

**MINUTES
BREVARD CITY COUNCIL
Regular Meeting
February 20, 2012 – 7:00 PM**

The City Council of the City of Brevard met in regular session on Monday, February 20, 2012 at 7:00 p.m. in the Council Chambers of City Hall with Mayor Jimmy Harris presiding.

Present: Mayor Jimmy Harris, Mayor Pro Tem Mac Morrow, Council Members Rodney Locks, Charlie Landreth, Wes Dickson and Maurice Jones.

Staff Present: City Manager Joe Moore, City Attorney Mike Pratt, City Clerk Desiree Perry, Fire Chief Craig Budzinski, Asst. Planning Dir. Brad Burton, Finance Director Jim Fatland, Planning Dir. Josh Freeman, Bldg & Grounds Dir. Lynn Goldsmith, Police Chief Phil Harris, Public Service Dir. David Lutz, Planner Sarah Lutz-Petersen, HR Dir. LeAnn McCraw, and Executive Assistant Jeanette Owen

Press: Derek McKissock of Transylvania Times, Leigh Kelly of Times News, and Morgan Newman of WSQL Radio

Others: Madrid Zimmerman, Heart of Brevard Executive Director

Welcome – Mayor Harris called the meeting to order, welcomed those present and introduced council members, City Attorney, Manager and Clerk.

Invocation – Pastor Judy Jennings, Joy Outreach Fellowship Church, offered the invocation.

Pledge of Allegiance to Flag – Boy Scout Troup #701 member Josiah Williams accompanied by Boy Scout Troup #703 members Sean Dambax, Josh Shuman, Caleb Smith, Daniel Hudson, Matt Harris, Parker Winston, Wesley Benson and Drew Chopin, led in the Pledge of Allegiance to the Flag.

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

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

Approval of Minutes – Mr. Landreth asked two corrections be made to the January 23rd draft Minutes: Page 1, paragraph 1, correct date from “January 2, 2012” to “January 23, 2012”; Correct spelling of name from “Brian Jonest” to “Brian Jenest”. Mr. Morrow asked the sentence within quotes on page 3, paragraph 1 be corrected to read, “We *have* enough spaces...” Mr. Jones moved, seconded by Mr. Locks, the January 6 Council Orientation Workshop meeting minutes be adopted as presented, and the January 23, 2012 regular meeting Minutes be corrected as described and adopted. Motion carried unanimously.

Public Hearing #1– Proposed Amendments to the Brevard City Code, Chapter 42, Article I, Section 42-3; Chapter 42, Article II, Section 42-41 and Chapter 46, Article I, Section 46-1. (a) Allow Sale of Alcoholic Beverages in Public Space during Approved Special Events; (b) Add Sidewalks and Other Public Ways to the List of Public Spaces in which it is Unlawful to Display Obscene Materials; and (c) Require the Issuance of a Permit and Agreement for the Private Use of Public Space for Outdoor Merchandise and Other Items, and to Allow the consumption of Alcoholic Beverages within Approved Outdoor Dining Areas.

At 7:16 p.m. the properly advertised and noticed public hearing to receive comments on the proposed amendments to the Brevard City Code began and Mr. Freeman was called upon to present the staff report.

Mr. Freeman stated the origin of the proposed City Code text amendments are from an application submitted by the Heart of Brevard (HOB). The following information was shared during the presentation:

- Section 42-3 Consumption of alcoholic beverages in public place.
- Currently outdoor alcohol consumption on public spaces is not allowed. A few years ago Council granted a one-time trial run whereby the HOB obtained the appropriate NC Alcohol Law Enforcement (ALE) Permit for the offering of sale and consumption of beer during the annual White Squirrel special event on public space. However, HOB decided to limit sale and consumption to private property. Since then, the HOB has continued to obtain ALE Permit for the sale and consumption of beer at the White Squirrel event limited to private property (private parking area within the Times Arcade Alley).
- Proposed amendment (a) would allow non-profits during special events to offer the sale and consumption of beer and wine only between the hours of 12 p.m. and 11 p.m., limited to area within one City block, provided the appropriate Operation Plan and NC ALE Permits are obtained.
- ALE requires a fence or barrier {minimum waist high of wrought iron, rope, etc.} around dining areas and outdoor seating areas. Would need to meet zoning setback requirement; therefore, only a few existing commercial/restaurant spaces would have the ability to meet the requirements.
- Requires serving of alcohol beverages in multi-use table ware. Cannot serve in product original container (i.e. beer bottle).
- Section 42-41 Displaying obscene materials.
- Proposed would include sidewalks and public ways in the list of places where the display of obscene materials is prohibited.
- Section 46-1 Selling on streets and sidewalks.
- City frequently receives complaints from citizens regarding merchandise within the sidewalk area which prohibits their using the public space for clear passage.
- Planning staff mailed out letters/notices to businesses; however, resulted in very little response to bring about compliance.
- Proposal includes businesses continued use of public space for sale of merchandise, provided they agree to the requirements by contract and obtain a no-fee Permit (for liability management).
- Purpose of the contract and/or permit is to insure business owners/merchants are aware of and agree to the requirements.
- Use of public space for the sale of private materials must comply with ADA standards, and, liability insurance as required during special events needs to be secured. (NC League of Municipalities requires of City.)
- Today NCLM recommends 2 million coverage. From their (insurance providers) perspective, conveying rights to use public space whether for a special event or to private business owner is the same. Staff recommendation is to not specify an amount (i.e. 2 million) within the text as the amount may be increase in the future.

