MINUTES
BREVARD CITY COUNCIL
Regular Meeting
September 16, 2013 – 7:00 PM

The Brevard City Council met in regular session on Monday, September 16, 2013 at 7:00 p.m. in the Council Chambers of City Hall with Mayor Pro Tem Mac Morrow presiding.

Present - Mayor Pro Tem Mac Morrow, Council Members Wes Dickson, Maurice Jones and Charlie Landreth.

Absent – Mayor Jimmy Harris and Council Member Rodney Locks

Staff Present – City Manager Joe Moore, City Attorney Mike Pratt, City Clerk Desiree Perry, Fire Chief Craig Budzinski, Assistant Fire Chief Bradley Elmore, Police Chief Phil Harris, Planning Director Josh Freeman, Assistant Planning Director Brad Burton, Planner Daniel Cobb, Public Service Director David Lutz, Finance Director Jim Fatland, Building & Grounds Director Lynn Goldsmith, Human Resource Director Christine Caldwell, Utility Director Jay Johnston, PE, and Executive Assistant Jeanette Owen. Several Brevard Firefighters were also present.

Press - Derek McKissock, Transylvania Times

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

B. Invocation – Dr. Keith Thompson, Brevard Davidson River Presbyterian Church, offered an invocation.

C. Pledge of Allegiance - Mayor Pro Tem Morrow led in the Pledge of Allegiance.

D. Certification of Quorum - The City Clerk certified a quorum with four members present.

E. Approval of Agenda - Mr. Landreth moved, seconded by Mr. Jones, the Agenda be approved as presented. Motion carried unanimously.

F. Approval of Minutes - Mr. Landreth moved, seconded by Mr. Dickson, the August 19, 2013 meeting minutes be approved as presented. Motion carried unanimously.

G. Public Hearing

G-1 <u>Proposed City Code Text Amendment for Mobile Food Trucks</u>

At 7:12 p.m. the properly advertised and noticed public hearing to receive comments on the proposed text amendments began. Mr. Cobb explained the City received an application from Oskar Blues Brewery requesting a text amendment that would allow mobile food vendors to set up a vehicle or trailers on private property to sell prepared food. A public input session was held on July 11th, Planning Board met and discussed the application and proposal at their July and August meetings, and voted unanimously to recommend Council adopt the proposed text as provided and included within the staff report. Recommended text would allow mobile food vendors in the NMX, DMX, CMX, IC and GI districts, subject to standards. Following receiving of public and Council comments, staff proposes to present a draft ordinance for Council's consideration at the next regular Council meeting.

Public Hearing – <u>Public Participation Comments</u>

Mr. Mike Young, 57 Park Avenue, is the owner/operator of The Falls Landing Restaurant and spoke in favor of allowing food trucks at locations outside of the Brevard's downtown district, as they could be an enhancement to places such as the Farmers Market. He is not in favor of allowing them in Brevard's downtown district.

Mr. Jeremy Owen, Oskar Blues Brewery representative, extended appreciation to the Planning staff and Planning Board as they took may things into consideration in arriving at the proposed text language and standards for mobile food vendors. Stated he believes the drafted language will be a fair ordinance and is in alignment with the City's image.

Ms. Anne Somich, 146 Whitmire Street, is the owner/operator of Wild Indigo Catering and spoke in favor of the proposed ordinance as it would provide opportunities for food service at Brevard Music Center, Farmers Market, and other places, as well as, in the downtown during festivals.

Ms. Dee Dee Perkins, DD Bullwinkle's business owner, former Council member and member of Heart of Brevard, spoke in favor of the proposal for outlying areas such as Oskar Blues Brewery and the Brevard Music Center; however, she is not in favor of allowing mobile food vendors to operate in the downtown area except during festivals.

Public Hearing Closed – With no further questions or comments from Council or the public, Mayor Pro Tem Morrow closed the hearing at 7:34 p.m.

H. Certificates / Awards / Recognition

Rick Lasater, Brevard Planning Board Member - Mayor Pro Tem Morrow and Planning Director Josh Freeman recognized and presented a gift and a Certificate of Appreciation to former Planning Board member Rick Lasater for his ten years of service on the Board.

