

**MINUTES
BREVARD CITY COUNCIL
Regular Meeting
September 19, 2011 – 7:00 PM**

The City Council of the City of Brevard met in regular session on Monday, September 19, 2011 at 7:00 PM in the Council Chambers of City Hall with Mayor Jimmy Harris presiding.

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

Staff: Firefighter Chris Budzinski, Assistant Planning Dir. Brad Burton, Planner Daniel Cobb, Planning Dir. Josh Freeman, Police Chief Phil Harris, Public Service Dir. David Lutz, Planner Sarah Lutz-Pietersen; HR Dir. LeAnn McCraw, and Executive Assistant Jeanette Owen.

Press: Derek McKissock, Transylvania Times

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

Mayor Harris welcomed and recognized Ms. Sherry Jones and the Schenck Job Corp Student Government students who were present to observe a Council meeting.

Invocation and Pledge – Pastor David Spray, Pisgah Forest Baptist Church, offered the invocation. Mayor Harris led in the Pledge of Allegiance.

Certification of Quorum – The City Clerk noted the absence of Council Member Perkins and certified a quorum present.

Agenda – Mr. Pratt recommended: (1) Consent Agenda Item #4 to remain with the record noting the low bidder did not purchase a bid packet, but did obtain one by another appropriate means. If approved, enter a Finding within the record that obtaining the bid packet was not a significant deviation from the bid requirements, and that Council can and does waive the failure to purchase the bid packet as not being a substantive matter under Chapter 143, Article 8 of the General Statutes; (2) Recommended Council table two items, Item #4 Animal Control and Item #6 Co-Ed Theater Lease as the legal documents are not ready; and, (3) Closed Session be held to discuss (a) potential litigation, (b) pending litigation and (c) economic development. Mr. McKeller moved, seconded by Mr. Canady, the Agenda be amended as recommended by the City Attorney and approved. Motion carried unanimously.

Approval of Minutes – Mr. Locks moved, seconded by Mr. Morrow, the August 15, 2011 meeting minutes be approved as presented. Motion carried unanimously.

Special Presentation – 2010 Transylvania County Tax Settlement Report
Mr. David Reid, Tax Assessor, and Ms. Charlene Stone presented the Report which reflects an overall 99.45% collection rate. A copy of the Report is on file. Council accepted the Report and applauded the County Tax Office for their excellent work and collection rate.

Special Presentation – Status Report of the Transylvania County Community Land Trust (TCCLT) Activities Mr. Carroll Parker provided a handout and presented a power point describing a CLT provides affordable housing, includes workforce houses built by students to be turned over to the Land Trust rather than selling, and other benefits of a CLT. (A copy of the handout and power point slides are on file.)

Public Hearing – 2011 Transylvania County Multi-Jurisdictional Hazard Mitigation Plan

At 7:39 PM the properly advertised and noticed public hearing to receive comments on the 2011 Transylvania County Multi-Jurisdictional Hazard Mitigation Plan began and Mr. Freeman was called upon to present the staff report.

Mr. Freeman explained in 2005 the City adopted the current Hazard Mitigation Plan. To comply with FEMA requirement, and to make possible continued funding, communities are required to update and re-adopt a hazard mitigation plan every five years. Staff recommends Council's adoption of the 2011 Transylvania County Multi-Jurisdictional Hazard Mitigation Plan as presented.

Ms. Anita Lowe, Transylvania County Planner, described the Mitigation Plan includes: (a) Both old and updated data as required by FEMA; (b) steps to reduce vulnerability due to disasters; (c) Plan includes and identifies hazards like winter storms, flooding, riverine erosion, landslides, etc.; and, (d) mitigation actions accomplished since 2005 are outlined.

Mr. Burton shared the City's FEMA Community Rating System rating has improved from 10 to 8 which brings citizens a fifteen percent (15%) flood insurance rate savings.

Public Hearing - Public Participation Comments:

Ms. Elizabeth Reshower, Pisgah Forest, asked what a reverse 911 system is.

Ms. Lowe explained 911 operators can place a telephone call to citizens throughout the County or to a specified area based upon GIS mapping information to alert them of a potential hazard. Work continues on cell phone notification ability.

Public Hearing Closed – With no further questions or comments from Council or the public, Mayor Harris closed the hearing at 7:58 PM.

Public Participation

Ms. Leslie Logemann, 223 West Jordan Street, stated she represents a group of citizens who desire the City to amend its current ordinances that prohibits the raising of chickens in the city limits, to allow the raising of chickens. Asked Council to start proceedings to establish an ordinance that would allow the raising of chickens and that would not allow roosters, butchering, and requires coops are to be attractive, contained and maintained. She concluded by provided Council with a handout titled, "Chickens for Brevard" that includes text considerations for the requested ordinance. (Handout on file.)

Ms. Eliza Witherspoon, 126 Maple Street, is a seventh grade student who spoke in favor of allowing the raising of chickens in the City, explaining two years ago she owned and cared for two hens until notified that "fowls" are not allowed in the city limits. Her hens were relocated and are doing well. She read aloud benefits that would be realized by allowing chickens in the city and asked Council to consider allowing hens in the City.

Dr. Ann Holshouser, DVM, spoke in support of a back yard chicken ordinance while emphasizing the importance people be held accountable for the proper care of their chickens.

Ms. Elizabeth Reshower spoke in favor of an ordinance to allow the raising of hens.

Council expressed their interest in considering an ordinance that would allow the raising of chickens within the city limits. Manager will come back to Council with a schedule (staff preparation, BPB review, etc.). The subject will be upon a future Agenda that is posted and upon the City's website so citizens will know when it will again be discussed by Council.

Consent Agenda – Mayor Harris explained Consent Agenda items are considered routine and are enacted by one motion. He read aloud the four (4) items listed and asked if Council desired to remove an item for discussion, or, add an item(s) to the Consent Agenda. Recommendation offered that New Business items #1 and #2 be added to the Consent Agenda.

Mr. McKeller moved, seconded by Mr. Morrow, the four Consent Agenda items be approved and to amended the Consent Agenda to include New Business Items #1 and #2, and, to include with item #4 the Finding for Record with respect to the Brushy Creek Sewer Replacement bid packet.

Discussion:

Question: Mr. Locks asked for a brief description of Consent Item #4.

Answer: Mr. Moore explained the project includes replacement of old/aging sewer lines that are contributing to the City's I&I situation.

Vote on the motion: Motion carried unanimously.

Consent Item K-1 – **Resolution No. 24-2011** Memorandum of Agreement Between the City of Brevard and the North Carolina Wildlife Resource Commission for Hap Simpson Park.

RESOLUTION NO. 24-2011

**A RESOLUTION APPROVING A MEMORANDUM OF AGREEMENT BETWEEN
THE CITY OF BREVARD AND THE NORTH CAROLINA
WILDLIFE RESOURCE COMMISSION FOR HAP SIMPSON PARK**

WHEREAS, The City of Brevard (hereinafter the "City") has received funding through the State of North Carolina Division of Water Resources of the Department of Environment and Natural Resources, and;

WHEREAS, The North Carolina Wildlife Resource Commission (hereinafter the "Commission") has expressed an interest in assisting the City of Brevard in providing recreational river access to the French Broad River within the boundary of Hap Simpson Park;

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

Section 1. The City of Brevard hereby officially adopts a *Memorandum of Agreement* (hereinafter "Agreement") between the City of Brevard and the North Carolina Wildlife Resource Commission, which is included herein and incorporated by reference as Exhibit A, whereby the City agrees to certain conditions which will ensure free public access during the daylight hours for a minimum of 25 years.

