

**City Council Regular Session  
January 13, 2014**

The City Council of the City of Elizabeth City met for a Regular Session on Monday, January 13, 2014 in Council Chambers, located on the 2<sup>nd</sup> floor of the Municipal Administration Building, 306 E. Colonial Avenue, Elizabeth City, NC.

MEMBERS PRESENT: Mayor Joe Peel  
Councilwoman Jean Baker  
Councilman Ray Donnelly  
Mayor Pro Tem Anita Hummer  
Councilman Tony Stimatz  
Councilman Michael Brooks  
Councilman Kem Spence  
Councilman Darius Horton  
Councilman Montravias King

MEMBERS ABSENT: NONE

OTHERS PRESENT: City Manager Rich Olson  
City Attorney Bill Morgan  
Planning Director June Brooks  
Chief of Police Eddie Buffaloe  
Electric Department Superintendent Karl Clow  
ECDI Director Rebecca Cross  
Human Resources Director Katherine Felton  
Public Utilities Director Paul Fredette  
Fire Chief Larry Mackey  
Inspections Director Stanley Ward  
Parks and Recreation Director Bobbi White  
Deputy City Clerk Vivian White

The City Council Regular Session was called to order by Mayor Joe Peel at 7:00 p.m. Mayor Peel welcomed everyone to the meeting. A moment of silent reflection was observed, after which Mayor Peel led in the Pledge of Allegiance.

**1. Agenda Adjustments and Approval:**

Mayor Peel called for any adjustments to and approval of the agenda.

**Motion was made by Mayor Pro Tem Anita Hummer, seconded by Councilman Montravias King, to approve the agenda with any necessary adjustments. Those voting in favor of the motion were: Baker, Donnelly, Hummer, Stimatz, Brooks, Spence, Horton and King. Against: None. The motion carried unanimously.**

*(Clerk notation: No adjustments were requested.)*

## **2. Comments from the Public:**

Mr. C. Everett Thompson, 208 Small Drive, Elizabeth City, NC stated that he and his wife had lived in Elizabeth City for over 40 years. He stated that he wanted to make comments to the Council regarding Arts of the Albemarle (AoA). He thanked the City Council for its past support of AoA and stated that he hoped the Council would consider future support of the organization. He said that he believed AoA to be the downtown anchor tenant for Elizabeth City and should it perish, he said he was afraid the downtown would go away. He encouraged support by the City Council and the citizens at large for AoA. He provided an overview of the services provided to the community by the organization and spoke of its positive impact on both adults and children in the community.

## **3. Approval of Minutes:**

Mayor Peel called for the Council's pleasure regarding the minutes presented for approval.

**Motion was made by Mayor Pro Tem Anita Hummer, seconded by Councilman Ray Donnelly, to combine and approve the minutes from September 23, 2013 through December 9, 2013. Those voting in favor of the motion were: Baker, Donnelly, Hummer, Stimatz, Brooks, Spence, Horton and King. Against: None. The motion carried unanimously.**

Minutes approved by the above motion are as follows:

- a. City Council Work Session – September 23, 2013
- b. City Council Regular Session – September 23, 2013
- c. Joint City/County Meeting – September 30, 2013
- d. City Council Regular Session – October 7, 2013
- e. City Council Work Session – October 28, 2013
- f. City Council Regular Session – October 28, 2013
- g. City Council Regular Session – November 12, 2013
- h. City Council Regular Session #1 – December 9, 2013
- i. City Council Regular Session #2 – December 9, 2013

## **4. Consent Agenda:**

Mayor Peel recognized City Manager Olson to read the items on the Consent Agenda for the record. Mr. Olson recommended approval of all items, as follows:

### **Beginning of Consent Agenda:**

- a. Consideration – Call for a Public Hearing on January 27, 2014 at 7:30 p.m. in City Council Chambers, 2<sup>nd</sup> Floor, 306 E. Colonial Avenue to receive comment on TA-02-13, Request to amend the UDO Articles II, IV and VII to comply with the 2013 General Assembly enacted legislation House Bill 276;
- b. Consideration – Call for a Public Hearing on January 27, 2014 at 7:30 p.m. in City Council Chambers, 2<sup>nd</sup> Floor, 306 E. Colonial Avenue to receive comment

on RZ-04-13 requested by Tonya Spellman to rezone 305 Perry Street from Residential R-6 to Neighborhood Business NB;

c. Consideration – Award of Downtown Improvement Grant Program application request in the amount of \$10,906 to River City CDC for a total project cost of \$21,812.16;

d. Consideration – Award of Downtown Improvement Grant Program application request in the amount of \$8,250 to Carlton D. Thornton for a total project cost of \$16,500;

e. Consideration – Adoption of Various Budget Amendments for accounting purposes, as follows;

### **BUDGET AMENDMENTS**

**BE IT ORDAINED** by the City Council of the City of Elizabeth City that the following amendments be made to the annual budget ordinance for the fiscal year ending June 30, 2014:

**SECTION I.** That the General Fund Insurance Proceeds (103350.8300) and Police Department Repair to Vehicles (105100.1700) be increased by \$2,594.

