

**City Council Regular Session  
January 27, 2014**

The City Council of the City of Elizabeth City met for a Regular Session on Monday, January 27, 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  
Finance Director Sarah Blanchard  
Planning Director June Brooks  
Police Captain John Etheridge  
Electric Department Superintendent Karl Clow  
ECDI Director Rebecca Cross  
Human Resources Director Katherine Felton  
Public Utilities Director Paul Fredette  
Fire Chief Larry Mackey  
Building Inspector David Lewis  
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 7:03 p.m. Mayor Peel welcomed everyone to the meeting and recognized Councilman Darius Horton to give the invocation, 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.

- a. Councilwoman Baker asked to add “singing of our National Anthem”.
- b. Councilman Horton asked to remove the item from the Consent Agenda regarding the Community Support Grant to the COA Foundation and move it to the Regular Agenda.
- c. Councilman Brooks asked to add “Conflict of Interest Policy”.

- d. Councilman Brooks asked to add “Comments on Non-Agenda Items”.
- e. Councilman Brooks asked to add “Mayor’s Student Advisory Committee”.
- f. Councilman Spence asked to add a Closed Session as allowed by NCGS 143-318.11(a)(6) – Personnel.
- g. Councilwoman Baker asked to add the two items held over from the previous Work Session: Cemetery Discussion and Committee Reports.

**Motion was made by Mayor Pro Tem Anita Hummer, seconded by Councilwoman Jean Baker, 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.**

## **2. Singing of the National Anthem:**

Mayor Peel reported that the newspaper featured an article recently about the Center Players. He said 22 students representing the Center Players had an opportunity to go to Atlanta to perform at the Junior Theatre Convention where over 5,000 students were in attendance from all across the United States. He said one of the things the students had an opportunity to do was try out to sing the National Anthem during the opening convocation. He stated there were 60 groups from across the county that tried out and he reported that three young ladies from Elizabeth City were selected for this honor. He said that some of the students received additional awards and almost half the Elizabeth City students received recognition beyond the performance of the National Anthem. He said the group as a whole was recognized as one of the top eight groups from across the country and seven of the students were asked to try out for a DVD that will be created in New York. He announced that three students have made the first cut. He said two of our students were recognized as being the top male and female performers – Corey Bradford and Lauren Luther. He said that Alana Houston is one of the finalists for the DVD. He said the third young lady to perform for this Council meeting is Naomi Rogers. Mayor Peel introduced Miss Luther, Miss Houston and Miss Rogers who sang the National Anthem and received a standing ovation. Mayor Peel thanked the Center Players for representing the City well and stated that “Elizabeth City is proud of you”.

## **3. Proclamations:**

### **a. Elizabeth City as a Purple Heart City:**

Mayor Peel read and presented a proclamation on behalf of the City Council and all our citizens, proclaiming and pledging our ongoing commitment to and support of the men and women who so honorably serve our nation; and declaring the City of Elizabeth City as a ***Purple Heart City in the State of North Carolina.***

The proclamation was accepted by Dan Serik on behalf of the Military Order of the Purple Heart who thanked the City for this declaration. He presented the proclamation to VFW 6060 Commander Greg Stafford. He also recognized members of the Disabled American Veterans Chapter 64, who were in attendance.

## **b. American Heart Month – February 2014**

Mayor Peel read and presented to representatives of the American Heart Association Tidewater Office a proclamation proclaiming February 2014 as American Heart Month in Elizabeth City. The proclamation invited all our citizens to participate in National Wear Red Day on Friday, February 7, 2014 and rededicate themselves to reducing the burden of heart disease by raising awareness, taking steps to improve their own heart health, and encouraging colleagues, friends, and family to do the same.

Ryan Holloway of the American Heart Association thanked the Council for the proclamation and shared information regarding the upcoming Heart Chase event.

### **4. Public Comments:**

Commander Greg Stafford of VFW Post 6060 stated that he was concerned about the Council's discussion regarding cemeteries and what could be placed on gravesites. He stated that he would like to continue to be able to place American flags each year on veterans' graves in honor of Memorial Day.

Keith Rivers, P. O. Box 211, Elizabeth City, NC stated that he is the president of the Pasquotank County Branch of the NAACP. Mr. Rivers presented a written statement to the Council and read from the statement for his comments. Mr. Rivers stated that his concern was that a clear violation of the City of Elizabeth City's Charter had occurred as it relates to misuse of City property, unacceptable personal use, superior-to-subordinate relationships and Code of Ethics. He stated that the NAACP believes that violations have occurred concerning Article IV Organization and Administration; Section 4.1 Form of Government; Section 4.2 City Manager, Appointments Powers and Duties; Section 4.7 Council-Manager Relationship; and Miscellaneous Section 2. He alleged that City Manager Olson and Mayor Joe Peel were guilty of these violations as they relate to the organization of a charter STEM school and a grant application for same. He stated that full transparency leads to trust and that there had been a breach in the trust that holds our community together. He stated that for these reasons, the NAACP was requesting a full investigation of the matter and also requested that the NAACP receive a written detailed copy of the investigation. He stated that the community must be helped to rest assured that its elected officials and city employees are not engaging in activities that violate the City's Charter and the trust of the citizens.

Raymond Rivers, Sr., 512 Magnolia Street, Elizabeth City, NC 27909 stated that on behalf of the Pasquotank County Branch of the NAACP, he wanted to extend an invitation to the Mayor and City Councilors to attend the Pasquotank NAACP's first annual Civil Rights Revival, which was being held on February 1, 2014 at 6 p.m. at Holy Trinity Community Church on S. Road Street.

### **5. Approval of Minutes:**

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

## **a. City Council Work Session – November 25, 2013**

Motion was made by Mayor Pro Tem Anita Hummer, seconded by Councilwoman Jean Baker, to approve the minutes of the November 25, 2013 Work Session. Those voting in favor of the motion were: Baker, Donnelly, Hummer, Stimatz, Brooks, Spence, Horton and King. Against: None. The motion carried unanimously.

**b. City Council Special Meeting – January 13, 2014**

Motion was made by Councilman Darius Horton, seconded by Councilwoman Jean Baker, to approve the minutes of the January 13, 2014 Special Meeting. Those voting in favor of the motion were: Baker, Donnelly, Hummer, Stimatz, Brooks, Spence, Horton and King. Against: None. The motion carried unanimously.

**6. 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 – Amendment to Heat Pump Rebate Policy;
- b. Consideration – Adoption of Budget Amendment to record additional parking violations collected in the amount of \$9,013, as follows;

**BUDGET AMENDMENT**

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

**SECTION I.** That the Parking Violation Revenue (103520.0000) and School Board Parking Violation Expenditure (106600.4525) be increased by \$9,013.

(To record additional parking violations collected due to increased collection efforts by Police Department. State law requires funds to be remitted to School Board.)

Adopted, this 27<sup>th</sup> day of January, 2014.

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Joseph W. Peel, Mayor

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Vivian White, Deputy City Clerk

- c. Consideration – Adoption of Budget Amendment to provide for Fire Department Building Repair in the amount of \$16,829, as follows;

**BUDGET AMENDMENT**

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

**SECTION I.** That the General Fund Balance Appropriated (103990.0000) and Fire Department Maintenance & Repair to Buildings (105300.1500) be increased by \$16,829.

(To appropriate funds for bedbug infestation.)

Adopted this 27<sup>th</sup> day of January, 2014.

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**Joseph W. Peel, Mayor**

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**Vivian White, Deputy City Clerk**

d. Consideration – Adoption of Ordinances declaring condemnation and ordering demolition of structures located at 300 Shepherd Street, 710 Garden Street, 617 Factory Street, 109 Glade Street, 111 Glade Street, 115 W. Burgess Street and 810 Greenleaf Street, as follows;

**ORDINANCE #2014-01-01  
CONDEMNATION AND DEMOLITION**

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**AN ORDINANCE DIRECTING THE BUILDING INSPECTOR TO REPAIR OR DEMOLISH THE PROPERTY HEREIN DESCRIBED AS UNFIT FOR HUMAN HABITATION AND DIRECTING THAT A NOTICE BE PLACED THEREON THAT THE SAME MAY NOT BE OCCUPIED UNTIL REPAIRED OR THAT THE STRUCTURE BE DEMOLISHED.**

**WHEREAS**, the City Council of the City of Elizabeth City finds that the property described herein is unfit for human habitation under the local and state codes, and that all the provisions of said codes have been met as a condition of the adoption of this Ordinance; and

**WHEREAS**, said structure should be repaired to meet the requirements of the Code or demolished as directed by the Building Inspector, and should be placarded by placing thereon a notice prohibiting use for human habitation; and

**WHEREAS**, the owners of said structure have been given a reasonable opportunity to bring the premises up to the standards of the subject codes in

accordance and pursuant to an order issued by the Building Inspector on **October 20, 2013** and the owner has failed to comply with said order;

**NOW, THEREFORE, BE IT ORDAINED**, by the City Council of the City of Elizabeth City that:

**Section 1.** The Building Inspector is hereby authorized and directed to place on the house at **300 Shepherd Street** a sign containing the legend:

***“This building is unfit for human habitation; the use or occupancy of this building for human habitation is prohibited and unlawful.”***

**Section 2.** The Building Inspector is hereby authorized and directed to proceed to repair or demolish the above-described structure in accordance with his order to the owner thereof dated **October 20, 2013** and after abatement, then charge the property owners for all expenses incurred, including any accrued interest after the initial billing.

**Section 3.** It shall be unlawful for any person to remove or cause to be removed said placard from any building to which it is affixed. It shall likewise be unlawful for any person to occupy or to permit the occupancy of any building herein declared to be unfit for human habitation.