Section 2. The Commission agrees to certain conditions which will facilitate the design and construction of a fishing platform and boat launch at Hap Simpson Park which will be designed and constructed by the Commission with materials paid for by the City of Brevard.

Section 3. This resolution shall take effect immediately and be effective for the life of the Agreement.

Adopted and approved this the 19th day of September, 2011.

Consent Item K-2 – **Ordinance No. 23-2011** Ordinance amending the FY 2011-2012 Budget Ordinance. The original Budget Ordinance No. 14-2011 contained incorrect dates which are corrected within the amended Ordinance No. 23-2011.

**ORDINANCE NO. 23-2011
(Amending Ordinance No. 14-2011)
CITY OF BREVARD FY 2011-2012 BUDGET ORDINANCE**

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

Sec. 1) The following amounts are hereby appropriated in the General Fund for the operation of the City Government and its activities for the Fiscal Year beginning July 1, 2011 and ending June 30, 2012 in accordance with the Chart of Accounts heretofore established for the City of Brevard:

	<u>Budget</u>
Governing Body	\$ 61,569
Administrative	285,605
City Clerk	126,479
Elections	16,000
Human Resources	168,863
Finance	423,042
Tax Collection	122,500
Legal	101,000
Planning	786,211
Building & Grounds	416,818
Police	2,488,364
Fire	371,995
Public Services:	
Administration	236,195
Garage	504,304
Streets Local	303,603
Streets Powell Bill	396,465
Sanitation	<u>644,139</u>
Total - Public Services	2,084,706
Recreation	88,104
Non-Departmental	302,427
Economic Development	31,850
Capital Budget	352,500
Contingency	<u>100,000</u>
Total Expenditures	\$ 8,328,033

Sec. 2) It is estimated that the following revenues will be available to the General Fund for the Fiscal Year beginning July 1, 2011 and ending June 30, 2012:

Taxes, Licenses/Permits	\$ 4,135,250
Intergov't. Revenues- NC	1,641,000
Refuse Collection Fees	667,000
Contractual Fees	376,650
Charges to Utility Fund	490,000
ABC Revenue	151,000
Charges to Fire District	229,000
Other Revenue	80,100
Fund Balance Appropriated ñ Elm Bend Sidewalk	375,000
Fund Balance Appropriated ñ Capital Budget	<u>183,033</u>
Total Revenues	\$ 8,328,033

Section 3) The following amounts are hereby appropriated in the Water and Sewer Utility Fund for the operation of said utilities for the Fiscal Year beginning July 1, 2011 and ending June 30, 2012:

Water Plant Operations	\$ 800,094
Water Distribution	473,295
Utilities Admin/Engineering	133,315
Sewer Plant Operations	861,368
Sewer Collection	874,678
Non-Departmental	717,336
W/S Special Project Budgets	2,446,778
Capital Budget	145,000
Contingency	<u>50,000</u>
Total Expenditures	\$ 6,501,864

Section 4) It is estimated that the following revenues will be available to the Water and Sewer Utility Fund for the Fiscal Year beginning July 1, 2011 and ending

June 30, 2012:

Water Billings	\$ 2,015,000
Sewer Billings	1,730,000
Transfer from Other Funds	200,000
W/S Project Budget Revenue	2,446,778
Fund Balance Appropriated - Capital Budget	17,586
Other Revenue	<u>92,500</u>
Total Revenues	\$ 6,501,864

- Section 5) The following amounts are hereby appropriated in the Heart of Brevard Municipal Service District Tax Fund for the Fiscal Year beginning July 1, 2011 and ending June 30, 2012:

Contract Services	\$ 121,000
Total Expenditures	\$ 121,000

- Section 6) It is estimated that the following revenues will be available to the Heart of Brevard Municipal Service District Tax Fund for the Fiscal Year beginning July 1, 2011 and ending June 30, 2012:

Service District Tax ñ Current	\$ 120,700
Service District Tax - Prior Years	<u>300</u>
Total Revenues	\$ 121,000

- Section 7) The following revenues will be continued for the Capital Reserve Fund for the Fiscal Year beginning July 1, 2011 and ending June 30, 2012:

Fund Balance Approp.	\$ 955,474
Impact Fees	7,500
Other	<u>4,000</u>
Total Revenues	\$ 966,974

- Section 8) The following expenditures will be continued for the Capital Reserve Fund for the Fiscal Year beginning July 1, 2011 and ending June 30, 2012:

Transfer to Other Funds	\$ 955,474
Other Expenditures	<u>11,500</u>
Total Expenditures	\$ 966,974

- Section 9) The following amounts are hereby appropriated in the Bjerg Fund for the Fiscal Year beginning July 1, 2011 and ending June 30, 2012:

Transfer to General Fund	<u>\$ 500</u>
Total Expenditures	500

- Section 10) It is estimated that the following revenues will be available to the Bjerg Fund for the Fiscal Year beginning July 1, 2011 and ending June 30, 2012:

Interest on Investments	<u>\$ 500</u>
Total Revenue	\$ 500

- Section 11) The following amounts are hereby appropriated in the Fire District Fund for the Fiscal Year beginning July 1, 2011 and ending June 30, 2012:

Transfer to General Fund	<u>\$ 229,500</u>
Total Expenditure	229,500

- Section 12) It is estimated that the following revenues will be available to the Fire District Fund for the Fiscal Year beginning July 1, 2011 and ending June 30, 2012:

	Fire District Tax	<u>\$ 229,500</u>
	Total Revenue	\$ 229,500
Section 13)	The following amounts are hereby appropriated in the Multi-Use Paths Fund for the Fiscal Year beginning July 1, 2011 and ending June 30, 2012:	
	Engineering & Construction	<u>\$ 876,567</u>
	Total Expenditures	876,567
Section 14)	It is estimated that the following revenues will be available to the Multi-Use Paths Fund for the Fiscal Year beginning July 1, 2011 and ending June 30, 2012:	
	Grants - \$250,000	
	Internal Funds ñ Transfer \$626,567	<u>\$ 876,567</u>
	Total Revenue	\$ 876,567
Section 15)	The following amounts are hereby appropriated in the Narcotics Task Force for the Fiscal Year beginning July 1, 2011 and ending June 30, 2012:	
	Operating Expenses	<u>\$ 35,000</u>
	Total Expenditures	\$ 35,000
Section 16)	It is estimated that the following revenues will be available to the Narcotics Task Force for the Fiscal Year beginning July 1, 2011 and ending June 30, 2012:	
	Grants, Internal Funds, Court Fees	<u>\$ 35,000</u>
	Total Revenue	\$ 35,000
Section 17)	The following amounts are hereby appropriated in the Downtown Master Plan for the Fiscal Year beginning July 1, 2011 and ending June 30, 2012:	
	Operating Expenses	<u>\$ 61,000</u>
	Total Expenditures	<u>\$ 61,000</u>
Section 18)	It is estimated that the following revenues will be available to the Downtown Master Plan for the Fiscal Year beginning July 1, 2011 and ending June 30, 2012:	
	Grants, Internal Funds, Court Fees	<u>\$ 61,000</u>
	Total Revenue	\$ 61,000
Section 19)	The following amounts are hereby appropriated in the Wayfinding Fund for the Fiscal Year beginning July 1, 2011 and ending June 30, 2012:	
	Operating Expenses	<u>\$ 174,000</u>
	Total Expenditures	<u>\$ 174,000</u>
Section 20)	It is estimated that the following revenues will be available to the Wayfinding Fund for the Fiscal Year beginning July 1, 2011 and ending June 30, 2012:	
	Grants, Internal Funds, Court Fees	<u>\$ 174,000</u>
	Total Revenue	\$ 174,000
Section 21)	It is estimated that the following revenues will be available to the Other Post Employment Benefits Fund for the Fiscal Year Beginning July 1, 2011 and ending June 30, 2012:	
	Transfer from General and Utility Funds	<u>\$ 18,750</u>
	Total Revenue	\$ 18,750
Section 22)	The following amounts are hereby appropriated in the Other Post Employment Benefits Fund for Fiscal Year beginning July 1, 2011 and ending June 30, 2012:	