Chief Budzinski shared in memoriam of September 11, the Brevard Fire Department has established September as the month to honor acts of life saving from the preceding year.

Life Saving Awards - Chief Budzinski, Assistant Chief Elmore and Mayor Pro Tem Morrow presented Life Saving Awards to Captain Carl Travis, Firefighter Bobby Cooper, Firefighter Ernie McCall and Firefighter Zac Smith, who together, on March 17, 2013, resuscitated and saved the life of a restaurant patron who had gone into sudden cardiac arrest. Several family members and fellow firefighters were in attendance for the presentations.

Valor Award – Chief Budzinski, Assistant Chief Elmore and Mayor Pro Tem Morrow presented Valor Awards to Assistant Chief Chris Budzinski, Firefighter Jesse Robinson and Firefighter David Sullivan for their placing their lives in danger on January 30, 2013, in order to rescue a motorist trapped by rising floodwaters. Several family members and fellow firefighters were in attendance for the presentation.

Retired Police Officer Marty Burns - Mayor Pro Tem Morrow and Police Chief Phil Harris presented to retired Brevard Police Officer, Captain Marty Burns, a framed original of Resolution No. 2013-19 along with his service badge and sidearm, a Glock Model 22 Gen 4. Family and friends were in attendance for the presentation. Chief Harris, Council and staff thanked Captain Burns for his 31 and one-half years of service.

I. Public Participation

Mr. Chris Bieker, Moody-Connolly Funeral Home, spoke and expressed concern and opposition to the final phase of the widening of Caldwell Street project that will soon begin. He understands the decision to do this project was made in the early 90's, and questioned why it has taken so long to come to be and questioned the widening still being necessary. As a business owner on Caldwell Street the project will create disruption to his business, and he has concerns with respect to the impact an expanded street and right-of-way will have upon their property as it may create a steep bank at their entrance, etc.

J. Special Presentations

J-1 Transylvania County Independent Economic Development Task Force – Transylvania County has created and appointed a task force to recommend an organizational structure for economic development, and to review the current mission, vision and branding statements of organizations involved in economic development. Task Force members, Mr. Billy Higgins and Ms. Ruth Harris were in attendance.

Prior to the start of the meeting, Mr. Higgins provided a handout for each Council member titled, "Independent Economic Development Task Force"; a portion of which is also included in the Agenda Packet. (Copy on file) Mr. Higgins explained the Task Force has been asked to: (a) Recommend TC Economic Development Organizational Structure; (b) Develop Mission/Vision Brand for TC EDO; and, (c) Identify Target Industries and Create Preliminary Marketing Plan. He explained the J. Goldsmith report suggested at present there are too many economic development agencies. The Task Force members want to understand what each is doing with regard to economic development, and to that end they have generated a list of twenty-two questions that be asked of the agencies. The questions are included in the Agenda packet materials, and, within the handout. Task Force is very interested in receiving City Council's honest feedback and input to these questions. Task Force will be asking the same of the Rosman Board of Aldermen.

Mr. Landreth recommended each Council member provide their individual comments to the questions, rather than for Council t provide an organizationally crafted response to the questions.

J-2 North Carolina Legislative Review: Law Enforcement – Chief Harris reported and briefly described recent changes and/or amendments to NC gun laws/concealed carry permit; misuse of 911; synthetic cannabinoids (marijuana) unlawful; speeding to elude arrest may have vehicles seized and forfeited; arrest registered sex offenders who fail to register at expected county of residence, etc., and others as more fully described in his staff report included in the Agenda packet.

Chief Harris suggested Council to direct staff to review our local ordinances in order to determine if additional provisions respective to concealed weapons on public property should be considered.

