

**MONDAY – 7:00 P.M.**

**JANUARY 23, 2012**

**CITY COUNCIL**

The City Council of the City of Elizabeth City held its second regular meeting of the month on the above date and time in the City Council Chambers of the Municipal Administration Building with Mayor J. W. Peel presiding. Members attending were: Mayor Pro Tem L. A. Hummer, Counselors: J. M. Baker, M. E. Brooks, R. T. Donnelly, L. M. Hill-Lawrence, K. K. Spence, J. A. Stimatz and J. B. Walton. City staff members attending were: City Manager R. C. Olson, City Clerk D. S. Pierce-Tamplen, City Attorney W. H. Morgan, Human Resource Director K. W. Felton, Parks and Recreation Director B. V. White, ECDI Director R. Cross, Finance Director S. E. Blanchard, Public Utilities Director P. A. Fredette, Assistant Fire Chief M. Cartwright, Lieutenant J. Lacombe and Planner A. Cole.

Mayor J. W. Peel established a quorum was present and called the meeting to order at 7:00 p.m. He welcomed those attending. He called upon Pastor Greg Brinson, New Hope Christian Church for the invocation after which he led the Pledge of Allegiance to the Flag of the United States of America.

**1} AGENDA ADJUSTMENT AND APPROVAL:**

Mayor Peel called for the Council's pleasure regarding the prepared agenda.

***A motion was made by Mayor Pro Tem L. A. Hummer, seconded by Councilman M. E. Brooks to approve the agenda as presented. Those voting in favor of the motion were: Hummer, Brooks, Baker, Donnelly, Hill-Lawrence, Spence, Stimatz and Walton. Against: None. Motion carried.***

**2} SELECTION OF MAYOR PRO TEM:**

Mayor Peel called for nominations for the Mayor Pro Tem Position.

***A motion was made by Councilwoman J. M. Baker, seconded by Councilman R. T. Donnelly to elect our Mayor Pro Tem based on two candidates, each serving one year of the two year term. That being Mr. Johnnie Walton, Ms. Lena Hill-Lawrence and that they would each serve one year - Mr. Walton the first and Ms. Lena Hill-Lawrence the second.***

Councilman Brooks stated that was a motion and it was called for nomination.

If we want to go into discussion that is fine. You opened the floor up for nominations and not for a motion.

City Attorney Morgan stated he thought it was really a moot point. Certainly, if Ms. Baker would like to withdraw her motion and nominate a particular candidate she is within her rights to do that or perhaps she should have both of the same candidates who have been nominated before nominated again tonight. Then Ms. Baker would certainly be in order at that time. He doesn't think you should rule her motion out of order by virtue of the fact that it was made in the form of a motion rather than a nomination.

Mr. Brooks stated you can't nominate two people. Our ordinance and our charter say the council shall elect one of its members. It doesn't say two, it says one. We can address this in Closed Session or we can discuss it in open session. This can get messy and we don't need to show that in front of our citizens. We are not going to do any kangaroo stuff, we are not going to do that kangaroo court, we are not going to find stuff to try to give a reason why the motion was made like that.

Councilwoman Baker said she would like to withdraw her motion. Councilman Donnelly stated he would withdraw his second to the motion.

***Councilwoman J. M. Baker nominated Councilwoman L. M. Hill-Lawrence for the position of Mayor Pro Tem. Councilman R. T. Donnelly seconded the nomination.***

***Councilman M. E. Brooks nominated Councilman J. B. Walton for the position of Mayor Pro Tem. Councilman K. K. Spence seconded the motion.***

***Those voting for Councilwoman L. M. Hill-Lawrence for the position of Mayor Pro Tem:***

<b><i>Brooks</i></b>	<b><i>No</i></b>
<b><i>Stimatz</i></b>	<b><i>Yes</i></b>
<b><i>Hill-Lawrence</i></b>	<b><i>Yes</i></b>
<b><i>Hummer</i></b>	<b><i>No</i></b>
<b><i>Walton</i></b>	<b><i>No</i></b>
<b><i>Baker</i></b>	<b><i>Yes</i></b>
<b><i>Spence</i></b>	<b><i>No</i></b>
<b><i>Donnelly</i></b>	<b><i>Yes</i></b>