Transfer to Irrevocable Trust	\$	<u>18,750</u>
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Section 23) It is estimated that the following revenues will be available to the Bracken Mountain Project Fund for the Fiscal Year beginning July 1, 2011 and ending June 30, 2012:

Planning Dept. Transfer (FY 2010-2011)	\$	23,000
NCDENR Grant Adopt-a-Trail		<u>5,000</u>
Total Revenue	\$	28,000

Section 24) The following amounts are hereby appropriated in the Bracken Mountain Project Fund for the Fiscal Year beginning July 1, 2011 and ending June 30, 2012:

Trail Design		<u>\$ 28,000</u>
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Section 25) It is estimated that the following revenues will be available to the Hap Simpson Stream Bank Restoration Project Fund for the Fiscal Year beginning July 1, 2011 and ending June 30, 2012:

Planning Dept. Transfer (FY 2010-2011)	\$	50,000
NCDENR Grant		<u>22,500</u>
Total Revenue	\$	72,500

Section 26) The following amounts are hereby appropriated in the Hap Simpson Stream Bank Restoration Project Fund for the Fiscal Year beginning July 1, 2011 and ending June 30, 2012:

Design and Construction	\$	72,500
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Section 27) It is estimated that the following revenues will be available to the CDBG Broad River Terrace Project Fund for the Fiscal Year beginning July 1, 2011 and ending June 30, 2012:

CDBG Grant	\$	250,000
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Section 28) The following amounts are hereby appropriated in the CDBG Broad River Terrace Project Fund for the Fiscal Year beginning July 1, 2011 and ending June 30, 2012:

Infrastructure Improvements, Administration, Planning	\$	250,000
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Section 29) That the Revenues and Expenditures set forth in Section 1 through Section 16 of this ordinance are hereby summarized as follows:

General Fund	\$	8,328,033
Water and Sewer Utility Fund	\$	6,501,864
Capital Reserve Fund	\$	966,974
Heart of Brevard MSD Fund	\$	121,000
Bjerg Fund	\$	500
Fire District Fund	\$	229,500
Multi-Use Paths Fund	\$	876,567
Narcotics Task Force	\$	35,000
Downtown Master Plan	\$	61,000
Wayfinding Fund	\$	174,000
Other Post Employment Benefits	\$	18,750
Bracken Mountain Project	\$	28,000
Hap Simpson Park	\$	72,500
CDBG ñ Broad River Terrace	\$	250,000
TOTAL BUDGET APPROPRIATIONS	\$	17,663,688

Section 30) There is hereby levied a tax at the rate of forty-three and one-fourth cents (\$0.4325) per one hundred dollars (\$100) valuation of property as listed for taxes

as of January 1, 2011 for the purpose of raising the revenue listed as Taxes in the General Fund in Section 2 of this ordinance. This rate is based on an estimated total valuation of property for the purposes of taxation of \$954,000,000 and an estimated collection rate of 99%. The estimated rate of collection is based on the actual rate of collection for FY 09-10.

- Section 31) There is hereby further levied a tax at the rate of twenty cents (\$0.2250) per one hundred dollars (\$100) valuation of property as listed for taxes as of January 1, 2011 within the boundaries of the Heart of Brevard Municipal Service District for the purpose of raising the revenue listed as Taxes in the Heart of Brevard Municipal Service District Tax Fund in Section 6 of this ordinance. This rate is based on an estimated total valuation of property for the purposes of taxation of \$54,000,000 and an estimated collection rate of 99%. The estimated rate of collection is based on the actual rate of collection of all City ad valorem taxes for FY 09-10.
- Section 32) The Budget Officer shall be authorized to reallocate departmental appropriations among the various line item expenditures of that department, as said officer believes necessary. The Budget Officer shall be authorized to effect interdepartmental transfers, in the same fund, provided that no departmental budget shall be reduced by more than ten percent without the prior approval of the City Council. Any such transfers shall be reported to the City Council at its next regular meeting and shall be entered in the minutes.
- Section 33) Copies of the Budget Ordinance shall be furnished to the Finance Officer and the Budget Officer of the City to be kept on file by them for their direction in the collection and disbursement of funds. Said officials are hereby authorized to receive and expend funds as herein set forth in accordance with the Brevard City Code and the General Statutes of the State of North Carolina.

Adopted and approved this 19th day of September, 2011.

Consent Item K-3 – **Resolution No. 17-2011** Authorizing Application for the North Carolina Governor’s Highway Safety Project Contract.

RESOLUTION NO. 17-2011

A RESOLUTION AUTHORIZING APPLICATION FOR THE NORTH CAROLINA GOVERNOR’S HIGHWAY SAFETY PROJECT CONTRACT

WHEREAS, the City Council of the City of Brevard herein called the “Agency” has completed an application contract for traffic safety funding and that the Brevard City Council has thoroughly considered the problem identified and has reviewed the project as described in the contract;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL IN OPEN MEETING ASSEMBLED IN THE CITY OF BREVARD, NORTH CAROLINA, THIS 19TH DAY OF SEPTEMBER, 2011, AS FOLLOWS:

1. That the project referenced above is in the best interest of the City of Brevard and the general public.
2. That Chief of Police Phil Harris is authorized to file, on behalf of the City of Brevard, an application contract in the form prescribed by the Governor’s Highway Safety Program for federal funding in the amount of \$15,000 to be made to the City of Brevard to assist in defraying the cost of the project described in the contract application.
3. That the City of Brevard has formally appropriated the cash contribution of \$-0- as required by the project contract.
4. That the Project Director designated in the application contract shall furnish or make arrangement for other appropriate persons to furnish such information, data, documents and reports as required by the contract, if approved, or as may be required by the Governor’s Highway Safety Program.
5. That certified copies of this resolution be included as part of the contract referenced above.
6. That this resolution shall take effect immediately upon its adoption.

Adopted and approved this the 19th day of September, 2011.

Consent Item K-4 – Resolution No. 19-2011 Awarding Contract for the Brushy Creek Basin Gravity Sewer Replacement Project.

Finding for the Record: The low bidder did not purchase a bid packet, but did obtain one by another appropriate means. Council finds obtaining the bid packet was not a significant deviation from the bid requirements, and that they can and do waive the failure to purchase the bid packet as not being a substantive matter under Chapter 143, Article 8 of the General Statutes.