~~ At 8:16 p.m. Mayor Pro Tem Morrow called for a ten minute break. ~~

K. Consent Agenda - Consent Agenda items are considered routine and are enacted by one motion. Mayor Pro Tem Morrow 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. Landreth moved, seconded by Mr. Dickson, the Consent Agenda items be approved as presented. Motion carried unanimously. The following items were approved:

K-1 Department Staff Reports
(a) Finance: Monthly Revenue and Expenditure Report
(b) Police: Bi-Annual Report
(c) Public Services: Monthly Report
(e) Building and Grounds: Quarterly Report

K-2 Ordinance No. 2013-10 Amending The FY 2013-2014 Budget, Amendment No. One

ORDINANCE NO. 2013-10

AN ORDINANCE AMENDING THE FY 2013-2014 BUDGET
AMENDMENT NO. ONE

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

WHEREAS, it is necessary to make an amendment to the approved budget for the delivery and final payment on the new Fire Department Tanker that occurred in August 2013; and

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

Section 1. FY 2013-14 Budget Ordinance, Section 11 - Fire Department Expenditures are hereby increased $351,100 from $854,447 to $1,205,547 as shown below:

Fire Department Expenditures	$172,650
Increase in Fund Balance	178,450

TOTAL EXPENDITURES	$351,100

Section 2. FY 2013-14 Budget Ordinance, Section 12 - Fire Department Revenue is hereby increased $351,100 from $854,447 to $1,205,547 as shown below:

Fire Department Fund Balance, Restricted Escrow Cash	$280,000
Sale of Old Tanker	71,100

TOTAL REVENUE	$351,100

Section 3. FY 2013-14 Budget Ordinance, Section 35 - Revenue and Expenditures set forth in Sections 1 through Section 34 of the Ordinance Amendment are hereby summarized as follows:

General Fund	$8,995,797
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	$21,375,799

Adopted and approved this 16th day of September, 2013.

L. Unfinished Business - None

M. New Business

M-1 Mobile Food Vendors – Council and public heard the outline of the proposed text amendment and public comments earlier during the Public Hearing portion of the meeting, and, text as recommended by staff and Planning Board was included in the Agenda packet materials. Unless directed otherwise by Council, staff plans to present a draft ordinance for consideration at Council's next meeting.

Mr. Dickson shared he desires staff to move forward with the proposed text for Council's consideration and further expressed concerns that the proposal includes not allowing mobile food vendors to operate within the Heart of Brevard district. Council needs to be sure to represent the whole community, city wide, and to be mindful to offer same considerations to businesses within Pisgah Forest, as an example.

Mr. Landreth shared he desires staff to move forward and provide a draft ordinance, the proposed text specifies mobile food vendors would be required to operate on private property (except during festivals), thereby precluding vendor(s) setting up on streets on any normal day, and, proposal may foster new businesses. Asked, when keeping in mind the proposed parameters of zoning and private land, what falls outside of DMX and municipal service district? Could parameters be too restrictive?

Mr. Moore replied by offering staff could prepare and present at Council's next meeting a map showing potential areas.

Mayor Pro Tem Morrow asked, and staff confirmed, food truck vendors must receive appropriate approvals from the Health Department.

Mr. Jones asked if a mobile food vendor could setup and operate in a parking lot, and, what time frame would a vendor be allowed to operate.

Mr. Cobb answered they would be allowed to operate year round, and, in order for one to use a parking lot it would only be permitted if adequate space is provided for both the primary business and mobile food vendor to meet the City's standards.

Mr. Landreth moved, seconded by Mr. Dickson, Council direct staff to prepare a draft ordinance to amend the City Code (UDO) that allows mobile food vendors to operate in the City limits.

Comments/Questions: Mr. Jones asked if Mr. Landreth would amend his motion to include staff to take into consideration comments shared in tonight's meeting.

Mr. Landreth replied he desires his motion to stand as presented.

Vote on the motion:
Ayes: Mr. Landreth, Mr. Dickson and Mayor Pro Tem Morrow.
Nos: Mr. Jones
Motion carried by a 3-1 vote.

M-2 Economic Development Contract with Transylvania Community Arts Council – Mr. Landreth moved, seconded by Mr. Jones, Council approve the economic development contract as presented. Motion passed unanimously.