***4 yes votes and 4 no votes***

***Those voting for Councilman J. B. Walton for the position of Mayor Pro Tem:***

***Roll Call Vote:***

<b><i>Brooks</i></b>	<b><i>Yes</i></b>
<b><i>Stimatz</i></b>	<b><i>No</i></b>
<b><i>Hill-Lawrence</i></b>	<b><i>No</i></b>
<b><i>Hummer</i></b>	<b><i>Yes</i></b>
<b><i>Walton</i></b>	<b><i>Yes</i></b>
<b><i>Baker</i></b>	<b><i>No</i></b>
<b><i>Spence</i></b>	<b><i>Yes</i></b>
<b><i>Donnelly</i></b>	<b><i>No</i></b>

***4 yes votes and 4 no votes***

***A motion was made by Councilman M. E. Brooks, seconded by Councilman K. K. Spence to table this item once again.***

***Roll Call Vote:***

<b><i>Brooks</i></b>	<b><i>Yes</i></b>
<b><i>Stimatz</i></b>	<b><i>Yes</i></b>
<b><i>Hill-Lawrence</i></b>	<b><i>No</i></b>
<b><i>Hummer</i></b>	<b><i>Yes</i></b>
<b><i>Walton</i></b>	<b><i>Yes</i></b>
<b><i>Baker</i></b>	<b><i>No</i></b>
<b><i>Spence</i></b>	<b><i>Yes</i></b>
<b><i>Donnelly</i></b>	<b><i>No</i></b>

***5 yes votes – 3 no votes. Motion carried.***

Councilman Walton asked to make a statement. We have had motions, one was made for Councilwoman Hill-Lawrence and one was made for him. Then we went to another level. Some wanted to split it up. That didn't work. Then we said let's flip a coin toss, that wouldn't work. He has talked to a lot of people in the community. He has even talked to a negotiator. He tried to work it out. The only thing turned out against that was he never said, do the right thing. He said let's do a compromise thing. The right thing is nothing but longevity. That is not hard. Attorney, if they split this up isn't that a charter change?

Mr. Morgan respond as he understands the Charter the person who serves as Mayor Pro Tem serves at the pleasure of Council. If it is Council's pleasure that one person holds the spot for one year and a second person holds it for the

second year during the current term, he thinks that is certainly permitted under the law.

Mr. Walton wanted to know if it had ever been done.

Mr. Morgan said he is not aware of it having been done here in this City.

Mr. Walton said we want to do a whole lot of changing of everything. If you have a Charter change don't you have to take it to Congress?

Mr. Morgan said a Charter change usually requires special legislation by the State.

Mr. Walton said if we have to end up in Congress with something like this it is ridiculous. They should just come in and remove everybody. So let's flip a coin or do something because that is what you are doing now. You are not making decisions. Everybody is playing games, political games. Congress should at least say you guys it is written in the Charter, make a decision and move forward.

Mayor Pro Tem Hummer said she thinks that we need to contact the Institute of Government on just what the Charter says because there is an email from Kim Hibbard who is with the NC League of Municipalities and only certain things can be change in the ordinance without going through the Legislature. The way she interpreted from her email is this type of change to our ordinance would require two thirds vote whether it goes to the legislature or not. It is a change to the ordinance. It doesn't say one for one year and someone else for another year, it says one.

Mr. Morgan said he has not seen that email so he is not aware the content. Certainly, as he reads the Charter it says the person who serves as Mayor Pro Tem serves at the pleasure of Council and again, he would say that if it is Council's pleasure that one person holds the seat for one year and a second holds it the second year that would be permitted. Again, he is saying that without the benefit of seeing Ms. Hibbard's email.

Mayor Pro Tem Hummer said there again it is not specific enough. We need a ruling on it.

Mayor Peel said what you are asking is that Council directs the City Attorney to get a ruling on whether we can have a Mayor Pro Tem for one year each or does our Charter limit us to having one for two years.

Mayor Pro Tem Hummer said she doesn't think flipping a coin is good city business and she would not vote to do so.

Mr. Brooks said this is the point he was trying to make. Most of the time we take something and if we want things to go our way we try to have opinions outside of what we are really saying. You can't take the last sentence and omit the first sentence. The first sentence says in 2-4 of our Ordinance, "the Council shall elect one of its members. Then we sit here and try to elect two of its members at one time. You can't do that. If we elect one member and then after the year elect another member that would be more feasible than trying to elect two members at the same time. You can't split up the vote. Don't try to interpret the law to make it fit someone that is telling you how to do it.