(To record insurance proceeds due to police vehicle accidents.)

**SECTION II.** That the General Fund Balance Appropriated (103990.0000) be increased by \$1,402, the Senior Center Grant Revenue (103490.6301) be increased by \$4,833, and Senior Center Grant Expenditures (106300.3301) be increased by \$6,235.

(To record Senior Center Grants of \$4,833 and local match of \$1,402.)

**SECTION III.** That the Electric Fund Insurance Proceeds (303350.8300) and Load Management Repair to Equipment (308400.1601) be increased by \$5,758.

(To record insurance proceeds for generator at Wastewater Plant struck by lightning.)

**SECTION IV.** That the Water & Sewer Retained Earnings Appropriated (313990.0000) and Halstead Boulevard Water Line Loan (318100.8101) be increased by \$36,755.

(To record interest payable to Pasquotank County for Halstead Boulevard water line loan. The annual principal payment of \$122,583 was budgeted.)

Adopted, this the 13<sup>th</sup> day of January 2014.

**Joseph W. Peel**  
**Mayor**

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**Vivian White, NCCMC**  
**Deputy City Clerk**

f. Consideration – Adoption of the following Resolution Approving Financing Terms for equipment purchases (police vehicles, refuse truck and senior center bus) to be funded by installment purchase financing in the amount of \$560,000 with BB & T;

**Resolution 2014 – 01-01**  
**Approving Financing Terms**

**WHEREAS:** The City of Elizabeth City, North Carolina (the “City”) has previously determined to undertake a project for the financing of a Police Vehicles, Refuse Truck and a Senior Center Bus, (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 December 13, 2013. The amount financed shall not exceed \$560,000.00, the annual interest rate (in the absence of default or change in tax status) shall not exceed 1.56%, and the financing term shall not exceed five (5) 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 the 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.

Approved this 13<sup>th</sup> day of January, 2014.

By: \_\_\_\_\_  
Vivian White, NCCMC, Deputy City Clerk

By: \_\_\_\_\_  
Joseph W. Peel, Mayor

g. Consideration – Acceptance of Tract P56-1(e) from Tanglewood Development, LLC and authorization to pay \$910.87 to the Pasquotank County Tax Department.

**End of Consent Agenda.**

**Motion was made by Councilwoman Jean Baker, seconded by Councilman Tony Stimatz, to approve the Consent Agenda as read. Those voting in favor of the motion were: Baker, Donnelly, Hummer, Stimatz, Brooks, Spence, Horton and King. Against: None. The motion carried unanimously.**

**5. Regular Agenda:**

a. Consideration – Appointment of Councilman Ray Donnelly to serve as the Elizabeth City Council’s representative to the Albemarle Rural Planning Organization Transportation Advisory Committee:

**Motion was made by Councilman Tony Stimatz, seconded by Councilwoman Jean Baker, to appoint Mr. Ray Donnelly to the Albemarle Rural Planning Organization Transportation Advisory Committee.**

Mayor Peel called for the Council's pleasure by roll call regarding this appointment. The roll call vote is recorded as follows:

**Councilman Brooks – yes  
 Councilman Stimatz – yes  
 Councilman Horton – yes  
 Mayor Pro Tem Hummer – yes  
 Councilman King – yes  
 Councilwoman Baker – yes  
 Councilman Spence – yes  
 Councilman Donnelly – yes**

**The motion carried unanimously.**

b. Consideration – Adoption of City Council 2014 Meetings Calendar:

Mayor Peel requested any comments by the City Manager on this request. Mr. Olson stated that the meetings calendar is similar to the past schedule in that the Council will continue to meet on the second and fourth Mondays of each month with a Work Session on the fourth Monday at 5:30 p.m. He noted the exceptions on the calendar for the year.

