solely a committee-level concern; it's an issue that the entire council needs to address. One of the main issues Mr. Jones has observed is property problems caused by street-related issues.

Mr. Carson inquired about the city's recent stormwater master plan.

Mr. Jones explained that it has been a while since the last one was conducted.

Mr. Morrow suggested that we initiate discussions on stormwater management during a council workshop early next year.

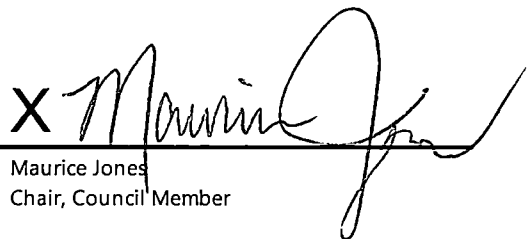
G. Set Date for Next Meeting

The next regular meeting of the Public Works & Utilities Committee was scheduled for Wednesday, November 1, 2023 at 3:30 p.m.

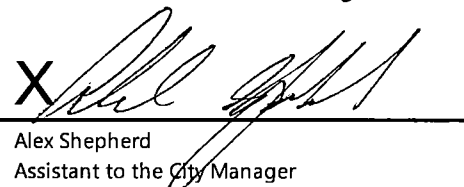
H. Adjourn

There being no further business, the meeting was adjourned at 4:06 p.m.

Minutes Approved: November 21, 2023

X 
Maurice Jones
Chair, Council Member

Minutes – Council Public Works and Utilities Committee M
Page 3 of 3

X 
Alex Shepherd
Assistant to the City Manager

MINUTES
City Council Public Safety Committee

Monday, October 23, 2023 – 3:30 PM
City Hall Council Chambers

Members Present: Mac Morrow, Chair, Council Member
Kevin Gallo, Citizen Member

Staff Present Wilson Hooper, City Manager
Tom Jordan, Police Chief
Bobby Cooper, Fire Chief
Alex Shepherd, Assistant to the City Manager
Becky McCann, Communications Coordinator
Wesley Shook, Interim Public Works Director

Guests: Mayor Maureen Copelof
Residents: Connie Perry, Linda Gallo, Monica Driscoll

A. Welcome & Call to Order

Committee Chair Mac Morrow welcomed everyone and called the meeting to order at 3:40 PM.

B. Certification of Quorum

Assistant to the City Manager Alex Shepherd certified that a quorum was present.

C. Approval of Agenda

Motion by Mr. Gallo, seconded by Mr. Morrow to approve the agenda as presented. The motion carried unanimously.

D. Minutes from September 25, 2023 Meeting

Motion by Mr. Gallo, seconded by Mr. Morrow to approve the minutes of the September 25, 2023 meeting as presented. The motion carried unanimously.

E. Update on Traffic Calming Working Group

Mr. Hooper communicated to the committee that Transportation Planning and Design is putting together a quote for professional services to guide us through the redesign and application process with NCDOT for the Main St, Greenville Highway, and Wilson St intersection. It requires an extensive design to take to NCDOT, which

will include traffic signals, striping, and a reconfiguration of the intersection. The quote will most likely have to go to City Council for approval. As for Probart St., the consultant suggested that we start off with enhanced signage before the piano key crosswalk on both sides. This includes markings on the pavement to warn drivers on the street that they are approaching a crosswalk. At Silverstein Park, both of our traffic engineers agree that this location is a candidate for a raised crosswalk from the parking lot to the park because the traffic count numbers are low; it's not an emergency thoroughfare, but there is a lot of pedestrian traffic.

Mr. Morrow asked how expensive a raised crosswalk is.

Mr. Hooper said that a raised crosswalk is expensive, but it shouldn't be too much. We are also working on a map to send to NCDOT for the areas we want to install our Jake Brake signs, and that will be the exhibit that accompanies our encroachment agreement with them.

Mr. Gallo asked the question that he thought was clearly stated at a previous meeting: that the evaluation signified or suggested that additional traffic calming was warranted for Probart St. He noticed that traffic is still being monitored but that the traffic monitoring device has not been turned around yet (to face eastbound traffic). Also, he thought previous discussions related to traffic calming on Probart St. included the installation of speed cushions that would not affect emergency vehicles. He also mentioned he had recently witnessed a tire blowout on a curve on Probart St., apparently caused by another vehicle crossing over the centerline on the road that forced the damaged vehicle to run into the curb. He spoke with the driver of the vehicle and encouraged her to report the incident to the Brevard Police Department.

Mr. Hooper said that the speed cushions are a very strong possibility; it's just a matter of determining where exactly they would go to be cost-effective with our funds. On the curve that you mentioned, Mr. Gallo, where it curves in and narrows, that is a poor design in the road, and our traffic engineers agree. However, the traffic engineers have not told us where the most efficient place for the speed cushions would be installed.

Mr. Jordan mentioned that we have provided the church on Gaston St. with a weighted pedestrian bollard that they can use. He said that he witnessed the church using the bollard and we are seeing vehicles be more cautious around the pedestrian crossing.

Mr. Morrow communicated that the residents in the French Broad Apartments would like to turn the alley along Appletree St. into a one-way.

Mr. Jordan said that their HOA communicated to him that it is a major cut-through and can sometimes be dangerous.

Mr. Gallo informed the committee that because the Main St. and Broad St. intersection backs up due to the light, people cut around the backside of the courthouse to beat the light.

Mr. Jordan said that this is legal but that it can be unsafe if people are traveling at high speeds.

Mr. Hooper informed the committee that NCDOT is about to commence a study of a traffic concept called a one-way pair. This would essentially convert Broad St. to a one-way going north and Caldwell St. to a one-way going south. The concept has traffic safety and traffic efficiency benefits.

F. Quarterly Accident Report

Mr. Hooper communicated to the committee that the quarterly accident report includes the City's and County's crash data for the first quarter of this fiscal year. Also included in the data is the annualized reporting of crash data that includes the entire county broken down by types of accidents; this data comes from NCDOT. As you can see from the data, our numbers remain consistent. During the first quarter of this fiscal year, we had thirty-one crashes with injuries, one hundred and seventy-six with property damage only, zero pedestrian crashes, and two vehicle-bicycle crashes. We will continue to refine the data so that it is in an easier-to-read format.

Mr. Gallo asked if the bicycle crashes were initiated by bicyclists only.

Mr. Hooper said yes, the number would include if you fell off your bicycle or collided with a bollard, and only if it is reported.

G. Railroad Ave Greenway Bollards

Mr. Hooper informed the committee of the various options mentioned in the staff report. He mentioned that there are options to dig up the double bollards and replace them with a single bollard or cut down the double bollards and shave down the 'stumps' to replace them with a single bollard, or do nothing and leave the double bollards in place. Both options will cost around \$1,325 per location for a grand total of \$11,925. I would like to get this committee's approval before taking it to City Council.

Mr. Gallo asked a question about when the original bollards were installed and what the specifications were. He stated that the bollards were spaced from the edge of the greenway and not the distance between the bollards.

Mr. Morrow said at the time that we didn't have the specifications for greenways, and it was left up to the engineers to decide.

Mr. Hooper said that now our practice is for the City Council to approve all plans, but at the time that these plans were completed, that was not the practice.

Mr. Gallo asked if the options for fixing the bollards have been brought to the Parks, Trails, and Recreation committee to receive feedback from bicyclists.

Mr. Morrow said that Swamp Rabbit does not have any bollards, and they have only had one issue since the greenway was built.

Mr. Hooper mentioned to the committee that since this will require a significant number of man-hours, I will bring this recommendation to City Council.

H. Pet Safety Policy

Ms. Perry introduced herself to the committee and brought forth an area of concern with the Transylvania Animal Control Ordinance and what it states about cruelty to animals. About a month ago, I experienced what I thought was an animal cruelty situation. We passed a home on Old Henderson Hwy that had an unfenced yard, and there were a couple of dogs tied to short tethers that kept choking themselves because they wanted to run towards us. One was tied to a doghouse, while the other was tied behind him. A few hours later, as we passed the home again, those dogs were still tied up. In the days that followed, I started driving past there at different points in the day to see if they were ever taken off their tethers, and the dogs were still tied, whether it was morning, afternoon, or evening. So, I reported it to the animal control office at the Brevard Police Station because I first went to Transylvania Animal Control and found out that I needed to go to the City. I received a call back from the officer who had gone to investigate; he stated that it wasn't the first time that he had had a discussion with the animal owners, but it was a different situation because the dogs had escaped from their tethers. However, when he investigated the animals for this case, he said that there was nothing that he could do because they have water, shelter, and appear to be fed. After this, I started looking at the ordinance, but it does not define certain things, and that is where law enforcement's hands are tied. The Transylvania County Animal Control Ordinance reads, 'It shall be unlawful for any owner or keeper to fail to provide their animals with proper shelter and protection from the weather, the opportunity for vigorous daily exercise, adequate feed and adequate water as defined within G.S. 19A-23, veterinary care when needed to prevent suffering, and humane care and treatment. Adequate feed means the provision at suitable intervals, not to exceed 24 hours of a quantity of wholesome food suitable for the species and age, sufficient to maintain a reasonable level of nutrition in each animal. Such food shall be served in a sanitized receptacle, dish, or container. Adequate water means constant access to a supply of clean, fresh, potable water provided in a sanitary manner or provided at suitable intervals for the species and not to exceed 24 hours at any interval. It states what the definition is for adequate feed and water is, but it does nothing to address shelter or the length of tether. If the tether is too short, then the animals are not able to have the opportunity to exercise. There are also some county ordinances that state what the tether can be made of, the length, and how long the animal can remain on the tether.

Mr. Morrow said that Ms. Perry brought up this policy in a procedural way, and if we were to implement something similar, we would have to write our own ordinance. Mayor Copelof said that we have some animal ordinances in our code.

Mr. Jordan informed the committee that some items are in the code, but it's not all-encompassing because we usually follow the county ordinance.

Mr. Morrow asked, so it would mean that we would have to change our ordinance.

Mr. Jordan said yes, but there are several challenges when implementing these types of ordinances, like constitutional issues when you go onto people's curtilage without a search warrant to inspect animal conditions. When you set time parameters for tethers, it means that a police officer would have to watch the animal for that length of time. Lastly, when you set some of these ordinances, they become subjective because what one person thinks is fine may not be okay with someone else. However, we could implement minimal tether lengths that would give the animal a better opportunity to exercise.

Ms. Perry said that she would like to at least allow for a longer tether to allow them to walk out of the spot they are sleeping in. Also, we should include an acceptable type of shelter.

Mayor Copelof mentioned that she examined our ordinance, and we have a section on animal cruelty. It looks like if we just made a few modifications like the length of the tether and adding specifications so that when our animal control officer goes out, he has something to use.

Mr. Jordan said that it would clear up some of the ambiguity, but the issue is broader when it comes to animal health and those kinds of things.

Mayor Copelof said it's not like we are starting from scratch on this issue; there are a lot of other local governments that have these ordinances on the books that we could follow.

Mr. Hooper informed the committee that if you instruct us, we will explore this and come back with recommendations at a future meeting.

Additional Comments:

Mayor Copelof asked a question if there were any updates concerning the handicap spaces where people keep falling and hurting themselves.

Mr. Hooper said we are currently working on this issue and will have a discussion during our staff meeting.

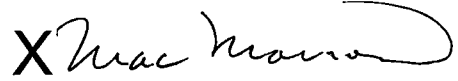
I. Set Date for Next Meeting

The next meeting of the Public Safety Committee will be on Monday, November 27, 2023 at 3:30 pm at City Hall.

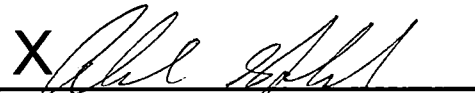
J. Adjourn

There being no further business, the meeting was adjourned at 4:44 PM.

Minutes Approved: November 27, 2023

X 

Mac Morrow,
Chair, Council Member

X 

Alex Shepherd,
Assistant to the City Manager

MINUTES

Rosenwald Community Advisory Board

Thursday, October 26, 2023 - 6:00 PM

Mary C. Jenkins Community & Cultural Center

Members Present: Maurice Jones, Co-Chair, Council Member
Randy Lytle, Co-Chair (Arrived at 6:07 PM)
Gary Daniel, Mayor Pro-Tem
Victor Foster, Citizen Member
Susan Threlkel, Citizen Member
Edith Darity, Citizen Member
Ella Jones, Citizen Member
Rebecca Wyn, Citizen Member

Staff Present: Wilson Hooper, City Manager
Tyree Griffin, Community Center Director
Alex Shepherd, Assistant to the City Manager

Guest: Mayor Copelof

A. Welcome & Call to Order

Co-Chair Maurice Jones welcomed everyone and called the meeting to order at 6:05 PM.

B. Invocation

Mr. Foster offered an invocation.

C. Certification of Quorum

Quorum was certified by Assistant to the City Manager Alex Shepherd.

D. Approval of Agenda

Motion by Mr. Daniel, seconded by Ms. Darity to approve the agenda. The motion carried unanimously.

E. Approval of Minutes

Motion by Mr. Foster, seconded by Ms. Threlkel to approve the minutes of the August 17, 2023 meeting as presented. The motion carried unanimously.

F. MCJCCC Security Measures Update

Mr. Hooper asked the committee to place this item on a future agenda to discuss in more detail. We have been trying to balance the feedback we have received from this committee with the security and liability needs that come with owning and operating a property like the MCJCCC, so we need more time to best secure the facility while respecting the privacy of users. However, we do have in our rental agreement a clause that allows users to choose whether to use the cameras, and we hope that will allay your concerns for now. As you know, we did have a mass shooting in Maine, and so I think that it underlines the need for cameras and other security measures in a public facility. I also couldn't imagine if there was an unfortunate event of a similar nature, and we could not solve the crime because the cameras were voluntarily turned off. The last point I need to make is that I need to correct myself because last time I told you something incorrect, and I want to correct myself. That is, we have cameras at City Hall, public works, the recreation/baseball facility, but we don't have them at the French Broad Community Center, and we don't have them at the Depot, but we will put them there. The Depot has had two cases of vandalism that I think the cameras would've helped us solve, and so we should look at possibly placing cameras at public facilities to deter these types of events.

Mr. Jones requested that, when we revisit the issue if we could have a quote to understand the costs.

Mr. Lytle mentioned that if we discuss this topic later, we should consider the reason for having cameras. I am not opposed to cameras at all, but we would like to understand the purpose behind their installation.

Mr. Hooper said the other item I will include in the costs is the cost of our insurance premiums and the difference between having no cameras and having cameras at our facility.

Mr. Foster said the issue to us regarding the cameras is the difficulty in explaining this to the community and having enough information to provide them with that nothing is here to invade people's privacy, but we want to ensure that everyone is safe.

Mr. Hooper informed the committee that he recently discussed the cameras with the City Attorney and Police Chief regarding the footage being subject to a freedom of information request. The answer is yes, but there is also a process that our attorney can go through to appeal to a judge to remove personally identifiable information from the footage before it is released. Therefore, we would include this in the policy that we would go before a judge and would try to have the information redacted.

G. Juneteenth Celebration Debrief

Mr. Griffin informed the committee that he would like the Mary C. Jenkins Community Center (MCJCCC) Board to outline a vision for what they envision the Juneteenth event to look like. By letting the MCJCCC Board use their expertise and wisdom within the

community, it gives them an advantage for what they want to see in this community. As a director, I must accommodate both the MCJCCC Board and the City, and I am the only one getting stretched thin having to work on these events. Ultimately, letting the MCJCCC Board take the next four to five months to present an outline to the Rosenwald Community Advisory Board, it gives this board more transparency and inclusion for what is being planned. By performing the planning process in this way, we are trying to build unity and enhance the Juneteenth event.

Mr. Jones mentioned that he agrees that the event needs to come together, and we hope that it would develop into a two-day event. However, we must bring two separate parties together with the MCJCCC Board and the City, and that could create issues because one group may be used to doing it a certain way while another group is used to doing it by themselves.

Mr. Griffin said that he agreed, and he hopes it will come together as one. We would like to get everyone involved and hope that we can work around everyone's schedule to ensure we receive everyone's feedback.

Mr. Hooper informed the committee that he thought the deadline needed to be moved up from March 2024 to February 2024 because I think you will need a month or two to consolidate feedback and plan the event.

Mr. Foster said their goal is to bring unity in the community. Juneteenth is a new celebration, and people are figuring out how they want to celebrate it. Not only are we trying to celebrate the day, but also incorporate the history and significance of Juneteenth. We want to celebrate where we were, where we are now, and how far we have come, so it is important to remember history.

Mr. Jones mentioned that when he envisioned how this event would grow, he envisioned a Juneteenth celebration like that of other downtown events that include vendors. He has always hoped to have more minority businesses so that as a vendor, you'd have the opportunity to sell traditional African clothing, food, and hopefully bring more people from outside. He said that he wants all events to be equal and have the same opportunities. Also, by providing the option within the Juneteenth celebration, we would provide a jump-start point to people who don't have a brick-and-mortar store but they are very talented, and it would allow them to sell their products.

Mr. Daniel mentioned that he was discussing the Juneteenth event with John Felty, who organizes the Mountain Song Festival. He said that he would be able to offer his input on how something like this should work. We obviously can't afford to hire him, but he would be a valuable resource if we could have that conversation.

Mr. Lytle informed the committee that three years ago he came to the MCJCCC Board and recommended that we have a Juneteenth celebration. The reason I brought it up was that I wanted to educate our community. I learned about Juneteenth a long time ago, and I felt like it was a great opportunity for the MCJCCC Board to put on the first event. A year later, we held another Juneteenth event, but a basketball tournament was

also formed that was piggybacking off our event. Then, the following year, there was some coordination done to try to mesh the two events. In doing that, it basically created two separate events because we wanted the young people who showed up for the basketball tournament to show up for the Juneteenth informational type of celebration. I understand that we must take baby steps to build this event, but with involvement from the City and using their resources, we should be able to get there.

Mr. Jones pointed out that we must involve the young people of our community to educate them on the importance of Juneteenth. He said that he hopes we could have an informational session followed by a basketball tournament that would be included in their registration.