**Section 4.** This Ordinance shall become effective upon its adoption.

**ADOPTED**, this 27<sup>th</sup> day of January 2014.

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Joseph W. Peel  
Mayor

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Vivian D. White, NCCMC  
Deputy City Clerk

**ORDINANCE #2014-01-02  
CONDEMNATION AND DEMOLITION**

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**AN ORDINANCE DIRECTING THE BUILDING INSPECTOR TO REPAIR OR DEMOLISH THE PROPERTY HEREIN DESCRIBED AS UNFIT FOR HUMAN HABITATION AND DIRECTING THAT A NOTICE BE PLACED THEREON THAT THE SAME MAY NOT BE OCCUPIED UNTIL REPAIRED OR THAT THE STRUCTURE BE DEMOLISHED.**

**WHEREAS**, the City Council of the City of Elizabeth City finds that the property described herein is unfit for human habitation under the local and state codes, and that

all the provisions of said codes have been met as a condition of the adoption of this Ordinance; and

**WHEREAS**, said structure should be repaired to meet the requirements of the Code or demolished as directed by the Building Inspector, and should be placarded by placing thereon a notice prohibiting use for human habitation; and

**WHEREAS**, the owners of said structure have been given a reasonable opportunity to bring the premises up to the standards of the subject codes in accordance and pursuant to an order issued by the Building Inspector on **May 26, 2013** and the owner has failed to comply with said order;

**NOW, THEREFORE, BE IT ORDAINED**, by the City Council of the City of Elizabeth City that:

**Section 1.** The Building Inspector is hereby authorized and directed to place on the house at **710 Garden Street** a sign containing the legend:

***“This building is unfit for human habitation; the use or occupancy of this building for human habitation is prohibited and unlawful.”***

**Section 2.** The Building Inspector is hereby authorized and directed to proceed to repair or demolish the above-described structure in accordance with his order to the owner thereof dated **May 26, 2013** and after abatement, then charge the property owners for all expenses incurred, including any accrued interest after the initial billing.

**Section 3.** It shall be unlawful for any person to remove or cause to be removed said placard from any building to which it is affixed. It shall likewise be unlawful for any person to occupy or to permit the occupancy of any building herein declared to be unfit for human habitation.

**Section 4.** This Ordinance shall become effective upon its adoption.

**ADOPTED**, this 27<sup>th</sup> day of January 2014.

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Joseph W. Peel  
Mayor

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Vivian D. White, NCCMC  
Deputy City Clerk

**ORDINANCE #2014-01-03  
CONDEMNATION AND DEMOLITION**

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**AN ORDINANCE DIRECTING THE BUILDING INSPECTOR TO REPAIR OR DEMOLISH THE PROPERTY HEREIN DESCRIBED AS UNFIT FOR HUMAN HABITATION AND DIRECTING THAT A NOTICE BE PLACED THEREON THAT THE SAME MAY NOT BE OCCUPIED UNTIL REPAIRED OR THAT THE STRUCTURE BE DEMOLISHED.**

**WHEREAS**, the City Council of the City of Elizabeth City finds that the property described herein is unfit for human habitation under the local and state codes, and that all the provisions of said codes have been met as a condition of the adoption of this Ordinance; and

**WHEREAS**, said structure should be repaired to meet the requirements of the Code or demolished as directed by the Building Inspector, and should be placarded by placing thereon a notice prohibiting use for human habitation; and

**WHEREAS**, the owners of said structure have been given a reasonable opportunity to bring the premises up to the standards of the subject codes in accordance and pursuant to an order issued by the Building Inspector on **May 29, 2013** and the owner has failed to comply with said order;

**NOW, THEREFORE, BE IT ORDAINED**, by the City Council of the City of Elizabeth City that:

**Section 1.** The Building Inspector is hereby authorized and directed to place on the house at **617 Factory Street** a sign containing the legend:

***“This building is unfit for human habitation; the use or occupancy of this building for human habitation is prohibited and unlawful.”***

**Section 2.** The Building Inspector is hereby authorized and directed to proceed to repair or demolish the above-described structure in accordance with his order to the owner thereof dated **May 29, 2013** and after abatement, then charge the property owners for all expenses incurred, including any accrued interest after the initial billing.

**Section 3.** It shall be unlawful for any person to remove or cause to be removed said placard from any building to which it is affixed. It shall likewise be unlawful for any person to occupy or to permit the occupancy of any building herein declared to be unfit for human habitation.

**Section 4.** This Ordinance shall become effective upon its adoption.

**ADOPTED**, this 27<sup>th</sup> day of January 2014.

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Joseph W. Peel  
Mayor



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Vivian D. White, NCCMC  
Deputy City Clerk

**ORDINANCE #2014-01-04  
CONDEMNATION AND DEMOLITION**

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**AN ORDINANCE DIRECTING THE BUILDING INSPECTOR TO REPAIR OR DEMOLISH THE PROPERTY HEREIN DESCRIBED AS UNFIT FOR HUMAN HABITATION AND DIRECTING THAT A NOTICE BE PLACED THEREON THAT THE SAME MAY NOT BE OCCUPIED UNTIL REPAIRED OR THAT THE STRUCTURE BE DEMOLISHED.**

**WHEREAS**, the City Council of the City of Elizabeth City finds that the property described herein is unfit for human habitation under the local and state codes, and that all the provisions of said codes have been met as a condition of the adoption of this Ordinance; and

**WHEREAS**, said structure should be repaired to meet the requirements of the Code or demolished as directed by the Building Inspector, and should be placarded by placing thereon a notice prohibiting use for human habitation; and

**WHEREAS**, the owners of said structure have been given a reasonable opportunity to bring the premises up to the standards of the subject codes in accordance and pursuant to an order issued by the Building Inspector on **May 20, 2013** and the owner has failed to comply with said order;

**NOW, THEREFORE, BE IT ORDAINED**, by the City Council of the City of Elizabeth City that:

**Section 1.** The Building Inspector is hereby authorized and directed to place on the house at **109 Glade Street** a sign containing the legend:

***“This building is unfit for human habitation; the use or occupancy of this building for human habitation is prohibited and unlawful.”***

**Section 2.** The Building Inspector is hereby authorized and directed to proceed to repair or demolish the above-described structure in accordance with his order to the owner thereof dated **May 20, 2013** and after abatement, then charge the property owners for all expenses incurred, including any accrued interest after the initial billing.

**Section 3.** It shall be unlawful for any person to remove or cause to be removed said placard from any building to which it is affixed. It shall likewise be unlawful for any person to occupy or to permit the occupancy of any building herein declared to be unfit for human habitation.

**Section 4.** This Ordinance shall become effective upon its adoption.

**ADOPTED**, this 27<sup>th</sup> day of January 2014.

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Joseph W. Peel  
Mayor

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Vivian D. White, NCCMC  
Deputy City Clerk

**ORDINANCE #2014-01-05  
CONDEMNATION AND DEMOLITION**

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**AN ORDINANCE DIRECTING THE BUILDING INSPECTOR TO REPAIR OR DEMOLISH THE PROPERTY HEREIN DESCRIBED AS UNFIT FOR HUMAN HABITATION AND DIRECTING THAT A NOTICE BE PLACED THEREON THAT THE SAME MAY NOT BE OCCUPIED UNTIL REPAIRED OR THAT THE STRUCTURE BE DEMOLISHED.**

**WHEREAS**, the City Council of the City of Elizabeth City finds that the property described herein is unfit for human habitation under the local and state codes, and that all the provisions of said codes have been met as a condition of the adoption of this Ordinance; and

**WHEREAS**, said structure should be repaired to meet the requirements of the Code or demolished as directed by the Building Inspector, and should be placarded by placing thereon a notice prohibiting use for human habitation; and

**WHEREAS**, the owners of said structure have been given a reasonable opportunity to bring the premises up to the standards of the subject codes in accordance and pursuant to an order issued by the Building Inspector on **May 20, 2013** and the owner has failed to comply with said order;

**NOW, THEREFORE, BE IT ORDAINED**, by the City Council of the City of Elizabeth City that:

**Section 1.** The Building Inspector is hereby authorized and directed to place on the house at **111 Glade Street** a sign containing the legend:

***“This building is unfit for human habitation; the use or occupancy of this building for human habitation is prohibited and unlawful.”***

**Section 2.** The Building Inspector is hereby authorized and directed to proceed to repair or demolish the above-described structure in accordance with his order to the owner thereof dated May 20, 2013 and after abatement, then charge the property owners for all expenses incurred, including any accrued interest after the initial billing.

**Section 3.** It shall be unlawful for any person to remove or cause to be removed said placard from any building to which it is affixed. It shall likewise be unlawful for any person to occupy or to permit the occupancy of any building herein declared to be unfit for human habitation.

**Section 4.** This Ordinance shall become effective upon its adoption.

**ADOPTED**, this 27<sup>th</sup> day of January 2014.

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Joseph W. Peel  
Mayor

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Vivian D. White, NCCMC  
Deputy City Clerk

**ORDINANCE #2014-01-06  
CONDEMNATION AND DEMOLITION**

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**AN ORDINANCE DIRECTING THE BUILDING INSPECTOR TO REPAIR OR DEMOLISH THE PROPERTY HEREIN DESCRIBED AS UNFIT FOR HUMAN HABITATION AND DIRECTING THAT A NOTICE BE PLACED THEREON THAT THE SAME MAY NOT BE OCCUPIED UNTIL REPAIRED OR THAT THE STRUCTURE BE DEMOLISHED.**

**WHEREAS**, the City Council of the City of Elizabeth City finds that the property described herein is unfit for human habitation under the local and state codes, and that all the provisions of said codes have been met as a condition of the adoption of this Ordinance; and

**WHEREAS**, said structure should be repaired to meet the requirements of the Code or demolished as directed by the Building Inspector, and should be placarded by placing thereon a notice prohibiting use for human habitation; and

**WHEREAS**, the owners of said structure have been given a reasonable opportunity to bring the premises up to the standards of the subject codes in accordance and pursuant to an order issued by the Building Inspector on October 23, 2013 and the owner has failed to comply with said order;

**NOW, THEREFORE, BE IT ORDAINED**, by the City Council of the City of Elizabeth City that:

**Section 1.** The Building Inspector is hereby authorized and directed to place on the house at 115 West Burgess Street a sign containing the legend:

***“This building is unfit for human habitation; the use or occupancy of this building for human habitation is prohibited and unlawful.”***

**Section 2.** The Building Inspector is hereby authorized and directed to proceed to repair or demolish the above-described structure in accordance with his order to the owner thereof dated October 23, 2013 and after abatement, then charge the property owners for all expenses incurred, including any accrued interest after the initial billing.

**Section 3.** It shall be unlawful for any person to remove or cause to be removed said placard from any building to which it is affixed. It shall likewise be unlawful for any person to occupy or to permit the occupancy of any building herein declared to be unfit for human habitation.

