

**MINUTES  
BREVARD CITY COUNCIL  
Regular Meeting  
October 21, 2013 – 7:00 PM**

The Brevard City Council met in regular session on Monday, October 21, 2013 at 7:00 p.m. in the Council Chambers of City Hall with Mayor Jimmy Harris presiding.

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

**Staff Present** – City Manager Joe Moore, City Attorney Mike Pratt, City Clerk Desiree Perry, Planning Director Josh Freeman, Building & Grounds Director Lynn Goldsmith, Finance Director Jim Fatland, HR Director Christine Caldwell, Utility Director Jay Johnston, PE, Planner Daniel Cobb, Assistant Planning Dir. Brad Burton, Police Chief Phil Harris, Fire Dept. Captain Mark Norton, Public Service Rep. Anthony Coward and Executive Assistant Jeanette Owen.

**Press** - Derek McKissock, Transylvania Times

**Others Present** – Council Candidates Ann Hollingsworth, Lori Swank and Kim Provost.

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

**B. Invocation** – Pastor Richard Jelley, Brevard Wesleyan Church, was not able to attend as scheduled. Mayor Harris offered an Invocation.

**C. Pledge of Allegiance** - Mayor Harris led in the Pledge of Allegiance.

**D. Certification of Quorum** - The City Clerk certified a quorum present.

**E. Approval of Agenda** - Mr. Morrow moved, seconded by Mr. Landreth, the Agenda be amended to (a) move Brevard College Art Exhibition (Item H) to follow the approval of Minutes, Transylvania County Animal Shelter Use Agreement be added to the Consent Agenda as ItemK-5, and the Agenda be approved as amended. Motion carried unanimously.

**F. Approval of Minutes** - Mr. Morrow moved, seconded by Mr. Landreth, the September 16, 2013 meeting Minutes be approved with the following two corrections: Pg. 7, vote on motion was a three to one vote , and, Item O Closed Session was presided by Mayor Pro Tem Morrow. Motion carried unanimously.

**H. Certificates/Awards/Recognition** – On behalf of the Brevard College Art Department, Professor Jo Humphrey thanked Council for providing College art students the opportunity to display their art work in City Hall. For many of the students it is the first time they have had their work displayed publically, and, being able to do so is both a good experience and provides a good resume point for them. An invitation to attend the student art exhibition on March 14<sup>th</sup> and the senior art exhibition scheduled for April 11<sup>th</sup> was extended.

**G. Public Hearing**

**G-1. Proposed City Code Text Amendment, Unified Development Ordinance: Appeals, Variances and Special Use Permits**

At 7:18 p.m. the properly advertised and noticed public hearing to receive comments on the proposed UDO text amendments began. Mr. Burton explained the proposed text amendments are the result of recent NC Legislature changes, making necessary to amend and update our local Code to be in keeping with the State's newly

adopted changes. Changes are primarily related to the Board of Adjustment appeal process. The drafted Ordinance was prepared by the Board of Adjustment attorney, Mr. Michael Egan, and has been reviewed by City Attorney Pratt.

Public Hearing Public Participation – None

Public Hearing Closed – With no further questions or comments from Council or the public, Mayor Harris closed the hearing at 7:26 p.m.

**I. Public Participation**

Ms. Kim Provost asked Council to explore providing both audio recordings and video tapings of Council meetings and workshops to provide greater transparency and convenience to the public.

**J. Special Presentation**

**J-1. Heart of Brevard (HOB)** – Heart of Brevard President Jeremy Owen introduced their new Executive Director, Mr. Heath Seymour. Mr. Seymour shared he is glad to be in Brevard and looks forward to working with Council.

Mr. Owen thanked Mr. Locks for his many contributions and years of service as a Council member, and, thanked Mr. Landreth for the assistance he provided them in the HOB Executive Director search process. Mr. Owen explained the HOB has reorganized, revised their by-laws, has done some restructuring of committees, and completed the 501-3C application in August and submitted to IRS. Intention is to also retain their existing 501-6C status as well.

HOB representatives Ms. Leigh Trapp, Ms. Ann Hollingsworth and Mr. Richard Coadwell provided updates on: (a) Promotions - They anticipate their branding and marketing efforts will be showcased at the upcoming Halloween Fest. (b) Economic Structuring Committee – Goals have been set including work towards a better balanced downtown district, promote façade improvements, discussing expansion of the district and feasibility of having auxiliary memberships to businesses outside the HOB district, working on the retail gap analysis of why people do and don't shop in Brevard, and new ability to link data base with City and County. A copy of the report is on file.