Mr. Foster said it would be great if these events could come together. However, we need to be more in touch with people who are coming to the Juneteenth event in regards to music, entertainment, and things of that nature.

Mr. Lytle mentioned that we do need to be careful because with the Juneteenth celebration, the City cannot be at the forefront of this event. The community center needs to be the ones putting it on, and the City is supporting us. Because if people think the City is having the Juneteenth celebration, then it is not going to be widely accepted.

Mr. Hooper said that this sounds ambitious, but I think the MCJCCC Board needs to aggressively plan the content over the holidays and bring it to the Rosenwald Advisory Board as soon as possible after the first of the calendar year to get feedback from this group. Then turn around and start planning because if there is one thing, we have learned it is that these events are time-consuming. To add on top of that, there would need to be a speaker, and this is an event of importance to the community.

Ms. Darity stated that as large as the Juneteenth event will be, we should form a committee and have our first meeting in December. We would need to know who wants to be part of the planning committee and their goals to ensure it happens. So, whether you are going to be working with arts and crafts or trying to get people to be the music and entertainment.

Mr. Jones said that a few members of the Rosenwald Advisory Board already serve on the MCJCCC Board, so that will be good for the initial planning and setting a vision for what we want the Juneteenth event to look like.

Mr. Foster informed the committee that there is an MCJCCC Board meeting in November, and the Juneteenth event needs to be at the top of the agenda.

Mr. Hooper mentioned the City will start getting involved when the MCJCCC Board brings the outline and plan to the Rosenwald Advisory Board, and that's when we can start talking about what staff resources we can dedicate to the event.

Ms. Jones said that all events around Juneteenth need to be centered on the historical aspect of the event even if it includes basketball or other events.

H. MCJCCC One Year Assessment

Mr. Griffin informed the committee that the vacancy rate for the year was 10.7%, and that the majority of the users were community/non-profit groups. We do have several groups like Rise & Shine, Music Class, and United but Different using the facility on a regular weekly basis. The majority of uptick that we usually receive is on weekends, and we have almost every Saturday booked until February 2024. Usually, for weekend events, we have around 50 to 120 people coming to the center for events. As we go on, we are trying to focus on key areas such as educational programs, youth programs, cultural events, and community meetings. Going over the expenses for the center, as you can see, we have items like utilities, supplies, and contracted services. From October 1st, 2022, to September 30th, 2023, the rental income was \$6,130, which is an average of around \$560 a month.

Mr. Jones asked the question if insurance is included in expenses.

Mr. Hooper said I am unsure if the insurance portion for this building is included in this budget, however it may be included somewhere else.

Ms. Threlkel asked how many people just come into the building just to walk through and are not there for an event. For example, to view the Green Book.

Mr. Griffin said yes, the Green Book has created a significant increase in visitors to the center, and I have counted around 300 people since we have had the Green Book.

Mr. Lytle asked the question if the center is operating in the red or black or are we breaking even.

Mr. Hooper responded that in this fiscal year, we have brought in \$1,810, and our operating expenses are \$15,000, and that does not include personnel expenses. However, I think that is okay because having this center here and subsidizing it is worth it to our elected officials. With that being said, I will keep an eye on that number, and if the expenses get out of control, then we might need to receive input from this Board to increase our rental rate. The expenses do not include the debt payment on the building and personnel expenses for Tyree because he also provides services for the City too.

Mr. Jones asked if it would be a good idea to fundraise to specifically offset the cost of operating the facility.

Ms. Threlkel said that we also need to fundraise to host exhibits, programs, and other events at the center.

Mr. Jones mentioned that he hopes the Rosenwald Advisory Board will help plan the MLK Jr. event. However, if you can't, then I hope that you all will identify the organization that will so that its more successful than last year.

Mr. Griffin mentioned that he has been working on this year's event for the past couple of months, and we are working with a group from Vision and are planning to have a brunch.

Additional Comments:

Mr. Jones said that he has received three citizen requests for no parking signs at the intersection of Brown Lane and North Lane.

Mayor Copelof informed the committee that several years ago, we sold bricks for the playground, and we have just finished completing the landscaping. So far, we have not installed the bricks, but people have paid money to help fund the Silverstein playground. We should think about where we want to put the bricks, and there are a couple of choices. You have the arch and other options.

Ms. Threlkel asked if the water feature is ever going to happen.

Mayor Copelof said that it is not budgeted because it is very expensive. We were also supposed to add the picnic shelter and other phases. However, we are working with Alvin for engineering plans and costing for the shelter. Then we will be able to fundraise or apply for grants to help fund the facility and potentially place the bricks near it.

Mr. Lytle asked if it is possible to build a wall for the bricks to be placed.

Mr. Daniel said the bricks would most likely need to be placed on the ground.

Ms. Jones mentioned that she did not understand why there was no funding for the picnic shelter.

Ms. Darity informed the committee that Bethel 'A' Baptist Church donated money to help construct the picnic shelter when the land transfer was being conducted. She stated that there should be a record of this in the land transfer agreement or minutes from a previous meeting.

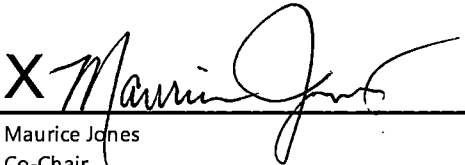
Mr. Hooper said that we will be sure to identify the funds that Bathel 'A' Baptist Church donated and use them appropriately once they are identified.

I. Set Date for Next Meeting

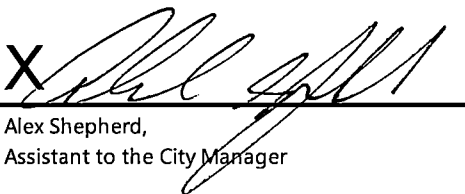
The next meeting was scheduled for Tuesday, November 28, 2023 at 6:00 PM at the Mary C. Jenkins Community & Cultural Center.

J. Adjourn

There being no further business, the meeting was adjourned at 7:25 PM.

X 
Maurice Jones
Co-Chair

Minutes Approved: November 28, 2023

X 
Alex Shepherd,
Assistant to the City Manager

MINUTES
City Council Public Works & Utilities Committee

Tuesday, November 21, 2023 – 3:30 PM
City Council Chambers

Members Present: Maurice Jones, Chair, Council Member
Mac Morrow, Vice-Chair, Council Member
Owen Carson, Citizen Member
Mayor Maureen Copelof, Ex-Officio

Staff Present: Wilson Hooper, City Manager
Dean Luebke, Finance Director
Wesley Shook, Acting Public Works Director
Dennis Richardson, Water Treatment Plant Supervisor
Emory Owen, Wastewater Treatment Plant Supervisor
Alex Shepherd, Assistant to the City Manager
Becky McCann, Communications Coordinator
Aaron Winans, WWTP Staff

A. Welcome and Call to Order

Committee Chair Maurice Jones called the meeting to order at 3:36 pm.

B. Certification of Quorum

Assistant to the City Manager Alex Shepherd certified that a quorum was present.

C. Approval of Agenda

Motion by Mr. Carson, seconded by Mr. Morrow to approve the agenda as presented.
The motion carried unanimously.

D. Approval of Minutes

1. October 4, 2023 Meeting

Motion by Mr. Morrow, seconded by Mr. Carson to approve the minutes of the October 4, 2023 meeting as presented. The motion carried unanimously.

E. City Trash Routes

Mr. Hooper reminded the committee that this originated from a request by a resident a couple of months ago to explore the possibility of providing garbage and recycling services to houses outside of the city limits but along the garbage route.

The committee correctly directed us to investigate the cost of providing services to all eligible properties. We have completed that investigation, and Mr. Shook and Mr. Shepherd are here to present their analysis.

Mr. Shook informed the committee that, as it stands right now, we are at capacity in our trash trucks. To provide additional service, we would need to add an additional garbage truck and a new crew to operate the truck.

Mr. Jones asked how much it would cost to purchase a new truck and pay the crew to operate it.

Mr. Shepherd mentioned that the total cost would be around \$246,000. Included in this figure is \$40,000 in debt service payments to purchase a new truck, approximately \$180,000 in salaries and benefits to pay a new three-man crew, \$6,000 a year in fuel, \$3,000 in maintenance costs, and the additional service would increase our dump fees by about \$17,000. If you divide the possible 214 homes that are eligible for trash service by \$246,000, then by twelve months, it would be \$95.79 per month. If seventy-five percent of the homes signed up, it would be \$125.33 per month, \$191.59 per month if fifty percent signed up, and \$379.63 per month if twenty-five percent signed up.

Mr. Jones asked if these numbers would roughly bring in \$20,000 a month and if they include any "what ifs" in case something were to go wrong, requiring additional spending.

Mr. Shepherd clarified that these revenue projections are solely aimed at breaking even on the \$246,000 and do not account for any "what if" scenarios.

Mr. Luebke added that it would be approximately \$1,200 per year for a customer to pay for their trash to be picked up at their home if everyone opted in.

Mr. Jones expressed doubt, saying he thinks they would be lucky if they got twenty-five percent of the customers to join.

Mr. Morrow suggested that people might not be willing to pay that much for trash service and asked if they had inquired about the rates of private garbage companies.

Mr. Shepherd replied that they did not inquire with garbage companies to determine their rates.

Mr. Morrow commented that rates likely vary depending on the area and neighborhood, considering the distance from the landfill.

Mr. Jones asked if there's any specific direction that staff recommends.

Mr. Hooper said would you like us to continue with this project or not.

Mr. Jones responded personally I would not be interested in paying this much for trash service.

Mr. Carson agreed, stating, it is cost prohibited and we haven't had any other residents come forward to request the same.

Mr. Jones asked how are we going to reach out to the resident.

Mayor Copelof said that she would reach out to him via email.

F. Stormwater Issues and Updates

Mr. Hooper informed the committee that during last year's City Council priority setting retreat, stormwater management didn't make the list of top priorities. However, it was discussed as a pursuit if there was an opportunity. Staff has invested some time exploring potential opportunities and determining the next steps. They approached the matter from two angles. First, if the city were to seriously consider implementing a stormwater fee to fund capital upgrades in stormwater infrastructure, and secondly, to see what projects could be funded using existing grants and loans. So far, they have consulted with the UNC Environmental Finance Center regarding establishing such a fee, and they have spoken to Land of Sky and Golden Leaf to understand the requirements for applying for existing grants and loans to address identified projects. The State budget, which supports Golden Leaf and other grant programs, no longer funds studies; they only fund construction projects. To be eligible for State funds, the city must have a completed study and have a shovel-ready project. In 2008, a stormwater study was completed by McGill and Associates, providing a list of capital projects with estimated costs. Some smaller projects have been completed, but significant ones remain. The estimated costs have likely doubled over the fifteen years. The city is waiting to hear from Land of Sky about the applicability of the old study. Additionally, Alvin from Summit Engineering has been asked to review the study, apply his expertise, and update the estimates. Once this is done, the committee will be presented with the updated information to decide if they want to apply for grants. The largest project, estimated at \$5 million fifteen years ago, is likely to be twice that amount now.

Mr. Jones asked which project was the largest phase of the study.

Mr. Hooper said it involved replacing a lot of the underground lines around the Library and South Broad Park area that collect from downtown.

Mr. Jones asked if this was the study where we used smoke and cameras to identify all the problem areas.

Mr. Morrow said yes, and we did complete some of that project, but there is more to do because we must keep going down the line further.

Mr. Hooper informed the committee that the whole drainage area was listed in the plan, and it had four phases. It started with downtown and underground

infrastructure; there would be a retention pond around the South Broad Park, and this was phase one.

Mr. Jones asked if the study called for increasing the size of the line.

Mr. Hooper said yes, it did. Then phases two, three, and four were to enhance the infrastructure further downstream, concluding with a stream bank restoration at the bottom of the stream around where Shepard Square is located. I will also ask Alvin if we could complete phases two, three, and four before completing phase one because those were more affordable than completing phase one.

Mr. Carson asked the question if the stormwater plan study had a lifespan.

Mr. Hooper said it does not have a lifespan, but I will send it out to the committee to review. I am also consulting with Alvin to examine the study and to provide his opinion on whether we should implement these phases.

Mayor Copelof commented that stormwater is a priority because it is a problem that a homeowner can't solve on their own. We have multiple areas around the city that are impacting their houses and streets. Also, to mention the area near Gaston St. and Varsity St. every winter black ice forms there because there is always water running on the street. Every winter it becomes a safety issue and we need to include this in our Strategic Planning in February.

Mr. Carson informed the committee that the concept of disconnecting impervious surfaces from the system would be beneficial. There is an engineer named Tim Ormond with Blue Earth Engineering that has innovative plans that allow people to collect stormwater using above-ground stormwater features at very low costs.

Mr. Hooper said that the Planning Department is going through their green growth assessment. They have hired a consultant to examine the unified development ordinance to find places where we can tweak it to create more sustainable growth. I imagine that they will point out our lack of retention requirements on infill development, which will pose a challenge to the new city council because we are trying to make fewer regulations and create more housing opportunities. But perhaps it's necessary because if we fill in all vacant lots, then all the impervious surfaces will be gone. To summarize, we are currently working on this issue so when it comes to the Strategic Planning session with the Council, we will be ready to discuss this topic.

Mr. Jones asked staff about current updates concerning city departments.

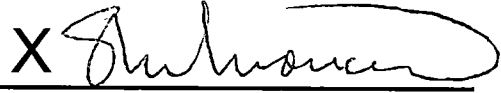
G. Set Date for Next Meeting

The next regular meeting of the Public Works & Utilities Committee was scheduled for Wednesday, December 6, 2023 at 3:30 p.m.

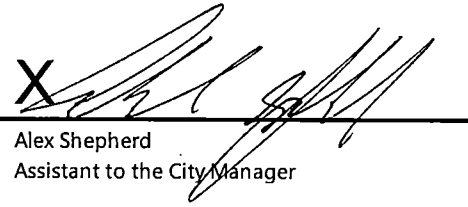
H. Adjourn

There being no further business, the meeting was adjourned at 4:34 p.m.

Minutes Approved: December 6, 2023

X 

Chair, Council Member

X 

Alex Shepherd
Assistant to the City Manager

STAFF REPORT

City Council, Monday, December 18, 2023

Title: Proposed Text Amendment to City of Brevard Unified Development Ordinance Chapters 2, 3, 10 & 19 - Extraction Uses

Speaker: Aaron Bland, Asst Planning Director

Prepared by: Aaron Bland, Asst Planning Director

Approved by: Paul Ray, Planning Director, Wilson Hooper, City Manager

Background

In fielding inquiries during day-to-day administration of the Unified Development Ordinance (UDO) Planning Staff realized that there is no land use in the use matrix of Section 2.2 for mines, quarries, or other such uses. These types of land use are collectively referred to as "Extractive Industries" and include businesses that excavate and remove rock, stone, ore, soil, gravel, sand, minerals, and similar materials from the surface and/or subsurface. These are intensive uses that are capable of generating large amounts of truck traffic, noise, and dust. Much of the activity of these uses occurs outdoors and the result can be an unaesthetic sight of pits, machinery, and piles of materials. Because of these potentially severe detrimental impacts Staff has initiated this text amendment to specifically add these uses to the UDO.

Council held a public hearing on this proposed amendment on November 20, 2023.

Discussion

This amendment adds extractive uses to the UDO in several places: the use matrix in Chapter 2; the uses standards in Chapter 3; the parking standards in Chapter 10; and establishes the use definitions in Chapter 19. The details of these additions are outlined below and the full proposed amendments are included as Attachment 1.

Chapter 2 - Use Matrix

Staff is proposing to add "Extractive Industries" as a category under the "Manufacturing/Wholesale/Storage" header. There would be two sub-uses: "Extractive uses which involve blasting" and a more general "All other extractive industries, except as listed below," following the standard set by the recent use matrix overhaul adopted earlier this year. Staff is proposing that the general use be permitted by right in the General Industrial zoning district and that the blasting version be allowed only with a special use permit in General Industrial.

Chapter 3 - Use Standards

The use standards for the general use include hours of operation set at 7:00 AM to 7:00 PM. This matches other limited hours of operation found in the UDO and City Code. The blasting use includes these hours of overall operation and also additional limits on the blasting, which is proposed to not be allowed between 5:00 PM and 9:00 AM and not at any

time on Sundays. Additionally, extraction uses involving blasting also must comply with any and all public safety provisions prescribed by the Brevard Police Chief, Brevard Fire Chief, and/or Transylvania County Emergency Management Director.

Chapter 10 - Parking Standards

Staff is proposing that this use be one of the uses that does not have specific parking ratios listed in the off-street minimum and maximum vehicle parking ratios table. Rather, Staff recommends this be one of the uses that is referred to Section 10.3.D, which is for land uses which have "widely varying parking demand characteristics making it impossible to specify a single off-street parking standard."

Chapter 19 - Definitions

Two definitions will be established, one for "Extractive uses" in general and another for "Extractive uses involving blasting." These can be found in Attachment 1.

Policy Analysis

Ensuring the use matrix is robust and does not have missing land uses is a general best practice for zoning ordinances. Additionally, the Building Brevard Comprehensive Land Use Plan action item LUH-19 speaks to maintaining clear and understandable planning documents, stating that the City should "Strive to make planning documents and UDO more approachable and user friendly to empower citizens to understand and advocate for their neighborhoods."

Fiscal Impact

None.

Recommendation

The Planning Board discussed this amendment at their October 24, 2023 meeting and unanimously recommended approval with some minor changes. In accordance with North Carolina General Statutes, the Planning Board also submits the attached Statement of Consistency (Attachment 2).

Action

Council's options for a decision concerning a petition to amend the text of this ordinance are as follows:

- Adoption of the amendment as written;
- Adoption of the amendment as revised by the Planning Board or by city council;
- Rejection of the amendment;
- Send the application back to the Planning Board for further study and consideration; or
- Call for additional public hearings on petitions brought before them.