**Section 4.** This Ordinance shall become effective upon its adoption.

**ADOPTED**, this 27<sup>th</sup> day of January 2014.

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Joseph W. Peel  
Mayor

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Vivian D. White, NCCMC  
Deputy City Clerk

**ORDINANCE #2014-01-07  
CONDEMNATION AND DEMOLITION**

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**AN ORDINANCE DIRECTING THE BUILDING INSPECTOR TO REPAIR OR DEMOLISH THE PROPERTY HEREIN DESCRIBED AS UNFIT FOR HUMAN HABITATION AND DIRECTING THAT A NOTICE BE PLACED THEREON THAT THE SAME MAY NOT BE OCCUPIED UNTIL REPAIRED OR THAT THE STRUCTURE BE DEMOLISHED.**

**WHEREAS**, the City Council of the City of Elizabeth City finds that the property described herein is unfit for human habitation under the local and state codes, and that all the provisions of said codes have been met as a condition of the adoption of this Ordinance; and

**WHEREAS**, said structure should be repaired to meet the requirements of the Code or demolished as directed by the Building Inspector, and should be placarded by placing thereon a notice prohibiting use for human habitation; and

**WHEREAS**, the owners of said structure have been given a reasonable opportunity to bring the premises up to the standards of the subject codes in accordance and pursuant to an order issued by the Building Inspector on **May 20, 2013** and the owner has failed to comply with said order;

**NOW, THEREFORE, BE IT ORDAINED**, by the City Council of the City of Elizabeth City that:

**Section 1.** The Building Inspector is hereby authorized and directed to place on the house at **810 Greenleaf Street** a sign containing the legend:

***“This building is unfit for human habitation; the use or occupancy of this building for human habitation is prohibited and unlawful.”***

**Section 2.** The Building Inspector is hereby authorized and directed to proceed to repair or demolish the above-described structure in accordance with his order to the owner thereof dated **May 20, 2013** and after abatement, then charge the property owners for all expenses incurred, including any accrued interest after the initial billing.

**Section 3.** It shall be unlawful for any person to remove or cause to be removed said placard from any building to which it is affixed. It shall likewise be unlawful for any person to occupy or to permit the occupancy of any building herein declared to be unfit for human habitation.

**Section 4.** This Ordinance shall become effective upon its adoption.

**ADOPTED**, this 27<sup>th</sup> day of January 2014.

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Joseph W. Peel  
Mayor

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Vivian D. White, NCCMC  
Deputy City Clerk

e. Consideration – Authorization for the City Manager to execute contracts required for the purchase of a fully automated refuse truck through H-GAC in the amount of \$246,424;

f. Consideration – Authorization for the Police Department to submit a preliminary grant application to the Governor’s Crime Commission and incorporate funding into the FY 14-15 budget;

g. Consideration – Authorization for the Police Department to submit a grant application to the NC Governor’s Highway Safety program and incorporate funding into the FY 14-15 budget.

**End of Consent Agenda.**

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

**7. Public Hearings:**

**a. Consideration –Public Hearing 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; and adoption of resolution authorizing modification of language in the UDO.**

At 7:30 p.m., Mayor Peel declared the meeting into Public Hearing and inquired of the Deputy Clerk if persons were present who wished to be heard. Upon reply that no one had registered, Mayor Peel declared the Public Hearing closed.

Planning Director June Brooks provided the staff review of this item. She stated that this Text Amendment is to amend the Unified Development Ordinance to modify language to comply with the 2013 General Assembly House Bill 276, which was enacted to modernize the statutes pertaining to zoning boards of adjustment and to clarify some of the issues that have arisen through the years. She said that these changes became effective October 1, 2013 and apply to actions taken on or after that date by local boards of adjustment. She stated that the legislation amends the primary board of adjustment statute, including provisions regarding voting, decisions, hearing notices, appeals and variances. She reported that the long-standing body of case law regarding the need to follow quasi-judicial procedures is now codified. She reviewed some of the more substantial changes in the Text Amendment for the Council. She reported that the Board of Adjustment and Planning Commission had reviewed the changes.

**Motion was made by Councilman Tony Stimatz, seconded by Councilwoman Jean Baker, to adopt the following resolution 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.**

**Resolution 2014-01-02  
Approving Text Amendment 02-13**

**to Amend the Unified Development Ordinance to  
Comply with House Bill 276**

**WHEREAS**, the 2013 General Assembly enacted legislation, House Bill 276, to modernize the statutes pertaining to zoning boards of adjustment; and

**WHEREAS**, these changes became effective October 1, 2013; and

**WHEREAS**, on December 3, 2013, the Planning Commission reviewed TA-02-13 for compliance with the new state legislation; and

**WHEREAS**, the Planning Commission opened the floor for public comments in regards to this request; and

**WHEREAS**, as a result of this review, the Planning Commission believes that the proposed text amendment to the City of Elizabeth City Unified Development Ordinance will comply with House Bill 276; and

**WHEREAS**, the following text is recommended to be adopted:

**Bolded Red** – new language to be added

**Strikethrough** – language to be deleted

**3-2.2 Appointment and Terms of Board of Adjustment**

- (D) If a member moves outside of the jurisdiction from which he has been appointed, that shall constitute a resignation from the Board **of Adjustment**, effective upon the date a replacement is appointed.

**3-2.3 Meetings of the Board of Adjustment**

- (B) The Board **of Adjustment** shall conduct its meetings in accordance with the quasi-judicial procedures set forth in this Ordinance and in accordance with its bylaws.
- (C) All meetings of the Board **of Adjustment** shall be open to the public, and whenever feasible the agenda for each Board **of Adjustment** meeting shall be made available in advance of the meeting.

**3-2.4 Quorum**

- (A) A quorum for the Board of Adjustment shall consist of the number of members equal to four-fifths of the regular Board **of Adjustment** membership (excluding vacant seats). A quorum is necessary for the Board **of Adjustment** to take official action.

**3-2.5 Voting**

- (A) **The concurring vote of four-fifths of the board shall be necessary to grant a variance. A majority of the members shall be required to decide any other quasi-judicial matter, to determine an appeal made in the nature of certiorari,** ~~The concurring vote of four fifths of the regular Board membership (excluding vacant seats) shall be necessary to reverse any order, requirement, decision, or determination of the Zoning Administrator, or to decide in favor of the applicant any matter upon which it is required to pass under any ordinance (including the issuance of a conditional **special** use permit) or to grant any variance.~~ All other actions of the Board shall be taken by majority vote, a quorum being present. **For the purposes of this subsection, vacant positions on the Board of Adjustment and members who are disqualified from voting on a quasi-judicial matter shall not be considered members of the Board of Adjustment for calculation of the requisite majority if there are no qualified alternates available to take the place of such members.**
- (C) **A member of any board exercising quasi-judicial functions pursuant to this Article shall not participate in or vote on any quasi-judicial matter in a manner that would violate affected persons' constitutional rights to an impartial decision maker. Impermissible violations of due process include, but are not limited to** ~~A member may be excused from voting on a particular issue by majority vote of the remaining members present under the following circumstances:~~
- 1) **A member having a fixed opinion prior to hearing the matter that is not susceptible to change;**
  - 2) **A member having undisclosed ex parte communications, a close familial, business, or other associational relationship with an affected person;**
  - 3) If the member has a ~~direct~~ financial interest in the outcome of the matter ~~at issue~~;
  - 4) If the matter ~~at issue~~ involves the member's own official conduct;  
or
  - 5) If participation in the matter might violate the letter or spirit of a member's code of professional responsibility; or
  - 4) ~~If a member has such close personal ties to the applicant that the member cannot reasonably be expected to exercise sound judgment in the public interest.~~



**If an objection is raised to a member's participation and that member does not recuse himself or herself, the remaining members shall by majority vote rule on the objection.**

- (F) A roll call vote shall be taken for each motion.

### **3-2.6 Board of Adjustment Officers**

- (B) ~~The chairman or any member temporarily acting as chairman may administer oaths to witnesses coming before the board.~~ **The chairman of the Board of Adjustment or any member acting as chairman and the Secretary to the Board of Adjustment is authorized to administer oaths to witnesses in any matter coming before the Board of Adjustment.**
- (C) The chairman and vice-chairman of the Board of Adjustment may take part in all deliberations and may vote on all issues.
- (D) A Secretary shall be appointed by the Chairman, either from within or outside of the Board membership, to hold office during the term of the Chairman.

### **3-2.7 Powers and Duties of Board of Adjustment**

- (A) The Board of Adjustment shall hear and decide:
  - 1) Appeals from any order, decision, requirement, or interpretation made by the Zoning Administrator **or administrative official charged with enforcement of the Ordinance**, as provided in Section 7-1. **As used in this section and Article VII, the term "decision" shall include any final and binding order, requirement, or determination.**
  - 5) **All matters upon which it is required to pass under any City statute or ordinance that regulates land use or development** ~~Any other matter the Board is required to act upon by any other City ordinance.~~
- (B) **The Board of Adjustment shall follow quasi-judicial procedures when deciding appeals and requests for variances and special use permits.**

### **4-7.3 Recommendations on Special Use Permit Applications**

- (F) The Board of ~~Zoning~~ Adjustments shall consider the application, the Technical Review Committee report and Planning Commission recommendation within 90 days from the date of consideration by the Planning Commission at a regularly scheduled ~~Commission~~ **Board** meeting or within such further time consented to by written notice from the applicant. Failure of the Board of ~~Zoning~~ Adjustments to take final action on an application within the prescribed time limit, or extensions thereof, shall result in approval of the application as submitted. (Amended 7/11/05).