Council Discussion:

- (Agenda Pkg. Pg. 7) Draft Pg. 1, Line 30, remove “approved special events”
- (Agenda Pkg. Pg. 7) Draft Pg. 1, Line 34, remove “which shall not exceed one city block”.
- (Agenda Pkg. Pg. 8) Draft Pg. 2, Line 48, correct from “specially” to “specifically”.
- (Agenda Pkg. Pg. 8) Draft Pg. 3, Lines 59-60, delete (redundant).
- (Agenda Pkg. Pg. 10) Draft Pg. 10, Line 133, correct to read “Sections 42-41 and 46-1”
- (Agenda Pkg. Pg. 11) Draft Pg. 11, Line 146, correct reference subsection from “b” to “c”.
- Expressed support for proof of insurance for private merchandise upon public property (sidewalk) as it is reasonable protection of the City’s risk.
- City should be named as an additional co-insuree.
- Asked staff why recommending both a contract/agreement and a permit?

- Staff reply: Would allow for two different vehicles, contract or civil/criminal penalties route, to address any potential code enforcement situations.

Public Hearing - Public Participation Comments:

Mr. Ted Fuhrer, Pisgah Forest Rotary Club President, spoke in favor of the proposed text amendments. The primary fundraiser of Rotary for the past 12 years has been the cycling event, Assault on the Carolinas. Last year event was moved from the High School to East Main Street. A professional start/finish line was added, space for cycling vendors, and (upon private property) offered amenities of music and the sale of beer. Resulted in a record year for cyclist registrations and net funds generated, as well as, was an economic benefit to our community in lodging, food, fuel and music revenues. (A copy of the prepared comments he read aloud are on record.)

Mr. Skip Hirsh, 61 Lakepoint Drive, Pisgah Forest, spoke in favor of the proposed text amendments. The text amendments are in keeping with and the result of the Branding Arts and Music Task Force recommendations. Allowing sale and consumption of alcohol beverages would increase the quality of the customers experience as they enjoy art, music and gather together, and would bring additional revenue to the City.

~~ Mayor called for a ten minute break from 8:27 to 8:37 p.m. ~~

Mr. Tom Cabe, Red Wolf Gallery, spoke in opposition to the proposed contract/agreement and permit for business owners and merchants to obtain prior to using the sidewalk for placement of merchandise, etc. If a merchant is to be required to pay for insurance they should not also be required to obtain a permit. Proposed is a no-fee permit; however, adoption of this would be laying the ground work for future permit with fees.

Mr. Phil Hoffmann, Looking Glass Outfitters located at 69 Hendersonville Highway, spoke in favor of the proposed text amendments. Proposed is in keeping with the result of the Branding Outdoor Recreation Task Force recommendations. Some who enjoy participating in various outdoor recreation opportunities our community offers, would also enjoy ability to have an alcohol beverage while seated outdoors.

Mr. John Felty, 246 Morningside Drive, spoke in favor of the proposed text amendments. We are competing with other communities of comparable size and population, many of which allow the consumption of alcohol in public spaces. Special Events are important to our community and in order for us to grow and maintain we must receive funding and this is one way that an event can self sustain. We are creating a community of likeminded individuals, and if we are going to continue attracting them and the next generation, will need to provide them the cultural background to enjoy the arts, music, outdoor recreation and allowed to have an alcohol beverage outdoors.

Ms. Kim Provost, Heart of Brevard President and owner of Hunters & Gatherers at 40 W Main Street, spoke in opposition to the proposed text amendment requiring an agreement/contract and permit prior to a business using public space. Believes allowing sidewalk merchandise gets people excited and attracts them to shop downtown. If amendments are adopted it will not accomplish more compliance or reduce liability, and will be viewed as not business friendly. Requests proposed requirement be deleted. (A copy of the prepared comments she read aloud are on record.)

Ms. Ann Hollingsworth, Main Street Limited, spoke in opposition of the proposed permit requirement. Believes being business friendly is very important right now. Can agree on the need for liability insurance described as the City is taking a risk, however questioned if one million rather than two would be sufficient.

Public Hearing Closed – With no further questions or comments from Council or the public, Mayor Harris closed the hearing at 8:58 p.m.

Public Hearing #2- Official Zoning Map Amendment to Establish the SAFE, Inc. of Transylvania County Planned Development District (PDD). Property is located on the north side of North Broad Street adjacent to Railroad Avenue, PIN 8586-53-7347-000, Deed Book 355 Page 57.