Mr. Morgan said he is not going to comment on that Mr. Brooks in open session. But you should not accuse him of doing something like that.

Mr. Brooks said he asked to take this to Closed Session.

Mayor Peel said we have already asked the Attorney to get a ruling.

Ms. Baker said she just wonders why we didn't have a copy of that letter on our dais tonight. It came in Friday.

Mayor Pro Tem Hummer said it just came in late this afternoon.

### **3} SPECIAL PRESENTATIONS:**

a} Proclamation – In Memory of Reverend Edward M. Forbes.

Mayor Peel read and presented a proclamation to Judge Grafton Beamon. Mr. Beamon made brief remarks and invited everyone to the celebration on February 10<sup>th</sup> that will pay tribute to the late Reverend Edward M. Forbes.

b} Proclamation – Proclaiming the month of January 2012 as "National Mentoring Month. He presented a proclamation to Ms. Mila Rose of the local YouthBuild organization. Ms. Rose made brief remarks.

c} Civil Air Patrol Pinning Ceremony. Ms. Jadeann Miller received her rank of CADET 2<sup>nd</sup> Lieutenant. Ms. Miller will be the Squadron Commander of the Elizabeth City Wild Eagle Squadron. Mayor Peel also presented Cadet Miller with the General Billy Mitchell Award.

### **4} PUBLIC COMMENTS:**

Mr. Hans Hess, Pastor of the Fountain of Life Church, 295 Highway 343 South, Camden, North Carolina addressed Council and asked that Council approve their request to leave the City's water system and go with Pasquotank County.

**5} CONSENT AGENDA:**

Mayor Peel called upon City Manager Olson to read the Consent Agenda items.

***A motion was made by Mayor Pro Tem L. A. Hummer, seconded by Councilman M. E. Brooks to approve the following Consent Agenda as presented. Those voting in favor of the motion were: Hummer, Brooks, Baker, Donnelly, Hill-Lawrence, Spence, Stimatz and Walton. Against: None. Motion carried.***

**Consent Agenda:**

1} Approved calling for a public hearing to be held for each of the following on Monday, February 13, 2012 at 7:30 p.m. in the City Council Chambers of the Municipal Administration Building for the following:

a} Rezoning Request (RZ-04-11) property located at 1119 W. Main Street from General Business (GB) to R-8, Residential

b} Text Amendment (TA-03-11) to amend the Unified Development Ordinance, specifically Article VI, Section 6-2.1(A), Single lot of record with lot area and/or width nonconformity.

2} Rejected the bid received from Barnhill Contracting Company in the amount of \$199,927 for the construction of a sidewalk extension from Providence Drive to the entrance to the Farm Fresh shopping area near Applebee's; and further directed the City Manager to investigate possible cost saving options including a "design-build" or "value engineered" option for the construction of the pedestrian bridge required for this project.

3} Approved the Elizabeth City Fire Department utilizing 1102 Parkview Drive for live burn training.

**End of Consent Agenda**

**6} PUBLIC HEARING:**

Mayor Peel called upon City Manager Olson for comments.

Mr. Olson advised the City of Elizabeth City is required to hold two public hearings whenever we apply for any community development block grant funds. We have received notice from CI that there are a number of CDBG grants that are available. The first one is a CDBG Infrastructure Grant which has a value of \$750,000 and the second one is a CDBG NC Catalyst Grant which has a limit of \$500,000. City staff is proposing that we apply for the South Road Street as our CDBG Infrastructure Grant for \$750,000 and for the Catalyst Grant we are either looking at elimination of some blight or substandard structures or possibly modifying the middle school in conjunction with the County and the PAL Program. This is the first public hearing. The second public hearing will provide a lot more details in each one of these specific grants that we have pending.

Mayor Peel declared the meeting into Public Hearing. Since there was no one present that wished to speak for or against the proposed grant applications, Mayor Peel declared the public hearing closed.

**7} REGULAR AGENDA:**

a} Various Committee Appointments/Reappointments:

1} Personnel Appeals Committee:

a} Mayor Peel asked for confirmation of reappointing Ms. Brenda W. Overton, 1312 Halstead Boulevard to a three-year term.