RESOLUTION NO. 19-2011

A RESOLUTION AWARDING CONTRACT FOR THE BRUSHY CREEK BASIN GRAVITY SEWER REPLACEMENT PROJECT

WHEREAS, in accordance with G.S. 143-129, the City of Brevard received formal proposals for the Brushy Creek Basin Gravity Sewer Replacement Project at 11:00 A.M. on Tuesday, July 26, 2011 at City Hall; and,

WHEREAS, after receiving the Bid Tabulation from the bid opening for the proposed project, the Brevard City Council now desires to approve an award of contract.

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

Section 1. A contract for the Brushy Creek Basin Gravity Sewer Replacement Project is hereby awarded to Gosnell Construction Co., Inc., Hendersonville, North Carolina, for a bid price of \$281,720.00, as received at 11:00 A.M., Tuesday, July 26, 2011, in accordance with the City's bid documents for this project.

Section 2. The Mayor and City Clerk are hereby authorized and directed to execute contracts for this project on behalf of the City as set forth in Section 1 of this Resolution.

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

Adopted and approved this the 19th day of September, 2011.

Consent Item K-5 (New Business Item #M-1) – Resolution No. 18-2011 Adopting the Transylvania County Multi-Jurisdictional Hazard Mitigation Plan.

RESOLUTION NO. 18-2011

A RESOLUTION ADOPTING THE TRANSYLVANIA COUNTY MULTI-JURISDICTIONAL HAZARD MITIGATION PLAN

WHEREAS, as a result of collaborative efforts of Transylvania County, the Town of Rosman, the City of Brevard and other outside agencies, the Transylvania County Multi-Jurisdictional Hazard Mitigation Plan has been developed; and

WHEREAS, the mission of the Transylvania County Multi-Jurisdictional Hazard Mitigation Plan is to either substantially reduce or permanently reduce the community's vulnerability to natural hazards; and to promote sound public policy designed to protect citizens, critical facilities, infrastructure, private property, and the natural environment, by increasing public awareness, documenting resources for risk reduction and loss-prevention, and identifying activities to guide Transylvania County towards the development of a safer, more sustainable community, and

WHEREAS, after a public hearing on September 19, 2011, it is the desire of City Council to adopt the Transylvania County Multi-Jurisdictional Hazard Mitigation Plan.

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

Section 1. The Transylvania County Multi-Jurisdictional Hazard Mitigation Plan is hereby adopted and approved.

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

Adopted and approved this the 19th day of September, 2011.

Consent Item K-6 (New Business Item #M-2) – The Cottages at Brevard (a)
Resolution No. 20-2011 Accepting the Community Development Block Grant Housing

Development Grant Agreement and Funding Approval and Special Conditions, CDBG No. 10-C-2209; and, (b) **Resolution No. 21-2011** To Adopt the Citizen Participation Plan, Residential Anti-Displacement Relocation Plan and the Optional Coverage Relocation Plan for CDBG No. 10-C-2209; and, (c) **Resolution No. 22-2011** To Adopt Fair Housing Plan and Fair Housing Complaint Procedure, The Equal Employment and Procurement Plan and Procurement Policy, and the Local Economic Benefit For Low and Very Low-Income Persons (Section 3) Plan for CDBG No. 10-C-2209; and, (d) **Resolution No. 23-2011** Adopting A Code of Conduct for the Community Development Block Grant Award and Administration of Contracts CDBG NO. 10-C-2209; and, (e) **Ordinance No. 25-2011** Establishing a Project Budget for the City of Brevard Community Development Block Grant Housing Development Project CDBG No. 10-2-2209.

RESOLUTION NO. 20-2011

A RESOLUTION ACCEPTING THE COMMUNITY DEVELOPMENT BLOCK GRANT HOUSING DEVELOPMENT GRANT AGREEMENT AND FUNDING APPROVAL AND SPECIAL CONDITIONS -- CDBG NO-10-C-2209

WHEREAS, the City of Brevard is participating in the Community Development BLOCK Grant Program under the Housing Act of 1974, as amended, administered by the North Carolina Department of Commerce; and

WHEREAS, the City of Brevard has been allocated a CDBG Housing Development Grant in the amount of \$250,000 under Title I of the Housing and Community Development Act of 1974 for infrastructure improvements related to the Cottages at Brevard development.

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

Section 1. The Mayor and City Council are hereby authorized to execute the Grant Agreement and Funding Approval on behalf of the City.

Section 2. The City Manager is hereby authorized to act on the behalf of the City to accept and administer the grant accepted above, including but not limited to the execution of relevant contracts for the CDBG grant related to the Cottages of Brevard development.

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

Adopted and approved this the 19th day of September, 2011.

RESOLUTION NO. 21-2011

A RESOLUTION TO ADOPT THE CITIZEN PARTICIPATION PLAN, RESIDENTIAL ANTI-DISPLACEMENT RELOCATION PLAN AND THE OPTIONAL COVERAGE RELOCATION PLAN FOR CDBG NO. 10-C-2209

WHEREAS, The City of Brevard has received funding through the State of North Carolina's Community Development Block Grant Program, and;

WHEREAS, The City of Brevard has agreed, by acceptance of the CDBG funds (CDBG No. 10-C-2209), to abide by the various regulations governing the administration of the Community Development Block Grant Program;

NOW, THEREFORE, BE IT RESOLVED THAT:

Section 1. The City of Brevard hereby officially adopts the *Citizen Participation Plan* (Exhibit A) whereby citizens are provided with an adequate opportunity for meaningful involvement on a continuing basis and for participation in the planning, implementation and assessment of the CDBG program activities.

Section 2. The City of Brevard hereby officially adopts the *Residential Anti-Displacement Relocation Plan* (Exhibit B) and *Optional Coverage Relocation Plan* (Exhibit C) whereby replacement units and relocation assistance shall be provided to residents when occupied low/moderate income dwellings are demolished or replaced.

Section 3. This Resolution shall become effective upon its adoption and approval and be effective for the life of the grant (CDBG No 10-C-2209).

Adopted and approved this the 19th day of September, 2011.

RESOLUTION NO 22-2011

**A RESOLUTION TO ADOPT FAIR HOUSING PLAN AND FAIR HOUSING COMPLAINT PROCEDURE, THE
EQUAL EMPLOYMENT AND PROCUREMENT PLAN AND PROCUREMENT POLICY, AND THE LOCAL
ECONOMIC BENEFIT FOR LOW AND VERY LOW-INCOME PERSONS (SECTION 3) PLAN FOR CDBG NO. 10-
C-2209**

WHEREAS, The City of Brevard has received funding through the State of North Carolina's Community Development Block Grant Program, and;

WHEREAS, The City of Brevard has agreed, by acceptance of the CDBG funds (CDBG No. 10-C-2209), to abide by the various regulations governing the administration of the Community Development Block Grant Program;

NOW, THEREFORE, BE IT RESOLVED THAT:

Section 1. The City of Brevard hereby officially adopts the *Fair Housing Plan* (Exhibit A) and *Fair Housing Complaint Procedure* (Exhibit B) whereby activities will be taken to inform citizens concerning fair housing law and a means provided as to how citizens may register a complaint if they feel that they are not being provided their fair housing rights.

Section 2. The City of Brevard hereby officially adopts the *Equal Employment and Procurement Plan* (Exhibit C) and *Procurement Policy* (Exhibit D), to provide to the greatest extent possible, equal opportunities for minorities and disadvantaged populations in the employment and procurement of the grant.

Section 3. The City of Brevard hereby officially adopts the *Local Economic Benefit to Low and Very Low-Income Persons (Section 3) Plan* (Exhibit E) to ensure that contracts for work are awarded, to the greatest extent possible to local businesses.