At 8:59 p.m. the properly advertised and noticed public hearing to receive comments on the proposed zoning map amendment and PDD began.

Mr. Locks stated he is the Chairman of SAFE and being very familiar with the request and having his opinion on the matter believes he should be recused.

Mr. Morrow moved, seconded by Mr. Landreth, Mr. Locks be recused from the SAFE, Inc., public hearing and further discussion. Motion carried unanimously.

Mr. Freeman and Ms. Lutz-Pietersen were called upon to present the staff report. (Staff report on file.) Mr. Freeman described conditional zoning as the City's ability to establish site specific zoning and use, unlike the more traditional re-zoning where any use permitted within a given district could be allowed. The PDD process allows for more flexibility in the development process whereby the developer and the City negotiate site-specific development standards for a project. Standards are codified in a stand-alone ordinance that applies to the property in perpetuity.

Using a digital projector, Ms. Lutz-Pietersen displayed a map of the subject property showing the property boundaries, current zoning district designation, and access. Applicants request includes: (1) To expand by adding 2,228 square feet to their current 3,230 sq. ft. building used as an emergency facility for victims of domestic violence; (2) To continue to receive City's rolling services at their gate rather than at the road R-O-W; (3) Flexibility in meeting stormwater requirements; (4) To use existing 10' wide two-way travel lane (Code requires 20); (5) Be allowed continued use of the existing gravel parking area (Code requires paving); (6) For security purposes, not be required to provide any pedestrian infrastructure on site; and, (7) Not be required to provide improvements for connectivity to or dedication of sufficient public R-O-W.

Staff, TRC and Planning Board recommendations: Project is in keeping with the 2010-2015 Consolidated Strategic Housing and Community Development Plan policy goal; dedication of a 30' right-of-way along Railroad Avenue for the future West Loop in keeping with the adopted Countywide Comprehensive Transportation Plan; and, in keeping with the City's Pedestrian Plan the dedication of a 20' pedestrian easement along the southwestern edge of the property as a viable option in the event the City is unable to obtain a more desirable easement on the south side of King's Creek.

Stormwater compliance is required. Council does not have the authority to waive the City's stormwater compliance requirements. Staff will work with the applicant/developer to insure compliance.

Mr. Will Buie, PE, of Lapsley & Associates, PA, speaking on behalf of SAFE shared the project would allow SAFE to double in size from a 9 bed to a 18 bed facility. Property is a large site with only a small portion being proposed for expansion, and, portions of the property are within designated flood zones. The proposed stormwater BMP will accommodate the new addition only, and the dedication of a stormwater easement within the flood zone will satisfy stormwater requirement for the existing impervious surface. Requested they not be required to provide pedestrian or bike path or easement as SAFE believes it is not in the best interest for their type of facility, and that the City would be better served by securing an easement across the stream (not on SAFE property). Of the Options displayed (staff report Exhibit C), they request the City only require Option 2.

Ms. Sally Stepp, SAFE representative, provided history of the facility, the positive impact they have made in assisting victims of domestic abuse, and, because of their

security concerns are asking they not be required to provide pedestrian access and easements.

Council, staff and applicant discussed together the different Pedestrian Easement Options (staff report Exhibit C). While an easement on the opposite side of the creek (from SAFE property) is more desirable, the City may not be able to obtain, or it could be many years before ability to do so, and therefore an easement should be obtained from SAFE. To achieve the City's pedestrian goals, both Option 1 and 2 would be needed.

Public Hearing - Public Participation Comments:

Mr. Rick Lasater, Brevard Planning Board Chair, stated that while he was initially in agreement with the Planning Board's recommendation to require a pedestrian easement, he (personally) no longer believes the City requiring an easement is warranted.

Public Hearing Closed – With no further questions or comments from Council or the public, Mayor Harris closed the hearing at 10:09 p.m.

Public Participation

Mr. David Carr, Army Strong Community Center at 306 East French Broad Street. Invited Council and citizens to the Center and asked for help in getting the word out the Center is open Monday-Friday, 8 a.m. to 5 p.m., and he and the staff are prepared and desire to assist veterans and their families in any way possible.

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.

Mr. Locks moved, seconded by Mr. Landreth, the four Consent Agenda items be approved as presented. Motion carried unanimously.

Consent Item K-1 – Staff Report: Public Services Department

Consent Item K-2 – **Resolution No. 2012-03** Authorizing the Refinancing of Fire Trucks.

Resolution No. 2012-03

A Resolution Approving Financing Terms

WHEREAS: The City of Brevard ("City") has previously determined to undertake a project for refinancing two (2) fire trucks (the "Project"), and the Finance Officer has now presented a proposal for the financing of such Project.

BE IT THEREFORE RESOLVED, as follows:

1. The City hereby determines to finance the Project through Branch Banking and Trust Company ("BB&T"), in accordance with the proposal dated February 8, 2012. The amount financed shall not exceed \$685,000.00, the annual interest rate (in the absence of default or change in tax status) shall not exceed 1.89%, and the financing term shall not exceed eight (8) years from closing.