**J-2. Eagle Scout Project at Bracken Preserve's Brushy Creek Trail** – Mayor Harris recognized and thanked Daniel Taylor, a senior at Brevard High School and member of Scout Troup 703, who is working on his Eagle Scout Project of constructing a covered shelter on the Brushy Creek Trail on the Bracken Preserve. In order to construct the shelter, he and Scout Wesley Benson have had to carry in to the site the wood and materials for the construction. Contractor Tim Robinson has been assisting them with this Eagle Scout project.

**J-3. Silvermont Planning Team** – Ms. Jeannie Falkner, Committee spokesperson, presented the Master Plan for the Grounds of Silvermont Park Report (on file). Also present were Master Plan Committee Members Bob Hurring, Lee Stewart, Margaret Mossbarger, Gene Baker, Sally Baker, Kathy Zimmerman, Jessica Ibarguen, Jan Osborne and Ellen Harris.

"In January 2012 the Silvermont Planning Team was formed from a group of citizen stakeholders, concerned that the park is under-utilized by the public, suffers from lack of maintenance, and lacks a cohesive vision for making it a vital center in the Transylvania County and Brevard community." [Pg.3 Executive Summary, Silvermont Grounds Master Plan]. Committee members and other citizens have been volunteering their time and talents to make some needed repairs and improvements to the park building and grounds.

The goal of the report is to provide recommendations to make the grounds of Silvermont Park a more vital part of Brevard and Transylvania County. On behalf of the

Committee Ms. Falkner shared the County has agreed to appropriate funds (\$200,000); however, additional money will need to be raised in order to accomplish the projects. Committee members asked for Council’s consideration to be engaged and participate in the project by means of financial assistance and/or City staff assistance.

**K. Consent Agenda** - Consent Agenda items are considered routine and are enacted by one motion. Mayor Harris read aloud the items listed and asked if Council desired to remove an item for discussion, or, to add an item(s) to the Consent Agenda.

Mr. Jones recommended New Business Items M2 through M5 be added to the Consent Agenda. Mayor Harris explained WCCA Board appointment applicant, Ms. McCrary, is a City employee and not a City resident. A board member on WCCA board would not affect in any way an ordinance or structure of the City.

Mr. Morrow moved, seconded by Mr. Landreth, the Consent Agenda be amended as recommended and approved. Motion carried unanimously. The following items were approved:

- K-1. Department Staff Reports**
  - (a) City Clerk: Quarterly Report
  - (b) Human Resources: Quarterly Report
  - (c) Finance: Monthly Revenue and Expenditure Report
  - (e) Public Services: Monthly Report

**K-2. Ordinance No. 2013-12 FY 2014 Budget Ordinance Amendment No. Two: Sanitation Truck**

**ORDINANCE NO. 2013-12**

**AN ORDINANCE AMENDING THE FY2013-2014 BUDGET  
AMENDMENT NO. TWO**

**WHEREAS**, the City Council of the City of Brevard has previously approved the annual budget (Ordinance No. 2013-07) and Budget Ordinance Amendment No. One (Ordinance No. 2013-10); and

**WHEREAS**, it is necessary to make an amendment to the approved budget for the payment and financing on the new garbage truck for the Sanitation Department that occurred in July ;and

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

SECTION 01) General Fund Expenditures are hereby increased \$127,910 from \$8,995,797 to \$9,123,707 as shown below:

|                                    |           |
|------------------------------------|-----------|
| Sanitation Department Expenditures | \$127,910 |
| Non Department Expenditures        | 22,360    |
| Contingency Expenditures           | -22,360   |
| TOTAL EXPENDITURES                 | \$127,910 |

SECTION 02) General Fund Revenue is hereby increased \$127,910 from \$8,995,797 to \$9,123,707 as shown below:

|               |           |
|---------------|-----------|
| Loan Proceeds | \$127,910 |
| TOTAL REVENUE | \$127,910 |