***A motion was made by Mayor Pro Tem L. A. Hummer, seconded by Councilman M. E. Brooks to accept the confirmation of reappointing Ms. Brenda W. Overton to the Personnel Appeals Committee for a three-year term ending 1/2015.***

***Roll Call Vote:***

<b><i>Brooks</i></b>	<b><i>Yes</i></b>
<b><i>Stimatz</i></b>	<b><i>Yes</i></b>
<b><i>Hill-Lawrence</i></b>	<b><i>Yes</i></b>
<b><i>Hummer</i></b>	<b><i>Yes</i></b>
<b><i>Walton</i></b>	<b><i>Yes</i></b>
<b><i>Baker</i></b>	<b><i>Yes</i></b>
<b><i>Spence</i></b>	<b><i>Yes</i></b>
<b><i>Donnelly</i></b>	<b><i>Yes</i></b>

***8 yes and 0 no. Motion carried.***

b} Mayor Peel asked for confirmation of reappointing Mr. Walter "Mickey" Golden, 901 Riverside Avenue to a three-year term.

***A motion was made by Mayor Pro Tem L. A. Hummer, seconded by Councilman M. E. Brooks to accept the confirmation of reappointing Mr. Walter "Mickey" Golden to the Personnel Appeals Committee for a three-year term ending 1/2015.***

***Roll Call Vote:***

<b><i>Brooks</i></b>	<b><i>Yes</i></b>
<b><i>Stimatz</i></b>	<b><i>Yes</i></b>
<b><i>Hill-Lawrence</i></b>	<b><i>Yes</i></b>
<b><i>Hummer</i></b>	<b><i>Yes</i></b>
<b><i>Walton</i></b>	<b><i>Yes</i></b>
<b><i>Baker</i></b>	<b><i>Yes</i></b>
<b><i>Spence</i></b>	<b><i>Yes</i></b>
<b><i>Donnelly</i></b>	<b><i>Yes</i></b>

***8 yes and 0 no. Motion carried.***

2} Urban Forestry Commission:

a} Mayor Peel asked for confirmation of appointing Mr. Adam White, 1307 W. Church Street for three-year term.

***A motion was made by Mayor Pro Tem L. A. Hummer, seconded by Councilman M. E. Brooks to accept the confirmation of appointing Mr. Adam White to the Urban Forestry Commission for a three-year term ending 12/31/2015.***

***Roll Call Vote:***

<b><i>Brooks</i></b>	<b><i>Yes</i></b>
<b><i>Stimatz</i></b>	<b><i>Yes</i></b>
<b><i>Hill-Lawrence</i></b>	<b><i>Yes</i></b>
<b><i>Hummer</i></b>	<b><i>Yes</i></b>
<b><i>Walton</i></b>	<b><i>Yes</i></b>
<b><i>Baker</i></b>	<b><i>Yes</i></b>
<b><i>Spence</i></b>	<b><i>Yes</i></b>
<b><i>Donnelly</i></b>	<b><i>Yes</i></b>

***8 yes and 0 no. Motion carried.***



3} Planning Commission:

Mayor Peel asked for confirmation of reappointing Ms. Susan Stallings, 417 Seldon Street to a four-year term.

***A motion was made by Mayor Pro Tem L. A. Hummer, seconded by Councilman M. E. Brooks to accept the confirmation of reappointing Ms. Susanne Stallings to the Planning Commission for a four-year term ending 2/2016.***

***Roll Call Vote:***

<b><i>Brooks</i></b>	<b><i>Yes</i></b>
<b><i>Stimatz</i></b>	<b><i>Yes</i></b>
<b><i>Hill-Lawrence</i></b>	<b><i>Yes</i></b>
<b><i>Hummer</i></b>	<b><i>Yes</i></b>
<b><i>Walton</i></b>	<b><i>Yes</i></b>
<b><i>Baker</i></b>	<b><i>Yes</i></b>
<b><i>Spence</i></b>	<b><i>Yes</i></b>
<b><i>Donnelly</i></b>	<b><i>Yes</i></b>

***8 yes and 0 no. Motion carried.***

b} Water Service Request – Fountain of Life Ministries:

Mayor Peel called upon City Manager Olson for comments.