Attachments:

1. Draft Amendment
2. Consistency Statement
3. Enacting Ordinance

Section 2.2.C – Use Matrix

CATEGORY	SECTION	USE	ZONING DISTRICTS						
			GR	RMX	NMX	DMX	CMX	IC	GI
Manufacturing/Wholesale/Storage									
Light Industrial and Manufacturing	3.11.A	All light industrial and manufacturing activities, except as listed below	—	—	—	—	SUP	—	P
		Brewery, Distillery, Winery, Cidery - High Impact	—	—	—	—	P	—	P
		Brewery, Distillery, Winery, Cidery - Low Impact	—	—	SUP	PS	PS	—	PS
		Laboratory	—	—	—	—	P	P	P
		Laundry, Dry Cleaning Plant	—	—	—	—	SUP	P	P
		Manufacturing Research and Development	—	—	—	—	P	P	P
		Media Production	—	—	P	P	P	P	P
Heavy Manufacturing	3.11.B	All heavy manufacturing activities, except as listed below	—	—	—	—	—	—	SUP
		Metal Products Fabrication, Machine or Welding Shop	—	—	SUP	SUP	P	—	P
Storage and Disposal	3.11.C	All storage and disposal uses, except as listed below	—	—	—	—	SUP	—	P
		Chemical Storage Facility	—	—	—	—	—	—	P
		Solid Waste Disposal Facilities	—	—	—	—	—	—	PS
		Junkyard / Salvage Yard	—	—	—	—	—	—	SUP
Wholesaling and Distribution	3.11.D	All wholesaling and distribution activities, except as listed below	—	—	—	—	P	—	P
		Equipment Rental	—	—	—	—	P	—	P
		Indoor Vehicle/Heavy Equipment Sales	—	—	PS	PS	PS	—	PS
		Outdoor Vehicle/Heavy Equipment Sales	—	—	—	—	PS	—	PS
Extractive Industries	3.11.E	All extractive industries, except as listed below	—	—	—	—	—	—	P
		Extractive industries involving blasting	—	—	—	—	—	—	SUP

Section 3.11.E (new)

E. Extractive Industries Use Category

1. Extractive industries:

a. Definition: Enterprises that excavate and remove rock, stone, ore, soil, gravel, sand, minerals, and similar natural materials from the surface and/or subsurface. This definition shall include, but is not limited to, quarries, sand and gravel pits, mines, and soil removal operations. This definition shall not include any such uses that involve blasting or other use of explosives.

b. Additional Standards:

i. Hours of Operation: Operating hours are limited to the hours of 7:00 AM to 7:00 PM.

2. Extractive industries involving blasting:

a. Definition: Enterprises that utilize the use of blasting or other explosives in order to excavate and remove rock, stone, ore, soil, gravel, sand, minerals, and similar natural materials from the surface and/or subsurface. This definition shall include, but is not limited to, any quarries, sand and gravel pits, mines, and soil removal operations that involve blasting at any point in the extraction process.

b. Additional Standards:

i. Hours of Operation: Operating hours are limited to the hours of 7:00 AM to 7:00 PM.

ii. Hours of Blasting: No blasting shall occur between 5:00 PM and 9:00 AM, nor at any time on Sundays or federal holidays.

iii. Compliance with Emergency Services: All special and general provisions in the interest of public safety relating to the process of blasting prescribed by the Brevard Police Chief, Brevard Fire Chief, and/or Transylvania County Emergency Management Director shall be strictly complied with.

Section 10.3.B

TABLE 10.3B: OFF-STREET MINIMUM AND MAXIMUM VEHICLE PARKING RATIOS							
Category	Land Use	Tier 1		Tier 2		Tier 3	
		Minimum	Maximum	Minimum	Maximum	Minimum	Maximum
Manufacturing / Wholesale / Storage							
Light Industrial and Manufacturing	All light industrial and manufacturing activities	1 / 750 SF of office, retail or administrative area + 1 / 4,000 SF of industrial space		1 / 750 SF of office, retail or administrative area + 1 / 4,000 SF of industrial space	1 / 300 SF of office, retail or administrative area + 1 / 2,000 SF of industrial space		1 / 300 SF of office, retail or administrative area + 1 / 2,000 SF of industrial space
Heavy Manufacturing	All heavy manufacturing activities	1 / 750 SF of office, retail or administrative area + 1 / 4,000 SF of industrial space		1 / 750 SF of office, retail or administrative area + 1 / 4,000 SF of industrial space	1 / 300 SF of office, retail or administrative area + 1 / 2,000 SF of industrial space		1 / 300 SF of office, retail or administrative area + 1 / 2,000 SF of industrial space
Storage and Disposal	All storage and disposal uses	1 / 750 SF of office, retail or administrative area + 1 / 4,000 SF of storage/disposal space		1 / 750 SF of office, retail or administrative area + 1 / 4,000 SF of storage/disposal space	1 / 300 SF of office, retail or administrative area + 1 / 2,000 SF of storage/disposal space		1 / 300 SF of office, retail or administrative area + 1 / 2,000 SF of storage/disposal space
Wholesaling and Distribution	All wholesaling and distribution activities	1 / 750 SF of office, retail or administrative area + 1 / 4,000 SF of wholesale, distribution, or retail space		1 / 750 SF of office, retail or administrative area + 1 / 4,000 SF of wholesale, distribution, or retail space	1 / 300 SF of office, retail or administrative area + 1 / 2,000 SF of wholesale, distribution, or retail space		1 / 300 SF of office, retail or administrative area + 1 / 2,000 SF of wholesale, distribution, or retail space
Extractive Industries	All extractive industries	Varies, See Section 10.3.D		Varies, See Section 10.3.D	Varies, See Section 10.3.D		Varies, See Section 10.3.D
Note: All square footage in gross square feet.							

Section 19.3 – Definitions

Extractive industries: Enterprises that excavate and remove rock, stone, ore, soil, gravel, sand, minerals, and similar natural materials from the surface and/or subsurface. This definition shall include, but is not limited to, quarries, sand and gravel pits, mines, and soil removal operations. This definition shall not include any such uses that involve blasting or other use of explosives.

Extractive industries involving blasting: Enterprises that utilize the use of blasting or other explosives in order to excavate and remove rock, stone, ore, soil, gravel, sand, minerals, and similar natural materials from the surface and/or subsurface. This definition shall include, but is not limited to, any quarries, sand and gravel pits, mines, and soil removal operations that involve blasting at any point in the extraction process.

**COMMENT OF CONSISTENCY WITH COMPREHENSIVE PLAN
AND ANY OTHER OFFICIALLY ADOPTED APPLICABLE PLANS
TXT-23-013**

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.

ORDINANCE NO. 2023-____

**AN ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE:
CHAPTER 2 – DISTRICT PROVISIONS, CHAPTER 3 – USE DEFINITIONS AND
STANDARDS, CHAPTER 10 – PARKING, AND CHAPTER 19 – DEFINITIONS
TO CREATE THE EXTRACTIVE INDUSTRIES LAND USE**

WHEREAS, the City of Brevard Planning Board has recommended that the Brevard City Code, Unified Development Ordinance be amended; 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-19:** Enhance communication of land use planning efforts, policy development, approvals and processes.*

and,

WHEREAS, a public hearing was conducted on Monday, November 20, 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. As to any conflict between this Ordinance and any parts of existing ordinances, the provisions of this Ordinance shall control.

SECTION 03. 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 this the 18th day of December 2023.

Maureen Copelof
Mayor

ATTEST:

Denise Hodsdon, CMC
City Clerk

APPROVED AS TO FORM:

Mack McKeller
City Attorney

STAFF REPORT

City Council, Monday, December 18, 2023

Title: Proposed Text Amendment to City of Brevard Unified Development Ordinance, Chapters 2, 4, 5, 17 and 19 - Building Line Revisions

Speaker: Emily Brewer, AICP, Senior Planner

Prepared by: Emily Brewer, Senior Planner

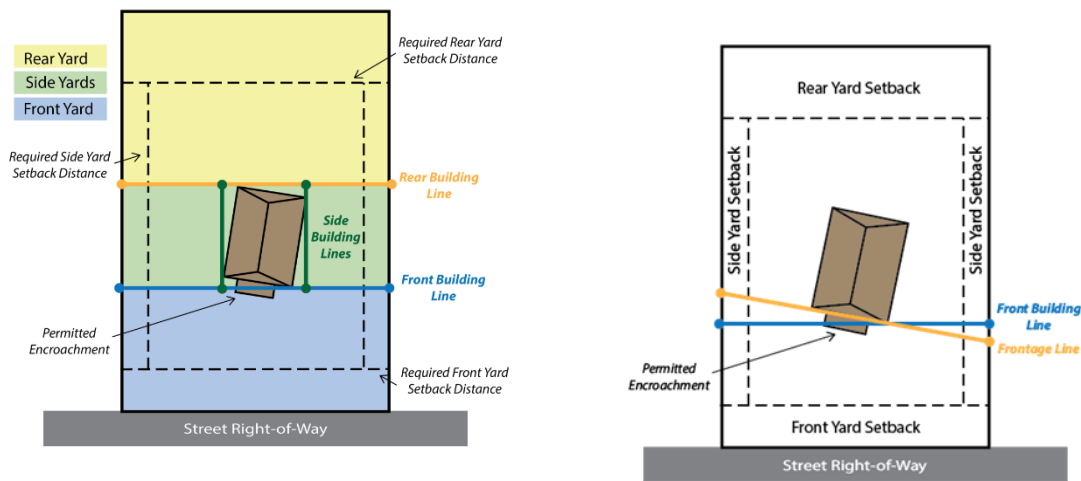
Approved by: Paul Ray, Planning Director, Wilson Hooper, City Manager

Background & Discussion

Building lines and yards are used as the measurement for multiple different standards in the Unified Development Ordinance, including fence height and accessory structure placement. This is a Staff-initiated text amendment that clarifies the definitions for these and other related items. The proposed text amendment is included as Attachment 1.

The major elements of the text amendment are below:

- **Building line:** A line measured parallel to the right-of-way line or property line touching that part of the building closest to the right-of-way line or property line. The building line shall not be measured from any encroachments permitted in Section 5.17 or any unenclosed structure (e.g., decks or patios).
- **Yard:** A space that lies between the principal building(s) and the nearest lot line or right-of-way line. The front yard and rear yard are defined by the respective building line, with the side yard(s) consisting of the remainder of the property not occupied by principal building(s).
- **Frontage Line:** A line measured across the façade of the portion of the building closest to the street. The frontage line shall not be measured from any encroachments permitted in Section 5.17 or any unenclosed structure (e.g., decks or patios). This line can be synonymous with the front building line when a building is oriented towards the street.



Staff also used this as an opportunity to improve the quality of the graphics and add additional graphics to illustrate key concepts. Since the public hearing, Staff revised the illustrations based on the comments received.

Planning Board heard this matter at their October meeting and unanimously recommended in favor of adoption. City Council held a public hearing on November 20, 2023.

Policy Analysis

According to North Carolina General Statute §160D, land use and development regulations should be objective standards that zoning administrators can apply in implementation, administration and enforcement actions (NCGS §160D-102). This text amendment continues to clarify the City's zoning regulations and improve the usability of planning documents.

Beyond implementing objective standards, the proposed text amendment is consistent with the following elements of *Building Brevard 2030* Comprehensive Land Use Plan:

- **GOAL 2:** *Encourage a development pattern that respects Brevard's sense of place and prioritizes livable communities.*
- **LUH-19:** *Enhance communication of land use planning efforts, policy development, approvals, and processes.*

Action

Staff requests that City Council take one of the following actions:

1. Adoption of the amendment as written;
2. Adoption of the amendment as revised by City Council;
3. Rejection of the amendment;

4. Send the application back to the Planning Board for further study and consideration; or
5. Call for additional public hearings on petitions brought before them.

In accordance with North Carolina General Statutes, the Planning Board also submits a statement analyzing the consistency and reasonableness of this proposal with regards to existing policies or plans of the City of Brevard. The Statement of Consistency and Reasonableness is included as Attachment 2.

Attachments:

1. Proposed Text Amendment
2. Consistency Statement



UNIFIED DEVELOPMENT ORDINANCE

CHAPTER 2. DISTRICT PROVISIONS

2.3. Density and dimensional requirements.

TABLE 2.3A: DENSITY AND DIMENSIONAL REQUIREMENTS

District	Minimum Lot Size/Project Area	Maximum Project Area By Right	Maximum Dwelling Unit (DU) Density	Maximum Ground Floor Area Each Principal Structure
GR4	None	20 acres	4 du/ac	10,000 sq. ft.
GR8	None	20 acres	8 du/ac	8,000 sq. ft.
RMX—Single-family home and duplex	None	10 acres	15 du/ac	8,000 sq. ft.
RMX—Multi-family and nonresidential	None	10 acres	15 du/ac	25,000 sq. ft.
NMX	None	10 acres	25 du/ac	30,000 sq. ft.
DMX	None	10 acres	None	25,000 sq. ft.
CMX	None	10 acres	40 du/ac	50,000 sq. ft.
IC	None	None	15 du/ac	100,000 sq. ft.
GI	None	None	DU Not Permitted	100,000 sq. ft.

Note: Projects or developments that do not meet one or more of the above standards may apply for conditional zoning in accordance with Section 2.1.C.

A. Development intensity.

- The following development types are considered group developments that may be permitted by the administrator in accordance with the review procedures in [CHAPTER 16](#):
 - Groupings of two or more principal structures or principal uses built on a single lot, tract or parcel of land (or grouping thereof) not subdivided into the customary streets and lots and designed for occupancy by separate families, businesses or other enterprises normally permitted within the underlying district (examples include, but are not limited to, summer camps, school campuses and hospitals, shopping centers, industrial parks, and apartment complexes);
 - Minor subdivisions, as defined in [CHAPTER 19](#), resulting in the establishment of condominium buildings, lots or spaces, townhomes, and other projects for which zero lot line development is proposed; or
 - Individual structures designed to accommodate a variety of distinct uses may be considered as a group development at the discretion of the administrator.



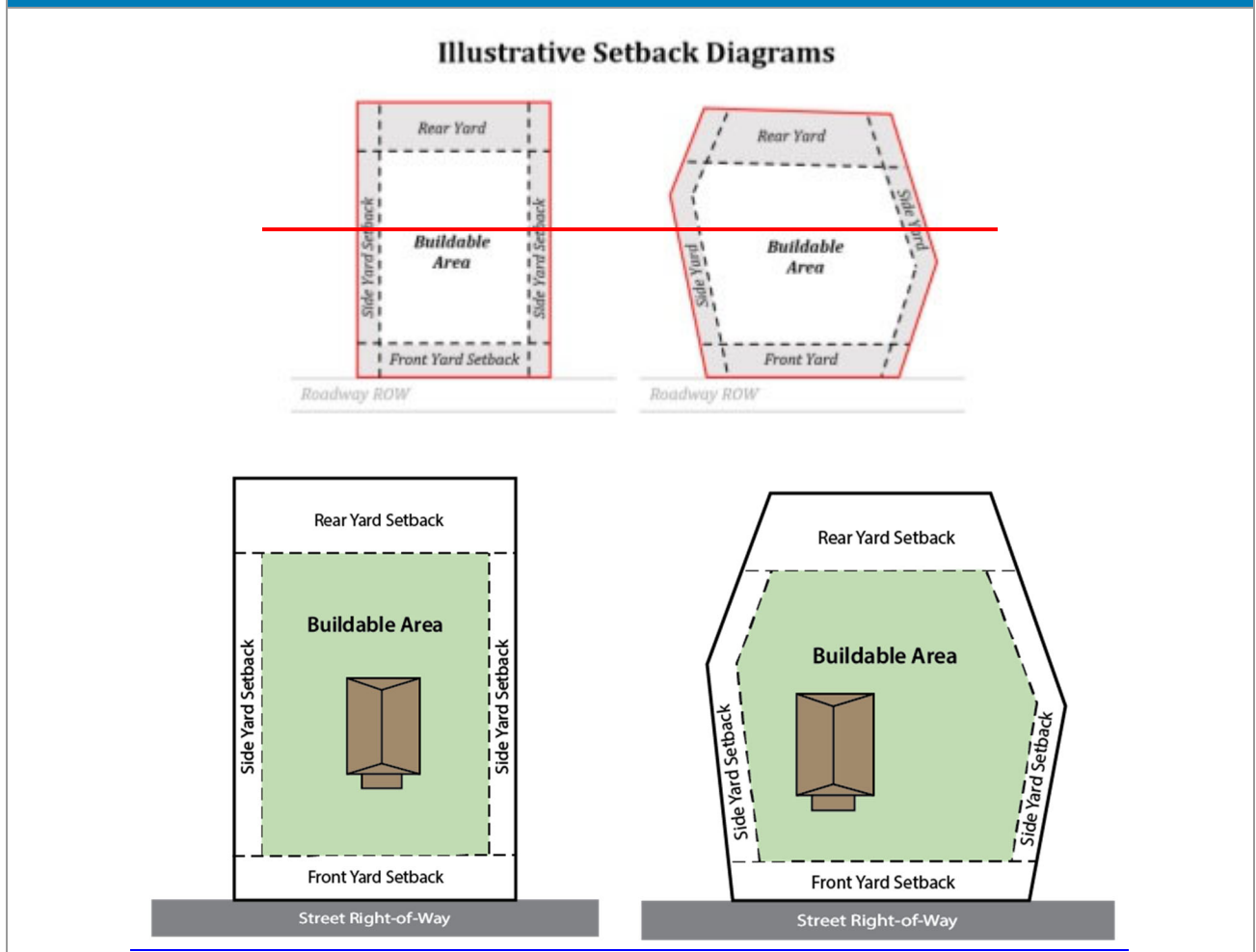
~~2. [Reserved.]~~

B. General standards for all setbacks and yards.

1. A building, structure, lot, or sign shall not be developed, used or occupied unless it meets the minimum setback requirements set forth herein for the use or the zoning district in which it is located, except permitted encroachments in Section 5.17.
 - a. Landscaping requirements set forth in CHAPTER 8 of this ordinance may supersede setbacks listed herein.
2. *Types of setbacks:*
 - a. Front yard setbacks shall apply to the portion of the lot adjacent to the right-of-way. All lots are required to have a front yard.
 - b. Rear yard setbacks shall apply to the portion of the lot on the opposite side of the lot from the front yard setback. All lots are required to have a rear yard.
 - c. Side yard setbacks shall be the required setback from any property line other than front or rear property lines.