2. All financing contracts and all related documents for the closing of the financing (the "Financing Documents") shall be consistent with the foregoing terms. All officers and employees of the City are hereby authorized and directed to execute and deliver any Financing Documents, and to take all such further action as they may consider necessary or desirable, to carry out the financing of the Project as contemplated by the proposal and this resolution. The Financing Documents shall include a Financing Agreement and Deed of Trust and a Project Fund Agreement as BB&T may request.

3. The Finance Officer is hereby authorized and directed to hold executed copies of the Financing Documents until the conditions for the delivery of the Financing Documents have been completed to such officer's satisfaction. The Finance Officer is authorized to approve changes to any Financing Documents previously signed by City officers or employees, provided that such changes shall not substantially alter the intent of such documents or certificates from the intent expressed in the forms executed by such officers. The Financing Documents shall be in such final forms as the Finance Officer

shall approve, with the Finance Officer’s release of any Financing Document for delivery constituting conclusive evidence of such officer's final approval of the Document’s final form.

4. The City shall not take or omit to take any action the taking or omission of which shall cause its interest payments on this financing to be includable in the gross income for federal income tax purposes of the registered owners of the interest payment obligations. The City hereby designates its obligations to make principal and interest payments under the Financing Documents as "qualified tax-exempt obligations" for the purpose of Internal Revenue Code Section 265(b)(3).

5. The City intends that the adoption of this resolution will be a declaration of the City’s official intent to reimburse expenditures for the project that is to be financed from the proceeds of the BB&T financing described above. The City intends that funds that have been advanced, or that may be advanced, from the City’s general fund, or any other City fund related to the project, for project costs may be reimbursed from the financing proceeds.

6. All prior actions of City officers in furtherance of the purposes of this resolution are hereby ratified, approved and confirmed. All other resolutions (or parts thereof) in conflict with this resolution are hereby repealed, to the extent of the conflict. This resolution shall take effect immediately.

Adopted and approved this 20th day of February, 2012.

Consent Item K-3 – Appointment to Human Relations Council. Mr. George Patrick Bohan was appointed to the Human Relations Council filling the unexpired term of former member Michelle Lynn Harvey. Term to expire May 2014.

Consent Item K-4 – **Resolution No. 2012-04** City Property Declared Surplus and Authorization for its Disposal by way of Internet Auction Utilizing GovDeals.

RESOLUTION NO. 2012-04

**CITY PROPERTY DECLARED SURPLUS AND AUTHORIZATION FOR ITS DISPOSAL
BY WAY OF INTERNET AUCTION UTILIZING WWW.GOVDEALS.COM**

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

Section 1. The following described personal property of the City of Brevard is hereby declared surplus:

SURPLUS VEHICLES:

YEAR	MAKE / MODEL	NO.	MILEAGE	VIN NO	TAG	FIXED ASSET #
1998	FORD Crown Victoria	A-11	130,405	2FAFP71W0WX136260	87661 R	1941
2002	CHEV. Impala	A-18	96,049	2G1WF55K029311266	39105 S	1921
2003	Harley Davidson Road King Motorcycle	A-1	3,415	1HD1FHW1X34711226	P 1655	1912

Section 2. Pursuant to the City's contract with GovDeals.Com and in accordance with North Carolina General Statute 160A-266, the City Manager and the City Clerk are hereby authorized to list the above described surplus equipment for auction.

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

Adopted and approved this 20th day of February, 2012.

Unfinished Business – Draft Noise Ordinance Amendment

Police Chief Harris explained text found within Brevard’s existing noise ordinance was declared unconstitutional by a local court. Proposed draft is more comprehensive and allows for measurable noise levels through decibels. Courts nationwide have taken issue with ordinances that are not easily quantified and understandable to citizens who are protected by the ordinances. The Police Department has purchased a sound meter (\$300) specifically for the enforcement of the noise ordinance. The draft incorporates the use of decibel levels as an added measure to define noise violations. Chief Harris demonstrated the sound meter

Attorney Pratt explained the draft amendment is not intended to do away with the City's existing Noise Ordinance, but rather to include decibel/frequency readings within our ordinance.

Mr. Morrow moved, seconded by Mr. Landreth, **Ordinance No. 2012-03** Amendment to the Noise Ordinance of the City of Brevard be adopted as presented. Motion carried unanimously.

ORDINANCE NUMBER 2012-03

AN AMENDMENT TO THE NOISE ORDINANCE OF THE CITY OF BREVARD

Whereas, the City Council has determined that the City Noise Ordinance should be reviewed and updated; and

Whereas, the City Attorney has performed such review and has determined that it would be appropriate, and consistent with the general health, safety and welfare of citizens and residents of the City, and in accord with prevailing legal standards, that certain amendments to the existing ordinance be enacted, and has recommended that City Council enact such amendments; and

Whereas, City Council has duly deliberated and discussed the proposed amendments, and has found and does hereby find that such amendments are appropriate and are in the best interests of the general health, safety and welfare of the citizens and residents of the City;

Now, therefore, City Council hereby enacts the following amendment to the Noise Ordinance, Article II, Division 2 of Chapter 38 of the City Code of Ordinances:

Section 1. A new section to the Ordinance, numbered Section 38-72.1, reading as follows, is hereby adopted:

Section 38-72.1.