N. Remarks By Officials

Mayor Pro Tem Morrow shared in March a workshop conducted by the Conservation Fund titled, "Balancing Nature and Commerce" will be offered and as Brevard is a gateway community distinctive and defined by our wood, water, people, culture and arts, he believes it will be beneficial to attend.

Mr. Landreth commended Mr. Lasater for his years of service on the Planning and Board of Adjustment, and shared the importance and value of having volunteers like him serving on City boards as their work and input is invaluable.

Mr. Jones expressed his appreciation to our Police and Fire Department personnel for all they do for the citizens of Brevard.

Mr. Dickson echoed Mr. Landreth and Mr. Jones' comments, and, shared the Mountain Song Festival was sold out both nights, and was another great event that brought or community together.

Mr. Moore thanked Tammy Hopkins, Director of Transylvania Community Arts Council, for her and the Arts Council's many contributions to our community.

O. Closed Session- Mayor Pro Tem Morrow asked the City Attorney if it would be appropriate to convene four closed sessions for the purpose to discuss (1) potential property acquisition; (2) economic development incentive; (3) a potential litigation matter, and (4) personnel matter. City Attorney advised it would be appropriate pursuant to **GS § 143-318.11. (a)(3), (4), (5)** 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 8:53 p.m. Mr. Landreth moved, seconded by Mr. Dickson, Council go into closed session to discuss potential property acquisition. Motion carried unanimously. Authorized to remain for the closed session with Council and the Attorney were the City Manager, City Clerk, Mr. Freeman, Mr. Fatland, Mr. Burton, Mr. Johnston and Police Chief Harris. *(A five minute break was taken to allow citizens and staff to leave Council Chambers.)*

Council Returned to Regular Session – At 9:08 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 9:08 p.m. Mr. Landreth moved, seconded by Mr. Jones, Council go into closed session to discuss an economic development incentive. Motion carried unanimously.

At 9:47 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 9:47 p.m. Mr. Landreth moved, seconded by Mr. Jones, Council go into closed session to discuss a potential litigation matter. Motion carried unanimously.

At 10:04 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 10:04 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.

Council came out of closed session at 10:15 p.m. No official action was taken in closed session and the Minutes of the closed session are authorized to be sealed.

Mr. ________________moved, seconded by Mr. ________________, Council adopt **Ordinance No. 2013-11** Fixing Compensation and the Other Terms of Employment for City Manager Joe Moore. Motion carried unanimously.

ORDINANCE NO. 2013-11

AN ORDINANCE FIXING COMPENSATION AND THE OTHER TERMS OF EMPLOYMENT FOR CITY MANAGER JOE MOORE

WHEREAS, the City Council of the City of Brevard has reviewed the job performance of City Manager Joe Moore and has found it to be exemplary; and

WHEREAS, in accord with Chapter 2, Article III of the Brevard City Code, the compensation of the City Manager and other terms of his employment are to be fixed by ordinance;

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

Section 1. RATIFICATION OF APPOINTMENT. Mr. Joseph M. Moore, II (herein after referred to as the "City Manager") was duly appointed to the Office and position of City Manager of the City of

Brevard, effective September 1, 2009, and has served ably since that date, and City Council desires his continued service.

Section 2. SALARY. The City Manager's base salary is hereby set at $115,762.00, effective July 1, 2013, which shall be paid by the City of Brevard.

Section 3. EQUIPMENT USE AND ALLOWANCES.

(a) MOTOR VEHICLE MAINTENANCE AND GAS ALLOWANCE. In addition to the City Manager's salary, the City of Brevard shall pay to him monthly the sum of $200.00 as compensation for providing a vehicle for his use in connection with the conduct of his office. This payment shall be designated as a motor vehicle maintenance and gas allowance, and shall be paid in lieu of any reimbursement for actual mileage traveled in the course of the conduct of his office, except as mileage for attending those Professional Growth and Development meetings contemplated in Section 8.