**4-7.5 Public Hearing Requirements and Procedures**

- (B) **For petitions being heard and decided by Council, t**~~The City Clerk shall publish a notice of the public hearing;~~ **for petitions being heard and decided by the Board of Adjustment, the Secretary to the Board of Adjustment shall publish notice of the public hearing. Notices shall be** in a newspaper having general circulation in the area. The notice shall be published not less than ten days, **but not more than 25 days,** before the date affixed for the hearing. In computing this period, the date of publication shall not be counted but the date of the hearing shall be.
- (C) Notice shall be given to neighboring property owners by mailing a written notice not later than ten days, **but not more than 25 days,** before the **date of the** hearing to those persons **as described in Subsection (A) above, and** who have listed for taxation real property any portion of which is located within 100 feet of the lot that is the subject of the application or appeal. ~~Notice may also be given by prominently posting signs in the vicinity of the property that is the subject of the proposed action.~~
- (D) ~~The Zoning Administrator shall mail written notice of the public hearing to the owners of all properties involved in the permit request~~ **Notice of hearings conducted pursuant to this section shall be mailed to the person or entity whose appeal, application, or request is the subject of the hearing; to the owner of the property that is the subject of the hearing if the owner did not initiate the hearing; to the owners of all parcels of land abutting the parcel of land that is the subject of the hearing; to any other person who makes a written request for such notice; as well as and to** the owners of all properties any portion of which is within 100 feet of the property involved in the permit request. **In the absence of evidence to the contrary, the city may rely on the county tax listing to determine owners of property entitled to mailed notice.**
- (E) **Within the same time period described in subsection (C),** The Zoning Administrator **shall also prominently post a notice of the hearing on the**

**site that is the subject of the hearing or on an adjacent street or highway right-of-way.** ~~may also post notices of the public hearing in the vicinity of the property involved in the permit request and take any other action deemed by the Zoning Administrator~~ **The Zoning Administrator may also take any other action he/she deem** to be useful or appropriate to give notice of the public hearing on any permit request.

- (F) The Zoning Administrator shall make every reasonable effort to comply with the notice provisions set forth in this Section. However, it is the permit-issuing board's intention that no failure to comply with any of the notice provisions [except those set forth in subsection (B) **and the requisite posting in subsection (D)**] shall render any permit request invalid.
- (H) The permit-issuing board is not required to take final action on a permit request within any specific period of time, but it should proceed ~~as expeditiously as practicable~~ **within a reasonable time period** on permit requests since inordinate delays can result in the applicant incurring unnecessary costs.
- (I) Subject to subsection (J) **and quasi-judicial decisions and judicial review rules in Article 7**, the Board of Adjustment or the City Council, respectively, shall approve the requested permit unless it concludes, based upon the information submitted at the hearing, that:
  - (1) The requested permit is not within its jurisdiction according to the Table of Permissible Uses; or
  - (2) The application is incomplete; or
  - (3) If completed as proposed in the application, the development will not comply with one or more requirements of this Ordinance.

#### **4-7.6 Board of Adjustment Action on Special Use Permit Applications**

In considering whether to approve an application for a special use permit, the Board of Adjustment shall proceed in the same manner as the City Council when considering conditional use permit applications (Section 4-7.7) ~~except that the format of the Board of Adjustment's proceedings will differ as a result of the four-fifths voting requirement set forth in Section 3-2.5(A).~~

- (B) The Board of Adjustment shall consider whether the application complies with all of the applicable requirements of this Ordinance. If a motion to this effect passes by the necessary ~~four-fifths~~ **majority** vote, the Board of

Adjustment need not make further findings concerning such requirements.

If such a motion fails to receive the necessary ~~four-fifths~~ **majority** vote or is not made, then a motion shall be made that the application be found not in compliance with one or more requirements of this Ordinance. Such a motion shall specify the particular requirements the application fails to meet. A separate vote may be taken with respect to each requirement not met by the application, and the vote of the number of members equal to more than one fifth of the board membership (excluding vacant seats) in favor of such a motion shall be sufficient to constitute such motion a finding of the Board of Adjustment. As provided in Subsection 4-7.5 (H), if the Board of Adjustment concludes that the application fails to meet one or more of the requirements of this Ordinance, the application shall be denied.

- (D) Appeals of actions by the Board of ~~Zoning~~ Adjustments regarding Special Use Permits may be taken to the Pasquotank County Superior Court within thirty days from the date of the written decision of the Board as prescribed in Section 7-12 of the Unified Development Ordinance. (Adopted 3/14/05)

#### **4-7.7 City Council Action on Conditional Use Permits**

- (A) Upon receipt of a recommendation from the Planning Commission, the City Council shall review the application for a conditional use permit and shall hold a public hearing on the application. Public notice of the public hearing shall be in accordance with the provisions of Section 4-7.5. The City Council, in considering conditional use permit applications, acts in a quasi-judicial capacity and, accordingly, is required to observe the procedural requirements of the Board of Adjustment ~~except~~ **including** that no vote greater than a majority vote shall be required for the City Council to issue a conditional use permit.

#### **4-7.8 Additional Requirements on Special Use and Conditional Use Permits**

- (A) Subject to subsection (B), in granting a special or conditional use permit, the Board of Adjustment or City Council, respectively, may attach to the permit such reasonable **and appropriate** requirements in addition to those specified in this Ordinance as will ensure that the development in its proposed location:
- (G) **Written decisions and recordation of permits shall follow the rules established in Section 7-12 of this Ordinance.**

Amend Article VII Appeals, Variances and Interpretations, in its entirety, as follows:

## 7-1 APPEALS

- (A) An appeal from any final order or decision of the Zoning Administrator, **or an appeal arising from other ordinances regulating land use and development**, may be taken to the Board of Adjustment by **the city or any person aggrieved who has standing under G.S. 160A-393(d)**. An appeal is taken by filing with the Zoning Administrator and the Board of Adjustment a written notice of appeal specifying the grounds therefor. A notice of appeal shall be considered filed with the Zoning Administrator and the Board of Adjustment when delivered to the Department of Planning and Community Development, the required filing fee paid, and the date and time of filing entered on the notice by the planning staff.
- (B) **The official who made the decision shall give written notice to the owner of the property that is the subject of the decision and to the party who sought the decision, if different from the owner. The written notice shall be delivered by personal delivery, electronic mail, or by first-class mail.**
- (C) ~~An appeal must be taken within thirty days after the date of the decision or order appealed from.~~ **The owner or other party shall have 30 days from receipt of the written notice within which to file an appeal. Any other person with standing to appeal shall have 30 days from receipt from any source of actual or constructive notice of the decision within which to file an appeal.**
- (D) **In matters of appeal, it shall be conclusively presumed that all persons with standing to appeal have constructive notice of the decision from the date a sign containing the words "Zoning Decision" or "Subdivision Decision" in letters at least six inches high and identifying the means to contact an official for information about the decision is prominently posted on the property that is the subject of the decision, provided the sign remains on the property for at least 10 days. Posting of signs is not the only form of constructive notice. Any such posting shall be the responsibility of the landowner or applicant. Verification of the posting shall be provided to the official who made the decision. Unless otherwise required by this Ordinance, posting of signs shall not be required.**
- (E) Whenever an appeal is filed, the Zoning Administrator shall ~~forthwith~~ transmit to the Board of Adjustment all the **documents and exhibits** ~~papers~~ constituting the record relating to the action appealed from. **The**

**Zoning Administrator shall also provide a copy of the record to the appellant and to the owner of the property that is the subject of the appeal if the applicant is not the owner.**

- (F) ~~An appeal stays all actions by the Zoning Administrator seeking enforcement of or compliance with the order or decision appealed from, unless the Zoning Administrator certifies to the Board of Adjustment that (because of facts stated in the certificate) a stay would, in his opinion, cause imminent peril to life or property. In that case, proceedings shall not be stayed except by order of the Board of Adjustment or a court, issued on application of the party seeking the stay, for due cause shown, after notice to the Zoning Administrator~~ **of a notice of violation or other enforcement order stays enforcement of the action appealed from unless the Zoning Administrator or official who made the decision certifies to the Board of Adjustment, after notice of appeal has been filed, that because of the facts stated in an affidavit, a stay would cause imminent peril to life or property or because the violation is transitory in nature, a stay would seriously interfere with enforcement of the Ordinance. In that case, enforcement proceedings shall not be stayed except by a restraining order, which may be granted by a court. If enforcement proceedings are not stayed, the appellant may file with the Zoning Administrator a request for an expedited hearing of the appeal, and the Board of Adjustment shall meet to hear the appeal within 15 days after such a request is filed. Notwithstanding the foregoing, appeals of decisions granting a permit or otherwise affirming that a proposed use of property is consistent with the Ordinance shall not stay the further review of an application for permits or permissions to use such property; in these situations the appellant may request and the Board of Adjustment may grant a stay of a final decision of permit applications or building permits affected by the issue being appealed.**
- (G) **Subject to the provisions of subdivision (F) of this subsection, the Board of Adjustment shall hear and decide the appeal within a reasonable time.**
- (H) **The official who made the decision shall be present at the hearing as a witness. The appellant shall not be limited at the hearing to matters stated in the notice of appeal. If any party or the city would be unduly prejudiced by the presentation of matters not presented in the notice of appeal, the Board of Adjustment shall continue the hearing. The Board of Adjustment may reverse or affirm, (wholly or partly,) or may modify the order, requirement or decision, or determination appealed from and shall make any order, requirement, decision or determination that in its opinion ought to be made in the case before it. To this end, the**

Board of Adjustment shall have all the powers of the ~~officer from whom the appeal is taken~~ **official who made the decision.**

- (I) **When hearing an appeal pursuant to G.S. 160A-400.9(e) or any other appeal in the nature of certiorari, the hearing shall be based on the record below and the scope of review shall be as provided in G.S. 160A-393(k).**
- (J) **The parties to an appeal that has been made under this subsection may agree to mediation or other forms of alternative dispute resolution. The ordinance may set standards and procedures to facilitate and manage such voluntary alternative dispute resolution.**

## 7-2 VARIANCES

### 7-2.1 General

- (B) A variance may be granted by the Board of Adjustment if it concludes that strict enforcement of this Ordinance would result in ~~practical difficulties or unnecessary hardships for the applicant and that, by granting the variance, the spirit of this Ordinance will be observed, public safety and welfare secured, and substantial justice done. It may reach these conclusions if it finds that~~ **upon a showing of all of the following:**
  - (1) **Unnecessary hardship would result** ~~if the applicant complies strictly with the provisions of the Ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, he can make~~ **no reasonable use can be made** of his ~~the~~ property;
  - (2) **The hardship results from conditions that relate to the applicant's land and are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance** ~~The hardship of which the applicant complains is one suffered by the applicant rather than by neighbors or the general public;~~
  - (3) ~~The hardship relates to the applicant's land, rather than personal circumstances;~~
  - (4) ~~The hardship is unique, or nearly so, rather than one shared by many surrounding properties;~~

- (5) **The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship;**  
~~The hardship is not the result of the applicant's own actions; and~~
- (6) The variance will neither result in the extension of a nonconforming situation in violation of Article VI nor authorize the initiation of a nonconforming use of land; **and**
- (7) **The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved.**

- (C) ~~In granting variances, the Board of Adjustment may impose such reasonable conditions as will ensure that the use of the property to which the variance applies will be as compatible as practicable with the surrounding properties~~ **No change in permitted uses may be authorized by variance. Appropriate conditions may be imposed on any variance, provided that the conditions are reasonably related to the variance. Any other ordinance that regulates land use or development may provide for variances consistent with the provisions of this subsection.**
- (D) A variance may be issued for an indefinite duration or for a specified duration only. Unless otherwise specified, any order or decision of the Board of Adjustment granting a variance shall expire if the applicant does not obtain a building permit or certificate of occupancy for such use within 60 days from the date of the decision or if construction of the use has not commenced within 180 days from the date of the issuance of a building permit, **home occupation permit**, or zoning permit.
- (E) The nature of the variance and any conditions attached to it shall be entered on the face of the **home occupation permit or** zoning permit, or the **home occupation permit or** zoning permit may simply note the issuance of the variance and refer to the written record of the variance for further information. All such conditions are enforceable in the same manner as any other applicable requirement of this Ordinance.