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

1. Definitions:

- "Ambient noise level" means an average A-weighted sound level based on at least three readings made and recorded over a period of no less than ten minutes, made at the location where a complainant claims to be disturbed by an alleged violation but at a time when no noise is then being alleged to violate this Ordinance, and made at a point no closer than outside the property line of the property from where the noise is generated.
- "ANSI" refers to the American National Standards Institute or any successor to such organization.
- "A-weighted sound level" means the sound pressure level in decibels as measured on a sound level meter using the A-weighting network measured by a sound level meter, following the criteria approved by ANSI.
- "Decibel" is a unit of measuring the amplitude of sound equal to 20 times the logarithm to the base ten of the ratio between the pressure of sound measured to the reference pressure, which is 20 micronewtons per square meter, as approved by ANSI.
- "Sound level meter" means an instrument which measures sound levels in decibels, which either meets the standard of ASAS 1.4-1983 or other ANSI approved minimum requirements, and provided further that such instrument shall be serviced, calibrated and operated as recommended by the manufacturer, operated by a person or persons trained to operate the same, as approved by the Chief of Police or his designee.

2. Violations.

In order to document and prove a prima facie violation of this Noise Ordinance,

(a) 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:

- by ten (10) decibels, between the hours of nine o'clock PM and seven o'clock AM; or
- by twenty (20) decibels, between the hours of seven o'clock AM and nine o'clock PM.

(b) 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:

- Sixty (60) decibels between the hours of nine o'clock PM and seven o'clock AM; or
- Seventy (70) decibels between the hours of seven o'clock AM and nine o'clock PM.

(c) 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 twenty-four 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.

3. Exceptions.

The following are excepted from this Noise Ordinance:

(a) 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.

(b) 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.

(c) Noises caused by:

- Lawn care equipment, agricultural equipment or construction equipment operated for intended and legitimate purposes between the hours of seven o'clock AM and nine o'clock PM;
- Properly permitted events such as parades, fairs, circuses and other entertainment events;
- 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 (5) minutes in any hour;
- Emergency work reasonably necessary to safeguard the public safety to person or property;
- Duly permitted electrical transformers and utility substations;
- 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
- Noises permitted pursuant to Section 38-73.

4. 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.

5. 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.

Section 2: The existing Section 38-72, is hereby amended by adding an new subsection 9, reading as follows:

(9) 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 seven o'clock AM and nine o'clock PM, 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.

Section 3: The existing Section 38-73, is hereby amended to read as follows:

Sec. 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.

Section 4: This Ordinance shall be effective upon its adoption and approval by City Council.

Adopted and approved by City Council this the 20th day of February, 2012.

New Business

NB Item M-1 - Brevard City Code Amendments. Ordinance No. 2012-04 An Ordinance Amending Brevard City Code to Permit the Sales and Consumption of Alcoholic Beverages Within Public Space During Approved Special Events

Council discussed possibility of considering the various proposed text amendments separate. Consensus text specific to special events and obscene material ready for adoption consideration. However, proposed standards specific to merchandise upon sidewalks requiring a contract/agreement, a non-fee permit and the amount of liability insurance provisions warrant further discussion.

Mr. Morrow moved, seconded by Mr. Locks, Council table action on Section 3 of the draft Ordinance. Further move **Ordinance No. 2012-04** An Ordinance Amending Brevard City Code to Permit the Sales and Consumption of Alcoholic Beverages Within Public Space During Approved Special Events, be adopted with the following changes/corrections:

- Delete Section 3
- Pg. 1, Line 30, delete “approved special events” and correct to read, “...issue a special permit that would allow....”
- Pg. 1, Line 34, delete “which shall not exceed one city block” from the sentence
- Pg. 2, Line 48, correct “specially” to “specifically”
- Pg. 3, Lines 59-60, (8) delete in its entirety
- Renumber Sections 4-8 to 3-7

Motion carried unanimously.

ORDINANCE NO. 2012-04

AN ORDINANCE AMENDING BREVARD CITY CODE TO PERMIT THE SALES AND CONSUMPTION OF ALOHOLIC BEVERAGES WITHIN PUBLIC SPACE DURING APPROVED SPECIAL EVENTS

WHEREAS, the City of Council of the City of Brevard has received a number of proposed 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 set forth herein.

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

SECTION 01. *Brevard City Code, Chapter 42 - Offenses and Miscellaneous Provisions, Article I. - In General, Section 42-3. - Consumption or possession of alcoholic beverages in public place*, is hereby amended to read as follows:

Sec. 42-3. - Consumption or possession of alcoholic beverages in public place.