(b) STANDARD OFFICE EQUIPMENT. The City of Brevard has been providing and shall continue to provide, for the use of the City Manager, all standard and reasonably necessary office equipment, including but not limited to a cell phone and a laptop computer, which shall be provided for business use at no cost to the City Manager.

Section 4. RESIDENCE REQUIREMENT. The City Manager shall be required to reside within the city limits of the City of Brevard or within the Extra-Territorial Jurisdiction of the City.

Section 5. ANNUAL EVALUATION. The City Manager's ongoing job performance will be reviewed each year prior to the establishing of the next fiscal year's budget and following that review, the City Council will set the terms of his continued employment, with any raises to be effective at the beginning of the next fiscal year. The evaluation shall include a written report and presentation by City Council to the City Manager.

Section 6. FUTURE INCREASES. The City Manager shall not qualify for or participate in any longevity pay raise or Cost of Living Adjustment (COLA) pay raise plan. Any salary raises will be individually considered by City Council and shall be based on performance, as well as other factors which are deemed relevant by City Council.

Section 7. PERSONNEL POLICY AND BENEFITS.

(a) 401K PLAN CONTRIBUTION. The City of Brevard shall contribute an amount equal to three percent (3%) of the City Manager's salary to his 401K plan, annually.

(b) OTHER BENEFITS. The City of Brevard Personnel Policy shall not apply to the City Manager. However, the Personnel Policy shall be followed for certain benefits to which he shall be entitled, to wit:

- Health Insurance/Health Savings Account for the City Manager and his family;
- Vacation time, sick leave and payment therefore;
- Paid holiday schedule;
- Group life insurance, short term disability insurance and dependant life insurance.

Section 8. PROFESSIONAL GROWTH AND DEVELOPMENT. The City Manager shall be permitted, and is encouraged to attend appropriate professional and municipal functions, meetings, conferences, etc., as a legitimate travel expense in accordance with the travel policies of the City. These may include the North Carolina League of Municipalities, the International City Management Association, the North Carolina City and County Management Association, the American Society of Civil Engineers and the American Public Works Association.

Section 9. COMMUNITY INVOLVEMENT. The City Manager is encouraged to be active and involved in all positive and appropriate facets of the community, including in his discretion, participation in civic organizations, charitable events, speaking engagements and the like. Upon the request of the City Manager, City Council will consider an allowance for participation in civic organizations.

Section 10. STANDARDS FOR BEHAVIOR AND CONDUCT. The City Manager shall at all times, and in all locations, present himself in public and in the presence of others, in such manner as is appropriate to the person who is the primary spokesperson and manager for the City of Brevard. In this regard, his conduct shall at all times be that of a competent, truthful, ethical and moral individual, and shall be beyond reproach. Any conduct in violation of this provision, including but not limited to a criminal misdemeanor or felony conviction of any kind, shall be grounds for immediate dismissal.

Section 11. TERMINATION OF EMPLOYMENT.

(a) VOLUNTARY SEPARATION. In the event that the City Manager voluntarily terminates his employment, no severance of any kind shall be paid by the City of Brevard.

(b) INVOLUNTARY SEPARATION. City Council retains the absolute right to terminate the City Manager's employment at will. In the event that the City Manager's employment is terminated by act of

City Council, he shall receive six (6) months' salary as severance pay in lieu of any other remaining salary. Severance pay shall be terminated immediately upon his acceptance of any other employment. Severance pay may be paid in lump sum or over the regularly scheduled pay days, in the discretion of City Council. No other benefits shall be paid or continued in effect following termination except as may be required by law.

Section 12. EFFECTIVE DATE. This Ordinance shall be effective as of July 1, 2013.

Adopted and approved this the 16th day of September, 2013.

Adjourn - There being no further business before Council, Mr. ________________ moved, seconded by Mr. ___________________, the meeting be adjourned. Motion carried. Meeting adjourned at 10:16 p.m.

s/Mac Morrow	s/Desiree Perry
Mac Morrow	Desiree D. Perry, CMC, NCCMC
Mayor Pro Tem	City Clerk

Minutes Approved: October 21, 2013