SECTION 35) That Revenue and Expenditures set forth in Sections 1 through Section 34 of the Ordinance Amendment are hereby summarized as follows:

|                               |             |
|-------------------------------|-------------|
| General Fund                  | \$9,123,707 |
| Water & Sewer Fund            | 5,687,100   |
| Utility Capital Projects Fund | 3,065,800   |
| Capital Reserve Fund          | 150,000     |

|                                     |              |
|-------------------------------------|--------------|
| Heart of Brevard MSD Fund           | 120,950      |
| Bjerg Trust Fund                    | 100          |
| Fire District Fund                  | 1,205,547    |
| Multi-Use Paths Fund                | 150,000      |
| Narcotics Task Force Fund           | 50,100       |
| Downtown Master Plan Fund           | 237,153      |
| Wayfinding Fund                     | 345,062      |
| Other Post Employment Benefits Fund | 18,750       |
| Bracken Mountain Project Fund       | 140,308      |
| Health Insurance Fund               | 967,800      |
| Housing Trust Fund                  | 13,332       |
| CDBG Cottages Fund                  | 225,000      |
| T.L. Scruggs Scholarship Trust Fund | 3,000        |
|                                     | -----        |
| TOTAL BUDGET APPROPRIATION          | \$21,503,709 |

Adopted and approved this 21<sup>st</sup> day of October, 2013.

**K-3. Recycling Services Contract** – Bi-Weekly Pickup – Council approved amending the contract with Republic Services, Inc., to provide every other week recycling for residential customers. No increase in the monthly residential recycling rate for every other week recycling pickup.

**K-4 Brevard City Council Meeting Calendar Amendment** – Council’s 2013 meeting schedule included a work-session for November 5, 2013. This meeting was moved up and held on September 30, 2013. Council approved removing the November 5, 2013 meeting date from their 2013 meeting schedule.

**K-5 (M-2) – Terrell Scruggs Scholarship Committee Appointment** – Reappointed Josh Freeman to a second term that will expire July 2016.

**K-6 (M-3) – Brevard Board of Adjustment Appointment** – Reappointed Carol Dillingham to first full term that will expire November 2016.

**K-7 (M-4) – Brevard Housing Authority Appointment** – Reappointed Judith West to a fifth full term that will expire November 2018.

**K-8 (M-5) – Western Carolina Community Action Board Appointment** – Appointed Debbie McCrary to fill the unexpired term from former member, Valeria Gardin; term will expire May 2017.

**L. Unfinished Business** – None

**M. New Business**

**M-1 Ordinance No. 2013-13 An Ordinance Amending the City of Brevard Unified Development Ordinance, Chapters 2 and 3 to Allow Mobile Food Vendors.** Public Hearing was held at Council’s September 16, 2013 meeting.

Mr. Cobb presented the draft Ordinance, projected a map of the City showing potential sites where food vendors could operate in the downtown areas of Brevard as well as sites in the Pisgah Forest. A mobile food vendor would not have to have a brick and mortar establishment; however, they would have to have a place to operate out of that is approved by the Health Department. Generally, mobile food vendor would operate from private, not public, property; both the property owner and vendor would secure the permit.

Mr. Landreth moved, seconded by Mr. Morrow, **Ordinance No. 2013-13** amending the City’s UDO to allow mobile food vendors be approved as presented. Motion carried unanimously.

**ORDINANCE NO. 2013-13**

**AN ORDINANCE AMENDING THE CITY OF BREVARD  
UNIFIED DEVELOPMENT ORDINANCE, CHAPTERS 2 & 3 TO  
ALLOW MOBILE FOOD VENDING**

WHEREAS, the City of Brevard Planning Board and Planning Department Staff have recommended a number of text amendments to the City of Brevard Unified Development Ordinance; 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. Mobile Food Vendors**

- a) WHEREAS, City Council, after due discussion and deliberation, has recognized that there is economic value in allowing properly licensed and permitted mobile food vendors to operate within the City of Brevard planning and zoning jurisdiction;
- b) The City of Brevard Code of Ordinances Unified Development Ordinance, Chapter 2. District Provisions 2.2 Subsection C Use Categories and Tables of Permitted Use, is hereby amended to include as a use *Permitted with Standards* Mobile Food Vendors, which shall read as set forth in Exhibit A of this ordinance, which is attached hereto and incorporated herein.
- c) The City of Brevard Code of Ordinances Unified Development Ordinance, Chapter 3. Additional Use Standards, Section 3.23 Temporary Uses *Permitted with Standards*, is hereby amended to include Subsection 10. Mobile Food Vendors, which shall read as set forth in Exhibit B of this ordinance, which is attached hereto and incorporated herein.

**SECTION 02.** 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 03.** As to any conflict between this ordinance and any parts of existing ordinances, the provisions of this ordinance shall control.