Section 4. This resolution shall become effective upon its adoption and approval and be effective for the life of the grant (CDBG No 10-C-2209).

Adopted and approved this the 19th day of September, 2011.

RESOLUTION NO. 23-2011

**A RESOLUTION ADOPTING A CODE OF CONDUCT FOR THE COMMUNITY DEVELOPMENT
BLOCK GRANT AWARD AND ADMINISTRATION OF CONTRACTS CDBG NO-10-C-2209**

WHEREAS, the City of Brevard is participating in the Community Development BLOCK Grant Program under the Housing Act of 1974, as amended, administered by the North Carolina Department of Commerce; and

WHEREAS, the Community Development Block Grant – U.S. Housing and Urban Development Programs of the Federal and State Governments requires The City of Brevard to maintain a written Code of Conduct for public officials (elected and appointed), officers, employees or agents engaged in the award or administration of contracts supported by federal funds; and

WHEREAS, no public official, employee, official, officer or agent of the City of Brevard shall anticipate in the selection or in the award or administration of a contract supported by federal funds if a conflict of interest, real or apparent, is involved; and

WHEREAS, Attachment O – Circular No. A-102 of the Code of Federal Regulations, Section 7, entitled "Code of Conduct" defines such a conflict of interest that would involve a financial or other interest, real or apparent, is involved; and

WHEREAS, North Carolina General Statutes Chapter 14, Article 31, entitled "Misconduct in Office" provides standards, regulations, and penalties for violation of state and local laws by public officials, officers, and employees;

NOW, THEREFORE, BE IT RESOLVED THAT:

Section 1. North Carolina General Statutes, Chapter 14, Article 31, entitled "Misconduct in Office" shall govern the code of conduct required by the Code of Federal Regulations, Attachment O, and Circular No. A-102, as set forth heretofore.

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

Adopted and approved this 19th day of September, 2011.

ORDINANCE NO. 25-2011

CDBG HOUSING DEVELOPMENT GRANT ORDINANCE

AN ORDINANCE ESTABLISHING A PROJECT BUDGET FOR THE CITY OF BREVARD COMMUNITY DEVELOPMENT BLOCK GRANT HOUSING DEVELOPMENT PROJECT – CDBG NO. 10-C-2209

WHEREAS, The City of Brevard is participating in the Community Development Block Grant Program under the Housing Act of 1974, as amended, administered by the North Carolina Department of Commerce; and

WHEREAS, The City of Brevard has been allocated a CDBG Housing Development Grant in the amount of \$250,000 under Title I of the Housing and Community Development Act of 1974 for infrastructure improvements pertaining to the Cottages at Brevard development; and

WHEREAS, The City of Brevard now desires to establish a project budget to account for the disposition of these funds.

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

Section 1. A project budget shall be established for the CDBG Housing Development Grant Project #10-C-2209.

Section 2. Revenues for this project shall be:

	<u>Original Grant</u>
Housing Development	\$250,000
TOTAL REVENUES	\$250,000

Section 3. Projected expenditures for this project shall be:

Street Improvements	\$99,457.00
Sewer Improvements	\$64,328.50
Water Improvements	\$61,214.50
Administration	\$18,000.00
Planning	\$7,000.00
TOTAL	\$250,000.00
TOTAL EXPENDITURES	\$250,000

Section 4. This Ordinance shall remain in effect until the completion of the CDBG Housing Development Grant Project #10-C-2209.

Section 5. The City Clerk and the Mayor are instructed to take appropriate actions to implement this Ordinance.

Adopted and approved this the 19th of September, 2011

Unfinished Business – Ordinance No. 24-2011 Amending the City of Brevard Code of Ordinances, Exhibit A - Amusements, Exhibit B – Peddlers and Solicitors / Temporary Vendors.

Discussed Exhibit A – At Council’s last meeting Ms. Perkins questioned some of the standards and since she is not present tonight to continue in the discussion, perhaps this should be tabled. Although standards are within the City’s current Code, questions were raised with respect to implication of gambling, and who should and should not be employed (33.2B). Should text be amended to address no employment if one is a registered sexual offender?

Mr. McKeller moved, seconded by Mr. Canady, Exhibit A be tabled. Motion carried unanimously.

Mr. McKeller moved, seconded by Mr. Morrow, **Ordinance No. 24-2011** including the presented **Exhibit B** be adopted subject to the following changes: Sections 1 and 2 be deleted (as it references/relates to Exhibit A which was previously tabled) renumbering Sections 3 through 10 (to 1-8), and, Exhibit B be changed to “Exhibit A of Ordinance No. 24-2011”.

Discussion:

Question: What are the substantial changes?

Answer: (a) Remove from Chapter 46 and place within UDO; (b) site and safety control changes [traffic, pedestrian safety, travel lines, etc.]; and, (c) limiting the size on tents and signage standards.

Question: Maximum size and setbacks for tents?

Answer: 1,500 square feet; 10' setback

Vote on the motion: Motion carried unanimously.

ORDINANCE NO. 24-2011

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 46. Peddlers and Solicitors, Article I. In General, Section 46-1. Selling on Streets and Sidewalks, Subsection (g)(1), hereby amended to 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, Chapter 46. Peddlers and Solicitors, Article II. Vending Carts in Downtown Area, is hereby repealed.

SECTION 03. Certain sections of the City of Brevard Code of Ordinances, Unified Development Ordinance, which are listed below, are hereby amended to read as set forth in Exhibit A of this ordinance, which is attached hereto and incorporated herein.

A. Chapter 2. District Provisions, Section 2.2.C. Use Matrix

B. Chapter 3. Additional Use Standards, 3.23. Temporary uses permitted with standards.

C. Chapter 19. Definitions, Section 19.3. Definitions

SECTION 04. 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 05. As to any conflict between this ordinance and any parts of existing ordinances, the provisions of this ordinance shall control.

SECTION 06. If any section, subsection, paragraph, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed severable and such holding shall not affect the validity of the remaining portions hereof.

SECTION 07. 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 08. This ordinance shall be in full force and effect from and after the date of its adoption.

Adopted and approved this 19th day of September, 2011.

EXHIBIT A (Ordinance Number 24-2011)

1. The City of Brevard Code of Ordinances, Chapter 46. Peddlers and Solicitors, Article I. In General, Section 46-1. Selling on Streets and Sidewalks, Subsection (g) Selling from streets and vehicles, is hereby amended to read as follows.

(g) Selling from streets and vehicles. It shall be unlawful for any vendor, as defined in section 46-32, or for any person whatsoever, to sell, barter, exchange or attempt to sell, barter, or exchange any goods, wares or merchandise from any city street or from any vehicle except:

(1) As may be authorized with respect to vending carts in Chapter 3 of the City of Brevard Unified Development; or

(2) As the prohibition may be waived by the approving authority for special events recognized by the city provided that the applicant satisfies all permit requirements of section 66-7 and complies with article I of chapter 66 and other applicable provisions of this Code.