**7-4 REQUESTS TO BE HEARD ~~EXPEDITIOUSLY~~**

The Board of Adjustment shall **determine contested facts** ~~hear~~ and decide all appeals, variance requests, and requests for interpretations ~~as expeditiously as possible~~ **within a reasonable time**, consistent with the need to follow regularly



established agenda procedures, provide notice in accordance with Section 7-8, and obtain the necessary information to make sound decisions.

#### **7-6 BOARD ACTION ON APPEALS AND VARIANCES**

- (A) With respect to appeals, a motion to reverse, affirm, or modify the order, requirement, decision, or determination appealed from shall include, insofar as practicable, a statement of the specific reasons or findings of facts that support the motion. If a motion to reverse or modify is not made or fails to receive the ~~four-fifths~~ **majority** vote necessary for adoption, then the motion is not approved.

#### **7-8 NOTICE OF HEARING**

The Zoning Administrator shall give notice of any hearing required by Section 7-7 as follows:

- (A) ~~Notice shall be given to the appellant or applicant and any other person who makes a written request for such notice by mailing to such persons a written notice not later than ten days before the hearing.~~ **Notice of hearings conducted pursuant to this section shall be mailed to the person or entity whose appeal, application, or request is the subject of the hearing; to the owner of the property that is the subject of the hearing if the owner did not initiate the hearing; to the owners of all parcels of land abutting the parcel of land that is the subject of the hearing; to any other person who makes a written request for such notice; to any other persons entitled to receive notice as provided by the zoning or unified development ordinance. In the absence of evidence to the contrary, the city may rely on the county tax listing to determine owners of property entitled to mailed notice.**
- (B) Notice shall be given to neighboring property owners by mailing a written notice not later than ten days, **but not more than 25 days**, before the **date of the** hearing to those persons **as described in Subsection (A) above, and** who have listed for taxation real property any portion of which is located within 100 feet of the lot that is the subject of the application or appeal. ~~Notice may also be given by prominently posting signs in the vicinity of the property that is the subject of the proposed action.~~ **Within that same time period, the City shall also prominently post a notice of the hearing on the site that is the subject of the hearing or on an adjacent street or highway right-of-way.**

#### **7-9 EVIDENCE AND SUBPOENAS**

- (B) All persons who intend to present evidence to the Board of Adjustment, rather than arguments only, shall be sworn. **Any person who, while under oath during a proceeding before the Board of Adjustment, willfully swears falsely is guilty of a Class 1 misdemeanor.**
- (C) ~~All findings and conclusions necessary to the~~ **Every quasi-judicial decision** (issuance or denial of the requested **special use permit**, appeal or variance (crucial findings)) ~~shall be based upon reliable evidence~~ **shall be based upon competent, material, and substantial evidence in the record.** Competent evidence (evidence admissible in a court of law) shall be preferred whenever reasonably available, but in no case may crucial findings be based solely upon incompetent evidence unless competent evidence is not reasonably available, the evidence in question appears to be particularly reliable, and the matter at issue is not seriously disputed.
- (D) **The Board of Adjustment through the chairman, or in the chairman's absence anyone acting as chairman, may subpoena witnesses and compels the production of evidence. To request issuance of a subpoena, persons with standing under G.S. 160A-393(d) may make a written request to the chairman explaining why it is necessary for certain witnesses or evidence to be compelled. The chairman shall issue requested subpoenas he or she determines to be relevant, reasonable in nature and scope, and not oppressive. The chairman shall rule on any motion to quash or modify a subpoena. Decisions regarding subpoenas made by the chairman may be appealed to the full board of adjustment. If a person fails or refuses to obey a subpoena issued pursuant to this subsection, the board of adjustment or the party seeking the subpoena may apply to the General Court of Justice for an order requiring that its subpoena be obeyed, and the court shall have jurisdiction to issue these orders after notice to all proper parties.**

#### **7-10 MODIFICATION OF APPLICATION AT HEARING**

- (B) Unless such modifications are so substantial or extensive that the Board **of Adjustment** cannot reasonably be expected to perceive the nature and impact of the proposed changes without revised plans before it, the Board of Adjustment may approve the application with the stipulation that the permit will not be issued until plans reflecting the agreed upon changes are submitted to the Zoning Administrator.

#### **7-12 WRITTEN DECISION**

- (A) Any decision made by the Board of Adjustment regarding an appeal or variance shall be reduced to writing, **signed by the chairman and/or other duly authorized member of the Board of Adjustment**, ~~and served upon the applicant or appellant and all other persons who make a written request for a copy.~~
- (B) **A quasi-judicial decision is effective upon filing the written decision with the Secretary to the Board of Adjustment. Issuances of variance and/or special use permit shall be recorded with the Pasquotank County Register of Deeds. Recordation shall be the responsibility of the property owner or applicant.**
- (C) **The decision of the Board of Adjustment shall be delivered by personal delivery, electronic mail, or by first-class mail to the applicant, property owner, and to any person who has submitted a written request for a copy, prior to the date the decision becomes effective. The person required to provide notice shall certify that proper notice has been made.**
- (E) **Every quasi-judicial decision shall be subject to review by the superior court by proceedings in the nature of certiorari pursuant to G.S. 160A-393. A petition for review shall be filed with the clerk of superior court by the later of 30 days after the decision is effective or after a written copy thereof is given in accordance with subdivision (C) of this subsection. When first-class mail is used to deliver notice, three days shall be added to the time to file the petition.**

**NOW THEREFORE, BE IT ORDAINED** that the City Council of the City of Elizabeth City does hereby amend the above text of the Unified Development Ordinance to reflect the changes in North Carolina General Statutes and Appendices Tables A-4-1 and A-4-2 as presented.

**ADOPTED**, this the 27<sup>th</sup> day of January 2014.

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Joseph W. Peel  
Mayor

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Vivian D. White, NCCMC  
Deputy City Clerk

**b. Consideration – Public Hearing to receive comment on RZ-04-13 requested by Tonya Spellman to rezone 305 Perry Street from Residential R-6 to Neighborhood Business NB; and adoption of required ordinance.**

Mayor Peel declared the meeting into Public Hearing and inquired of the Deputy Clerk if persons were present who wished to be heard. Upon reply that no one had registered, Mayor Peel declared the Public Hearing closed.

Mayor Peel recognized Planning Director Brooks for her report. Ms. Brooks stated that Tonya Spellman is requesting to rezone .74 acres at 305 Perry Street from Residential R-6 to Neighborhood Business NB. She said that the site is composed of five parcels and is adjacent to the north side of New Hollywood Cemetery. She stated that this site has been used for commercial purposes since the 1980's and has been a nonconforming use. She said that it started as Brooks Grocery, and then Ocean Delite, a seafood market and restaurant, until 2012. She reported that the applicant is proposing to use this site as a restaurant and food delivery service. She said that this use is permitted by right in the Neighborhood Business District. She stated that the Neighborhood Business (NB) zoning classification is intended to allow small, limited retail service land uses, which provide goods and services to the surrounding residential neighborhood. She advised that limited neighborhood commercial use is considered an acceptable use for the site and is in compliance with the future land use plan. She said that this request was heard during the December 2013 Planning Commission meeting and that the Planning Commission recommends approval of this rezoning.

**Motion was made by Councilman Kem Spence, seconded by Councilman Darius Horton, to adopt the following ordinance approving RZ-04-13 by the Council. Those voting in favor of the motion were: Baker, Donnelly, Hummer, Stimatz, Brooks, Spence, Horton and King. Against: None. The motion carried unanimously.**

**Ordinance 2014-01-08  
Rezoning Request RZ-04-13  
305 Perry Street (Tax Map 28, Block F, Lots 1, 5, 6, 23 and 24)**

**WHEREAS**, on December 3, 2013, the Planning Commission reviewed Petition RZ-04-13 by Tonya Spellman to rezone property located at 305 Perry Street and further identified as Tax Map 28, Block F, Lots 1, 5, 6, 23 and 24 from Residential R-6 to Neighborhood Business NB; and

**WHEREAS**, the Planning Commission opened the floor for public comments in regards to this request; and

**WHEREAS**, as a result of these comments and review, the Planning Commission believes that the proposed rezoning of this property will allow for limited services to the surrounding residential neighborhood and is consistent with the Elizabeth City/Pasquotank Land Use Plan and therefore, recommends approval.

**NOW THEREFORE, BE IT ORDAINED** that the City Council of the City of Elizabeth City does hereby approve this request to amend the Official Zoning Map to show the above referenced parcel as NB (Neighborhood Business).