**SECTION 04.** If any section, subsection, paragraph, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed severable and such holding shall not affect the validity of the remaining portions hereof.

**SECTION 05.** 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 06.** This ordinance shall be in full force and effect from and after the date of its adoption.

Adopted and approved this 21<sup>st</sup> day of October, 2013

**EXHIBIT A  
(Ordinance Number 2013-13)**

- 1. The City of Brevard Unified Development Ordinance, Chapter 2. District Provisions Section 2.2. Subsection C. Use Categories and Tables of Permitted Uses is hereby amended to add Mobile Food Vendors as a use *Permitted With Standards*, as shown below:

| Temporary Uses                         | 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  | —   | —  | —  |

|                     |   |   |    |    |    |    |    |
|---------------------|---|---|----|----|----|----|----|
| Mobile Food Vendors | — | — | PS | PS | PS | PS | PS |
|---------------------|---|---|----|----|----|----|----|

**EXHIBIT B**  
**(Ordinance Number 2013-13)**

1. The City of Brevard Unified Development Ordinance, Chapter 3. Additional Use Standards, Section 3.23 Temporary Vendors, Subsection E is hereby amended to add number 10 as shown below:

10. Mobile Food Vendors

- a. Mobile food vendors are licensed motor vehicles or mobile food units which offer for sale and consumption food and beverages (excluding alcohol).
- b. Permits required.
  - i. The owner, or authorized agent thereof, of any property upon which a mobile food vendor(s) proposes to operate, shall secure a permit for the establishment of a mobile food vendor site. Applicants shall provide such information as is deemed necessary by the Administrator to demonstrate compliance with this Ordinance; such information shall include, but shall not be limited to, a listing of the mobile food vendors authorized to operate upon the subject property.
  - ii. Mobile food vendors shall secure a permit to operate within the jurisdiction of the City of Brevard. Applicants shall provide such information as is deemed necessary by the Administrator to demonstrate compliance with this Ordinance; such information shall include, but shall not be limited to, a listing of the mobile food vendor sites upon which the vendor proposes to operate, as well as confirmation of compliance with all applicable health regulations.
  - iii. In the issuance of permits for mobile food vendor sites and mobile food vendors, the Administrator shall have broad discretion to assign such conditions as may be necessary to protect the health, safety, and welfare of the public.
  - iv. Permits for mobile food vendor sites and mobile food vendors shall be valid for a period of one (1) year, and shall be renewed annually. Permit fees shall be determined by Brevard City Council as set forth in the City of Brevard Schedule of Taxes, Charges and Fees.
- c. Mobile food vendors must have a base of operations such as a restaurant or commissary and must report to said base daily for supplies, cleaning, and servicing.
  - i. If the base of operations is under different ownership than the mobile food vendor, a written agreement for use must be submitted as part of the zoning application.
  - ii. No waste, grease, or wastewater shall be released into the City’s sanitary sewer or storm water collection systems, ditches, tree wells, or other public spaces.
- d. There shall be no limit to the number of mobile food vendors per parcel so long as all other separation and site requirements as set forth below are met.
- e. Separation and setbacks.
  - i. Mobile food vendors shall be subject to all site requirements as set forth in section 3.23.A.4.k except as modified below.
  - ii. Setbacks, generally.

Mobile food vendors shall be situated at least ten (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.Separation between mobile food vendors.

Mobile food vendors shall be situated at least twenty (20) feet from one another.

iv.Separation between mobile food vendors and permanent structures.

- a. Mobile food vendors shall be situated at least twenty-five (25) feet from any permanent structures.
- b. The Administrator may, upon recommendation of the Fire Marshal, approve the placement of mobile food vendors within twenty-five (25) feet or less of a permanent structure. Such approval shall be based upon building type building materials, existing fire breaks, and other pertinent information. Such reductions shall be reviewed on a case-by-case basis, at the discretion of the Administrator.
- c. There shall be no reduction in separation between mobile food vendors and permanent structures within the Downtown Fire District.
- d. Mobile food vendors shall be situated at least two-hundred (200) feet from any residential structure that is located within a General Residential (GR) zoning district.

v.Mobile food vendors must be setback a minimum of ten (10) feet in all directions from fire hydrants.

f. Power

- i.Outside of the Heart of Brevard district, generators may be used to power the vending unit. Within the Heart of Brevard only dedicated power supplies shall be used.
- ii.For dedicated power supplies the applicant must present documentation that power load supplied to the vehicle is sufficient to meet the vehicles needs while in operation.
- iii.Vendors are subject to the requirements of the City of Brevard Noise Ordinance (Chapter 38, Noise Ordinance), North Carolina Health Code, and North Carolina Building Code.

