

MINUTES
BREVARD CITY COUNCIL
Regular Meeting
August 15, 2011 – 7:00 PM

The City Council of the City of Brevard met in regular session on Monday, August 15, 2011 at 7:00 PM in the Council Chambers of City Hall with Mayor Jimmy Harris presiding.

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

Staff: Fire Chief Craig Budzinski, Assistant Planning Dir. Brad Burton, Planning Dir. Josh Freeman, Bldg & Grounds Dir. Lynn Goldsmith, HR Dir. LeAnn McCraw, Police Officer Wayne Newton, Executive Assistant Jeanette Owen, Finance Dir. Terry Scruggs, and Public Service Dept. Wesley Shook.

Press: Derek McKissock, Transylvania Times

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

Invocation and Pledge – Pastor Brent Metcalf, Brevard Community Church, offered the invocation. Boy Scouts Ian Brown and Ethan Ham, Mills River Troup #622, led in the Pledge of Allegiance.

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

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

Approval of Minutes – Ms. Morrow moved, seconded by Mr. Canady, the February 10 and 11, 2011 Retreat and August 1, 2011 meeting minutes be approved as presented. Motion carried unanimously.

Pubic Hearing – Proposed text amendments to the City of Brevard Code of Ordinances (a) Chpt. 30 Fire Protection and Protection to authorize Brevard Fire Chief to require the installation of key boxes at approved locations; (b) Chapters 2,3, and 19 Unified Development Ordinance (UDO) permit standards for game and billiard rooms; (c) Chpt. 46 Selling on Streets and Sidewalks, and Chpts. 2,3, and 19 UDO permit standards for temporary uses and special events, including temporary vendors; and, (d) Chpt. 16 UDO to authorize the Board of Adjustment to consider architectural exceptions to certain standards in Chpts. 3 and 5 of the UDO.

At 7:14 PM the properly advertised and noticed public hearing to receive comments on the four (4) above described proposed text amendments to the City Code began and Mr. Freeman was called upon to present the staff report.

Mr. Freeman explained four separate text amendments addressing different sections of the City Code will be discussed and considered in this one public hearing. He asked Council, should they decide after the hearing to not approve a section, that consideration be made to approve any section(s) they do find acceptable. He then provided the following explanations for the proposed text amendments:

Chapter 30 Fire Prevention and Protection (Exhibit A of draft Ord. No. 22-2011) – A City staff initiated text amendment. Key box, also known as a Knox Box, is a metal box mounted upon the wall of a building containing a key to the building or unit that, in the event of a fire call, allows firefighters to make access without having to damage or destroy doors or windows. Proposed amendment would allow, in addition to the Fire

Marshall, the Brevard Fire Chief to require the installation of a key box upon commercial and industrial structures within the City.

Chapters 2, 3 and 19, Unified Development Ordinance to incorporate permit standards for indoor amusements, game and billiard rooms (Exhibit B of draft Ord. No. 22-2011) – A Council initiated text amendment. Recently an applicant seeking a game/billiard room Permit came before Council for approval as required by City Code. Council approved the applicant's Permit, and followed by requesting Planning staff to draft a text amendment whereby all future such permit requests would be reviewed and approved administratively by staff rather than by Council. Exhibit B contains staff and Planning Board's recommended elimination of Chapter 10 of the City Code, and text amendment within Chpts. 2, 3, and 19 of the UDO requiring the Administrator (Code Official) or Board of Adjustment (depending upon the zoning district), rather than Council, to review an applicant's permit request to insure compliance with City standards and the authority to approve.

Chapter 46 Selling on Streets and Sidewalks, and Chpts. 2, 3, and 19 of UDO to incorporate permit standards for temporary uses and special events, including temporary vendors – A Council initiated text amendment. At Council's August 2, 2010, meeting citizens expressed concern regarding the growth of temporary vendors, competition with existing "brick and mortar" businesses, and the potential threat that unmanaged temporary vending operations might pose to visiting patrons. On September 20th Council directed staff to prepare draft ordinance amendments; on December 7th the Planning Board conducted a public input session to gather input from various stakeholders regarding the temporary vendor issue. Exhibit C contains staff and Planning Board's recommended text amendment standards believed to better protect the health, safety and welfare of the public, includes more defined management of waste standards, permit operating periods, off-street parking, temporary use area/square footage, sign, and site layout standards.

Planning Board further recommended Council consider amending the Fee Schedule to reduce the zoning permit fee for a non-agricultural temporary use from the current \$500 to \$200. However, this BPB recommendation is not included within the draft ordinance for discussion tonight because an amendment to the FY 2011-2012 adopted Fee Schedule would require a separate budget amendment ordinance.