Mr. Olson stated we have recently received a request from Fountain of Life Ministries located at 1107 US 17 South to connect their domestic water service to the County Water System. Both the City and the County's water distribution systems are available to service this property. This property is in the City service area as agreed to with the County. The water used by the church would be credited against the City's 250,000 gallons per day "take or pay" agreement. A site plan was submitted to the TRC over a year ago. City staff had concerns when this structure was requested to be built there whether the structure should be built there. Based on recommendations of the Fire Marshall we did not believe that there is adequate enough water pressure for the fire suppression system. At that particular time we did recommend to the County that they allow the Fountain of Life Church to tap off the 16" line that runs parallel to their site. However, we retained them as a domestic water customer. We did approach the County about allowing them to tie on to that 16" line or the adjacent 10" line for domestic service inside of the building. City staff's concern at that time was that because of the new agreement we have with water service territories that the City is credited with that amount of volume that the church would use against

our 250,000 gallons obligation. City staff has talked with representatives of the County. We believe that the County is willing to consider that. At that particular time they were looking at taking over all of that area, Winslow Nursing Home, Adams Landing and two or three other business there are tied directly to the County line. Staff's primarily concern is that 250,000 gallons per day "take or pay" obligation and we wanted to be sure that we at least got credit for the volume that they are using against our allocation. We have no problem with them going on to the County's system if the County will give us credit toward our "take or pay" obligation. That is something they would have to work out with the County. The County has specific tap fees and other fees associated with a connection.

***A motion was made by Councilman M. E. Brooks, seconded by Mayor Pro Tem L. A. Hummer to conditionally relinquish service to the Fountain of Life Ministries as a water customer of the City of Elizabeth City, and further moved the condition being that the County provides credit for the volume they use against our "take or pay" obligation. Those voting in favor of the motion were: Brooks, Hummer, Baker, Donnelly, Hill-Lawrence, Spence, Stimatz and Walton. Against: None. Motion carried.***

***A motion was made by Mayor Pro Tem L. A. Hummer, seconded by Councilman M. E. Brooks to authorize the City Manager to draft a letter based on our discussion of these conditions and send it to the Pasquotank County Commissioners for their consideration. Those voting in favor of the motion were: Brooks, Hummer, Baker, Donnelly, Hill-Lawrence, Spence, Stimatz and Walton. Against: None. Motion carried.***

Councilman Stimatz stated he had a side comment on this. Would you confirm that we are not providing an adequate level of service so what are we doing to resolve that issue regardless of where these people go? How are we allowing people to become customers if we can't provide a minimum level of service?

Mr. Olson replied that he thinks the issue is the City would have to spend \$125,000 to \$150,000 putting in a new water line down there to service that one customer. To us it makes wiser sense to allow them to go onto the County instead of duplicating the County's lines in that area. The City Council had previously allowed Winslow Memorial Nursing, Mill End Carpet, Adams Landing and several other customers to be served by the County even though they are in the corporate city limits. The precedent was set back in 2003.

Mr. Stimatz said it sounds like we have an inadequate water system somewhere at least to these people and how did we get there and what are we doing to

resolve that. We have a group of people that have sited an area that we can't service because our system is inadequate.

Mr. Olson replied in order to service them we need to make certain improvements and it is just a cost benefit analysis or makes sense to us to put that capital costs in that line or whether we should relinquish those customers. We need that going in and we explained that to the City Council when we entered into the different agreements that we have with the County. This is the only area he is familiar with where we have that issue.

Public Utilities Director Fredette said the City took over the service line and there are county lines in that area. That is where there is an interface between the County and the City. All of the customers in that area receive adequate pressure off the County line. This is the first customer that comes in after you have an agreement with the County defining service areas. The agreement provides for them to tie in the County lines based on conditions that we set forward. All of the customers in that area have adequate pressure and flow and it is a matter of enforcing or engaging the agreement that you entered into a year ago.

C} Update of Official Zoning Map Project:

Mayor Peel called upon City Manager Olson for comments.

Mr. Olson stated he would have Ms. Cole to come forward and update you. You have a detailed memo from her concerning issues we are having with the official zoning map of the City. As we indicated earlier on with the Council we cannot find the 1997 Official Zoning Map. We have to go back to the official zoning map that is dated 1973. Staff has been rebuilding that map.