vi.Restrooms must be available on site.

g. Hours of operation for mobile food vendors shall be limited to 7:00AM to 10:00PM, except during an approved special event, when other operating hours may be established as part of the event.

h. Vendors must vacate the site each day unless the vendor owns the site.

i. Mobile food vendor operators or their designee must be present at all times during operation, except in the event of an emergency.

j. Each food truck shall supply at least one (1) waste receptacle which must be removed and emptied at the end of each day, City trash receptacles shall not be used for food truck waste.

k. Signage

i.Mobile food vendors shall be limited to the following:

- a. One (1) wall sign affixed to the vehicle or trailer per side of vehicle or trailer. Said sign shall be no larger than 32 square feet.
- b. One small A-frame sign not to exceed four (4) feet in height and eight (8) square feet of surface area may be placed within five (5) feet of the vehicle or trailer to display daily specials, menus, or other similar information.

## **N. Remarks By Officials**

Mayor Harris encouraged folks to vote in the upcoming election, and thanked those who made the Silvermont presentation for their work on the property as well as their work on the Master Plan presented.

Mr. Landreth shared he and Mr. Locks attended the NCLM Conference, and, shared Brevard is “on the map across the State” not only because of its beauty, but also because of the contributions and work of Mr. Locks and how he has represented our Community.

Mr. Jones echoed appreciation for the Silvermont presentation, and extended appreciation to Mr. Locks for his support and contributions made over the years while serving as Council member.

Mr. Dickson echoed appreciation to and for Mr. Locks, and, shared he looks forward to working with the new HOB Executive Director Heath Seymour.

Mr. Locks shared it has been his honor to serve the City for the past sixteen years. Community service as an elected official is the highest honor as people, from within your own community, have voted for you and have placed their trust in you. Over the years he has worked with many council members, staff, managers and attorney, and the thing he likes the most is the relationship and respect between council and staff as they agree to disagree and work together for our community. Concluded by saying he is comfortable leaving as Brevard has a great council, staff, manager and attorney who are moving forward.

Mr. Pratt shared it has been his privilege to know and work with Rodney as a boss and friend.

Ms. Perry expressed her appreciation to Mr. Locks for his friendship, the help he provided to her when she became Clerk, and for the many contributions he has made while serving on Council.

Mr. Moore expressed his appreciation to Mr. Locks and that he has enjoyed their one-on-one monthly meetings and it is a pleasure to work with him.

**O. Closed Session-** Mayor Harris asked the City Attorney if it would be appropriate to convene two closed sessions for the purpose to discuss (1) potential litigation, and (2) personnel matter. City Attorney advised it would be appropriate pursuant to **GS § 143-318.11. (a)(3) and (6)**. Each closed session will require a separate motion, second and vote to discuss the matter. Council will enter and exit regular session for each closed session.

At 8:34 p.m. Mr. Jones moved, seconded by Mr. Landreth, Council go into closed session to discuss potential litigation. Motion carried unanimously. Authorized to remain for the closed session with Council and the Attorney were the City Manager, City Clerk, Mr. Freeman and Mr. Burton. *(A two minute break was taken to allow citizens and staff to leave Council Chambers.)*

Council Returned to Regular Session – At 8:39 p.m. Council resumed the meeting in regular session. No official action was taken in closed session and the Minutes of the closed session are authorized to be sealed.

At 8:40 p.m. Council dismissed the City Clerk to hold a closed session to discuss a personnel matter. City Attorney will provide Minutes of the closed session, and will provide to the Clerk the record of Council’s return to regular session and actions (if any) taken, and adjournment.

In open session, Mr. Jones moved, seconded by Mr. Landreth, Council go into closed session to discuss a personnel matter. Motion carried unanimously.

Council came out of closed session at 9:20 p.m. No official action was taken in closed session and the Minutes of the closed session are authorized to be sealed.

**Adjourn** - In open session, upon motion by Mr. Landreth, second by Mr. Dickson, and unanimous vote in favor of adjournment, the meeting adjourned at 9:20 PM.

s/\_\_\_\_\_  
Jimmy Harris  
Mayor

s/\_\_\_\_\_  
Desiree D. Perry, CMC, NCCMC  
City Clerk

Minutes Approved: February 17, 2014