Chapter 16 of UDO to authorize the Board of Adjustment to consider architectural exceptions to certain standards in Chpts. 3 and 5 – A citizen initiated text amendment. Exhibit C amendment includes gasoline canopy be among the architectural requirements which an applicant may request the Board of Adjustment to grant exception.

Council and staff discussion of the proposed amendments included the following:

Exhibit A – Briefly discussed with no recommended changes to proposed text.

Exhibit B

- G Amusements, Indoor, Section 5 (line 133) be corrected to read, "...for storage purposes, or for toilets."
- H Amusements, Indoor, Section 2 (b), (line 196) be correct to read, "No play on any game in a game room shall be allowed..."
- Questioned purpose for standard that a billiard room is not to be located on a second floor and if this standard, that has been a part of the City Code for many years, was written to address law enforcement or structural concerns.
- Suggested if text was for law enforcement purposes that text be amended to read "billiard rooms to be at street level".
- Mr. Locks expressed concern some existing text has built in assumptions that illegal activities take place in such establishments, and text should be changed.
- Ms. Perkins shared with having benefit of the entire City's game, arcade, and billiard room standards being pulled together, she's discovered some

inconsistencies, such as hours of operation. Recommended rather than proceed to adopt the proposed amendments addressing their initial charge of transferring review and approval of Permits to staff, that Council consider re-directing staff to perform a thorough review to address all issues, concerns and inconsistencies in order to adopt an ordinance that reads the way it should read.

- Mayor Harris and Mr. McKeller commented staff and Planning Board have done as directed by Council, specifically, to draft text whereby the review process for these Permits be done administratively, and suggested Council consider adoption of the text amendments as presented.

Exhibit C

- Ms. Perkins questioned if zoning permit fees for non-profits should be waived, or, if they should be charged at a reduced rate.
- Staff explained zoning permit reviews performed are the same for a profit or non-profit applicants. The review verifies appropriate land use and compliance with zoning and safety requirements, as these standards are to be uniformly applied.
- Staff explained zoning review fees are charged to profit and non-profit applicants; however, the Privilege License tax is not charged to non-profit organizations.
- Discussed agricultural temporary vendor sales have existed for many years and in more recent years the addition of non-agricultural (tool, furniture, etc.) temporary vendor sales have taken place.
- Mr. Canady stated he is interested in having the permit fee for agricultural vendors reduced from the current \$200 to \$100.
- Ms. Perkins stated the fees came from the initial discussions of fairness between a permanent business vs temporary vendors, and believes fees as adopted for both agricultural and non-agricultural temporary vendors are appropriate.
- Mr. Locks shared provided the standards are met, more temporary vendor permits could be issued, including to a brick and mortar business if they so desired, as there are no limits upon the number of temporary vendor Permits allowed.
- 1. (g) (2) (line 245) be corrected to read, "...recognized by the city, provided that the applicant satisfies all permit requirements..."
- Staff confirmed temporary vendors are not permitted to stay in campers or RV's on site while they are selling their produce, Christmas trees, furniture, etc.
- Mr. McKeller questioned the reasoning for a properly Permitted vending cart operator in the downtown not being allowed to use their Permit to operate during a special event. {Is existing text in City Code, not a proposed text amendment.}

~~ At 8:33 PM Mayor Harris called for a break. Break ended at 8:42 PM. ~~

Exhibit D

- Proposed text will provide additional flexibility within the UDO, and will elevate role of CAC.
- Ms. Perkins asked the status of staff review of the architectural chapter of the UDO.
- Staff continues to work on it. However, it is not a budgeted or item tasked to staff by Council and therefore is not upon the department's high priority list.
- 16.14 Architectural Exceptions, Section C (line 755), be corrected to read, "The approving authority in granting a special exception may...."

Public Hearing - Public Participation Comments:

Ms. Madrid Zimmerman, Heart of Brevard Executive Director, read a prepared comment describing the HOB "brick and mortar" businesses objections to the proposed text amendments for temporary vendor and vendor carts, with some objections based as a matter of fairness rather than equality. A copy was provided to the City Clerk and is on file.