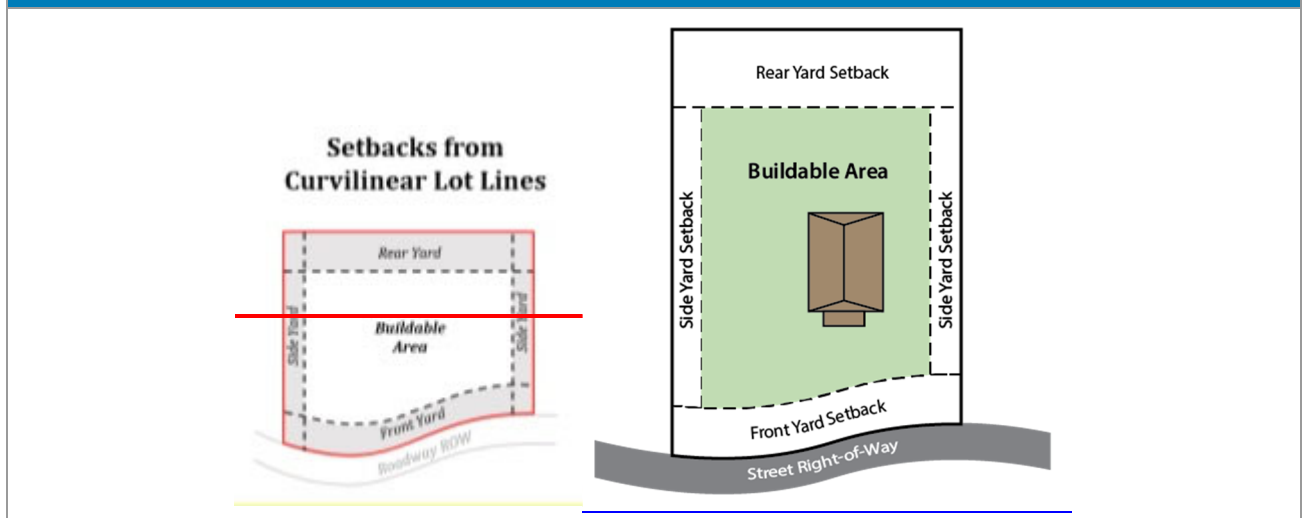


FIGURE 2.3A: ILLUSTRATIVE SETBACK DIAGRAMS

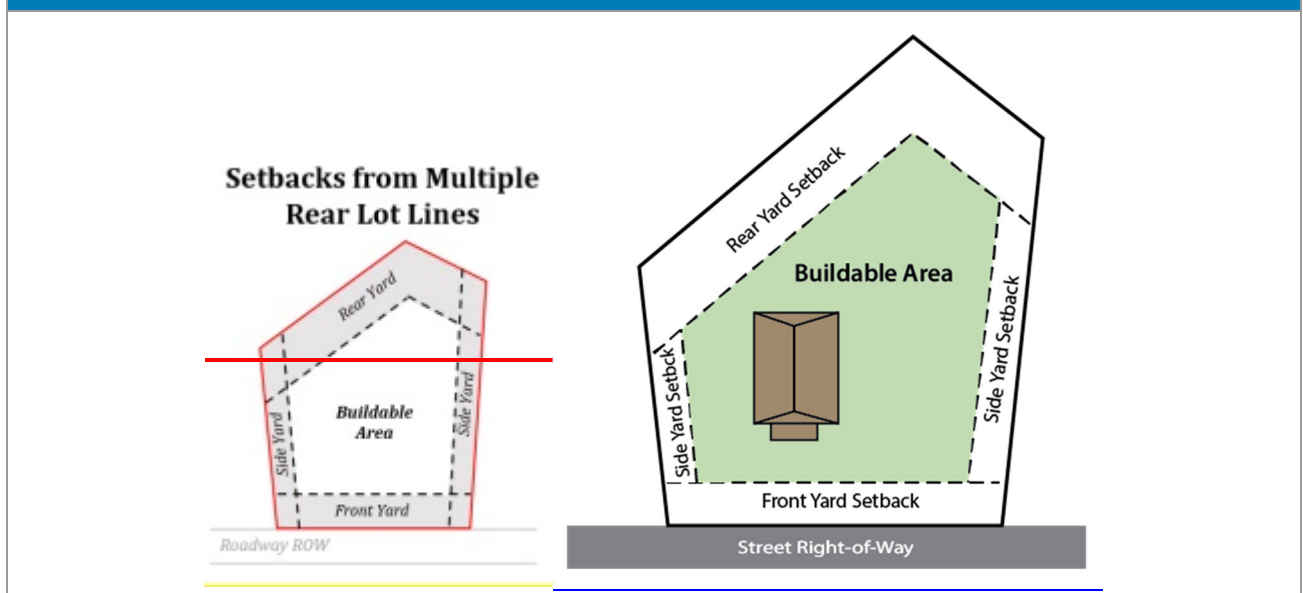


3. *Measurement of setbacks and building lines:*

- a. Required yard setbacks and building lines are measured parallel to the applicable lot line or public right-of-way line.
 - i. Front yard setbacks and building lines shall be measured from the property line or the edge of the right-of-way, whichever is further from the centerline of the roadway.
 - ii. Side yard and rear yard setbacks and building lines shall be measured from the property line(s).
- b. When lot lines are curvilinear, setbacks and building lines shall be measured parallel to the curvilinear lot line.

**FIGURE 2.3B: SETBACKS FROM CURVILINEAR LOT LINES**

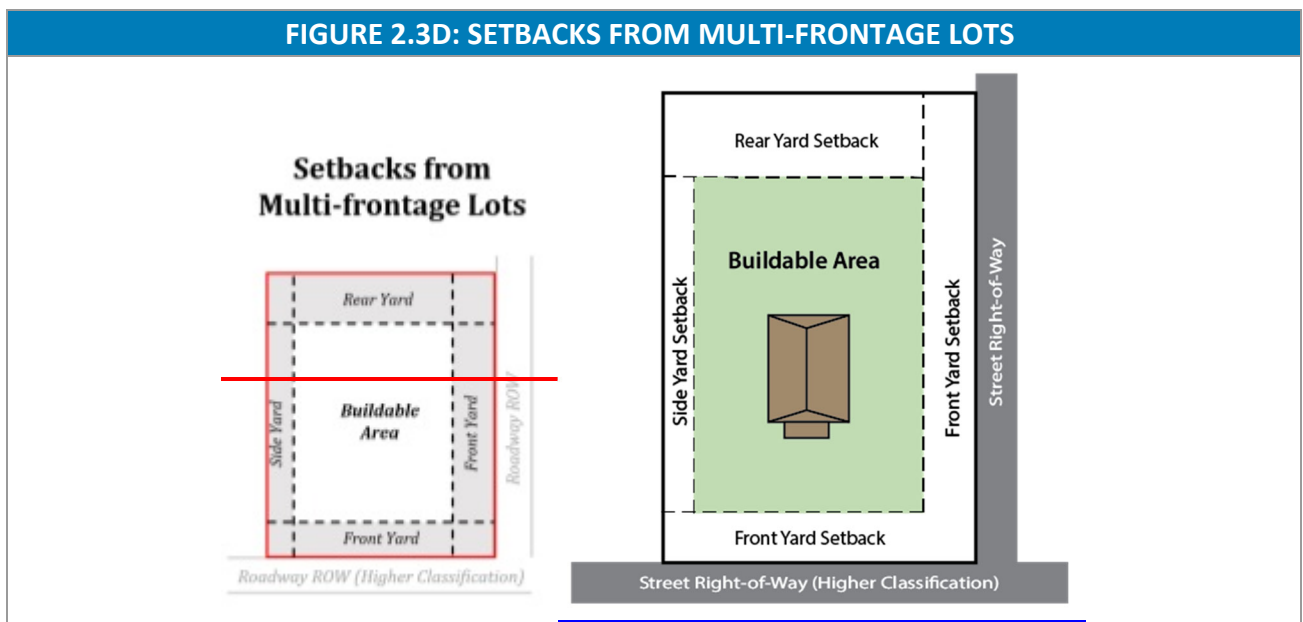
- c. When there are multiple rear lot lines, the rear [yard](#) setback [and building line](#) must be measured from each of the rear lot lines.

FIGURE 2.3C: SETBACKS FROM MULTIPLE REAR LOT LINES

4. *Administrative decisions for setbacks:*
- The administrator may impose additional setbacks based upon specific guidance from the City of Brevard Comprehensive Plan, the City of Brevard Downtown Master Plan and other district or small area/master plans, the City of Brevard Comprehensive Pedestrian Plan, the City of Brevard Street Schedule, or other plans or policies of the city.
 - For private streets, a right-of-way in accordance with [CHAPTER 13](#) shall be assumed by the administrator.



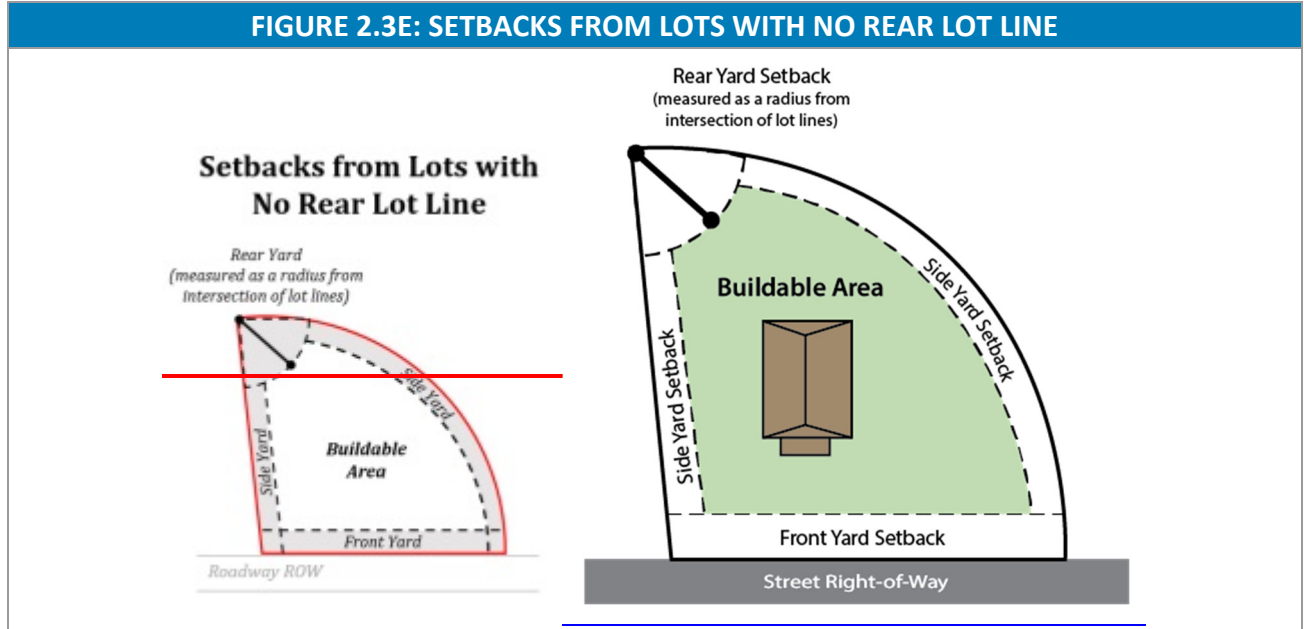
- ii. When determining the edge of the right-of-way, the administrator shall account for existing or proposed additional automobile, bicycle, or pedestrian travel lanes, turn lanes, roundabouts, on-street parking, and other improvements that deviate from a standard street cross-section.
 - b. The administrator may approve deviations from required setbacks by up to 20 percent of the required area in accordance with [CHAPTER 16](#) in order to:
 - i. protect existing or proposed rights-of-way and other infrastructure improvements
 - ii. ensure environmental protection of sensitive and/or conservation areas, including steep slope areas
 - iii. account for surface water protection and/or satisfy flood damage prevention requirements
 - c. For non-conforming lots without street frontage, the administrator shall designate a front yard for the purposes of setback measurement.
5. *Corner lots and multi-frontage lots setbacks:*
 - a. Any structure on any lot that fronts on more than one street shall comply with the minimum front yard setback requirement for each street upon which the lot fronts.
 - b. Alleys, rear lanes, and commercial service lanes are not classified as streets for the purpose of determining corner or multi-frontage lot setbacks.
 - c. The rear yard shall be determined as the portion of the lot on the opposite side of the lot from the front yard on the street with the higher classification.



6. *Triangle lots and other lots without a rear lot line:*
 - a. On properties where there is no rear lot line, the rear [yard](#) setback shall be measured as a radial distance from the intersection of side lot lines at the rear of the lot.

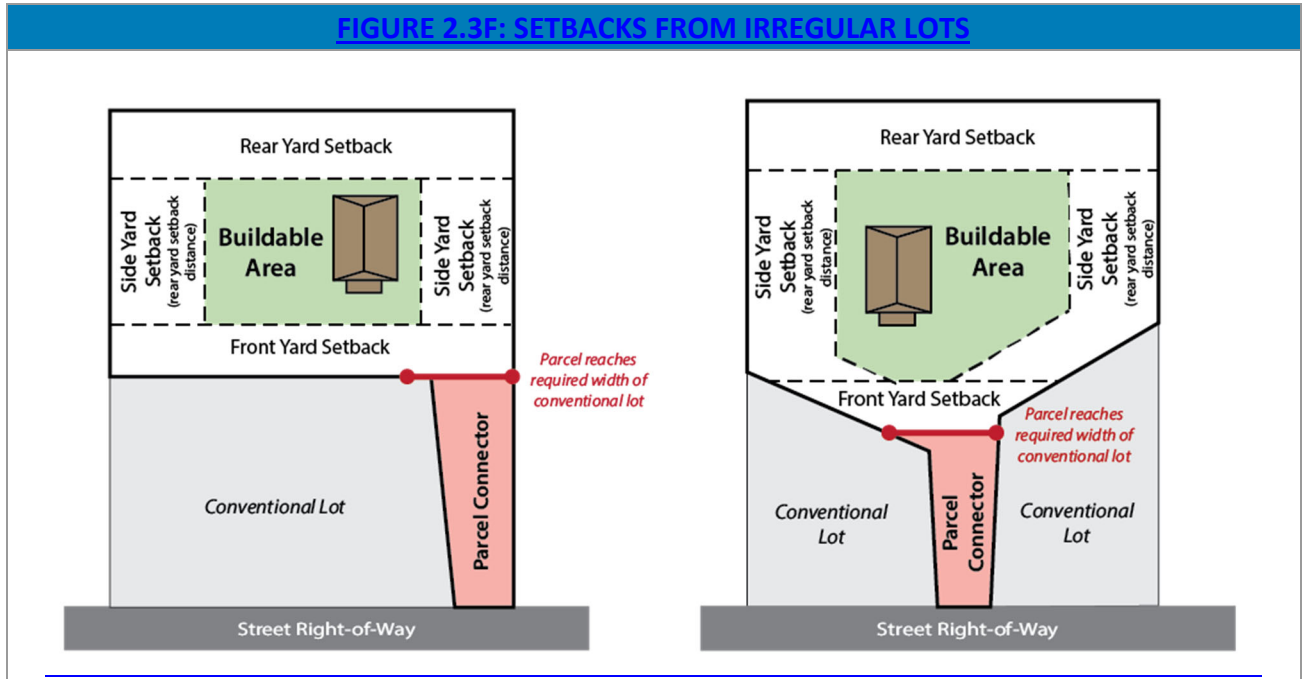


FIGURE 2.3E: SETBACKS FROM LOTS WITH NO REAR LOT LINE



7. *Irregular lot setbacks:*

- a. The location of required front, side and rear yards on irregularly shaped lots shall be determined by the administrator. This determination shall be based on the spirit and intent of this ordinance to continue the appropriate spacing and location of buildings and structures on individual lots.
- b. For irregular lots, the Zoning Administrator will determine the termination of the "parcel connector" based on the definition and will measure front-yard setbacks from that point.
- ~~b.c. Lots that do not have an obvious visual relationship with the fronting street, such as "irregular lots," shall be evaluated on the basis of having one setback from neighboring properties. The setback amount~~ All other setback distances (rear and side yards) shall be equal to the minimum rear yard setback for the district, unless:
 - i. A newly-created irregular lot would convert an existing conforming secondary or accessory dwelling unit to a principal single-family structure. In this case, the setbacks for the principal structure may equal that of an accessory structure of that size in the zoning district.
- ~~c.a. For irregular lots, the Zoning Administrator will determine the termination of the "parcel connector" based on the definition and will measure front-yard setbacks from that point.~~

**FIGURE 2.3F: SETBACKS FROM IRREGULAR LOTS**

8. *Zero-lot line development setbacks:*

- a. Zero-lot line development (i.e., townhomes, condominiums and similar structures) and other structures using partiwalls are permitted subject to other requirements as set forth in this ordinance.

9. *Infill lot setbacks:*

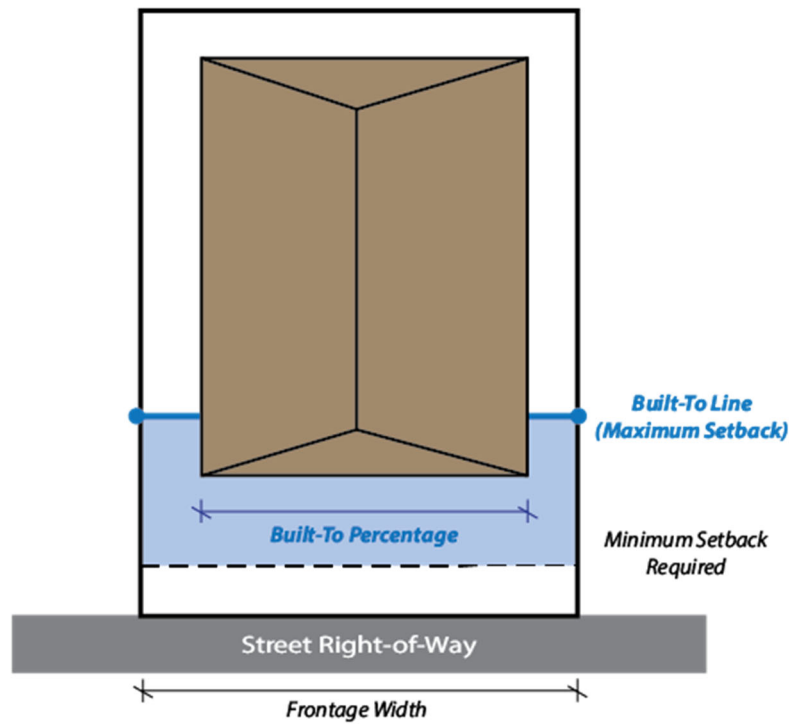
- a. The administrator may grant exceptions to the setback requirements of this ordinance for infill developments where the average setback on already-built-upon lots located wholly or in part within the same block and zoning district, and fronting on the same street as such lot, is less than the minimum required setback. In such cases, the front and side [yard](#) setbacks on such lot may be less than the required setback but not less than the average of the existing setbacks on the developed lots.
- b. In established neighborhoods, the administrator may determine that the functional rear yard is not opposite the front yard based on the peculiar shape of the parcel or the development pattern. In these cases, the administrator may determine that another line shall be considered the rear lot line for setback purposes.