**Motion was made by Councilman Tony Stimatz, seconded by Councilwoman Jean Baker, to adopt the calendar as presented. Those voting in favor of the motion were: Baker, Donnelly, Hummer, Stimatz, Brooks, Spence, Horton and King. Against: None. The motion carried unanimously.**

**The calendar presented is as follows:**

<b>Date</b>	<b>Time</b>	<b>Meeting</b>
January 13, 2014	7:00 p.m.	Regular Meeting
January 27, 2014	5:30 p.m.	Work Session
	7:00 p.m.	Regular Meeting
February 10, 2014	7:00 p.m.	Regular Meeting
February 24, 2014	5:30 p.m.	Work Session
	7:00 p.m.	Regular Meeting
March 10, 2014	7:00 p.m.	Regular Meeting
March 24, 2014	5:30 p.m.	Work Session
	7:00 p.m.	Regular Meeting
April 14, 2014	7:00 p.m.	Regular Meeting
April 28, 2014	5:30 p.m.	Work Session
	7:00 p.m.	Regular Meeting

May 12, 2014	7:00 p.m.	Regular Meeting
May 27, 2014 ( <i>Tuesday</i> )	5:30 p.m.	Work Session
	7:00 p.m.	Regular Meeting
June 9, 2014	7:00 p.m.	Regular Meeting
June 23, 2014	5:30 p.m.	Work Session
	7:00 p.m.	Regular Meeting
July 14, 2014	7:00 p.m.	Regular Meeting
August 11, 2014	7:00 p.m.	Regular Meeting
August 25, 2014	5:30 p.m.	Work Session
	7:00 p.m.	Regular Meeting
September 8, 2014	7:00 p.m.	Regular Meeting
September 22, 2014	5:30 p.m.	Work Session
	7:00 p.m.	Regular Meeting
October 6, 2014	7:00 p.m.	Regular Meeting
October 27, 2014	5:30 p.m.	Work Session
	7:00 p.m.	Regular Meeting
November 10, 2014	7:00 p.m.	Regular Meeting
November 24, 2014	5:30 p.m.	Work Session
	7:00 p.m.	Regular Meeting
December 8, 2014	7:00 p.m.	Regular Meeting

Councilman Donnelly inquired as to the scheduling for joint City/County meetings. Mr. Olson responded that since the meetings are held at various locations, the meetings would be scheduled as Special Meetings.

c. Consideration – Approval of Interlocal Agreement with Pasquotank County for the Collection of Taxes:

Mayor Peel recognized City Manager Olson for a review of this request.

Mr. Olson stated that this item was brought before the City Council during a joint City/County meeting held on September 30, 2013. He advised that at that time, members of the City Council were not happy with the proposed draft of the agreement. He said that staff worked on the proposed agreement and presented an amended draft during the October 28, 2013 meeting, which was approved and forwarded to Pasquotank County for action.

Mr. Olson reported that Pasquotank County responded with a counter-offer to the agreement on December 11, 2013; and he referred the Council members to the revised document as presented in the agenda. He pointed out that the only change from the previous draft was in Section XI of the agreement.

Mr. Olson stated that Section XI of the agreement was re-drafted to reflect that the County must notify the City 30 days prior to the sale of foreclosed property. In addition, the City then has the right to notify the County if it has issues due to environmental or potential liability concerns. Pasquotank County would then be authorized to bid on the

property, but can only bid the least amount of money required to secure the property up to the existing tax liability. Mr. Olson said that the City will pay a pro-rata share of the cost to secure the property based on the ratio of City to County taxes owed. He stated that the property will be titled in the City's name and the City will maintain the property until it sells. The sales proceeds will be split between the City and County based on the ratio of taxes paid. Any surplus will be kept by the City to cover the cost of maintaining the property. Mr. Olson said the revised agreement had been sent to Pasquotank County. He reported that although County staff had not reported any objections, the Commissioners had not yet taken official action.

**Motion was made by Councilman Ray Donnelly, seconded by Mayor Pro Tem Anita Hummer to authorize Mayor Joseph W. Peel to execute the Pasquotank County Interlocal Agreement to collect taxes, as presented. Those voting in favor of the motion were: Baker, Donnelly, Hummer, Stimatz, Brooks, Spence, Horton and King. Against: None. The motion carried unanimously.**

d. Discussion – City Council Meetings Invocation:

Mayor Peel recognized Councilman Horton for his comments on this matter.

Councilman Horton stated that in 2011, the American Civil Liberties Union sued Forsythe County, which prompted considerable discussion regarding invocations at City meetings. He noted that in 2012, the Elizabeth City Council took action to allow for a moment of silent reflection during meetings. He reported that after talking with residents in the community, he felt it was time to take another look at the issue in order to bring prayer back to Council meetings. He pointed out that no one complained to the City that prompted the change in policy. He stated that it was his opinion that prayer is a part of the fabric of our society, and he stated that our nation was founded on prayer. He said that his interpretation of the law was that there was nothing wrong with praying as long as the Council was not embracing or advancing one faith over another. He appealed to the Council members to take a look at the issue and proposed that the Council allow community leaders to pray at meetings and ask City staff to develop guidelines as they relate to language that can be used in the prayers.