Mr. Pete Peters, 111 Park Avenue, stated with respect to proposed text amendments: (1) Key Box / Knox Box - He suggested text be changed to “appropriate location” rather than “approved location”. (2) Billiard tables are very heavy and therefore to allow a business to have them upon a second floor should only be allowed if the structure has been designed and engineered for the floor to safely carry such a load. (3) Temporary Vendors – In addition to discussion of temporary vendors, the situation of downtown businesses utilizing the public sidewalk system as additional square footage to sell and promote their business without a permit, charge or payment to the City, should be addressed. Sidewalks are for pedestrian passage – merchandise upon the sidewalk has forced him and others to have to walk onto the curb or into the street. (4) Supports the text amendment to allow the BOA to consider architectural exceptions.

Council discussed with City Attorney their interest in possibly tabling Exhibits B and C, and, whether they should close or continue the public hearing. Attorney Pratt recommended they close the hearing as any significant changes to Exhibits B and C would require additional public hearing Notice and publication.

Public Hearing Closed – With no further questions or comments from Council or the public, Mayor Harris closed the hearing at 9:16 PM.

Public Participation – None

Consent Agenda – Mayor Harris explained Consent Agenda items are considered routine and are enacted by one motion. He read aloud the two (2) items listed and asked if Council desired to remove an item for discussion, or, add an item(s) to the Consent Agenda. Mr. Locks moved, seconded by Mr. McKeller the two Consent Agenda items be approved as presented. Motion carried unanimously.

Consent Item K-1 – Reappointed Ms. Norah D. Davis to the Brevard Planning Board for a three (3) year term to expire September 2014.

Consent Item K-2 – Accepted Brevard Police Department Quarterly Report as submitted by Chief Phil Harris.

Unfinished Business – Second Reading of **Ordinance No. 21-2011** Requiring the Abatement of a Nuisance on Land Owned by Satpal Rathie.

Mr. Canady moved, seconded by Mr. Morrow, to approve and enact Ordinance No. 21-2011 requiring the abatement of a nuisance on land owned by Satpal Rathie.

Vote on motion:

Yea: Mr. Canady, Mr. Morrow and Ms. Perkins

Nay: Mr. Locks and Mr. McKeller

Motion carried by majority 3-2 vote.

ORDINANCE NO. 21-2011

AN ORDINANCE REQUIRING THE ABATEMENT OF A NUISANCE ON LAND OWNED BY SATPAL RATHIE

WHEREAS, the Code Enforcement Office issued an Order of Abatement dated March 30, 2011, giving Mr. Rathie three options from which to choose in order to abate a nuisance described in the Order; and

WHEREAS, Mr. Rathie appealed to City Council from the Order of Abatement; and

WHEREAS, Council affirmed the Order of Abatement during the June 20, 2011, City Council meeting; and

WHEREAS, pursuant to Section 38-39 of the City Code of Ordinances, the minutes from the June 20, 2011, City Council meeting contain Council’s findings made in affirming the Order of Abatement, and these findings are incorporated herein by reference; and

WHEREAS, this Ordinance is enacted pursuant to Section 38-39 of the City Code of Ordinances.

NOW, THEREFORE, be it hereby ordained that:

1. The condition of Mr. Rathie's property, which is overgrown with weeds or other noxious vegetation over 24 inches in height, is hereby declared to be a danger and hazardous to the health, safety and general welfare of the inhabitants of the City and a public nuisance.

2. Mr. Rathie is to abate the nuisance by completing one of the three following methods within the next thirty (30) days following enactment of this Ordinance:

(1) Thoroughly mow and clean up the property as has been done in years past without fail. His history of previously performing this action annually, without fail, for many years clearly speaks to cognizance of the City Code Chapter 38, Section 38-32.1, and his failure to do so would be substantial evidence of willful non-compliance with the City's Code requirements.

(2) Thoroughly mow and clean up the property to the greatest extent possible, but leave a thirty-foot vegetated riparian buffer out from the top of the bank of Norton Creek. This is the option that would be the closest to complying with the City Code and the Environmental Protection (Chapter 6) section of the City's Unified Development Ordinance, and would be most desirous to the City.

(3) Hire a North Carolina licensed forester to develop a comprehensive forest management plan for the property and submit that plan to the City as a use of the property (silviculture, conservation, etc.). Implement and follow that plan's requirements.

3. Should Mr. Rathie fail so to do, at the order of the City Manager, the City shall enter upon Mr. Rathie's property for the purpose of abating the nuisance pursuant to Section 38-40, and the cost of abatement shall be declared a lien upon the property pursuant to Section 38-41.

4. A copy of this ordinance shall be served upon Mr. Rathie by the Code Enforcement Officer by FIRST CLASS MAIL and by CERTIFIED MAIL, RETURN RECEIPT REQUESTED.