**ADOPTED**, this the 27<sup>th</sup> day of January, 2014.

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Joseph W. Peel  
Mayor

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Vivian D. White, NCCMC  
Deputy City Clerk

**8. Regular Agenda:**

**a. Consideration – Appointment of William David Harris to serve a three-year term on the Board of Zoning Adjustments ending January 2017 (*Requires Roll Call Vote*).**

**Motion was made by Councilman Tony Stimatz, seconded by Councilman Ray Donnelly, to appoint William David Harris to serve a three-year term on the Board of Zoning Adjustments ending January 2017.**

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 – Appointment of Eddie Spencer to serve a two-year term on the Parks and Recreation Advisory Board ending January 2016 subject to like appointment by the Pasquotank County Board of Commissioners (*Requires Roll Call Vote*).**

**Motion was made by Councilman Tony Stimatz, seconded by Mayor Pro Tem Anita Hummer, to appoint Eddie Spencer to serve a two-year term on the Parks and Recreation Advisory Board ending January 2016 subject to like appointment by the Pasquotank County Board of Commissioners.**

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.**

**c. Consideration – Appointment of Ms. Doris Johnson to complete the unexpired term ending September 2016 of Roger Gunter on the Historic Preservation Commission. (*Requires Roll Call Vote*).**

**Motion was made by Councilman Tony Stimatz, seconded by Mayor Pro Tem Anita Hummer, to appoint Ms. Doris Johnson to complete the unexpired term ending September 2016 of Roger Gunter on the Historic Preservation Commission.**

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.**

**d. Update – Alley Closing Process.**

Mayor Peel recognized Mr. Olson to give the staff report for this item. Mr. Olson reported that some members of the Council expressed concerns that the description used for the alleyways included in the resolution adopted on November 25, 2013 to close a number of alleys was not clear enough. He stated that the City Attorney was asked at that time to clear up the descriptions, which he subsequently did. He stated that the Council had also asked that all adjacent property owners to an alleyway being closed be contacted offering a period until February 28, 2014 to request that any obstruction in the alleyway being vacated be removed by the City. He said that to date requests have been received from five property owners for removal of obstructions in

four of the alleys. He referred the Council to the copy of the revised resolution that had been provided for them in their agenda packet, as well as the copy of the notification letter.

Councilman Stimatz inquired if further action was required of the Council to which Mr. Olson responded that the process is now complete. Councilman Stimatz stated that the alley definitions were much clearer.

**e. Holdover from the Work Session: Cemetery Discussion.**

Mayor Peel recognized Parks and Recreation Director Bobbi White to continue the discussion of this matter deferred from the earlier Work Session.

Mayor Peel asked if the Councilors had questions regarding Ms. White's Work Session presentation.

Councilman Horton commented that he read in the staff report that City staff is recommending that families no longer be allowed to have solar lights, trees and things of that nature on the cemetery plots they have purchased. He said it was his understanding that when a family purchases a plot, it becomes their property unless prior rules and regulations were established to outline what can and cannot be done. He suggested that the North Carolina Cemetery Commission should be consulted for an answer. He pointed out that many persons have already purchased the items that have been placed on the gravesites. He said that as he understood from the staff report, these things are a maintenance problem. He stated that he felt that there were a host of persons willing to maintain the cemeteries living in the City if the present maintenance provider found it to be a problem. He said he would prefer not to ask families to remove items on the gravesites and instead find a maintenance provider that could work around the issue.

Councilman Horton stated that he found the 24 hour notice requirement to be acceptable and agreed with staff that the City should not get into the business of digging graves. He stated that he thought the City should just make sure that burials are reported in a timely manner and that gravesites are probed; but getting into the logistics of what to put and what not to put on graves should be left alone.

Director White stated that it did not matter who performed maintenance in her opinion, because since becoming department director, the City had used two different providers and they all see the issue of decorated gravesites as a "nightmare". She stated that there had been issues with one company wanting to use Roundup around the headstones, which caused them to sink. She advised that with the current contract, the use of a weed eater was required around the headstones, which makes it necessary to move everything placed by the headstones. She pointed out that some gravesites have as many as ten to twenty arrangements plus the solar lights and other decorations. She reported that family members complain when everything isn't moved and cleaned around. Ms. White pointed out that the cemeteries are historical and staff would like to keep them maintained in a pristine condition, thus the recommendation for the proposed regulations of what can and cannot be used.

Councilman Donnelly suggested that to tighten the regulations under Section 18-6 as it refers to one freestanding vase of flowers; he suggested that the reference to “one standard size vase of flowers” be made to avoid extremely large urns with huge floral arrangements. He stated that he was uncomfortable with funeral homes being able to pass the cost on to the customer. He said that the funeral homes may do that, but he did not want to state it in the City’s policy.

Mr. Olson commented that the City could not regulate the placement of American flags in a cemetery because it is a federal issue.

Councilman Spence asked what drove this item to be presented to the Council for discussion. Ms. White stated that the complaints are being received from family members regarding plots being decorated, which are located near their family plot. She stated that often the wind blows the decorations to other locations in the cemetery causing a litter problem for other gravesites. Councilman Spence asked how many complaints are being received. Ms. White responded that it depended on the weather, but in windy periods, the department would receive five or six complaints monthly just for the three cemeteries that the City owns.

Councilman Stimatz stated that he would prefer to see actual language for the ordinance before making a decision to go to Public Hearing. He stated that some of the information in the staff write-up is probably okay, but the part regarding how the City will deal with the actual plots needs further review to determine the rights of the property owner. He stated that if the cemeteries are indeed historic, the City has an obligation to regulate them for historic purposes; and he pointed out that solar lights were not invented far enough back to be grandfathered over the historic question. He stated that the reality is that the Council’s forefathers decided to take over these cemeteries, and commented that state law establishes that abandoned cemeteries should be owned by counties. Councilman Stimatz reiterated that he would like to see three things brought back: (a) what the rights of property owners and their survivors are; (b) what the historic preservation concerns are and if there are standards; and (c) what the maintenance costs are. He stated that he did not think there were too many people bidding on the work to which Ms. White responded that the City only received two bids. Ms. White stated that it is a monumental task to maintain eight cemeteries.

**Councilman Stimatz made a motion to table any changes to Section 18-6 regarding gravesites pending further research by staff to bring back what we can and cannot do.**

**Councilman Stimatz withdrew this motion.**

Councilman Spence asked if he heard correctly that the County is supposed to be responsible for cemeteries. Councilman Stimatz responded that if a cemetery is abandoned, by state statute it defaults to the County. He pointed out that at some time in the City’s past, the City fathers decided that they would take it on and accepted the cemeteries from whoever the owner was. Mr. Olson stated that the ownership is clouded because the City has to maintain the cemeteries, but he did not think the City owned them. He stated that staff would provide additional information to members of the City Council.



Councilman Spence stated that if the City does not own the cemeteries, the annual maintenance cost being spent would certainly help the City's budget. He stated that the Council should "put the City Attorney to work and make the County responsible for what they are supposed to do".

**Councilman Stimatz made a motion, seconded by Councilman Ray Donnelly, to call for a Public Hearing to be held on February 10, 2014 to receive public comment regarding the proposed modifications to Section 18 of the City Code, except for those changes related to Section 18-6 and bring those back to us when staff has completed their work. Those voting in favor of the motion were: Baker, Donnelly, Hummer, Stimatz, Brooks, Spence, Horton and King. Against: None. The motion carried unanimously.**

**f. Consideration – Award of Community Support Grant in the amount of \$1,000 to the COA Foundation on behalf of Men of Excellence and Distinction in the Albemarle and adoption of budget amendment as required (moved from Consent Agenda at the request of Councilman Horton).**

Councilman Horton stated that he had a question regarding the amount of money left over to give grants and asked the procedure for making applications. Mr. Olson explained the procedure for Community Support Grant Applications. Councilman Horton asked if the MEDIA group had made a presentation before the Finance Committee to which Mr. Olson responded that they had not. Councilman Horton stated that he felt that if all other applicants were required to make a formal presentation to the Finance Committee, this group should also be required to do the same.

Mayor Pro Tem Hummer commented that she agreed that a presentation should be made in person and that the Council should be consistent.

**Motion was made by Councilman Darius Horton, seconded by Councilman Kem Spence, that before the Council award the grant to the COA Foundation in the amount of \$1,000, they come before Council with a formal presentation.**

**A friendly amendment was offered by Councilman Stimatz that the presentation be made before the Finance Committee in order to be consistent. Councilman Horton accepted the amendment to his motion.**

**Those voting in favor of the motion were: Baker, Donnelly, Hummer, Stimatz, Brooks, Spence, Horton and King. Against: None. The motion carried unanimously.**

Councilman Stimatz commented that these types of things should be documented in a procedures manual and requested that the City Manager look into compiling a manual for the Council.

**g. Addition to agenda by Councilman Brooks: "Conflict of Interest Policy".**

*(Deputy Clerk Notation: The discussion of this item is provided verbatim at the request of Councilman Brooks.)*

**Councilman Brooks:**

It is troubling when you hear the concerns of the NAACP with improprieties that deals with properties and City properties and finance. The reason why it is troubling to me, as you know I wasn't at the meetings around Thanksgiving – I was out of town. But I got a chance to listen to the audio that was done - taped at the library - and I listened to the auditor - and one of the auditor's recommendations was that we put together a Conflict of Interest Policy. Because we paid the auditor – did we pay the auditor, did we pay him, was he paid? –

**Mr. Olson:**

Yes.

**Councilman Brooks:**

Since we paid him and his letter of recommendation to the manager was that we put together a conflict of interest policy, I think that we should go ahead and abide by that. And as I was listening, I noticed that he said that we were supposed to have a 15% established balance for undesigned (*sic*) fund balance – that is working capital - that means 15% - as I understood he was saying – that means that we have enough money where we can operate 15% of the year. That is how he stated it on the video. So, with the concerns that the NAACP had - and the concerns that everybody \_\_\_\_ (?)\_\_\_\_ Conflict of Interest Policy – I don't think that he came up with that for no reason – just like I don't think the NAACP is doing smoke with no fire. So, I make a motion that we do a Conflict of Interest Policy and investigate – follow thru on the investigation that was asked for by the NAACP on the City Manager and the Mayor – and see how that turns out, because I think that the best ones to police us are ourselves. And I don't know if we have to have the – Mr. Morgan do it, or the Chief of Police – I don't know. But I think that motion will go forth because the auditor has no bone in this fight – the NAACP has no bone in this fight, but they keep coming up with the same thing. I'm sure the auditor hasn't talked with the NAACP and the NAACP hasn't talked to the auditor. So, there is something that needs to be unraveled there and it would be good if everything come out lovely and smooth – that would be good – but we need to get this behind us. So I make the motion that we put together a Conflict of Interest Policy and follow thru on the investigation of Mr. Peel and City Manager as recommended by the NAACP.

**Councilman Horton:**

Second

**Mayor Peel:**

Motion Seconded; Mr. Olson you want....