It shall be unlawful for any person to consume, sell, serve or drink alcoholic beverages of any kind, or to publicly display alcoholic beverages if the container has been opened or the seal broken, on any property owned, leased or controlled by the city, and any public street, alley, sidewalk or parking lot within the city limits, whether the area is open to vehicular traffic or has been closed to vehicular traffic in connection with a parade or other special event, unless a valid permit is obtained, pursuant to subsection (1), below:

(1) The city manager (or designee thereof, hereafter, “the administrator”) is hereby authorized to issue a special permit that would allow to permit the sale and consumption of alcoholic beverages during special events, which have been permitted pursuant to Chapter 66 of Brevard City Code, and City of Brevard Unified Development Ordinance Chapter 3, Additional Use Standards.

(2) This permit shall only be valid for a designated area.

(3) The sales and consumption of wine and beer shall be limited to 12:00 p.m. to 11:00 p.m., during the permitted timeframe of the festival.

(4) The special event permit holder shall be solely responsible for assuring compliance with all applicable laws of the City of Brevard and the State of North Carolina pertaining to the sales and consumption of alcoholic beverages. Permit holders who demonstrate failure to assure compliance with such laws shall be subject to immediate permit revocation, and may be subject to such civil and criminal penalties as are set forth in Brevard City Code and the North Carolina General Statutes. The administrator shall have the discretion to withhold approval of permits for the sales and consumption of alcohol associated with future special events, when the permit holder has failed to demonstrate compliance with such law in the operation of previous events.

(5) 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.

(6) In the issuance of a special event permit, the Administrator shall have the authority to impose reasonable conditions to protect the public health, safety welfare.

(7) Chief of Police, Police Department Event Commander On-Duty, and the Administrator shall have authority to immediately cause alcohol sales and consumption activities to cease and desist upon a determination that the permit holder has failed to maintain compliance with the terms and conditions of the permit or the requirements of Brevard City Code, or that continuation of alcohol sales and consumption at the event would pose an immediate threat to the public health, safety and welfare.

SECTION 02. *Brevard City Code, Chapter 42 - Offenses and Miscellaneous Provisions, Article II. - Obscene Materials, Section 42-41* is hereby amended to read as follows:

Sec. 42-41. - Displaying obscene materials.

(a) It shall be unlawful for any person to display, sell or distribute on any street, alley, sidewalk or other public way, or in any store, shop or public place in the city, any obscene materials, pictures, marks, words or representations of any kind.

(b) For the purposes of this section, the term "obscene" shall mean material or conduct which the average citizen of the city, applying the contemporary standards of the city, would find, when taken as a whole, appeals to the prurient interest, and the material or conduct depicts or describes, in a patently offensive manner, conduct, sexual or otherwise, enumerated in G.S. 14-190.1(c), and the material or conduct, when taken as a whole, lacks serious literary, artistic, political or scientific value.

SECTION 03. Any person violating the provisions of this ordinance shall be subject to the penalties set forth in Chapter 1, Section 1-8 of Brevard City Code.

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 20th day of February, 2012.

NB Item M-2 – Zoning Map Amendment. Ordinance No. 2012-05 An Ordinance Amending the Official Zoning Map of the City of Brevard Creating the SAFE Inc. of Transylvania County Planned Development District.

Record: Minutes to show Mr. Locks has been recused from motion.

Mr. Morrow moved, seconded by Mr. Landreth, **Ordinance No. 2012-05** An Ordinance Amending the Official Zoning Map of the City of Brevard Creating the SAFE Inc. of Transylvania County Planned Development District, be approved as presented.

Discussion Question: Two Options were provided. Is the motion to include Option 1, Option 2 or both Option 1 and Option 2? Answer: Both Option 1 and 2. (Attachment A)

Vote: Motion carried unanimously.

ORDINANCE NO. 2012-05

**AN ORDINANCE AMENDING THE OFFICIAL ZONING MAP OF THE
CITY OF BREVARD CREATING THE SAFE INC OF TRANSYLVANIA COUNTY
PLANNED DEVELOPMENT DISTRICT**

WHEREAS, the City of Brevard has the authority, pursuant to Part 3 of Article 19 of Chapter 160A of the North Carolina General Statutes, to adopt zoning regulations, to establish zoning districts and to classify property within its jurisdiction according to zoning district, and may amend said regulations and district classifications from time to time in the interest of the public health, safety and welfare; and

WHEREAS, this use of land is generally consistent with the Ordinance and with that proposed in the City's adopted 2002 Land Use Plan and other official plans, but that the scale and intensity is not; however, the use is a necessary and desirable service within the community and furthers the City's goals for affordable housing so it is Council's determination that the subject property is an appropriate location for this use; and

WHEREAS, the City of Brevard Planning Board has reviewed the proposed ordinance and recommends its enactment by City Council with conditions.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BREVARD, MEETING IN REGULAR SESSION AND WITH A MAJORITY OF THE COUNCIL MEMBERS VOTING IN THE AFFIRMATIVE, HEREBY ORDAINS THE FOLLOWING:

Section One. Upon petition of SAFE Inc of Transylvania County (hereafter, "Developer"), the Official Zoning Map of the City of Brevard is hereby amended to create the SAFE Inc of Transylvania County Planned Development District (hereafter, "District") as more particularly set forth herein.