5. This Ordinance shall be effective immediately upon its enactment.

Read and approved on first reading on August 1, 2011, and adopted on second reading on the 15th day of August, 2011.

New Business

New Business Item M-1 - Proposed **Ordinance No. 22-2011** Amending the Brevard City Code of Ordinance, Exhibits A, B, C and D.

Mr. McKeller moved Council adopt Ordinance No. 22-2011 as presented and amended to include the text corrections as described by Mr. Freeman (Exhibit B, lines 133 and 196; Exhibit C line 245; Exhibit D line 755). Motion failed for lack of a second.

Ms. Perkins stated she believes Exhibits B and C need to be further discussed.

Ms. Perkins moved Council adopt **Ordinance No. 22-2011**, Exhibit A as presented, and, Exhibit D as presented and amended with line 755 correction as described by Mr. Freeman. Motion was seconded by Mr. Morrow.

Discussion: Unanswered questions within Exhibits B & C remain. Council will provide feedback to Planning staff at their next regular meeting.

Vote on Motion: Motion carried unanimously. (Ordinance No. 22-2011 text to be corrected to reflect adoption of Exhibit's A and D only, including, renaming Exhibit D to Exhibit B.)

ORDINANCE NO. 22-2011 AN ORDINANCE AMENDING THE CITY OF BREVARD CODE OF ORDINANCES

WHEREAS, the City of Brevard Planning Board and Planning Department Staff have recommended a number of text amendments to the City of Brevard Code of Ordinances; and

WHEREAS, after review and consideration of the proposed amendments, it is the desire of the City Council of the City of Brevard to approve the amendments as recommended.

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

SECTION 01. The City of Brevard Code of Ordinances, Chapter 30. Fire Prevention and Protection, Section 30-8 is hereby adopted and shall read as set forth in Exhibit A of this ordinance, which is attached hereto and incorporated herein.

SECTION 02. The City of Brevard Code of Ordinances, Unified Development Ordinance, Chapter 16 Administration, Section 16.14. Architectural exceptions, is hereby amended to read as set forth in Exhibit B of this ordinance, which is attached hereto and incorporated herein.

SECTION 03. Any person violating the provisions of this ordinance shall be subject to the penalties set forth in Chapter 18 of the City of Brevard Unified Development Ordinance.

SECTION 04. As to any conflict between this ordinance and any parts of existing ordinances, the provisions of this ordinance shall control.

SECTION 05. 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 06. The enactment of this ordinance shall in no way affect the running of any Amortization provisions or enforcement actions, or otherwise cure any existing zoning violations.

SECTION 07. This ordinance shall be in full force and effect from and after the date of its adoption.

Adopted and approved this 15th day of August, 2011.

Mr. Morrow moved, seconded by Ms. Perkins, Council table Exhibits B and C to their next regular scheduled meeting, and, thanked staff for their work on the Exhibits presented tonight. Motion carried unanimously.

New Business Item M-2. Economic and Community Development Policy

Mr. Moore requested Council hold a workshop on August 29, 2011 at 5:30 PM for a Community Development work session.

Special Meeting Scheduled – Mr. Morrow moved, seconded by Mr. McKeller, Council schedule and hold a Special Meeting, Community Development workshop, as requested by the Manager on Monday, August 29, 2011 at 5:30 PM. Motion carried unanimously.

Remarks by Officials

Mayor Harris thanked the Fire Department staff for their preparation for the 9-11 remembrance planned for Sunday, September 11th at 8:30 AM at the Fire Department, when a piece of steel from one of the destroyed twin towers to be mounted upon the Fire Department.

Mr. Morrow thanked and commended Planning staff, Planning Board, Community Appearance Committee and the Technical Review Committee for their preparation and hard work exhibited tonight in review of the public hearing draft ordinance and four exhibits.

Ms. Perkins encouraged participation in the County 150th Celebration activities offered on September 3rd, including the Edwin McCain concert the City has sponsored.

Mr. Moore shared Chief Budzinski is to be applauded for the work and preparation being made for the 9-11 remembrance. Also to be applauded are Mr. Freeman, Planning staff and the Planning Board for the public input process they have initiated and facilitate allowing people to come forward and voice their comments and concerns on various subjects, like the input session on the temporary vendor subject.

Adjourn - There being no further business before Council, Ms. Perkins moved, seconded by Mr. Canady, the meeting be adjourned. Motion carried unanimously. Meeting adjourned at 9:37 PM.

Desiree D. Perry
City Clerk

Jimmy Harris
Mayor

Minutes Approved: September 19, 2011