**Mr. Olson:**

Mayor, there are two separate issues there; and most likely those items should be separated. Under Section 2-115 concerning investigations, (a) The city council may direct the city attorney to investigate any apparent violation of the Code as it applies to the mayor, member of the city council, city manager or city clerk and to report the findings of this investigation to the city council. That is a formal process we have in the City Code to address the one issue here. The other issue is the drafting of a Conflict of Interest Policy, which is separate and apart from the formal investigation under the existing City Code.

**Councilman Brooks:**

It's okay. I separate them. I separate them. **First I make the motion that we investigate – call for an investigation by the NAACP – on the Mayor and the City Manager. I separate them. I separate them.**

**Mayor Peel:**

Okay, so you are amending your motion?

**Councilman Brooks:**

Yes, if he said – if what Rich said – he wanted as far as the policy – and I understand the Conflict of Interest Policy – I understand that. So what I do - I will make two separate motions, you know. It's okay. So I follow thru on the request by the NAACP - because if I recall correctly, this is not the first time the NAACP came up here with that statement. And we, for some reason just blew it off. Didn't say anything about it – so I think we should – to clear ourselves as a Council – I think we should go ahead and go forward and find if there's smoke and no fire – great – we look like a rose, you know? So I make that motion that we go ahead and do the investigation that the NAACP recommends.

**Councilman Horton:**

Second.

**Mayor Peel:**

So, we have motion and a second to do the investigation. Mr. Spence. . .

**Councilman Spence:**

I think I'm the one that brought up sometime last year when they was talking about the Charter on the writing the grant – and I asked – I think I'm the one that asked – about our grant writer writing it and about him being paid and who paid. .

**Mr. Olson:**

She...

**Councilman Spence:**

She getting paid - I'm the one, I asked in a Council meeting about who's paying and why were we paying them to write something that didn't involve the City. And who is responsible for paying that. And I don't think I ever got a answer for that, so I guess – I think what he's saying is that we used our grant writer to write, so....

**Mr. Olson:**

I sent a memo to the members of the City Council shortly after that meeting explaining the time and value and what occurred. You may want to look at your memos for the end of November where I basically clarified that issue for members of City Council.

**Councilman Spence:**

Okay.

**Mr. Olson:**

City staff has no problem with the investigation by the City Attorney or anyone else.

**Mayor Peel:**

And neither does the Mayor. In fact, like Mr. Brooks, I welcome it and I think we need to move on. Okay, other comments? Councilman Horton...

**Councilman Horton:**

May I ask a question? Now, Rich, in the – what you just read – does it specify that the City Attorney has to be the one to do that investigation?

**Mr. Olson:**

It says the City Council may direct...okay. That is discretionary. The City Attorney can investigate any apparent violation.

**Councilman Horton:**

So we can get an outside source to do the investigation.

**Councilman Brooks:**

We sure can.

**Councilman Horton:**

**I think to keep all avenues open and clear minded, I think we need to look at an outside source. I don't know who that may be, but I feel it should be someone that has no connections to the persons to be investigated.**

**Councilman Brooks:**

**I accept the friendly amendment.**

**Mayor Peel:**

Mr. Stimatz...

**Councilman Stimatz:**

The only thing is that it says that the person that believes a violation has occurred may file a verified complaint in writing with the City Council. I don't have one of those.

**Councilman Spence:**

He just ....

**Councilman Stimatz:**

I heard a lot – but there's no definitive that on this day, this date, this happened. There're no details on that. I think you guys are ripping off the City. I can say that about all kinds of things. So, my point is that I would like to see that. I don't have a problem with an investigation. In fact, if everybody remembers, I'm the one who's made every motion to have an investigation this Council has had ever since I've been on the Council. Okay? Every single one. So, I don't have a problem having an investigation – I'd like to know what I'm investigating. And I'd like to have a little more detail than "I think there's something going on". That's all I would ask. But other than that.....no big deal.

**Councilman Spence:**

That's the – to me – that's the purpose of an investigation. Whoever is doing the investigation – it's their responsibility to gather the facts. We're not the investigators. If we are going to pay somebody to do this investigation – we might as well pay ourselves if we've got to get all the facts. That's their job to get the facts.

**Mayor Peel:**

Okay. Mr. Brooks.

**Councilman Brooks:**

Yes, and I agree. I've been fortunate enough to take some – to have a diploma in investigative process; and I know that Councilman Spence know, cause he work - where he works, he do investigations all the time. And I know that too – and I know a little bit about investigations. I think he's totally right. We shouldn't

have to do all the homework for someone that we're paying to do the homework. That doesn't make any sense. It's up to them to find a place to work and get all the facts. I agree with that in totality. I also agree with Councilman Horton saying that we need to have an outsider – I don't think and – Tony addressed it and I will get away from that – we bring it up to a vote. Tony addressed the situation concerning me. Everything that was said was there and it was in our minutes. It was in the minutes. Everything was there. There was nothing to investigate. Everything was right there. Everything that happened was right there. So there was nothing to investigate – the time, what happened, we discussed it – it's in the minutes – so it's two separate animals. And that was the only time, Councilman Stimatz, that you have ever requested an investigation on a councilperson. But anyway, ready for the vote.

**Councilman Stimatz:**

I never said that I did. The other ones were against other persons in the City.

**Mayor Peel:**

Okay, Mrs. Hummer...

**Mayor Pro Tem Hummer:**

Yes, both the manager and the mayor have welcomed the investigation and if there are concerns in the community, we need to show transparency. How could we vote against it? I mean, you know, we have been asked to do this, so, we need to move on.

**Mayor Peel:**

Okay. Mr. Donnelly...

**Councilman Donnelly:**

I just need to know what we are investigating. Specifically, days, times, places – we need...I don't know...I'm not going to spend taxpayers' dollars to investigate in general. Maybe we could investigate the whole Council. And that's up to the investigator to make that determination as to what the issue is. I...we need to be specific about what we are investigating; and, when, you know, it happened, where it happened, and how it happened.

**Mayor Peel:**

Okay. Mr. Horton, I believe you had your hand up?

**Councilman Horton:**

Yes. I feel that the NAACP in this presentation that they've made tonight is pretty much made it very plain that there has been a breach of trust and that they feel that persons have used their office for personal gain.

**Councilman Donnelly:**

Do you have a copy of that?

**Councilman Horton:**

Yes. You didn't get one?

**Councilman Donnelly:**

No.

**Councilman Horton:**

Yes...there is a letter here that has been presented - and like I said, we are not trying to point fingers in this stage, but I just feel that to, you know, satisfy the complaints that have been mentioned, that we just need to have an investigation and it needs to be done by an outside source to justify that persons that sit on this council have not used their office for personal gain. I think now it's not a choice of whether or not to have the investigation, it's just a choice of who to get to do the investigation at this point –which I feel that Council should perhaps take time to bring recommendations now, or at a later date, who from an outside source - that has no connections to any of us - that can bring a true opinion as it relates to whether or not these individuals are violating our charter.

**Mayor Peel:**

I think that's the way the motion....

**Mr. Olson:**

Mayor may I clear an item up?

**Mayor Peel:**

Yes.

**Mr. Olson:**

We are not talking about the City Charter. The City Charter is a separate legal instrument. We are talking about the City Code. There's a big difference and I know the NAACP mixes those two together. The City Charter is what governs us, which is approved by the State Legislature. The City Code is what you all have adopted. Okay? So, it's the City Code that has been violated – not the City Charter.

**Councilman Horton:**

Thank you, Mr. Olson, for educating me. Once again, instead of evaluating the City Charter, we need to look at the Code and see has it been violated.

**Mayor Peel:**

Okay, any other discussion?

**Councilman Brooks:**

Ready for the question.

**Mayor Peel:**

**Okay. All in favor say “aye”, any opposed, “nay”. The motion carries.**

*Deputy Clerk Note: The vote on the motion was unanimous.*

So, Mr. Olson, you will get the names of some outside folks that can do this?

**Mr. Olson:**

Since I am a target of the investigation, I'll refer this to the City Attorney and ask him to present some names and qualifications to the governing body.

**Mayor Peel:**

Alright.

**Councilman Horton:**

Mr. Mayor, I feel that we as Councilmembers should seek qualified individuals to bring back at our next meeting to conduct the investigation.

**Mayor Peel:**

Ms. Baker...

**Councilwoman Baker:**

I don't feel qualified to know who would conduct such a process. I think, perhaps, you know, another public official, maybe the County Manager, maybe the DA, maybe somebody else, if you don't want the City Manager ....

**Councilman Spence:**

Call the School of Government.

**Councilwoman Baker:**

I'm sorry. What's that?

**Councilman Spence:**

I said call the School of Government.

**Councilwoman Baker:**

School of Government.



**Councilman Horton:**

Exactly.

**Councilwoman Baker:**

Yeah. But I certainly don't feel qualified to bring names to this body to, you know, to conduct that process.

**Mayor Peel:**

I think the way it stands right now, Mr. Morgan would do that.

**Councilman Stimatz:**

He'll bring names to us; we'll still decide.

**Mayor Peel:**

You'll still decide.

**Councilman Horton:**

Okay.

**Mayor Peel:**

Mr. Brooks.

**Councilman Brooks:**

Yeah, and I think this is where the second motion come in, with the Conflict of Interest Policy. That means that I think that's what the murky water that we in, because Mr. Morgan works for the City. . .

**Councilman Horton:**

Exactly.

**Councilman Stimatz:**

Works for us.

**Councilman Brooks:**

and that, yeah, works for the City. We are the City; we are the legislative body of the City. I think that's what the concern was, but I will make the second part of that motion, that we put together, as the auditor stated, a Conflict of Interest Policy.

**Councilman Spence:**

Second.

**Mayor Peel:**

Okay. So the motion is to direct the City Manager to develop a Conflict of Interest Policy and bring it back to the Council.

**Councilman Brooks:**

Do you want, I mean, I ask the Council because I don't know. Do we want the burden to be on the City Manager himself or do we want to...do you feel comfortable in doing that?

**Councilman Spence:**

That's his job.

**Mr. Olson:**

Yeah. At the time the auditor gave that recommendation, we had several Conflict of Interest policies that this governing body has already approved. All of our federal money – we have a separate Conflict of Interest Policy – I personally believe that the auditor did not state that correctly. You, every time we have a grant, you have to approve a Conflict of Interest policy, which you have done, which is all inclusive. You have the part of the code I'm reading from that basically addressed that. But if you want a separate Conflict of Interest Policy, we can have one to you by next meeting.

**Councilman Stimatz:**

Don't we have ...