10. *Lots within the Downtown Development Overlay District:*

- a. New buildings in the Downtown Development Overlay District shall be subject to a front build-to line, or maximum setback, of 12 feet, as measured from the edge of the right-of-way, with a build-to percentage of 80 percent. The build-to percentage may be reduced to 50 percent if the new building includes a public courtyard or plaza space.



FIGURE 2.3G: BUILD-TO LINE AND BUILD-TO PERCENTAGE



C. Setbacks for zoning districts.

1. The minimum setback distance for principal structures varies by zoning district and shall be measured in accordance with this section.

TABLE 2.3B: SETBACKS FOR PRINCIPAL STRUCTURES

District	Front Yard Setback	Rear Yard Setback	Side Yard Setback
GR (4, 8)	15 feet	25 feet	6 feet
RMX	10 feet	25 feet	6 feet
NMX	Edge of right-of-way	10 feet	0 feet / 10 feet from residential district
DMX	Edge of right-of-way	0 feet	0 feet
CMX	10 feet	10 feet / 25 feet from residential district	0 feet / 10 feet from residential district
IC	40 feet	40 feet	40 feet
GI	15 feet	10 feet / 25 feet from residential district	10 feet / 25 feet from residential district
CZD	To be determined by approving authority		

D. Setbacks for accessory structures.



1. Setbacks for accessory structures vary based on the size of the structure and the zoning district.

TABLE 2.3C: SETBACKS FOR ACCESSORY STRUCTURES				
District	Side Yard Setback		Rear Yard Setback	
	< 120 sq. ft.	≥ 120 sq. ft.	< 120 sq. ft.	≥ 120 sq. ft.
GR (4, 8)	3 feet	6 feet	3 feet	10 feet
RMX	0 feet	3 feet	0 feet	3 feet
NMX	0 feet	3 feet	0 feet	3 feet
DMX	0 feet	0 feet	0 feet	0 feet
CMX	0 feet	0 feet	0 feet	0 feet
IC	40 feet along all external boundaries			
GI	10 feet/25 feet from residential district	10 feet/25 feet from residential district	10 feet/25 feet from residential district	10 feet/25 feet from residential district
CZD	To be determined by approving authority			

2. Accessory structures to residential uses [located](#) within 6 feet of the principal structure are considered to be attached for the purpose of setbacks, and shall comply with the setback [requirements](#) of the principal structure.

E. Other structure and lot dimensional requirements.

TABLE 2.3D: OTHER STRUCTURE AND LOT DIMENSIONAL REQUIREMENTS					
District	Height By Right (1)	Min. Lot Width of Conventional Lot (2)	Min. Lot Width of Irregularly Shaped Lot (3)	Max. Parcel Connector Length of Irregular Lots (4)	Out-Parcels (5)
GR (4, 8)	35 feet	30 feet	20 feet	300 feet	-
RMX	35 feet	30 feet	20 feet	300 feet	-
NMX	35 feet	20 feet	-	-	-
DMX	50 feet	0 feet	-	-	P
CMX	50 feet	0 feet	-	-	P
IC	50 feet	60 feet	20 feet	300 feet	P
GI	50 feet	60 feet	20 feet	300 feet	P
CD	To be determined by approving authority				

1. Additional height may be permitted by the board of adjustment (hereinafter BOA) as a special use permit. See the requirements for large structures as set forth in Section 5.14. See computation of building height as set forth in Section 5.18.
2. Minimum lot width for conventional lots shall be fulfilled at the right-of-way line.
- 3&4. Irregularly shaped lots are permitted to have the reduced minimum lot width at the right-of-way line if the lot width reaches the minimum lot width for a conventional lot within the maximum allowable parcel connector length. Additional standards are levied on these parcels (see Section 4.3.G).



5. In Zoning Districts where out-parcels are permitted, the minimum lot width at the right-of-way for irregular lots may be fulfilled by an exclusive access easement for ingress, egress, and utilities. This easement must be at least the width of the minimum lot width for irregular lots in the Zoning District.
 - a. "P" denotes out-parcels are permitted.
 - b. "-" denotes out-parcels are not permitted within the given district.
6. No structure or land use shall encroach upon any public or private easement or public or private right-of-way or easement unless otherwise provided for by this ordinance.



CHAPTER 4. GENERAL LOT AND STRUCTURE PROVISIONS

4.8. Accessory structures.

- A. *Principal buildings required.* The construction of an accessory structure or building is not permitted unless a principal building is located on the lot, except as set forth below or as otherwise provided in this ordinance. Accessory structures shall be incidental and subordinate to the principal structure(s). Accessory and principal buildings may be constructed concurrently.
1. Accessory structures utilized for agricultural purposes in association with bona-fide agricultural operations may be permitted in the absence of a principal structure.
 2. Garden sheds may be permitted in the absence of a principal structure subject to the following requirements:
 - a. Garden sheds shall be no larger than 120 square feet in size;
 - b. Garden sheds shall be single-story;
 - c. Garden shed shall not be connected to water, sewer, or electricity; and
 - d. Garden sheds shall be utilized only for the storage of lawn equipment, garden utensils, and other implements necessary for the maintenance of gardens and grounds.
- B. Accessory structures shall meet the density and dimensional requirements set forth in Section 2.3 of this ordinance.
- C. Accessory structures shall not exceed two stories in height.
- D. *Accessory structures on lots with single-family dwellings and duplexes.*
1. Maximum number permitted. No more than two accessory structures shall be permitted per lot. Beehives and chicken coops shall not count toward the maximum number of accessory structures on a lot.
 2. Accessory structures shall be located only in the side or rear yards, except for gazebos, private garages, and carports. Such structures shall comply with the front yard setbacks [for primary structures](#) in Section 2.3-B. The administrator shall make a determination as to the side or rear yard for accessory structures proposed to be located on lots fronting more than one street.
 - ~~3. Accessory buildings shall not cover more than 30 percent of the required side or rear yard except as otherwise provided in this ordinance.~~
 - ~~4.3.~~ Accessory structures with a footprint of more than 500 square feet shall be buffered from the adjacent residential development with a Type A buffer yard. Accessory structures located more than 24 feet from a property line shall be exempt from this buffering requirement.
 - ~~5.4.~~ Under no circumstances shall the use of a shipping container be permitted for the purpose of providing permanent storage as an accessory use.
- E. *Accessory structures on lots with non-residential uses, multi-family uses, and group developments.*



1. Maximum number permitted. No more than two accessory structures shall be permitted per lot, except in General Industrial (GI). In all other zoning districts, additional structures shall be considered as principal structures in a group development.
2. Accessory structures shall be located only in side or rear yards except for bona-fide agricultural enterprises.
3. Accessory structures shall comply with the applicable landscaping requirements of [CHAPTER 8](#) of this ordinance.
4. Accessory structures shall be clad in materials similar in appearance to the principal structure in accordance with [CHAPTER 5](#), except when such material is non-conforming with this ordinance.

F. Exempt structures.

1. Structures including but not limited to mailboxes, newspaper boxes, birdhouses, flagpoles, pump covers, garden boxes and planters, doghouses, and any other similar small or ornamental structures shall not be considered principal or accessory structures and shall not require a permit.

4.9. Fences and walls.

- A. All fences and walls shall be constructed so that the best face faces outward from the parcel upon which it is constructed and towards adjacent properties. The "best face" shall generally mean the side opposite to framing members.
- B. Fences and walls shall not be placed within public utility easements or public right-of-way without first securing an encroachment agreement from the City of Brevard, the North Carolina Department of Transportation, or other appropriate entity.
- C. Fence or wall height shall be measured from the side of the fence or wall that is exterior to the property as the vertical distance between the lowest adjacent ground level, natural or filled, and the top of the fence material. Fence heights are restricted as follows:
 1. In industrial districts, and public safety and other critical facilities. Fences or walls shall be no greater than six feet in height ~~before the front building line~~ in the front yard(s) and no greater than eight feet in height in the side ~~or~~ and rear yards.
 2. All other districts and uses. Fences or walls shall be no greater than four feet in height in the front yard(s) and no more than eight feet in height in the side and rear yards. ~~than eight feet in height behind the front building line or four feet in height before the front building line.~~
 3. No closed fence or wall shall be greater than two-and-a-half feet in height when placed within the sight triangle of any intersection as specified in [Section 4.5](#) of this ordinance. Open fences are exempt from this provision.
- D. Fence and wall materials shall conform to the following requirements:
 1. *Residential districts:*
 - a. All fences and walls must be of brick, stone, stucco, wrought iron, wood, or other materials similar in appearance and durability, except that chain link or woven wire may be used in the side and rear yards ~~behind the front building line.~~
 - b. All other wire fences, including barbed wire or concertina wire, are prohibited.



- c. Nothing in this chapter shall prevent the administrator from approving architecturally variant uses of material to allow creative fence design, such as the contemporary look of heavy-gauged welded wire panels framed in timber.
- d. The use of plastic plumbing pipe is a prohibited fence material.

2. *Commercial districts:*

- a. All fences and walls must be of brick, stone, stucco, wrought iron, wood, or other materials similar in appearance and durability.
- b. Chain link wire fences may be used as secure enclosures internal to the property or site subject to the following requirements:
 - i. Chain link fences shall not be visible from a public right-of-way,
 - ii. Chain link fences shall not serve as a perimeter fence or property line fence unless buffered by a type A buffer yard on all sides, and then only in the side or rear yard behind the front building line.
- c. All other wire fences, including barbed wire or concertina wire, are prohibited.
- d. All walls and fences shall be materially similar to other walls and fences in the same block or general vicinity.

3. *Industrial districts, public safety facilities, and other critical facilities:*

- a. All fences and walls must be of brick, stone, stucco, wrought iron, wood, or other materials similar in appearance and durability, and shall be materially similar to other walls and fences on the same block or general vicinity.
- b. Vinyl coated, chain link fencing may be approved by the administrator as perimeter fencing with additional filtering through openings using opaque or semi opaque slats or screening or by installing a type A landscaping buffer between incompatible uses, between different zoning districts or where visible from a public street.

4. *Barbed wire:* Barbed wire may be permitted within bona-fide agricultural operations within any zoning district.

E. Retaining walls shall also conform to the following requirements:

- 1. Retaining walls should minimize the impacts of cut and fill on a site.
- 2. The height of any retaining wall should not exceed five feet unless required to be higher for engineering reasons.
 - a. An increase in retaining wall height may be allowed if the proposed design minimizes the cut and fill impacts and enhances the existing landscape.
- 3. In areas where cuts are steeper, a stepped or terraced wall should be used. Large, unbroken retaining walls in a uniform plane should be avoided.



CHAPTER 5. BUILDING TYPES AND ARCHITECTURAL STANDARDS

5.4. General building design requirements.

Unless otherwise noted, the following standards apply to all buildings:

- A. *Architectural style:* The building design standards of this chapter intentionally do not mandate a particular style and permit a wide variety of architectural expressions. However, when a design exhibits a known architectural style (e.g., Colonial, Victorian, Classical Revival) the details shall be consistent with that style unless the local architectural vernacular of Brevard provides an alternate precedent for a detail.
- B. *Frontage:* All buildings in the Downtown Development Overlay District, regardless of building type, shall be oriented towards the street so that the frontage line is the same as the front building line. ~~All buildings shall share a frontage line with a street or square. (Exception: Building that are interior to a site that has buildings that otherwise meet the frontage requirement.)~~
- C. *Termination of vistas:* Important street vistas, such as along city gateways and primary pedestrian streets, should terminate in a focal point such as a building or other architectural or natural feature.
- D. *Compatibility:* Adjacent buildings should relate in similarity of scale, height, architectural style, and/or configuration.
- E. *Proportions:* Windows, doors, columns, eaves, parapets, and other building components shall be proportional to the overall scale of the building. Windows shall be vertically proportioned wherever possible.

FIGURE 5.4A: EXAMPLE OF PROPORTIONAL FACADE ELEMENTS



- F. *Wall materials:* When two or more materials are used on a façade, the heavier material (e.g., brick) should be placed below the lighter material (e.g., siding) to give a sense of support and grounding.
- G. *Underground wiring:* To reduce the visual impact of overhead wiring, utility services shall be located underground.
- H. *Type of construction:* Manufactured, mobile, and metal units are prohibited, except as may be allowed in CHAPTER 3 for a temporary office or classrooms, site management, or storage uses during construction projects.
- I. *Roof pitch:* Roofs with pitches less than 3:12 and flat roofs will require a parapet wall. A pitched roof shall be profiled by eaves a minimum of six inches from the building face or with a gutter.



FIGURE 5.4B: EXAMPLE OF PITCHED ROOFS WITH EAVES



- J. *Public art:* Public art, such as statues, fountains, and other works of art are encouraged and may be placed in any required front setback area as well as in other appropriate areas.
- K. *Façade treatment:*
 - 1. Architectural elements such as windows, doors, bulkheads, masonry piers, transoms, cornice lines, window hoods, awnings, canopies, and other similar details, shall be used on all facades facing public rights-of-way.

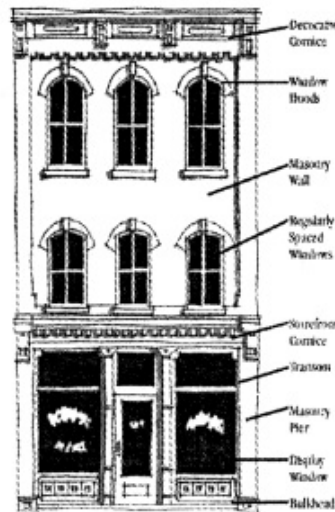
FIGURE 5.4C: EXAMPLE OF STOREFRONT WITH WINDOWS AND DOORS ALONG STREET FRONTAGE



- 2. Building wall offsets, including projections, recesses, and changes in floor level shall be used in order to:
 - a. Add architectural interest and variety; relieve the visual effect of a single, long wall;
 - b. Subdivide the wall into human size proportions. Similarly, roofline offsets shall be provided to lend architectural interest and variety to the massing of a building and to relieve the effect of a single, long roof.
- 3. The ground level of buildings shall offer pedestrian interest along sidewalks and paths. This may be accomplished by means of windows, entrances, and architectural details. Incidental signage on buildings (in accordance with [CHAPTER 12](#)), awnings, and ornamentation is encouraged.



FIGURE 5.4D: EXAMPLE OF MULTISTORY BUILDING WITH PEDESTRIAN-ORIENTED GROUND LEVEL

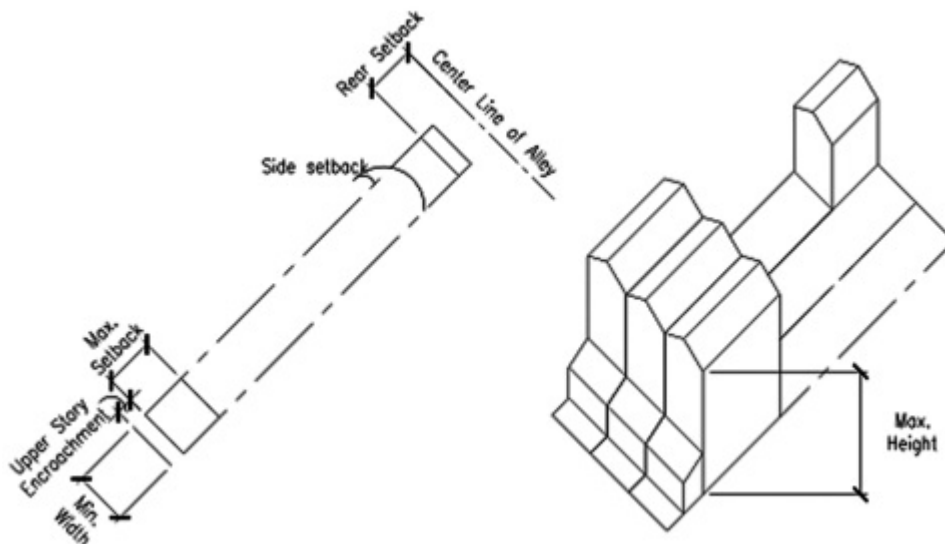


5.11. Building type: Townhouse.

The following restrictions only apply to regulation of townhouse buildings not subject to the N.C. Residential Code for One- and Two-Family Dwellings.

- A. *Description:* The townhome is a building with more than two residential units that are located side-by-side. When an entrance is provided at-grade, the townhome may be used as a live-work unit. The uses permitted within the building are determined by the regulations in place for the district in which it is located.

