

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

The City Council of the City of Elizabeth City met for a Work Session on Monday, January 27, 2014 in Council Chambers, located on the 2nd floor of the Municipal Administration Building, 306 E. Colonial Avenue, Elizabeth City, NC.

MEMBERS PRESENT: Mayor Joe Peel
Councilwoman Jean Baker (*arrived at 6:55 p.m.*)
Councilman Ray Donnelly
Mayor Pro Tem Anita Hummer
Councilman Tony Stimatz
Councilman Michael Brooks
Councilman Kem Spence (*arrived at 5:40 p.m.*)
Councilman Darius Horton (*arrived at 5:45 p.m.*)
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
Parks and Recreation Director Bobbi White
Deputy City Clerk Vivian White

1. Call To Order:

The City Council Work Session was called to order by Mayor Joe Peel at 5:30 p.m. Mayor Peel welcomed everyone to the meeting.

2. Moment of Silent Reflection:

Mayor Peel stated that the Council had previously voted to change its rules of procedure to allow an invocation. He pointed out that the consideration of that matter appeared later on in the agenda. He said that he would like to request that the Council vote to suspend its rules in order to allow an invocation. Mayor Peel announced that this change would require a super majority vote.

City Attorney Morgan advised that since five members of Council were present, a super majority would consist of four affirmative votes.

Motion was made by Councilman Michael Brooks, seconded by Mayor Pro Tem Anita Hummer to suspend the rules to allow an invocation. Those voting in favor of the motion were: Hummer, Stimatz, Brooks and King. Against: Donnelly. Motion carried. (Baker, Spence and Horton had not yet arrived.)

An invocation was offered by Councilman Michael Brooks.

3. Pledge of Allegiance:

Mayor Peel led in the Pledge of Allegiance to the American Flag.

4. Agenda Adjustments and Approval:

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

Motion was made by Mayor Pro Tem Anita Hummer, seconded by Councilman Michael Brooks, to approve the agenda with any necessary adjustments. Those voting in favor of the motion were: Donnelly, Hummer, Stimatz, Brooks, and King. Against: None. The motion carried unanimously. (Baker, Horton and Spence had not yet arrived.)

(Deputy Clerk Notation: No adjustments were requested.)

5. Consideration – Expanding the NC Potato Festival from One Day to Three Days:

Mayor Peel recognized City Manager Olson for the staff report on this item.

Mr. Olson stated that staff had received a request from ECDI, the organization in charge of the NC Potato Festival, to expand this year's event from one day to three days. He advised the Council that he did not believe staff could make that decision because of a potential legal issue involving Section 14-1 of the City Code. Mr. Olson said that he and the City Attorney would address their concerns after a presentation by Tim and Cindy Williams, who were representing the festival.

Mayor Peel recognized ECDI Director Rebecca Cross and Mr. and Mrs. Williams to give their presentation.

Ms. Cross read a prepared report, which is recorded verbatim as follows:

“The NC Potato Festival is the largest festival in Northeastern North Carolina. It draws visitors from as far away as Florida and Virginia and from right here in our own backyard, as well. In the past three years, the North Carolina Potato Festival has grown from under 10,000 attendees to over 25,000 attendees. The goal of ECDI and the Potato Festival Committee has been to make the festival bigger and better every year.

Many of our local businesses support the event annually with sponsorships; and many of our local artists and craftsmen, churches and other non-profit

organizations, as well as downtown businesses, participate with a vendor booth each year.

We have nearly 300 volunteers from all over the area including Junior ROTC, Coastguard, Junior Women's League, Boy Scouts, River City CDC YouthBuild, real estate firms, local churches, Coast Guard JLP, American Legion and more. It is truly an event for the whole community and beyond!

Typically, the event has run from 10:00 a.m. to 11:00 p.m. on the third Saturday in May and has put heads in beds for our hotels and B&B's, sold fuel to travelers from our local gas stations, increased sales at local restaurants and retailers, and brought thousands of people to our town who may not have come otherwise.

The North Carolina Potato Festival Committee has already started working on the May 2014 event. In the past, some of our street vendors have asked us to add an additional day to the Festival. Past City Councilors and Mayors have asked us to expand the Festival to more than one day similar to the old River Spree Event. The general public has also made requests to expand the days of the Festival. Therefore, the Committee is considering expanding the 2014 Potato Festival to include three days, which is necessary for the Festival to grow.