Ms. Cole stated that staff has been working as a team on this particular project since it has been assigned. It is really a matter of putting the pieces together, working from our old paper map and working off of records provided by the Clerk. We anticipate at least another six-eight months because this project goes on along side of other regular duties executed by your Planning Staff. We have researched as we come to the end of the project, public notification will require special steps meaning that we will have to run ads in the local newspaper. That has to be an enlarged ad if there are more than 50 individual properties affected by any of the inconsistencies or necessary changes. We will work with you and notify you as we get closer to the end.

**8} COMMENTS AND INQUIRIES ON NON-AGENDA ITEMS:**

Mayor Peel called for comments or inquiries.

Councilman Donnelly stated he had no further comments.

Councilman Spence stated he had no further comments.

Councilwoman Baker stated she had no further comments.

Councilman Walton stated that PAL was sponsoring a boxing event this coming weekend at the Middle School. He encouraged everyone to try to attend.

Mayor Pro Tem Hummer stated that the Finance Committee met this morning and they took the following action:

- a} Approved the November 08, 2011 minutes as presented.
- b} Recommended the rejection of the sidewalk bids be placed on tonight's Council agenda with a recommendation of approval. This gave the City Manager the direction to investigate possible cost saving options including a design build or value engineered option for the construction of a pedestrian bridge that is required for this project.
- c} Recommended the Fire Contract go to the Joint Meeting Agenda for discussion at that time.
- d} Recommended a budget amendment be placed on the February 13<sup>th</sup> Council Agenda with a recommendation of approval for the Water Street/Shepard Street Intersection project.
- e} Recommended the MOU for fire protection with the US Coast Guard Base which will be presented at our February 13<sup>th</sup> meeting.
- f} Considered a Closed Session item that is on the Closed Session agenda for tonight.

Councilwoman Hill-Lawrence stated she had no further comments.

Councilman Stimatz stated he had no further comments.

Councilman Brooks stated he had no further comments.

Mayor Peel stated that Elizabeth City had in town about 15 people from the Travel Channel. They are filming an hour program "Dead Files" which is about the murder of Nell Cropsy.

City Manager Olson stated he would like to remind everyone of the Joint City/County meeting scheduled for this coming Monday night. He will be forwarding a copy of the agenda this week.

**9} CLOSED SESSION:**

Mayor Peel called for a motion to retire into Closed Session.

***A motion was made by Mayor Pro Tem L. A. Hummer, seconded by Councilwoman L. M. Hill-Lawrence to retire into Closed Session for discussion of land in reference to the Second Deliver Point and as per NCGS 143-318.11 (A) (5). Those voting in favor of the motion were: Hummer, Hill-Lawrence, Baker, Brooks, Donnelly, Hill-Lawrence, Spence, Stimatz and Walton. Against: None. Motion carried.***

**10} RETURN TO REGULAR SESSION:**

Mayor Peel called for a motion to return to regular session of Council.

***A motion was made by Councilman M. E. Brooks, seconded by Councilman J. A. Stimatz to return to regular session of Council. Those voting in favor of the motion were: Brooks, Stimatz, Baker, Donnelly, Hill-Lawrence, Hummer, Spence and Walton. Against: None. Motion carried.***

Mayor Peel declared the meeting back into regular session.

**11} ITEM FROM CLOSED SESSION:**

Mayor Peel called for action regarding the item discussed in Closed Session.

***A motion was made by Councilman J. A. Stimatz, seconded by Mayor Pro Tem L. A. Hummer to authorize staff to proceed with the purchase of the Lowry property in the amount of \$300,000 for the second delivery site. Those voting in favor of the motion were: Stimatz, Hummer, Baker, Brooks, Donnelly, Hill-Lawrence, Spence and Walton. Against: None. Motion carried.***

**12} ADJOURNMENT:**

There being no further business to come before the Council at this time, Mayor Peel entertained a motion for adjournment.

***A motion was made by Councilman M. E. Brooks, seconded by Councilman J. A. Stimatz to adjourn the meeting. Those voting in favor of the motion were: Brooks, Stimatz, Baker, Donnelly, Hill-***

***Lawrence, Hummer, Spence and Walton. Against: None. Motion carried.***

Mayor Peel adjourned the meeting at 8:25 p.m.

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Dianne S. Pierce-Tamplen, MMC  
City Clerk

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Joseph W. Peel  
Mayor