2. The City of Brevard Code of Ordinances, Unified Development Ordinance, Chapter 2. District Provisions, Section 2.2.C. Use Matrix, is hereby amended to read as follows:

-CHAPTER 2, SECTION 2.2.C, EXCERPT-

Temporary Uses & Structures	GR	RMX	NMX	DMX	CMX	IC	GI
Carnivals or Circus	—	—	—	—	PS	PS	PS
Farmers Market	—	—	PS	PS	PS	PS	—
Religious Meeting	PS	PS	PS	PS	PS	PS	PS
Contractor’s Office and Equipment Shed	PS	PS	PS	PS	PS	PS	PS
Seasonal Structures	PS	PS	PS	PS	PS	PS	PS
Satellite real estate sales office	PS	PS	PS	PS	PS	PS	PS
Special event	PS	PS	PS	PS	PS	PS	PS
Temporary Vendors	—	—	PS	PS	PS	—	—
Vending Pushcarts	—	—	—	PS	—	—	—

3. The City of Brevard Code of Ordinances, Unified Development Ordinance, Chapter 3. Additional Use Standards, 3.23. Temporary uses permitted with standards, is hereby amended to read as follows.

3.23. Temporary uses, structures, and special events permitted with standards.

A. General requirements.

1. Temporary uses, structures and special events shall be established for operation only after the issuance of a temporary use or special event permit and a city privilege license, the fees for which shall be set forth in the Schedule of Taxes, Fees and Charges of the annually adopted Budget Ordinance for the City of Brevard.
2. In the consideration of any temporary use, structure or special event, the administrator shall have broad discretion to impose such conditions as may be necessary to protect the health, safety and welfare of the public.
3. In addition to the specific temporary uses and structures listed below, the administrator may, at his or her discretion, issue a permit for other temporary use provided that:

a. The use is clearly of a temporary nature;

b. The use is limited to a period not to exceed 90 days except as otherwise provided; and

c. The use is in keeping with the requirements and is consistent with the spirit and intent of the district in which it is proposed, and of this ordinance.
4. In addition to the standards contained in the following sections, applicants for operation of a temporary use, structure or special event shall demonstrate compliance with each of the following requirements:

a. The use shall clearly be of a temporary nature.

b. The use shall not obstruct any public travel way except by specific approval by the city and will cause no traffic congestion;

c. The use shall not create a nuisance to surrounding uses.

d. The use shall not create hazards or adverse impacts related to parking, drainage, fire protection, or other adverse impacts.

e. The operator shall provide a plan for the management of waste generated by the use, and sanitary facilities if the administrator or health department deems it is necessary.

f. The operator shall satisfy all other requirements of the director of public health, the building inspector or the fire marshal.

g. The operator shall secure a business license, street closure permit, sidewalk closure permit, or parade permit if required.

h. Parking:

i. A minimum of five parking spaces shall be designated for use by patrons of the temporary use, structure or special event. In all cases, the applicant shall demonstrate that there will be adequate parking for the existing uses as well as the temporary use, structure or special event.

ii. Temporary use, structures, and special event may be permitted within developed parking lots that serve a principle structure(s), the hours of operation of which are the same as the use, structure or event, only when the number of existing parking spaces exceeds the minimum number of spaces that are required for the principle structure(s) by a minimum of five parking spaces, plus the number of parking spaces to be rendered unusable within the area of the use, structure, or event.

I. Area:

The total area of a temporary use or special event, including tents, display areas, and other appurtenances of the use, shall not exceed 2,000 square feet. This requirement shall not apply to the following categories of temporary uses or special events:

i. Special events, upon approval by the Administrator.

ii. Farmers markets.

iii. Carnivals and Circuses.

iv. Religious meetings.

v. Temporary vendors on undeveloped, vacant lots.

vi. Temporary vendors on developed properties containing principle structures, where the hours of operation of the principle structure does not conflict or overlap with the hours of operation of the temporary use, and when the property is wholly owned or leased by the operator of the temporary use.

j. Tents & Structures:

i. Applicants shall provide flame retardancy certifications for all tents.

ii. Temporary structures shall not exceed 120 square feet. Tents, satellite real estate sales offices and contractor's offices and equipment sheds shall not be subject to this requirement.

iii. Seasonal greenhouses, tents, and other temporary structures may be permitted for a period not to exceed 90 days. These structures must be removed on the expiration date of the permit.

iv. A contractor's office and equipment shed may be permitted in any district for a period covering the construction phase of a project, not to exceed one year, provided that such office be placed on the property on which the project is situated.

v. The administrator may approve the temporary set-up and occupancy of recreational vehicles (or other temporary dwellings in consultation with the building inspector) when the principal residence of the occupant has been destroyed by wind, fire, movement of earth, or other manmade or natural disaster, and subsequent to such event having been declared a disaster by the Mayor of the City of Brevard, the County Manager of the County of Transylvania, the Governor of the State of North Carolina, or the President of the United States. In no case shall such a vehicle or temporary dwelling be set up or occupied for a period exceeding 180 days. The setup or occupancy of a recreational vehicle shall not be permitted within the City of Brevard for any other reason whatsoever, except as otherwise provided for in this ordinance.

k. Site Layout.

i. Temporary uses, structures and special events shall be arranged so as to maximize public safety, to minimize conflicts among vehicles and pedestrians, to minimize conflicts with existing, permanent uses.

ii. Temporary uses, structures and special events shall be situated at least 10 feet from all property lines and any road right-of-way, shall not encroach onto any street, sidewalk, or travel way, and shall not obstruct any loading zone or handicapped parking space. This requirement shall not apply to special events approved by the City for placement upon public streets.

iii. Temporary uses, structures and events may obstruct travel ways within parking lots only upon determination by the administrator that such obstruction will not impede commerce, hinder the flow of traffic or endanger the safety of motorists or pedestrians. Uses, structures or events shall be clearly delineated and separated from areas of active vehicle operation by means of traffic safety cones, signage, flagging, or other approved means.

iv. Temporary uses, structures and special events shall be situated at least 10 feet from points of ingress and egress, and shall not obstruct the sight triangle at any intersection. Ingresses and egresses to the temporary uses, structures and special events shall be designated.

l. The administrator shall require an operations and site plan for each temporary use, structure, or special event, and shall require written permission for the operation of the temporary use, structure or special event by the owner(s) of the subject property.

m. The administrator may require that the operator provide a performance bond in the amount of 150 percent of the cost of removal of the use and restoration of the site.

n. The temporary use, structure or special event shall comply will all other applicable provisions of City Code.

B. Carnivals and Circuses

1. Carnivals and circuses may be permitted for a period not to exceed 21 days.

2. Carnivals and circuses shall only be permitted within undeveloped, vacant lots, or within developed parking lots that serve a principle structure, which structure is unoccupied for the duration of the carnival or circus.

3. Carnivals and circuses shall not employ registered sex offenders.

C. Farmers Market

1. Farmers Markets may be permitted for a period of one year.

2. Vendors and products:

a. Vendors may offer seasonal horticultural, agricultural, aquacultural or forest products, including but not limited to raw fruits, vegetable, perennials, annuals bulbs, dried flowers, Christmas trees, and similar products.

b. Vendors may offer value-added horticultural, agricultural, aquacultural or forest products which were produced by the vendor, including but not limited to baked goods, meat, dairy, honey, cider, preserves, relishes, jams, jellies and similar products.

c. Vendors may offer hand-made crafts and works of art which were produced by the vendor; provided, however, that such products shall not exceed 25 percent of all products sold within the venue on any given day of operation.

d. Vendors may offer food items prepared by the vendor; provided, however, that such products shall not exceed 25 percent of all products sold within the venue on any given day of operation, and provided that the vendor shall comply with all applicable requirements of the Director of Public Health and the North Carolina Department of Agriculture.

e. The sale of live animals is prohibited.

f. All vendors, including vendors utilizing vending push carts, shall situate products for sale, as well as associated vehicles, push carts, tents, tables or other materials within a designated vending space as delineated upon a site plan provided to the administrator in accordance with paragraph C.3, below.