Section Two. The zoning classification of that certain real property identified on Transylvania County tax maps by the following PIN number and deed book / page number, is hereby zoned as the SAFE Inc of Transylvania County Planned Development District (hereafter, "District"), said zoning district being further depicted in Exhibit A, attached hereto and made a part hereof:

PIN 8586-53-7347-000; Deed Book 355 Page 57.

Section Three. The District is a conditional zoning district established pursuant to the Unified Development Ordinance of the City of Brevard by means of authority granted by the North Carolina General Statutes.

Section Four. Future development and use of lands situated within the District, and the processing of applications to develop and use such lands, shall comply with all applicable provisions of Brevard City Code and certain conditions, which are more particularly set forth herein, and the final master plan, which is attached to this ordinance as Exhibit B and incorporated herein. This Ordinance and its exhibits shall run with the land and shall be binding on the Developer, its heirs and assigns.

Section Five. The Developer is hereby granted vested rights for a period of five (5) years to complete the project in accordance with the final master plan and the terms and conditions of this ordinance.

Section Six. Conditions.

- a. Except as set forth in this section and Exhibit B, Final Master Plan, development within the District shall comply with all applicable provisions of Brevard City Code, including but not limited to,
 - 1. Unified Development Ordinance
 - 2. Chapter 62. Streets, Sidewalks, and Other Public Ways
 - 3. Chapter 70. Utilities

- b. The Planning Director, or designee thereof (hereafter, " Administrator") may approve minor modifications to the final master plan. Major modifications to the master plan shall be considered as a new Planned Development District proposal in accordance with the procedures set forth in Chapters 2 and 16 of the Unified Development Ordinance.
- c. The Developer shall seek and secure zoning site plan approval from the Administrator, prior to commencing development activity within the District.
- d. The Developer shall render all applicable fees to the Administrator prior to receiving final zoning approval for any structure from the City of Brevard, and prior to receiving a Certificate of Occupancy for any structure from Transylvania County.
- e. Land Uses.
 - 1. Only those uses of land that are set forth in the following Table of Allowable Uses may be permitted within the District. Such uses are further defined in Chapter 19 of the Unified Development Ordinance.
 - 2. The term "P" indicates that the use of land is allowable "by right" and may be authorized by the Administrator.
 - 3. All permissible uses shall comply with any applicable condition or standard as set forth in the Unified Development Ordinance.
 - 4. Table of Allowable Use:

PERMISSABLE USES OF LAND	PERMIT PROCESS
Group Care Facility – 6 or more	P
Community Service Organization	P
Parking	P

- f. The Developer shall dedicate 30’ of right-of-way along Railroad Avenue to the City of Brevard, ZONE AE and the floodway for flood control, stormwater, stream bank restoration, and utility easement as well as 20’ on centerline utility easements for all existing and proposed City water and sanitary sewer infrastructure prior to Certificate of Occupancy.
- g. The Developer shall, prior to Certificate of Occupancy, dedicate a 20’ wide pedestrian easement as generally depicted in Exhibit C with the understanding that should the City be able to acquire alternative easement through adjoining properties, that the City will abandon the easement, the details of which shall be determined subsequent to the adoption of this ordinance to the mutual satisfaction of the City and the Developer.
- h. The Developer shall provide a stormwater maintenance plan detailing how the stormwater system shall be maintained, by whom, and on what schedule as well as acknowledge a responsible party should any repairs be required by the City as a result of annual inspections of the system prior to Authorization to Construct.
- i. The Developer shall install a “click-to-enter” gate at the main entrance of the property for use by emergency personnel and have this gate inspected by the Brevard Fire Department and programmed to a Brevard Fire Department approve channel within twelve months of the adoption of this ordinance.

Section Seven. The Planning Director is hereby authorized and directed to modify the City’s Official Zoning Map consistent with this Ordinance.

Section Eight. If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of the ordinance.

Section Nine. All ordinances or portions thereof in conflict herewith are hereby repealed to the extent of such conflict.

Section Ten. This ordinance shall be in full force and effect from and after the date of adoption.

Adopted and approved this the 20th day of February, 2012.

~~ Mayor called for an eight minute break from 10:55 to 11:03 p.m. ~~

NB Item M-3 – Farmland Protection.

Mr. Freeman explained the proposed Farmland Protection Plan as submitted by the Agricultural Advisory Board (AAB) was adopted by Transylvania County in 2009. Brevard Planning Board and staff recommend Council's approval of the Plan, as amended. The purpose of the Plan is to not only assess the agricultural industry in Transylvania County, of which over 16, 000 acres is farmland, but also to recommend a number of actions local government could take to support the agricultural industry. Following the County's adoption of the Plan, the AAB decided to also ask the City to adopt, but with a set of "City-specific" amendments as the City is uniquely positioned to assist the agricultural industry in ways the County government may not be, such as to support the development of a permanent farmer's market facility within the City's jurisdiction.