FIGURE 5.11A : ILLUSTRATION OF ATTACHED HOUSE



- ~~B. *Yards:* The townhome typically has one yard (rear) though variations include a small front setback often used for landscaping.~~

**G.B. General requirements:**

1. The bulk and scale of townhome infill development shall be similar to and consistent with the surrounding neighborhood as evaluated by the bulk of buildings adjacent, abutting and surrounding the proposed development. All buildings should be designed to adhere to the existing architectural pattern of the surrounding neighborhood.
2. Useable porches and stoops should form a predominate motif of the building design and be located on the front and/or side of the building. Useable front porches are at least eight feet deep and extend more than 30 percent of the facade.
3. Garage doors are not permitted on the front elevation of any townhome.
4. All building elevation visible from the street shall provide doors, porches, balconies, and/or windows. A minimum of 60 percent of front elevations, and a minimum of 30 percent of side and rear building elevations shall meet this standard. "Percent of elevation" is measured as the horizontal plane (lineal feet) containing doors, porches, balconies, terraces, and/or windows. This standard applies to each full and partial building story.
5. To provide privacy, all front entrances shall be raised from the finished grade (at the building line) a minimum of 1½ feet.
6. All townhome buildings shall provide detailed design along all elevations. Detailed design shall be provided by using as many of the following architectural features on all elevations as appropriate for the proposed building type and style (may vary features on rear/side/front elevations):
 - a. Dormers.
 - b. Gables.
 - c. Recessed entries.
 - d. Covered porch entries.
 - e. Cupolas or towers.
 - f. Pillars or posts.
 - g. Eaves (minimum ten-inch projections which may include gutter).
 - h. Off-sets in building face or roof (minimum 16 inches).
 - i. Window trim (minimum four inches wide).
 - j. Bay windows.
 - k. Balconies.
 - l. Decorative patterns on exterior finish (e.g. scales/shingles, wainscoting, ornamentation, and similar features).
 - m. Decorative cornices and roof lines (for flat roofs).



FIGURE 5.11B: EXAMPLES OF TOWNHOUSE BUILDINGS

Multi-Family Townhomes with Alley	Multi-Family Townhomes with Alley
	
Multi-Family Townhomes with Driveways	Live-Work Units
	

D.C. Materials:

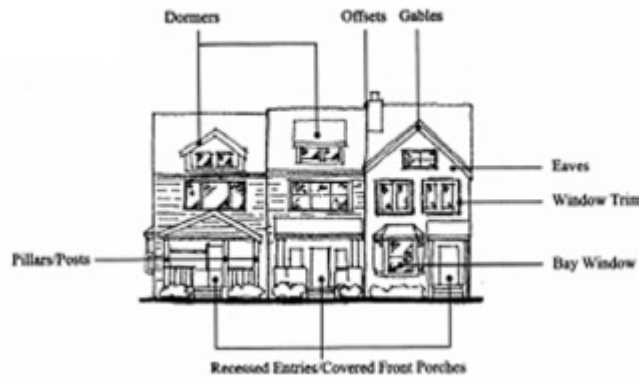
1. Residential building walls shall be one or more of the following: wood clapboard, cementitious fiber board, wood shingle, wood drop siding, primed board, wood board and batten, brick, stone, stucco, or vinyl.
2. Residential roofs shall be clad in wood shingles, standing seam metal, terne, slate, and/or asphalt shingles.

E.D. Other requirements:

1. Main roofs on residential buildings shall be symmetrical gables or hips with a pitch between 6:12 and 12:12. Monopitch (shed) roofs are allowed only if they are attached to the wall of the main building. No monopitch roof shall be pitched less than 4:12.
2. Two wall materials may be combined horizontally on one facade. The heavier material should be vertically placed below the other material.
3. The undercroft of buildings shall be enclosed.
4. All buildings should be designed to adhere to the existing architectural pattern of the surrounding neighborhood.
5. Overhanging eaves may expose rafters.
6. Flush eaves shall be finished by profiled molding or gutters.
7. All rooftop equipment shall be screened from view.



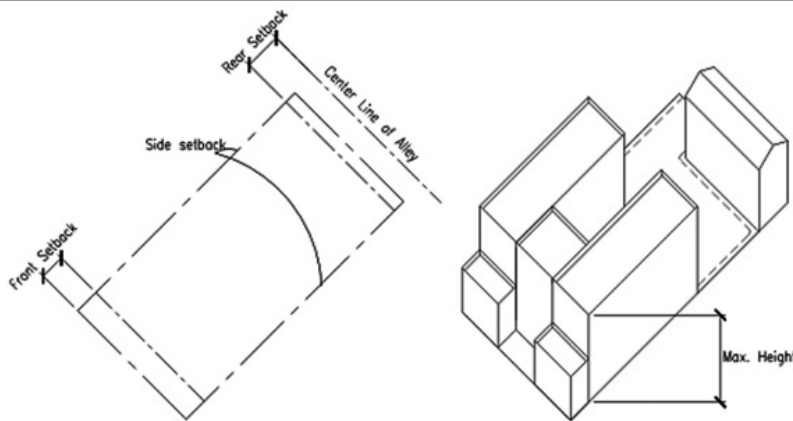
FIGURE 5.11C : ILLUSTRATION OF TOWNHOUSE BUILDING FACADE



5.12. Building type: Apartment.

- A. *Description:* A multiple unit building with units vertically arranged (generally) and with parking located below or behind the building. Units may be used for rent or for sale in condominium ownership or may be designed as continuing care facilities. The ground floor may be available for commercial uses. The use permitted within the building is determined by the district in which it is located.
- B. ~~*Yards:* An apartment building typically has one yard (rear) though variations include a small front setback often used for landscaping.~~

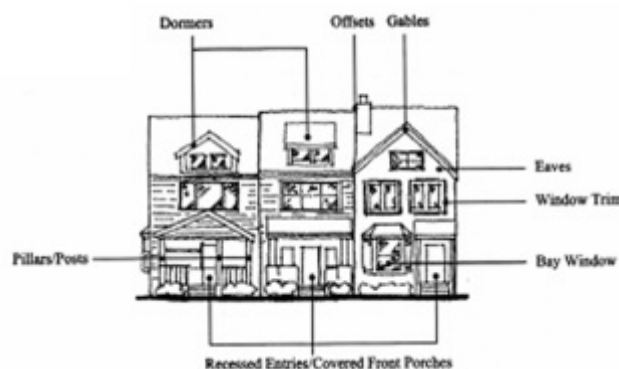
FIGURE 5.12A : ILLUSTRATION OF APARTMENT BUILDING



- C. *General requirements:*
1. The bulk and scale of apartment infill development shall be similar to and consistent with the surrounding neighborhood as evaluated by the bulk of buildings adjacent, abutting and surrounding the proposed development. All buildings should be designed to adhere to the existing architectural pattern of the surrounding neighborhood.
 2. Useable porches and stoops should form a predominate motif of the building design and be located on the front and/or side of the building. Useable front porches are at least eight feet deep and extend more than 30 percent of the facade.



3. Garage doors are not permitted on the front elevation of any apartment building.
4. All building elevations visible from the street shall provide doors, porches, balconies, and/or windows. A minimum of 60 percent of front elevations, and a minimum of 30 percent of side and rear building elevations shall meet this standard. "Percent of elevation" is measured as the horizontal plane (linear feet) containing doors, porches, balconies, terraces, and/or windows. This standard applies to each full and partial building story.
5. To provide privacy, all front entrances shall be raised from the finished grade (at the building line) a minimum of 1½ feet.
6. Apartment buildings shall provide detailed design along all elevations. Detailed design shall be provided by using as many of the following architectural features on all elevations as appropriate for the proposed building type and style. Features may vary between rear, side and front elevations.
 - a. Dormers.
 - b. Gables.
 - c. Recessed entries.
 - d. Covered porch entries.
 - e. Cupolas or towers.
 - f. Pillars or posts.
 - g. Eaves (minimum ten-inch projection which may include gutter).
 - h. Off-sets in building face or roof (minimum 16 inches).
 - i. Window trim (minimum four inches wide).
 - j. Bay windows.
 - k. Balconies.
 - l. Decorative patterns on exterior finish (e.g. scales/shingles, wainscoting, ornamentation, and similar features).
 - m. Decorative cornices and roof lines (for flat roofs).

FIGURE 5.12B : ILLUSTRATION OF APARTMENT BUILDING FACADE**D. Materials:**

1. Apartment building walls shall be wood clapboard, cementitious fiber board, wood shingle, wood drop siding, primed board, wood board and batten, brick, stone, stucco, or vinyl.



2. Apartment building roofs shall be clad in wood shingles, standing seam metal, terne, slate, or asphalt shingles.

E. Other requirements:

1. Main roofs on apartment buildings shall be symmetrical gables or hips with a pitch between 6:12 and 12:12. Monopitch (shed) roofs are allowed only if they are attached to the wall of the main building. No monopitch roof shall be pitched less than 4:12.
2. Two wall materials may be combined horizontally on one facade. The heavier material should be vertically placed below the other material.
3. The undercroft of buildings shall be enclosed.
4. All buildings should be designed to adhere to the existing architectural pattern of the surrounding neighborhood.
5. Overhanging eaves may expose rafters.
6. Flush eaves shall be finished by profiled molding or gutters.
7. All rooftop equipment shall be screened from view.

FIGURE 5.12C: EXAMPLES OF APARTMENT BUILDINGS

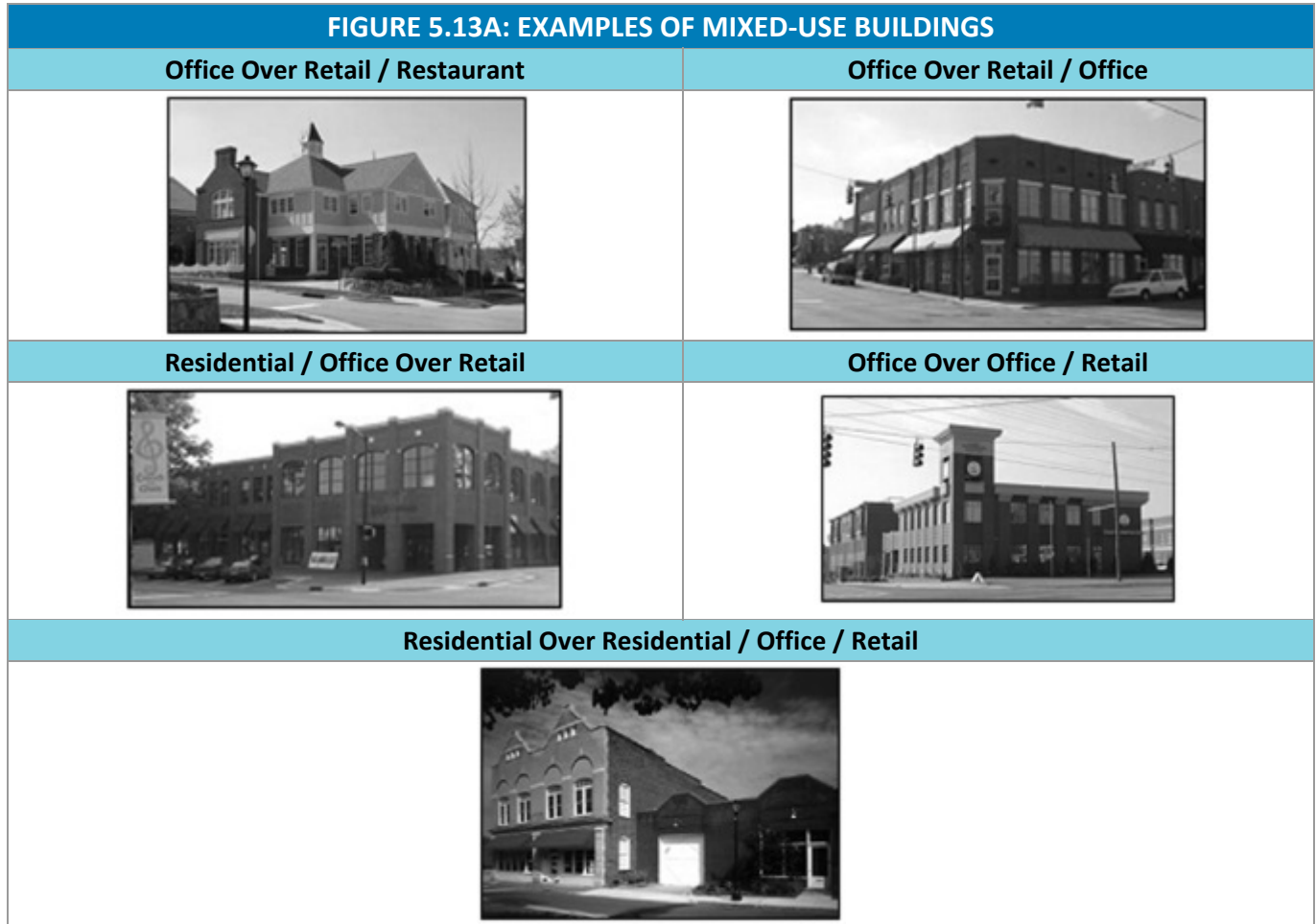
Multi-Family Development	Multi-Family Development
	
Eight-Plex	Multi-Family Development
	

5.13. Building type: Mixed-use.

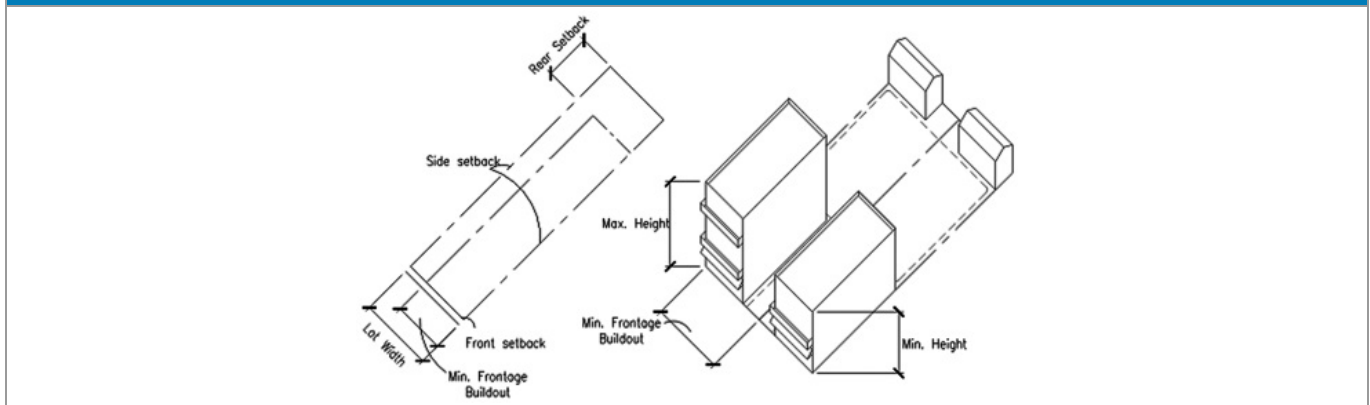
- A. Description:** A multi-story small scale structure which can accommodate a variety of uses. A group of mixed-use buildings can be combined to form a mixed-use neighborhood center. Individual mixed-use buildings can be used to provide some commercial services, such as a neighborhood store, in close proximity to homes.



The uses permitted within the building are determined by the regulations for the zoning district in which it is located.



- B. Yards Public Space: A mixed-use building ~~typically has one yard (rear), although variations may~~ include a small front plaza or courtyard to provide public space for outdoor seating as well as a building with complete lot coverage where parking is handled in a manner other than on-site surface parking.

**FIGURE 5.13B: ILLUSTRATION OF MIXED-USE BUILDING****C. General requirements:**

1. Mixed-use buildings shall have a minimum of two stories.
2. Street walls: The first floors of all mixed-use buildings shall be designed to encourage and complement pedestrian-style interest and activity by incorporating the following elements:
 - a. The first floor of all buildings fronting directly on a street shall include transparent windows and doors arranged so that the uses inside are visible from and/or accessible to the street on at least 40 percent of the length of the first floor building elevation.
 - b. Expanses of blank walls may not exceed 20 feet in length. (A "blank wall", in this context, is a facade that does not contain transparent windows or doors).
 - c. Window dimensions:
 - i. Maximum sill height (1st floor): 42 inches (as measured from the finished floor elevation).
 - ii. Minimum area: 16 square feet.
 - iii. Minimum width: 3 feet.
 - iv. Minimum height: 4 feet.
3. Ventilation grates and emergency exit doors located at the first floor level in the building facade, which are oriented to any public street, shall be decorative.
4. Building entrances: A primary entrance facade shall be oriented toward the street, designed for the pedestrians, and distinguishable from the rest of the building. Such entrances shall provide a sense of entry and add variety to the streetscape. Additional entrances may be oriented toward side or rear parking lots. Service entrances for shipping and receiving shall be oriented away from the public street.
5. A building canopy, awing, or similar weather protection may be provided and should project a minimum of three—five feet from the facade.

D. Materials:

1. Mixed-use building walls shall be brick, stone, cementitious fiber board, stucco, or wood clapboard. Regular or decorative concrete block and EIFS-type stucco may be used on building walls not visible from a public street or as an accent material only. All accessory buildings shall be clad in materials similar in appearance to the principal structure.
2. Pitched roofs shall be clad in wood shingles, standing seam metal, corrugated metal, slate, or asphalt shingles.



5.14. Building type: Commercial building.

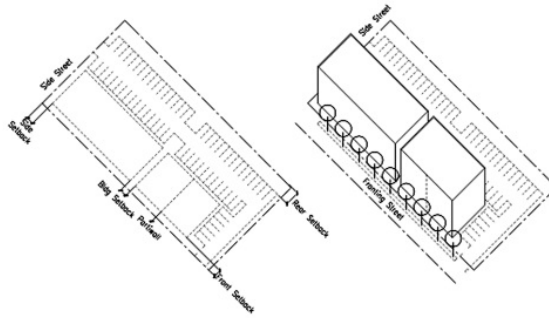
- A. *Description:* A single or multi-story medium to large structure which generally accommodates automobile-oriented commercial uses typically found along major thoroughfares. A group of commercial buildings can be combined to form a community center. This building type provides convenient automobile access from the fronting thoroughfare, while maintaining the negative impacts of parking lots on an active pedestrian realm. The uses permitted within the building are determined by the regulations for the zoning district in which it is located.

FIGURE 5.14A: EXAMPLES OF COMMERCIAL BUILDINGS	
Retail	Grocery Store
	
Retail along Thoroughfare	Pharmacy with Drive-Thru
	
Fast-food Restaurant	Gas Station
	

- B. ~~Yards~~Public Space: The commercial building ~~typically has one yard (rear) though variations may~~ include a small front plaza or courtyard to provide public space for outdoor seating as well as a building with complete lot coverage where parking is handled in a manner other than on-site surface parking.