3. The operator shall provide the administrator an operations plan, operating rules, and a list of the names of the vendors (persons, firms or corporations) who shall provide merchandise for sale as part of the market. The list shall generally describe the type of item to be sold by each said vendor. The updated versions of the aforementioned documents shall be provided with the renewal of the temporary use permit on an annual basis, or as otherwise required by the administrator.

D. Religious meetings

1. Religious meetings may be permitted in a tent for a period not to exceed 30 days.

2. Religious meetings shall be permitted only within undeveloped, vacant lots, or within developed parking lots that serve a principle structure provided that the hours of operation of the principle structure do not conflict or overlap with the hours of operation of the religious meeting.

E. Temporary Vendors

1. Temporary vendors, excluding vending pushcart operators, may be permitted one tent, which shall not exceed 1,500 square feet in area. Temporary vendors shall employ no other temporary structure.

2. Signage.

a. Temporary vendors, excluding vending pushcart operators, may be permitted one banner. Such banner shall be affixed to the wall of the tent or table, and shall not exceed 32 square feet in size.

b. Temporary vendors, excluding vending pushcart operators, may be permitted one A-frame sign. Such sign shall not exceed 8 square feet per side, nor shall it exceed 4 feet in height, and shall be placed in compliance with all applicable setbacks for ground signs within the zoning district in which the use is located. Such signs shall be removed at the end of each business day.

3. Prohibited Conduct.

No temporary vendor shall:

a. Sell, barter, exchange or attempt to sell any goods, wares or merchandise from any city street or from any vehicle or trailer. This prohibition shall not apply to vending carts as set forth below. This prohibition may be waived by the administrator for special events recognized by the city, provided that the applicant satisfies all permit requirements of section 66-7 and complies with article I of chapter 66 and other applicable provisions of Brevard City Code.

b. Vend on any street or sidewalk where vending is otherwise prohibited.

c. Vend between 9:00 p.m. and 7:00 a.m. of the following day, except during city-approved festivals and events.

d. Sell food or beverages for immediate consumption unless the operator has available for public use his own or a public litter receptacle which is available for his patrons' use and no more than ten feet distant from his pushcart or mobile food unit.

e. Leave the designated location without first picking up, removing and disposing of all trash or refuse remaining from sales made.

f. Solicit or conduct business with persons in motor vehicles.

g. Sell anything other than that which the operator is licensed to vend.

h. Sound or permit the sounding of any device which produces noise, or use or operate any sound system, radio, sound amplifier or speaker to attract the attention of the public.

- i. Vend within 50 feet of any driveway entrance to a police or fire station, or within ten feet of any other driveway or of any alley.
- j. Vend within ten feet of the crosswalk at any intersection.
- k. Vend within ten feet of any fire hydrant or fire escape.
- l. Allow any item relating to the operation of the vending business to lean against or hang from any building or other structure lawfully placed on public property, without the owner's permission.
- m. Vend within ten feet of any building.

4. Application for permit

The application for a temporary vending permit shall include:

- a. The name, home and business address of the applicant, and the name and address of the owner of the vending business or of the cart to be used in the operation of the vending business.
- b. A description of the type of food, beverage or merchandise to be sold.
- c. A description (including the size) and a photograph of any pushcart to be used in the operation of the business, including the license and registration number of any motor vehicle used in the operation of the business.
- d. Two prints of a full-face photograph, taken not more than 30 days prior to the date of the application, of any person who will sell or offer for sale any food, beverage or merchandise.
- e. A copy of any approval required by the county health department, building inspector, or fire marshal.
- f. Proof of an insurance policy, issued by an insurance company licensed to do business in the state, protecting the permittee and the property owner (including the City in the case of pushcart operators) from all claims for damages to property and bodily injury, including death, which may arise from operations under or in connection with the permit. Such insurance shall name the property owner as additional insured and shall provide that the policy shall not terminate or be canceled prior to the expiration date without 30 days' advance written notice to the city. Policies covering pushcart operators shall conform to the minimum coverage requirements as set forth by the city manager.
- g. The Federal and State tax identification numbers of the owner of the business, and copies of the owner's pre-printed North Carolina sales and use tax forms for the months of proposed operation.

5. All permits issued under this section shall be displayed in a prominent location at all times during the operation of the vending business.

6. Any temporary vendor's permit may be denied, suspended or revoked by the administrator for fraud or misrepresentation in the application for the permit or in the conduct of the business, for conduct of the business in such a manner as to create a public nuisance or constitute a danger to the public health, safety, welfare or morals, or for conduct which is contrary to the provisions of this chapter or any condition of permit approval.

7. Non-Agricultural Roadside Vendors

- a. non-agricultural vendors may be permitted to operate for a period not to exceed 90 days, after which such vendors shall vacate the premises and shall not be reestablished for a period of 45 days.

8. Agricultural Roadside Vendors

- a. Agricultural vendors may be permitted to operate for a period not to exceed 180 days, after which such vendors shall vacate the premises and shall not be reestablished for a period of 45 days.
- b. Agricultural vendors shall only offer seasonal horticultural, agricultural, aquacultural or forest products, including but not limited to raw fruits, vegetable, perennials, annuals bulbs, dried flowers, Christmas trees, and similar products.

9. Vending Pushcarts

a. To relieve any potential for traffic hazard or pedestrian congestion, or any safety hazard resulting therefrom, the number of vending carts with active permits within the central business district at any given time shall not exceed four.

b. No vendor selling from a pushcart on the sidewalk shall:

i. Leave any pushcart unattended.

ii. Store, park or leave any pushcart overnight on any street or sidewalk.

iv. Vend within 75 feet of any other vending cart.

v. Set up, maintain or permit the use of any table, crate, carton, rack or other device to increase the selling or display capacity of his pushcart or where such items have not been described in his application.

vi. Allow any items relating to the operation of the vending business to be placed anywhere other than in, on or under the pushcart.

ix. Maintain any pushcart upon any street or sidewalk which impedes, endangers or interferes with the travel upon or use of the street or sidewalk.

x. Set up a pushcart so as to block or impede ingress and egress to any structure.

c. If it becomes necessary for the regulation of traffic or the safety or convenience of pedestrians, any law officer of the city may direct vendors to move to another location. No person may refuse to comply with a law enforcement officer when the order is given under the authority of this section.

d. Size of pushcarts

i. No pushcart shall exceed 48 inches in width or 72 inches in length.

ii. No pushcart shall exceed 60 inches in height, nor shall any canopy be less than 78 inches in height at its lowest point.

iii. The administrator shall have the right to require smaller dimensions based upon such factors as, but not limited to, pedestrian and vehicular safety and adequate sight distances.

e. Minimum travel way

The pushcart shall be set up so that a minimum of five feet of pedestrian passage is maintained along the sidewalk at all times.

f. Operation during special events within the central business district.

Vendor permits will be invalid during special festivals and events in the within the central business district. However, vendors may apply for permits from the sponsoring organization or committee to operate within the area of the special event.

3. The City of Brevard Code of Ordinances, Unified Development Ordinance, Chapter 19, Definitions, Section 19.3. Definitions, is hereby to amended to include the following definitions:

Chapter 19. Definitions, Section 19.3. Definitions

Farmers Markets means venues wherein multiple vendors sell or offer for sale, seasonal products directly to consumers on a non-wholesale basis. Farmers markets shall be accessible to the general public and managed by public or non-profit entities. Farmers Markets are a form of temporary use.