Mayor Peel asked the City Attorney if he would like to address this issue for the Council. Mr. Morgan stated that he agreed with most of Councilman Horton's statement. He said that "we all pray" and there is nothing illegal with having prayer at public meetings, such as a City Council meeting. He advised that what the Council must be cautious of, and the Courts are very attentive to, is not just "not advocating one particular religion or sect at the expense of another". He provided an example, the case in Forsythe County, which had published rules that speakers had to follow. He stated that the rules were the stated policy of Forsythe County, but in practice once the policy was in place, between May 2007 and December 2008 in spite of the official policy, four-fifths of the ministers who prayed at the beginning of their meetings made reference to Jesus or Jesus Christ or Savior. He stated that the Fourth Circuit Court of Appeals ruled that even though the County did not advocate a particular religion, in practice the County by allowing the prayer, allowed the advocacy of Christianity at the expense of other religions to occur.



Mr. Morgan reported that the resulting lawsuit was ruled in favor of the Plaintiff and Forsythe County lost. He said that his mentor, Mr. Gerald White, had been reading about this issue and wrote, during the month of December, a prayer that he thought would withstand any challenge by any person or group. He stated that essentially what the prayer does is ask for divine guidance in the legislative process and asks that the public body engage itself in such a way as to follow the high ideals of freedom and democracy and that Constitutional principles be withheld. He stated that he thought certainly a policy could be created that prevents or prohibits the mentioning of one particular religion or sect at the expense of another, but if in practice the ministers who come to pray do advocate Christianity or any other religion, there would be a serious problem.

Mr. Morgan stated that he had read the entire opinion from the Forsythe County case and underlined what he thought were the important parts. He offered to share his copy with the City Councilors for their review.

Councilman Brooks stated that this issue had been an ongoing battle for him since the Council voted to eliminate prayer before meetings. He stated that it is his belief that if the City puts a policy in place, shares it with the various ministers and has them to come and pray, there would not be a problem. He said that should an issue arise with a minister, the Mayor has the authority as chair of the meeting to invoke the policy. He said that he did not agree with an established prayer format, because the needs were not the same during every Council meeting. He stated that he thought the Council "must pray – we need divine intervention" because of poverty and other issues faced by our citizens.

**Motion was made by Councilman Michael Brooks, seconded by Councilman Darius Horton, that the Council invoke prayer back before our meetings with the policy sent forth saying they can't promote one religion over another and if they can't abide by that they need not come before Council to pray.**

Councilman Spence asked why, since there are two ministers on Council, they could not pray if the issue is one of an outside minister praying. He stated that a moment of silence to him meant reverence to someone who has passed on or something about the past. He stated that God is not the past; He is the past, present and future.

Councilman Stimatz stated that this is very much the discussion held in 2012 and he reminded the Council that the thought at that time, rather than having to police people from the outside, which is what did not occur in Forsythe County, a pre-determined prayer would be appropriate. He asked how the policy will be enforced and at what point it would be determined that too many people had come up and done the wrong thing. He said it was previously offered that the Council have a pre-set prayer that would withstand any test, but there was never an agreement on what the prayer should read. He stated that the result of the disagreement was a moment of silent reflection. He said that it was not a fact of the Council not wanting to pray; rather, it was a fact that they all swore an oath to uphold the Constitution, which means abiding by the ruling of the Supreme Court.

Councilman Stimatz stated that he was okay with opening the process up to outside clergy; and he said that if problems arise, at some point the practice would have to be stopped and the prayer brought back internally.

Mayor Peel questioned Councilman Brooks regarding the intent of his motion to make the Mayor the one to be the enforcer of the policy. He asked if there was a pastor praying and that minister invokes the name of Jesus Christ, was it the expectation that he would gavel the minister down and stop him from praying. Councilman Brooks stated that it was his intention to provide the policy beforehand, and should it be violated, the Council would end the practice of having outside ministers pray. Councilman Brooks stated that he was adamantly against the use of a pre-printed prayer.

Councilman Horton stated that he did not feel it was appropriate to question the integrity of our local pastors. He stated that he would like to take on the role of developing a list of community leaders from all faiths, all walks and all beliefs, who would be willing to bring an invocation, possibly with the help of Pastor Phil Dowdy, who formerly helped with that process. He said that he was willing to educate the ministers regarding the Council's expectation. He said in so doing, he did not feel it would get to a point where a minister would do something that they had been asked not to do.