FIGURE 5.14B: ILLUSTRATION OF COMMERCIAL BUILDING

**C. General requirements:**

1. **Street walls:** The first floors of all commercial buildings shall be designed to encourage and complement pedestrian-style interest and activity by incorporating the following elements:
 - a. The first floor of all buildings fronting directly on a street shall include transparent windows and doors arranged so that the uses inside are visible from and/or accessible to the street on at least 40 percent of the length of the first floor building elevation.
 - b. Expanses of blank walls may not exceed 20 feet in length. (A "blank wall", in this context, is a facade that does not contain transparent windows or doors.)
 - c. Window dimensions:
 - i. Maximum sill height (1st floor): 42 inches measured from the finished floor elevation
 - ii. Minimum area: 16 square feet.
 - iii. Minimum width: 3 feet.
 - iv. Minimum height: 4 feet.
 - d. Ventilation grates and emergency exit doors located at the first floor level in the building facade, which are oriented to any public street, shall be decorative.

D. Materials:

1. Commercial building walls shall be brick, stone, cementitious fiber board, stucco or wood clapboard. Regular or decorative concrete block and EIFS-type stucco may be used on building walls not visible from a public street or as an accent material only. All accessory buildings shall be clad in materials similar in appearance to the principal structure.
2. Pitched roofs shall be clad in wood shingles, standing seam metal, corrugated metal, slate, or asphalt shingles.

5.17. Encroachments.

Certain [structural and](#) architectural features are permitted to encroach across parcel lines, into setback areas, and into rights-of-way. The following standards shall be established for encroachments:

- A. Awnings:** Awnings on structures within commercial and mixed-use zoning districts may encroach upon the front setback area and rights-of-way provided that the following conditions are met:



1. Awnings shall be supported by means of a frame attached directly to the structure receiving beneficial use of the awning. In no case shall awnings be supported by a frame attached to a sidewalk or other public right-of-way.
 2. Storefront awnings projecting the width of the sidewalk pedestrian zone must be attached to the building at 14 feet above the grade of the sidewalk. Awnings may only project two-thirds the width of the sidewalk pedestrian zone if attached lower than 14 feet above the grade of the sidewalk.
 3. Awnings shall not project into the furniture/landscape zone of any sidewalk, nor over a street or adjacent on-street parking, and, in no event, shall they project further than seven feet from the face of the building.
 4. The lowest point of any awning shall be at least nine feet above the grade of the sidewalk.
 5. All awnings in other zoning districts shall be considered a part of the structure for purposes of measuring and complying with area and setback regulations.
- B. *Handicapped ramps:*** The administrator may approve the installation of handicapped landings, ramps, and similar structures as additions to existing structures, even though such additions do not meet the minimum setback requirements of this ordinance, provided such additions meet the following criteria:
1. They are intended for the sole purpose of providing handicapped access to an existing structure.
 2. They fully conform to North Carolina Building Code and are designed to minimize setback deviations to the maximum extent possible.
 3. Prior to the issuance of any permit the administrator shall inspect the site of the proposed addition and may impose such conditions as are necessary to minimize any conflicts that may arise from the construction thereof, including the encroachment of such additions upon setback lines.
 4. No such addition shall encroach into a public or private right-of-way or easement, regulatory floodway, or surface water protection area.
- C. *Roof overhangs and gutters:***
1. Roof overhangs and gutters may encroach into front, rear, or side yard setbacks by up to two feet.
- D. *Uncovered porches, stoops, and stairs:***
1. Uncovered porches, stoops, and stairs, intended primarily for means of ingress and egress, nominally in line with the first floor above grade or any floor below that, may encroach into front, or rear yard setbacks up to one-third of the required setback dimension up to a height of four feet above the elevation of the floor being served. The area of each porch not including landings between runs of stairs, shall be no greater than fifty square feet.
- E. *Balconies and bay windows:***
1. Covered or uncovered balconies and bay windows may encroach into front or rear setbacks up to three feet into the required setback dimension. Balconies or bay windows may not exceed ten feet in width. Cumulative total of balconies and bay windows projecting into the setback shall not exceed 33 percent of the total width of each elevation.
- F. *Chimneys:***
1. Chimneys may encroach into front, rear, or side setbacks by up to two feet. Width of the chimney encroachment shall not exceed that necessary for the fireplace, flue, and the typical building walls enclosing the fireplace or flue.
- G.** No such eve, bay window, balcony, stairs, stoop, porch, chimney shall encroach into a public or private right-of-way or easement, regulatory floodplain, or surface water protection area.



CHAPTER 17. DEVELOPMENT PLAN REQUIREMENTS

17.7. Final plat requirements. [EXCERPT]

The final plat shall be prepared by a registered land surveyor, licensed to practice in the State of North Carolina and must be drawn to a scale no less than one inch = 100 feet, and shall meet the requirements of the Transylvania County Register of Deeds Office. The final plat shall constitute all portions of the preliminary plat site, which the subdivider proposes to record, and develop at the time. The size and number of completed applications shall be set by the administrator.

No final plat shall be approved unless and until the subdivider has installed in the platted area all improvements required by this ordinance or has posted performance guarantees in accordance with [CHAPTER 11](#). The final plat shall contain the following:

- A. The exact boundary of the tract of land being subdivided showing clearly the disposition of all portions of the tract.
- B. Scale denoted both graphically and numerically with north arrow and declination. A vicinity map showing the location of the subdivision with respect to adjacent streets and properties.
- C. As built drawings and plans of all water, sewer, and storm drainage system facilities, illustrating their layouts and connections to existing systems. Such plans shall show all easements and rights-of-way, to demonstrate that the facilities are properly placed and the locations of all fire hydrants, blow-off valves, manholes, pumps, force mains, and gate valves are indicated. This information shall not be placed on the final plat but must be submitted at the time of request for final plat approval or release of any surety for required improvements, whichever comes later.
- D. Sufficient data to determine readily and reproduce accurately on the ground the location, bearing, and length of every street, alley line, lot line, building ~~line~~ and easement line. All dimensions shall be measured to the nearest one-hundredth of a foot and all angles to the nearest second.
- E. The lines and names of all streets, alley lines, lot lines, lot and block numbers, easements, reservations, protected areas or required open space (steep slope areas, surface water protection areas, floodways and non-encroachment areas, etc.), the special flood hazard area, on-site demolition landfills and areas dedicated to public purpose with notes stating their purposes. The final plat shall contain the following statement:

"Areas delineated upon this plat or plan as a protection area or special flood hazard areas is subject to limitations upon development as set forth [CHAPTER 6](#) of the City of Brevard [UNIFIED DEVELOPMENT ORDINANCE](#), and any development, disturbance, or encroachment is prohibited except in accordance therewith."
- F. The accurate locations and descriptions of all monuments, markers, and control points.
- G. Underground and aerial utility easements shall be shown.
- H. The name of the city in which the subdivision is located, the name of the subdivision, the name of the owner, the name, registration number, and seal of the registered surveyor under whose supervision the plat was prepared, and the date of the plat.
- I. Submittal of payment in lieu of dedicated open space (if applicable).



CHAPTER 19. DEFINITIONS

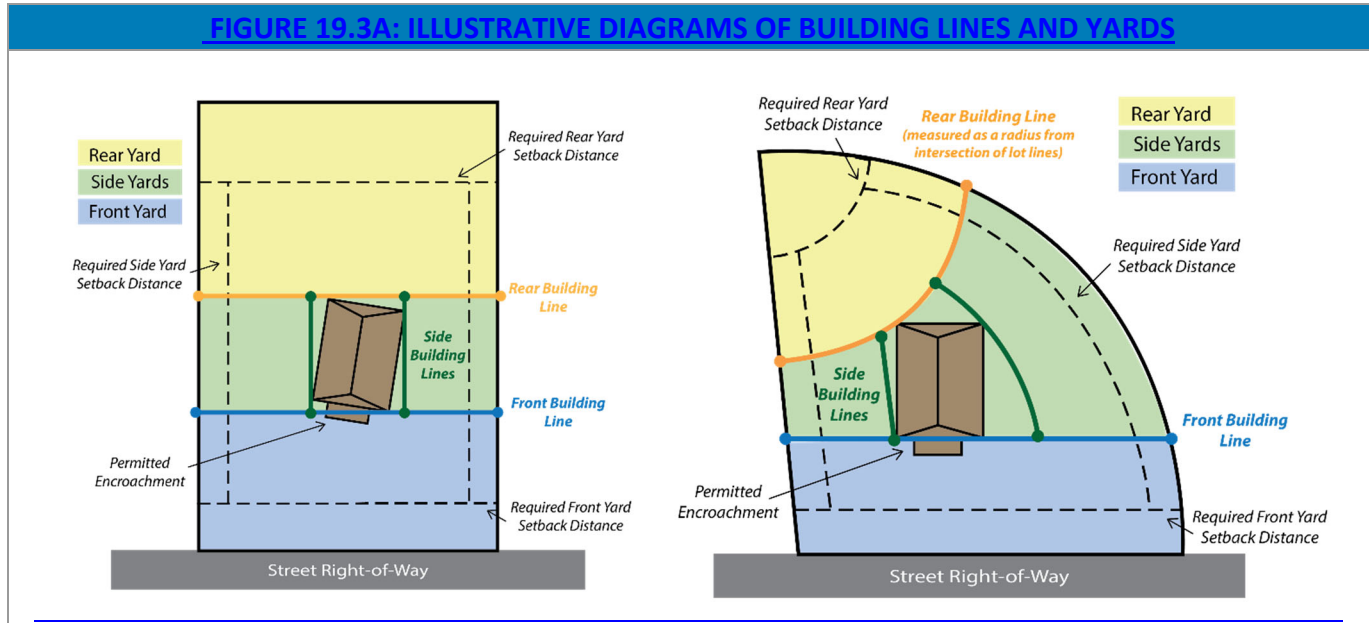
19.3. Definitions.

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

Building: Any "structure" used or intended for supporting or sheltering any use or occupancy. See Structure.

Buildable area: ~~That~~ The portion of any lot which may be used or built upon in accordance with the regulations governing the zoning district within which the lot is located when the front, side, and rear yard setbacks and open space requirements for the district have been subtracted from the total area. ~~The required front, side and rear yards shall be measured inward toward the center of said lot from all points along the respective property lines or street right-of-way as appropriate. Buildable area shall be computed by measuring the allotted distances, perpendicular from each property line.~~

Building line: A line measured parallel to the right-of-way line or property line touching that part of the building closest to the right-of-way line or property line. The building line shall not be measured from any encroachments permitted in Section 5.17 or any unenclosed structure (e.g., decks or patios). ~~That line determined by meeting respective front, side, and rear yard requirements. The required side and rear yards for individual lots shall be measured inward toward the center of the lot from all points along the respective property lines. The required front yard shall be measured inward toward the center of the lot from all points on the street right-of-way line.~~



Build-to line: A build-to line is a set building line on a lot, measured parallel from the front and/or corner side lot line, where the structure must be located. The building façade must be located at or in front of the build-to line. Façade articulation, such as window or wall recesses and projections are not counted as the building façade line, which begins at the applicable façade wall. The build-to line may also be referred to as a maximum setback.



Build-to percentage: The build-to percentage specifies the percentage of the building façade that must be located at the build-to line or within a build-to zone. Façade articulation, such as window or wall recesses and projections, do not count against the required build-to percentage.

Build-to zone: The area between the build-to line and the minimum setback line.

Encroachment: Any structural or architectural element that breaks the plane of a vertical or horizontal regulatory limit, such as extending into setback requirements or above a height limit.

For the purposes of flood management, this term shall mean ~~Means~~ the advance or infringement of uses, fill, excavation, buildings, permanent structures or development into a floodplain (including floodway) or surface water protection area (including floodway), which may impede or alter the storage capacity or flow capacity of a floodplain.

Fence: An enclosure or barrier of wood, masonry, stone, wire, metal, or other manufactured material or combination of materials intended to be used as a boundary, means of protection, privacy screening, area of confinement, or retaining wall.

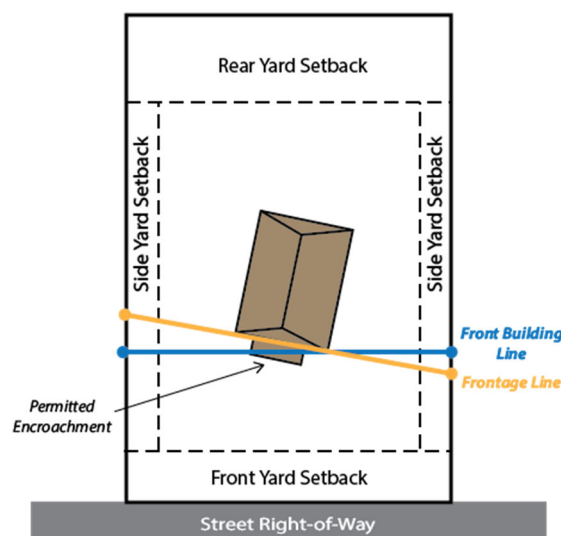
Fence, closed: A fence in which the openings through which clear vision is possible from one side to the other on a horizontal plane comprise 30 percent or less of the total side area of the fence.

Fence, open: A fence in which the openings through which clear vision is possible from one side to the other on a horizontal plane comprise 70 percent or more of the total side area of the fence.

Frontage: The side of a lot abutting a street. Frontage is not determined by design features (including entrances) of any building(s) located on the lot.

Frontage line: A line measured across the façade of the portion of the building closest to the street. The frontage line shall not be measured from any encroachments permitted in Section 5.17 or any unenclosed structure (e.g., decks or patios). This line can be synonymous with the front building line when a building is oriented towards the street.

FIGURE 19.3B: ILLUSTRATIVE DIAGRAMS OF FRONTAGE LINE AND BUILDING LINE



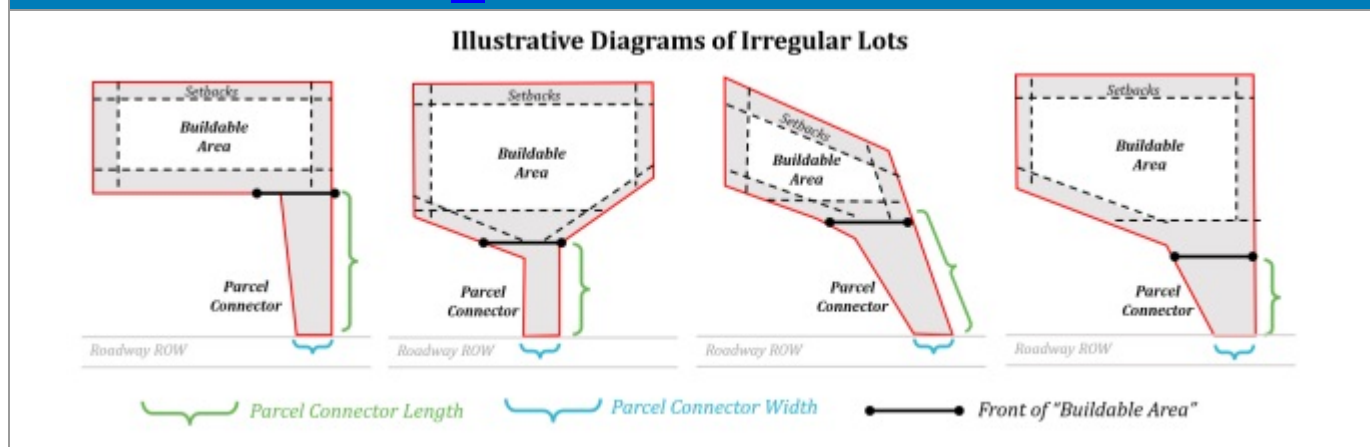


Lot, conventional: Conventional Lot shall refer to any lot where the minimum lot width for conventional lots (See Section 2.3) is met at the right-of-way line.

Lot, irregular: Irregular Lot shall refer to any lot where the functional access to a road is provided along a long narrow “parcel connector” and the “buildable area” is typically situated, at least in part, behind adjoining lots which front on a public street.

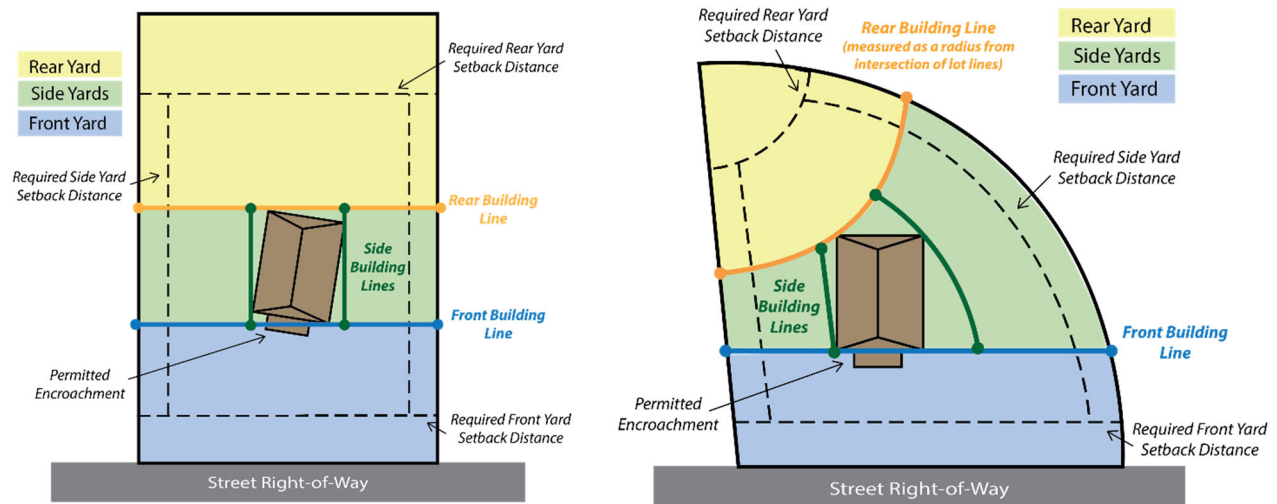
- A. “Buildable Area”: The largest portion of an irregular lot where development is intended.
- B. “Parcel Connector”: The long narrow strip of property that provides functional access for ingress, egress, and utilities.
 1. The width of the “parcel connector” is measured along the right-of-way line, and must be at least minimum lot width for irregular lots and does not exceed that for conventional lots (see Section 2.3).
 2. The length of the “parcel connector” is measured from the right-of-way until the property width reaches the minimum lot width for conventional lots and shall not exceed the maximum parcel connector length for irregular lots (see Section 2.3).