Vending Pushcart means any self-contained, wheeled vehicle used for displaying, keeping or storing any article by a vendor or peddler (other than a motor vehicle, bicycle or trailer) which may be moved without the assistance of a motor and does not require registration by the state department of motor vehicles. Vending pushcarts are a form of temporary use.

New Business

New Business Item M-3 – Contract Award for the Septage Pre-Treatment Station and Inter-Local Governmental Agreement.

Mr. Moore recommended Council not proceed with the awarding of the contract at this time and directed Council's attention to the "Fiscal Impact" portion of his staff report (on file) describing the Inter-Local Agreement assigns responsibility of invoices to the County. However if default occurs, then the City is responsible for payment of invoices to the contractors and engineers in the short-term by virtue of the City's contract with those parties. Manager sought Council's direction.

Mr. McKeller moved, seconded by Mr. Canady, Council table adoption and acceptance consideration of the awarding the bid contract and Inter-Local Governmental Agreement until their next regular meeting scheduled for October ~~10~~ 17, 2011. Motion carried unanimously.

New Business Item M-5 – Tourism Development Authority (TDA) and Planning Board (BPB) Appointments.

Mr. Locks moved, seconded by Mr. Morrow, Dee Dee Perkins be reappointed to serve as City Council representative on the Tourism Development Authority thru December 2011. In January, having benefit of a full Council, another Council representative will be appointed to TDA. Motion carried unanimously.

Three applications are on file for Planning Board appointment consideration. While Council affirmed any one of the three would be a good member, Mr. Morrow suggested Mr. Platt be considered as he resides on Whitmire Street and has already been active in the planning for redevelopment of this area within the City. Mr. Morrow moved, seconded by Mr. Canady, that Mr. Parker Platt be appointed to serve on the Planning Board to filling the unexpired term from Karla Atkinson; term to expire September 2012.

October Meeting Date Correction and Adoption of Revised Meeting Schedule: Council's regular October meeting is scheduled for October 17th, not October 10th as previously mentioned in the motion to table NB Item #M-3. October 10th is a scheduled Special Meeting workshop. Mr. McKeller moved, seconded by Mr. Canady, to amend the motion to table to correct the date to October 17th, and, to adopt the schedule of meetings approved at Council's September 6th Special Meeting as sent out by the City Clerk (Meeting Schedule, Exhibit A). Motion carried unanimously.

Remarks by Officials

Mayor Harris commented the 150th Celebration was great and applauded all who had a hand in the planning and organizing of the various activities.

Mr. Canady commented the Song Fest was also great.

Mr. Morrow shared the DuPont State Forest has been recognized as being #5 in biking and outdoor recreation, which fits right into our branding efforts.

Mr. McKeller stated the City lost an outstanding public servant this past week with the passing of Mr. Terry Scruggs, who served as the City's Finance Director for many years and who's contributions to the City cannot be measured.

Mr. Moore echoed Mr. McKeller's comments, adding Terry had a profound effect upon on community and City staff members.

Closed Session - Mayor Harris asked the City Attorney if it would be appropriate to convene a closed session to discuss three items separately: (1) **Pending litigation, Glade Homes vs City of Brevard**, (2) **Potential litigation**, and (3) **Economic development**. City Attorney advised it would with the appropriate motion, second and vote pursuant to

GS § 143-318.11. (a)(3) to consult with an attorney employed or retained by the public body in order to preserve the attorney-client privilege between the attorney and the public body, which privilege is hereby acknowledged; and, pursuant to **GS § 143-318.11. (a)(4, 5)** to discuss matters related to the economic development.

Upon motion by Mr. McKeller, seconded by Mr. Locks, and unanimously passed a closed session to discuss pending litigation, **Glade Homes vs City of Brevard**, potential litigation and economic development was called at 9:07 PM and to convene upon clearing Council Chambers.

A three (3) minute recess took place in order to allow all who were not authorized to remain to leave Council Chambers.

Adjourn Closed Session to Regular Session – At 10:35 PM, Mr. McKeller moved, seconded by Mr. Canady, the closed session be adjourned into regular session. Motion carried unanimously.

No official action was taken in closed session and Minutes of the Closed Session are authorized to be sealed.

Adjourn - There being no further business before Council, Mr. McKeller moved, seconded by Mr. Canady the meeting be adjourned. Motion carried unanimously. Meeting adjourned at 10:35 PM.

Desiree D. Perry
City Clerk

Jimmy Harris
Mayor

Minutes Approved: November 21, 2011

Minutes – Brevard City Council – September 19, 2011
EXHIBIT A

Brevard City Council
2011 Meeting Schedule

Meetings are held at 7:00 PM unless indicated otherwise.

Monday, January 24, 2011 (*Changed to 4th Monday due to MLK Holiday.*)
 Monday, February 7, 2011
 Monday, February 21, 2011
 Monday, March 7, 2011
 Monday, March 21, 2011
 Monday, April 4, 2011
 Monday, April 18, 2011
 Monday, May 2, 2011
 Monday, May 16, 2011
 Monday, June 6, 2011
 Monday, June 20, 2011
 - *Council will not meet on 1st Monday of July due to Independence Day Holiday.*
 Monday, July 18, 2011
 Monday, August 1, 2011
 Monday, August 15, 2011
 Monday, August 29, 2011 @ 5:30 PM – #1 Community Development Strategy *Special Mtg.*
 - *Council will not meet on 1st Monday of September due to Labor Day Holiday.*
 Tuesday, September 6, 2011 @ 5:30 PM – #2 Community Development Strategy *Special Mtg.**
 Monday, September 19, 2011
~~Monday, October 3, 2011 Meeting Cancelled*~~
 Monday, October 10, 2011 @ 5:30 PM – #3 Community Development Strategy Workshop*
 Monday, October 17, 2011
 Thursday, October 27, 2011 @ 5:30 PM – #4 Community Development Strategy Workshop*
~~Monday, November 7, 2011 Meeting Cancelled*~~
 Tuesday, November 15, 2011 @ 5:30 PM – #5 Community Development Strategy Workshop*
 Monday, November 21, 2011 @ 4:00-6:30 PM – #6 Community Development Strategy Workshop*
 Monday, November 21, 2011 @ 7:00 PM Regular Meeting
 Monday, November 28, 2011 @ 5:30 PM – #7 Community Development Strategy Workshop*
 Monday, December 5, 2011
 - *Council will not meet on 3rd Monday of December due to Christmas Holiday.*

2012 Meetings Scheduled*

Tuesday, January 17, 2012*
 Thursday, February 9, 2012 Annual Retreat - #8 Community Development Strategy Workshop*
 Friday, February 10, 2012 Annual Retreat*
 Saturday, February 11, 2012 City Council Annual Retreat*
Note: Annual Retreat meetings start time has not yet been determined.
 Monday, February 20, 2012*
 Monday, March 5, 2012 - #9 Community Development Strategy Public Hearing*

Adopted: December 6, 2011

Posted on bulletin boards: December 9, 2011

City website & Sunshine List: December 16, 2010

*Meeting Schedule Amended: September 6, 2011

Amended Meeting Schedule posted on bulletin boards, website & Sunshine List: September 7, 2011

By: D. Perry, City Clerk