Councilman Stimatz stated that what he envisions is that staff will come back with a change to the Council's procedures manual to change from a moment of silent reflection to a prayer or invocation, and at that time, the rules of engagement and the language that will be provided to the ministers will also be made available for the Council's consideration.

Councilman Brooks stated that adjustments could be made to the motion he made, because he felt the Council was headed in the right direction.

Mayor Peel stated that the process could not be started until there was a change in the Council's procedures.

**Mayor Peel inquired if everyone was clear that the motion was to move forward with the process as discussed. He called for a vote on the motion. Those voting in favor of the motion were: Baker, Hummer, Stimatz, Brooks, Spence, Horton and King. Against: Donnelly. The motion carried.**

**Mayor Peel stated that as he understands the discussion, Councilman Horton and Councilman Brooks would work with City Manager Olson and City staff to draft the information for Council's consideration during the next City Council meeting.**

## **6. Comments and Inquiries on Non-Agenda Items:**

Councilman Brooks thanked the Police Department for taking care of some neighborhood problems that had been expressed to him.

Councilman Stimatz welcomed everyone to the Council meeting and wished everyone a Happy New Year.

Councilman Horton expressed his gratitude for the Council's willingness to work on the issue of prayer during Council meetings in a peaceful manner. He said that he was looking forward to some bright days and great moments on the City Council.

Mayor Pro Tem Hummer requested an update on the 17 S Sidewalk Project. Mr. Olson responded that a couple of minor delays had been experienced but the project was moving forward.

Councilman King wished everyone a Happy New Year. He welcomed all of the City's college students back and wished them all a successful semester. He congratulated the ladies of Delta Sigma Theta Sorority on their 101<sup>st</sup> Founders Day. He commended City staff for their diligence during the recent bad weather. He stated that he had been meeting with some concerned citizens in the Oak Grove neighborhood and advised that the ditches need to be cleaned in that neighborhood.

Councilwoman Baker thanked Mr. Everett Thompson for attending the meeting and speaking about Arts of the Albemarle. She said that she, too, feels that AoA is the downtown anchor.

Councilman Spence welcomed the new members of Council, Councilman Horton and Councilman King. He inquired as to the progress of the Brooks Avenue paving project and stated that he had received complaints that it is much like "a roller-coaster".

Councilman Donnelly stated that he was disappointed that the University of North Carolina had closed the studio arts program at ECSU. He asked for a progress report on the ECDI building. He stated that the contractors working on the building were not keeping the walkway cleared very well and requested that City staff address that issue.

Mayor Peel welcomed the two new members of the Council and stated that the Council was glad to have them on board. He stated that he was looking forward to working with them. He announced that 39 students from AoA would be attending a national competition in Atlanta for junior theater groups from all over the United States. He reported that three of the students would be singing the National Anthem during the opening session. He said that these three young ladies are unbelievably talented. He stated that the City has some incredibly talented young people and some incredibly talented adults who were working with. He encouraged everyone to go see the Center Players when they next perform and described them as a real asset to the community.

**7. Closed Session As authorized by NCGS §143-318.11(a)3 Consultation with City Attorney and NCGS §143-318.10(e) – Approval of Closed Session Minutes:**

**Motion was made by Mayor Pro Tem Anita Hummer, seconded by Councilman Ray Donnelly, to go into Closed Session as authorized by NCGS §143-318.11(a)3 - Consultation with City Attorney and NCGS §143-318.10(e) - Approval of Closed Session Minutes. Those voting in favor of the motion were: Baker, Donnelly, Hummer, Stimatz, Brooks, Spence, Horton and King. Against: None. The motion carried unanimously.**

Mayor Peel announced a five minute recess at 7:52 p.m. after which the Council entered Closed Session.

**Motion was made by Councilman Michael Brooks, seconded by Councilman Tony Stimatz, to come out of Closed Session and return to open session. Those voting in favor of the motion were: Baker, Donnelly, Hummer, Stimatz, Brooks, Spence, Horton and King. Against: None. The motion carried unanimously.**

**Motion was made by Mayor Pro Tem Anita Hummer, seconded by Councilman Darius Horton, to approve the Closed Session minutes of September 30, 2013, October 28, 2013 and November 12, 2013 as presented. Those voting in favor of the motion were: Baker, Donnelly, Hummer, Stimatz, Brooks, Spence, Horton and King. Against: None. The motion carried unanimously.**

**8. Adjournment:**

There being no further business to be discussed, Mayor Peel adjourned the meeting at 8:47 p.m.

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Joseph W. Peel  
Mayor

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Vivian D. White, NCCMC  
Deputy City Clerk