FIGURE 19.3A3C: ILLUSTRATIVE DIAGRAMS OF IRREGULAR LOTS



Setback: The minimum distance a structure may be located from a ~~curb line~~, lot line, or right-of-way line along frontages and side and rear lot lines.

Yard: A space that lies between the principal building(s) and the nearest lot line or right-of-way line. The front yard and rear yard are defined by the respective building line, with the side yard(s) consisting of the remainder of the property not occupied by principal building(s). ~~on the same lot with a principal building, open, unoccupied, and unobstructed by buildings or structures from ground to sky except where encroachments and accessory buildings and structures are expressly permitted.~~

**FIGURE 19.3D: ILLUSTRATIVE DIAGRAMS OF BUILDING LINES AND YARDS**

Yard, front: A yard situated between the front building line and the front lot line or right-of-way line extending the full width of the lot. [See Yard.](#)

Yard, rear: A yard situated between the rear building line and the rear lot line extending the full width of the lot. In the case of multi-frontage lots or other type of lot, the front yard shall supersede the rear yard. [See Yard.](#)

Yard, side: A yard situated between a ~~side-building line~~ and side lot line(s) and extending from the required front yard, as determined by the front building line, to the required rear yard, as determined by the rear building line. [See Yard.](#) ~~In determining the situation of accessory structures, the side yard shall be assumed to extend through the rear yard to the rear lot line.~~

**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:

GOAL 2: Encourage a development pattern that respects Brevard's sense of place and prioritizes livable communities.

LUH-19: Enhance communication of land use planning efforts, policy development, approvals, and processes.

STAFF REPORT

City Council, Monday, December 18, 2023

Title: Lease of Brevard Davidson River Presbyterian Church
Property for LMI Housing

Speaker: Wilson Hooper, City Manager
Mack McKellar, City Attorney
Sara Van Lear, Development Finance Initiative

Prepared by: Wilson Hooper, City Manager

Approved by: Wilson Hooper, City Manager

Background

The City and leaders from Brevard Davidson River Presbyterian Church (BDRPC) have been working together on an effort to convert a portion of the church's downtown property into low-to-moderate income (LMI) housing. The concept was discussed with the congregation in late 2022. Since that time, the City engaged the UNC SOG Development Finance Initiative (DFI) to study the area's housing needs and perform a high-level study exploring the feasibility of constructing housing on the site.

DFI deemed development on the site feasible, and recommended taking the next step in the project. With DFI's help and expertise, the City will recruit a private development partner to finance and construct LMI housing on the site.

Discussion

DFI recommends that the lead public entity have "site control" prior to going to market for a development partner. This gives developers and the financial markets the confidence they need invest time and resources into the property. BDRPC governing body has expressed willingness to grant site control to the City -and eventually the development partners- via a long-term ground lease.

With support from DFI, city staff have been negotiating the terms of a lease with an ad hoc subgroup of BDRPC's Session (governing body) and are ready to take the document to the parties' respective governing boards. The draft lease was reviewed by the Housing Committee on Tuesday, December 12, 2023. It is scheduled to go before the church's full Session for approval on Friday, December 15, 2023. Per BDRPC's bylaws, it must then receive congregational approval, which will occur in January.

*****As of the publication of this agenda document, the meeting with the church's Session has not been held. Please consider this a placeholder. Staff will send out an updated agenda item Friday afternoon.*****

Action

Pass a resolution approving the lease and authorizing city staff to execute its terms.

Attachments:

1. BDRPC City Draft Lease

STATE OF NORTH
CAROLINA COUNTY OF
TRANSYLVANIA

LEASE AGREEMENT

THIS LEASE (this "Lease") is dated this _____ day of January, 2024, and is between BREVARD DAVIDSON RIVER PRESBYTERIAN CHURCH, a North Carolina non-profit corporation (the Church ""), and the City of Brevard, a body corporate and politic of the State of North Carolina (the "City").

Addresses:

Church	BREVARD- DAVIDSON RIVER PRESBYTERIAN CHURCH Main Street Brevard, NC 28712
City	City of Brevard 95 W Main St Brevard, NC 28712

1. Basic Terms: The following terms shall apply unless the context clearly indicates otherwise, and any reference in this Lease to any of the basic terms will be construed to include the provisions set forth below as well as all of the additional terms and conditions of the applicable sections of this Lease where such basic terms are more fully set forth:

A. Commencement Date: _____, 2023.

B. Rent: One Dollar (\$1.00) per year, payable at the commencement of the lease and annually thereafter.

C. Term: The term of this lease shall be from the Commencement Date through and including _____, 2113.

D. Permitted Uses: For pursuing, investigating and implementing affordable, rental housing solutions in Brevard and Transylvania County, North Carolina. Affordable rental Housing is defined as housing wherein the use thereof is restricted solely to rental housing for households which have a minimum income less than 80% of the Average Median Income for Transylvania County, North Carolina as defined by the United States Department of Housing and Urban Development (hereinafter "HUD").

E. The Real Property: All those parcels, tracts and other rights located in Transylvania County, North Carolina, and described in the deed recorded in the Office

of the Register of Deeds for Transylvania County, North Carolina in Book _____, at Page ----- and as shown on attached Exhibit A.

- F. Church is the owner of the Real Property at issue herein
- G. Church and City desire for the City to lease from the Church the Real Property in order for the City to investigate, solicit and enter into agreements to facilitate construction of affordable housing projects which shall provide housing exclusively for households in the community which have an income no greater than 80% of the Average Median Income (AMI) for Transylvania County as defined by HUD.

IN CONSIDERATION OF the Church leasing the Real Property to the City, the City leasing the Real Property from the Church and the mutual benefits and obligations set forth in this Lease, the receipt and sufficiency of which consideration is hereby acknowledged, the Church and City agree as follows:

1. Lease of Real Property. Upon the terms and conditions set forth herein, Church hereby leases to City, and City hereby accepts and rents from Church, the land described in Exhibit A, together with all rights, privileges, and easements appurtenant thereto (the "Real Property"). The Real Property and all existing and future buildings and other improvements constructed thereon and all fixtures therein (the "Improvements") are collectively referred to herein as the "Premises."

2. City shall pay to the Church the sum of One Dollar (US \$1.00) each year as the Rent, on the execution hereof.

3. The City may use the Real Property only for the Permitted Uses during the Term. The City shall maintain the Real Property in good condition. In the event that use of the real property does not comply with the Permitted Use herein, this shall constitute an incident of Default under this agreement. In the event of Default, Church shall give the City a notice of not less than six months in which they can cure the Default before Church terminates this lease.

4. The City may sublease or license some or all of the Real Property to third parties for Permitted Uses, subject to the terms hereof and specifically requiring that any sublease be for the purpose of creating affordable, rental housing for households who have an annual income of less than 80% of the Average Median Income (AMI) for Transylvania County, North Carolina as defined by HUD.

5. Notwithstanding any other provision hereof, neither the City nor the Church shall take any action which will in any way impair the use of this real property for the Permitted Uses herein.

6. The City is hereby granted by the Church an irrevocable limited power of attorney to negotiate, grant, enforce, terminate, revoke and in all other ways deal with any future easements, subleases, or licenses granted to third parties for Permitted Uses on the Real Property.

A. This limited power of attorney shall not apply to any existing encroachments or licenses on the Real Property.

B. The Church hereby warrants that it will not take any action which will grant any additional rights or privileges to any entity without the written consent of the City.

7. City shall have the right to terminate this Lease with five years prior notice to Church. Church shall have the right to terminate this lease upon thirty years notice and full assumption of any Permitted Mortgages discussed herein.

8. A memorandum of this Lease Agreement shall be recorded in the Office of the Register of Deeds for Transylvania County.

9. The City shall maintain adequate liability insurance to indemnify the Church from and against all claims, injury and damage to the Real Property or to any person arising out of City's or Sublessee's use of the Real Property.

10. This Lease may be amended with the written consent of both the City and the Church.

11. Nothing contained in this Lease is intended by the Parties to create a relationship of principal and agent, partnership, or joint venture. The Parties intend only to create a relationship of Church and City.

12. Encumbrances, Assignment and Subletting. It is anticipated that City shall enter into sublease agreements with entities which shall develop the said Real Property for the Permitted Uses set forth herein. In furtherance of this goal, the parties further agree as follows:

- (a) Assignment and Subletting. Except for (i) resident subleases entered into by City/sublessee in the ordinary course of operating the Premises in accordance herewith, (ii) Permitted Mortgages (as defined herein), and (iii) assignments to the mortgagee or its nominee or to a purchaser (other than City) pursuant to Permitted Mortgages upon foreclosure or assignment in lieu of foreclosure, City shall not assign this Lease or transfer, mortgage, encumber or sublet the Premises for any purpose than a Permitted Use herein. No assignment or subletting by Lessee shall constitute a release of City's obligations hereunder, and City shall remain responsible for the full and faithful performance and observance of all of the covenants and conditions to be performed or observed by City hereunder.
- (b) Prohibited Transfer. City agrees for itself and its successors and assigns in interest hereunder that it shall not, other than pursuant to a Permitted Mortgage or with respect to any assignment, lease, sublease or transfer (including an assignment to a Permitted Mortgagee or its nominee or to a purchaser, other than City, pursuant to a Permitted Mortgage upon foreclosure or assignment in lieu of foreclosure): (i) assign this Lease or any of its rights under this Lease as to all or any portion of the Premises, or the equipment in the Premises; or (ii) make or permit any voluntary or involuntary total or partial sale, lease, assignment, conveyance, mortgage, pledge, encumbrance or other transfer of any or all of the Premises or the equipment in the Premises or the Improvements or the occupancy or use thereof, other than in the ordinary course of business (including but not

limited to (x) any sale by execution of any judgment of any or all of City's rights hereunder, or (y) any transfer by operation of law, without first obtaining County's consent, the consent of HUD, NCHFA, the Investor Member and all Permitted Mortgagees.

(c) Leasehold Mortgages.

a. Permitted Mortgages. Subject to Church's rights under this Lease, City or its sublessee's shall have the right to incur debt secured by Sublessee's interests in the Premises and by collateral assignments of sublessee's interest in this Lease, upon the following conditions:

- i. the original secured lender shall be either an Institution (as defined below) or an obligee approved by City;
- ii. all rights acquired under any such mortgage or collateral assignment shall be subject and subordinate to the covenants, conditions and restrictions set forth in this Lease, including the rights of sublessees occupying any portion of the Premises not inconsistent herewith; and
- iii. all of the loan proceeds (net of ordinary loan costs) shall be used for the benefit of the City Improvements.

b. Any leasehold mortgage or collateral assignment satisfying the foregoing requirements or expressly approved in writing by City shall be considered a "Permitted Mortgagee" from and after the date that sublessee shall have given City written notice (i) specifying the name and address of the mortgagee or beneficiary entitled to notices hereunder (each a "Permitted Mortgagee"); and (ii) enclosing a copy of the applicable leasehold mortgage or collateral assignment.

c. As used herein, "Institution" shall mean a bank, a bank affiliate, savings and loan association, trust company, insurance company, public pension fund or retirement fund, private pension or retirement fund having a bank or trust company as trustee, or agency of (or created by) the Federal government (such as FNMA) or by a state or local government.

d. As used herein, the term "leasehold mortgage" shall mean and include whatever security instruments are used for that purpose in North Carolina, including deeds of trust, mortgages, security agreements, assignments of leases, and financing statements.

(d) Covenants for Benefit of Permitted Mortgages. If and for so long as one or more Permitted Mortgages remains unsatisfied of record, Church agrees for the benefit of the Permitted Mortgagee thereunder that:

(1) This Lease shall not be canceled, surrendered, or modified by joint action of City and Church without the prior written consent of the Permitted Mortgagees under the Permitted Mortgages.

(2) Church shall, upon serving on City or Sublessee a notice of default, simultaneously serve a copy of such notice on the Permitted Mortgagee under each Permitted Mortgage provided sublessee has given City an address for such notice. Each such notice shall be served on the Permitted Mortgagee in the manner provided for notices to the parties hereunder at the most recent address provided by the Permitted Mortgagee or City; and the Permitted Mortgagee shall have the same period as City, running from the time of service of the notice on the Permitted Mortgagee, within which to remedy or cause to be remedied the defaults complained of, and Church shall accept performance by the Permitted Mortgagee as performance by Sublessee.

(3) The name of the Permitted Mortgagee may be added to the standard loss payable endorsement to any insurance required or permitted hereunder.

(4) In the event of termination of this Lease by reason of an Event of Default, City shall enter into a new lease for the Premises with the Permitted Mortgagee with the most superior lien or its nominee ("Superior Mortgagee") for the remainder of the Term hereof, effective as of the date of such termination, upon the same terms and conditions contained in this Lease, subject only to the rights, if any, of the parties then in possession of any part of the Premises, provided:

(A) The Superior Mortgagee or its nominee shall make written request upon City for the new lease within fifteen (15) days after the date of termination, and the written request shall be accompanied by any then due payment under this Lease; and the Superior Mortgagee or nominee shall execute and deliver the new lease within fifteen (15) days after City shall have delivered it.

(B) The Superior Mortgagee or its nominee shall pay to City, at the time of execution and delivery of the new lease, any and all sums which would then be due pursuant to this Lease but for such termination and, in addition thereto, any reasonable expenses, including reasonable attorneys' fees, which City shall have incurred by reason of such default, including the costs of negotiation, approval and recording the new lease.

(C) The Superior Mortgagee or its nominee shall perform and observe all covenants in this Lease (including, but not limited to, all covenants regarding permitted uses to be performed by sublessee and shall further remedy any other conditions which Sublessee was obligated to perform under the terms of this Lease.

(D) Church and/or City shall not warrant possession or condition of the Premises to a subsequent sublessee or the Superior Mortgagee under the new lease.

(E) Sublessee under the new lease shall have substantially the same rights, title and interest in and to the Premises as sublessee has under this Lease.

(F) Any such new lease may be terminated for failure of the new sublessee to remedy or comply with any and all provisions of the new lease.

(G) City has secured the approval of NCHFA (if such approval is required) to enter into the new lease.

13. Fee Mortgages. Except for the Permitted Mortgages, City agrees that it will not during the Term encumber its interest in the Premises (i) unless approved by all Permitted Mortgagees and (ii) unless there is an express subordination of that encumbrance to the interests of such holders and sublessee in the leasehold, and any purported subordination of sublessee's leasehold interest hereunder to an encumbrance on the fee interest shall be void.

14. Nature and Extent of Agreement. This instrument and the instruments incorporated herein by reference contain the complete agreement of the parties regarding the terms and conditions of the lease of the Premises. There are no oral or written conditions, terms, understandings or other agreements pertaining thereto which have not been incorporated herein. This instrument creates only the relationship of lessor and lessee between the parties as to the Premises; and nothing in this Lease shall in any way be construed to impose upon either party any obligations or restrictions not expressly set forth in this Lease or in an instrument incorporated herein by reference.

15. Severability. If any provision of this Lease or its application to any person or circumstance shall, to any extent, be deemed valid or unenforceable, the remaining provisions of this Lease, and the application of that provision to other persons or circumstances, shall not be affected.

16. Captions. The captions for each paragraph in this Lease have been inserted only as a matter of convenience and for reference, and in no way define, limit or affect the scope or intent of that paragraph.

17. Governing Law. This Lease shall be governed by and construed in accordance with the laws of the State of North Carolina applicable to contracts made and to be performed therein. The parties agree that venue for the prosecution of any state court proceedings shall be Transylvania County, North Carolina, and any federal court proceeding shall be the Western District of North Carolina.

18. Successors. This Lease shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

19. Amendments. This Lease may not be amended except by written instrument duly executed by each of the parties. Any amendment with material changes shall be subject to the prior written consent of all Permitted Mortgagees.

IN WITNESS WHEREOF, the parties, pursuant to due authority, have caused their names to be signed hereto by their respective officers, and their seals to be affixed hereto, duly attested.

THIS INSTRUMENT HAS BEEN PREAUDITED IN THE MANNER REQUIRED BY THE
LOCAL GOVERNMENT BUDGET AND FISCAL CONTROL ACT

By: _____
Dean Luebbe, Brevard Finance Officer

BREVARD DAVIDSON RIVER PRESBYTERIAN CHURCH

By: _____
GINNY BRADFORD
Clerk of the Session

CITY OF BREVARD:

By:_____

MAUREEN COPELOF, Mayor

ATTEST:_____

DENISE HODSDON, City Clerk

STATE OF NORTH CAROLINA
COUNTY OF Transylvania

I, _____, a Notary Public of Transylvania County, North Carolina, do certify that, on the date shown below, before me came GINNY BRADFORD, the Clerk of the Session for Brevard Davidson River Presbyterian Church, and acknowledged the voluntary execution of the foregoing document on behalf of said church, for the purposes stated therein.

Witness my hand and notarial seal, this the _____ day of _____, 2023.

Notary Public

Printed Notary Name

My commission expires:

STATE OF NORTH CAROLINA
COUNTY OF TRANSYLVANIA

I, _____, a Notary Public of Transylvania County, North Carolina, do certify that, on the date shown below, before me came _____, personally came before me this day and acknowledged that (s)he is the City Clerk to City of Brevard, North Carolina and that by authority duly given and as the act of said City, the foregoing instrument was signed in its name by the Mayor of the City of Brevard, North Carolina. and attested by him/her as City Clerk.

The Signatory acknowledged to me that she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated.

Witness my hand and notarial seal, this the _____ day of _____, 2023.

Notary Public

Printed Notary Name

My commission expires:

EXHIBIT A

[See attached pdf]