Transylvania County Agricultural Advisory Board Members Eric Caldwell, Dale Robertson, Carroll Parker, Jackie Whitmire and Britney Whitmire were present to make the presentation and answer any questions Council may have.

Mr. Locks reference several House and Senate Bills (HB 406, SB 676, HB 168) sharing there are many differences between a City and County, especially with respect to zoning, annexation and utilities. As an example, City does not allow individuals to dig wells where public water supply is available. He expressed caution needs to be exercised that components of the Farmland Protection Plan are not in conflict with City standards.

Mr. Caldwell and Mr. Robertson explained the purpose of the Farmland Plan is to protect farmland. The document provides recommendations and strategies, not binding restrictions.

Mr. Locks moved, seconded by Mr. Landreth, Council adopt **Resolution No. 2012-05** Adopting the Transylvania County Farmland Protection Plan & City Specific Amendments, as presented and subject to City Staff being directed to review the Plan to make sure legislation he previously referenced is incorporated into the Plan, not necessarily the legislation text, but the impacts and relationship as provided for in the legislation is to be incorporated. Motion carried unanimously.

RESOLUTION NO. 2012-05

A RESOLUTION ADOPTING THE TRANSYLVANIA COUNTY FARMLAND PROTECTION PLAN AND CITY SPECIFIC AMENDMENTS

WHEREAS, the Transylvania County Commissioners have adopted the Transylvania County Farmland Plan and the City of Brevard desires to adopt the same plan with additional recommendations specific to City operations made by the Transylvania County Agricultural Advisory Board; and

WHEREAS, agriculture has long been an important and vital element to the economy of Transylvania County and the culture of its citizens; and

WHEREAS, the protection and support of agriculture within the City of Brevard and Transylvania County is necessary to encourage a sustainable economy and maintain a high quality of life and,

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

Section 1. The Transylvania County Farmland Protection Plan and City Specific Amendments to that plan, which is attached hereto and included herein by reference, are hereby adopted as policy of the City of Brevard.

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

Adopted and approved this the 20th day of February, 2012.

Remarks By Officials –

Mayor Pro Tem Morrow – Shared former Transylvania County Manager, David McNeil, is now serving as a Council member in Southern Pines.

City Clerk - Council Members Dickson, Jones and Landreth completed the Ethics Training Requirement on January 25th (attendance verification on file). Expressed appreciation to the UNC School of Government Local Elected Leaders Academy for offering the Essentials course nearby (Asheville), and to Food Lion and The Local Government Federal Credit Union for making possible scholarships. We applied and received five scholarships paying the full registration costs (\$350 each / \$1,750 total) for Council members Morrow, Locks, Dickson, Jones and Landreth who attended the two-day course.

Closed Session - Mayor Harris asked the City Attorney if it would be appropriate to convene a closed session to discuss two items separately: (1) Acquisition of real property, and (2) Personnel. City Attorney advised it would with the appropriate motion, second and vote pursuant to **GS § 143-318.11 (a)(5)**: To establish, or to instruct the public body's staff or negotiating agents concerning the position to be taken by or on behalf of the public body in negotiating (i) the price and other material terms of a contract or proposed contract for the acquisition of real property by purchase, option, exchange, or lease. And, pursuant to **GS § 143-318.11(a)(6)**: To consider the qualifications, competence, performance, character, fitness, conditions of appointment, or conditions of initial employment of an individual public officer or employee or prospective public officer or employee; or to hear or investigate a complaint, charge, or grievance by or against an individual public officer or employee.

Upon motion by Mr. Locks, seconded by Mr. Jones, and unanimously passed a closed session to discuss property negotiation (closed session #1) and personnel (closed session #2) was called at 11:39 p.m. and to convene upon clearing Council Chambers. Authorized to remain with Council and Attorney were: City Manager Moore, Planning Director Freeman, Asst. Planning Dir. Burton and the City Clerk.

A two (2) minute recess took place in order to allow all who were not authorized to remain to leave Council Chambers.

Adjourn Closed Session #1 to Regular Session – At 12:20 a.m., Mr. Locks moved, seconded by Mr. Morrow, the closed session #1 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.

Council excused Mr. Freeman, Mr. Burton and Mrs. Perry. City Attorney instructed to take Minutes of Closed Session #2.

Adjourn - There being no further business before Council, Mr. Jones moved, seconded by Mr. Locks the meeting be adjourned. Motion carried unanimously. Meeting adjourned at 12:32 a.m.

Jimmy Harris, Mayor

Desiree D. Perry, City Clerk

Minutes Approved: March 19, 2012

ATTACHMENT A
Brevard City Council Minutes – February 20, 2012

SAFE INC Planned Development District, Options 1 and 2 as adopted.