**Councilman Brooks:**

In my motion, I would like to have a separate Conflict of Interest Policy. I understand what you are saying there, but we need a separate Conflict of Interest Policy, cause I looked at it twice, I stood there for a while and kept looking over it cause I wanted to make sure I was receiving what his intent was to....I think that we are...I make the motion that –restate the motion that we have a Conflict of Interest Policy separate.

**Councilman Horton:**

Second.

**Mayor Peel:**

Okay. Mr. Stimatz...

**Councilman Stimatz:**

We also have what we adopted when the state legislature came out with their disclosure law. We adopted a six or seven page document which I can't find online – and I'd like to have it put on there. I think it contains a lot of this stuff

already. We need to read that as well. For the new Council members, if you haven't seen it, then you need to see it. It's pretty detailed and it's pretty specific on what you should and shouldn't be doing. So, anyway, I welcome the idea that we will have a Conflict of Interest Policy. A number of years ago, there were some things going on on Council that really would have helped clarify that. So, thank you.

**Mayor Peel:**

Ms. Hummer...

**Mayor Pro Tem Hummer:**

Yes, I recollect that the auditor said that there were some concerns raised as he was interviewing, I believe he said Council members, and I would like to offer a suggestion that it be an item on the agenda for our retreat so that we have...we can take part...WE can take part in drawing this up. I think that's the fair way to do it.

**Mayor Peel:**

Do you accept that friendly amendment?

**Councilman Brooks:**

Yes. We're good.

**Councilman King:**

I concur with Mayor Pro Tem Hummer that we should construct - look at whatever Ethics Policy that we have in place, review it - at our retreat and planning session, whenever that will be. In that way, we won't have to worry about the City Manager presenting it and then we don't like it and he'll have to go back and do it again. So, all hands on deck at the retreat and planning session. That's my recommendation.

**Mayor Peel:**

Mr. Brooks...

**Councilman Brooks:**

Yeah, I accept the friendly amendment. That will take some of the burden – some of the burden – but City Manager said that he had access to all that. So, he got the material in front of him. But it's okay for us to do it collectively at the retreat, also. I agree with Mayor Pro Tem Hummer. So, that can be a friendly amendment, so we won't have to go out and rush to get it done. We can take our time and, you know...

**Mayor Peel:**

Okay. Any other discussion? All in favor of the motion say “aye”, any opposed, “nay”. Motion carries.

*(Deputy Clerk notation: The vote on the motion was unanimous.)*

**h. Addition to agenda by Councilman Brooks: “Comments on Non-Agenda Items”.**

Councilman Brooks commented that when the Councilors have their comments at the end of each meeting, other Councilors should be able to respond. Mayor Peel pointed out that it would then become a discussion or debate. He suggested that this could be a discussion held during the retreat if the Council wanted to make that change.

Councilman Brooks stated that he thought if a Council member made an incorrect statement, other Councilors should be able to correct the mis-statement.

**i. Addition to agenda by Councilman Brooks: “Mayor’s Student Advisory Committee”.**

Mayor Peel recognized Councilman Brooks for his comments on this matter. Councilman Brooks stated that he read the newspaper article about the Mayor’s Student Advisory Committee. He said that he had previously commented that the Council should get the students involved. He said with the state of the economy, students are not financially stable. He reminded the Council that when he had talked about this previously, he had suggested that two students from each of the three institutions be involved. He suggested that it would be best for the student body to elect the representatives for each school and allow them to meet in Council Chambers quarterly and televise the meeting. Councilman Brooks suggested that the City pay the students \$100 each quarter for their participation. He stated that he thought it would be good for Councilman King to chair the meeting to keep it stable.

Mayor Peel stated that Councilman King would be the chair of the committee and five students would participate from ECSU, three from COA and two from MACU. He said that the membership was designed because of the size of the schools. Mayor Peel said that since the committee was organized in the middle of the school year, the heads of the three schools were consulted and made recommendations for students to serve.

Councilman Brooks stated he thought it would be better for the students to be elected by the student bodies, so they could get a “feel for the whole election process”. Mayor Peel responded that he would not have a problem with that, but pointed out that the school year is already in the second semester, which did not allow a lot of time to organize.

Councilman Brooks asked the City Manager if the City could find the money in the budget to pay the students. Mr. Olson responded that he did not think it was a budget issue but may be more a legality issue that he would have to research and report back.

Councilman Stimatz stated that it was his understanding that this committee is not a City Council committee. Mayor Peel responded that Councilman Stimatz was correct in that this committee is a “Mayor’s Committee”. Councilman Stimatz stated that he did

not particularly want to pay for a mayor's committee and pointed out that gets back to the earlier discussion regarding conflict of interest and using official City funds "fund a private thing the mayor is doing".

Councilman Brooks stated that he thought it could be the Council's committee so they could be involved and eliminate the conflict of interest. He said given the economic situation in this area, it would motivate some of the students if they were paid.

Councilman Spence commented that he liked Councilman Brooks' statements and he stated that he would personally give the first \$100 in order to show interest in our students if the City could not do it. He said that he would challenge other Council members to do the same.

Mayor Peel stated that he thought the City Manager should first be given the opportunity to research the matter and suggested that the discussion be held until that time.

**j. Holdover from Work Session: Committee Reports.**

- a) EC-PC Economic Development Commission: Mayor Pro Tem Hummer, Councilwoman Baker, Councilman King and Mayor Peel

Mayor Pro Tem Hummer stated that the Commission met and the nominating committee brought their slate of recommended officers for 2014 to the full board. She stated that she was elected Chair and Councilwoman Baker was elected Secretary.

- b) Central Communications Advisory Board: Councilman Spence

Councilman Spence stated that he was unable to attend the last meeting.

- c) Fireman's Relief Fund Board: Councilman Brooks

Councilman Brooks stated that there had been no meeting.

- d) NC Eastern Municipal Power Agency: City Manager Olson and Mayor Peel

Mr. Olson stated that due to inclement weather, the meeting had been changed to the following Monday.

- e) Elizabeth City Downtown, Inc.: Councilman Donnelly

Councilman Donnelly stated that if weather allows, the ECDI Director and some members of the board would be attending the Main Street Annual Conference in New Bern. He thanked the Council for endorsing and expanding the Potato Festival on behalf of the Board and Directors. He announced that Bobbi White had been selected as the Main Street Champion and would receive her award in New Bern.

- f) Elizabeth City Area Chamber of Commerce Board: Mayor Peel

Mayor Peel stated that the Chamber would be sponsoring Job Shadow Day on February 4, Paint the Town Red Day on February 7 and on February 13 would host the Chamber's 103<sup>rd</sup> Annual Meeting.

- g) Finance Committee: Mayor Pro Tem Hummer, Councilman Donnelly, Councilman Horton and Mayor Peel

Mayor Pro Tem Hummer stated that all of the recommendations that the Committee sent to the Council for consideration appeared on the agenda. She provided a recap of all items considered.

- h) Parks and Recreation Advisory Board: Councilman Horton

Councilman Horton stated that he was welcomed to the Board by the Parks and Recreation Director and a meeting is scheduled for the following week, which will be his first meeting.

- i) Elizabeth City/Pasquotank County Airport Authority: Councilman Stimatz

Councilman Stimatz stated that the new Airport Manager is on board and doing a good job. He stated that a lot was going on at the airport not only with the physical plant but as it relates to ongoing relationships with the Coast Guard. He said progress is being made on several major documents including the lease agreement. He said the biggest issue facing the board is how to deal with maintenance of the main runway long term. He stated that the first month of DOD fuel sales was quite satisfactory.

- j) Storm Water Drainage Advisory Board: Councilman Stimatz, Councilman Donnelly and Councilman Brooks

Councilman Stimatz stated that a meeting was held the previous week and two major issues were discussed: where to go with the Tiber Creek Basin and what to do about long range drainage planning for the Tanglewood area. He said that in most areas of town, the City is having to work with what is has, but the Tanglewood area presents an opportunity to get ahead on the planning before development.

- k) Tourism Development Authority: Councilwoman Baker

Councilwoman Baker stated that she was unable to attend the last meeting due to work commitments out of town.

## **9. Comments and Inquiries on Non-agenda Items:**

Councilman Donnelly had no further comments.

Councilman Spence had no further comments.

Councilwoman Baker asked for clarification on the new Heat Pump Policy. The City Manager responded that the policy is only for heat pumps not for fuel heating systems. He pointed out that the Electric Fund is the source of funding for that program.

Councilman King thanked everyone for attending the meeting. He thanked City staff for their efforts in making sure the City is safe. He stated that he had received several complimentary calls from constituents regarding the great job the Police Department is doing. He announced that there must have been an issue regarding notification with the Martin Luther King Observance because the City was on the program and no one attended.

Mayor Pro Tem Hummer had no further comments.

Councilman Horton thanked the Police Department for the good job they were doing. He wished Mayor Pro Tem Hummer a happy belated birthday.

Councilman Stimatz cautioned everyone about the snow storm predicted to arrive with five to eight inches of snow. He encouraged everyone to be prepared.

Councilman Brooks stated that he attended the eighth grade oratorical contest sponsored by the National Council of Negro Women in honor of Martin Luther King Jr. Day. He complimented the wonderful speeches given by the students.

Mayor Peel stated that he attended the Martin Luther King Day breakfast. He stated that he wanted Councilman King to know that his name did appear on the program for the Martin Luther King Day observance at Sheep Harney School, as did the name of County Commission Chairman Jeff Dixon. He stated that neither of them were there because no one contacted them about the event, let alone to let them know they were included on the program. He said that no one contacted City staff regarding the event either in order that a memo could have been provided to the Councilors. He asked Councilman King to advise whoever was responsible, if he knew, because things of that nature did not make anyone look good when the City is not represented.

#### **10. Closed Session as allowed by NCGS 143-318.11(a)(6) – Personnel.**

**Motion was made by Councilman Kem Spence, seconded by Councilman Montravias King to go into closed session pursuant to NCGS 143-318.11(a)(6). 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 declared a five minute recess at 9:13 p.m. after which the Council convened in Closed Session.

**Motion was made by Councilman Kem Spence, seconded by Councilman Montravias King 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.**

**11. Adjournment:**

There being no further business to be discussed, Mayor Peel adjourned the meeting at 9:24 p.m.

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Joseph W. Peel  
Mayor

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Vivian D. White, NCCMC  
Deputy City Clerk