To coincide with the three day festival idea, the committee was approached by a mechanical ride vendor (National Event Management Corp.) to provide our rides for the three day event. Rides will include Tea Cups, Scrambler and a Tilt-A-Whirl. Including the mechanical entertainment rides for adults and children will fit well into the model of expansion from a one day event to a three day event. The Festival will officially begin on Friday evening at 5:00 p.m. with the rides, food vendors, games and a free street dance with live bands playing. It will encompass Water Street (Main to Shepherd) and the first block of Ehringhaus Street (McMorrine to Water Street). The Festival will close at 11:00 p.m. The Potato Festival will re-open on Saturday at 10:00 a.m. and continue until 11:00 p.m. and will add Main Street (Water to Road Street) just as in years past. There will still be music, bands, the Annual Potato Peeling Contest, Little Miss Tater Tot, food vendors, craft vendors, the antique car and tractor shows, Corn Hole Contest, Potato Sack Races and fireworks along the Pasquotank River. On Sunday, the Festival will open from noon until 5:00 p.m. with vendors, food, music, rides and games and events; the streets would remain closed until midnight on Sunday.

With the expansion of the Festival will come the need to close the two westbound lanes of Ehringhaus Street from McMorrine Street to Water Street beginning on Tuesday. This will allow for the set-up of the mechanical rides as well as receive the required state inspections that are necessary. The Committee will be working with local downtown merchants and business owners to coordinate the new format of the Festival. They will also apply for the proper street closing permissions from NCDOT. The Potato Festival Committee has tried to expand

the Festival each year and offer more activities and entertainment for all age groups.

There will be some additional cost to the City if the event is expanded. The additional cost is estimated to be \$5000, with approximately \$3,500 of that amount for additional police service and \$1,500 for public works to clean up daily and set up barricades.

Finally, Section 14-1 of the City Code states that no person shall maintain a carnival within the City for longer than one day. Staff is of the opinion that Section 14-1 covers standalone carnivals, which would be the primary event. In the case of the Potato Festival, the rides would be an accessory use and Section 14-1 would not apply in staff's opinion. However, staff would like the City Council to make a determination regarding this matter.

The staff recommendation is that by motion, the Council approve the expansion of the NC Potato Festival from one day to three days as described above; and make a determination concerning whether the carnival is an accessory to the festival.”

Ms. Cross thanked the Council for their consideration and introduced Tim and Cindy Williams for their comments.

Ms. Williams shared a poster that had been prepared with pictures of the festival from last year showing the range of volunteers, the main stage, and a view of Main Street. She pointed out that you could not count the number of heads in the crowd. She reported that throughout the day during the last festival, crowds were present just as the pictures depicted, even though the weather was not ideal. She stated that if the festival was expanded to three days, one could wonder the type of crowds that could be drawn to downtown Elizabeth City. She stated that vendors often ask if the festival is longer than one day; and pointed out that if the festival were longer, more vendors would be attracted to participate.

Ms. Williams reported that the festival had been approached by the broker for the mechanical ride company who advised that Elizabeth City was on his path from Jacksonville to Ahoskie; and the company was looking for a place to operate on their open weekend. She pointed out that they did not look at the festival as being a carnival even though they want to add mechanical rides. She indicated that they intended to apply for the City's Special Festival Permit that allows festivals from one to three days. She said that a ride vendor, in their mind, was just another vendor; and they did not realize there would be a dilemma with the City Code's carnival regulation. She said in addition to the City's support for a longer festival and the necessary street closures and services, they wished to ask for the City's support regarding the carnival issue. She stated that if the festival is going to be three days in length, the organizers had to begin right away to plan for entertainment, plan events for three days, secure vendors for three days and the like. Ms. Williams stated that she had talked with the downtown merchants and had received support from the majority of the merchants for the three day festival, even with the proposed street closures.

Councilman Stimatz asked if the festival would go out with an RFP for a ride vendor. Ms. Williams stated that they are working with a ride broker who brokers rides for multiple ride companies. She stated that the company proposed is the one who will be travelling in Elizabeth City's path. Councilman Stimatz asked the City Attorney if the same rules had to be followed by ECDI and the City. Mr. Morgan responded that he did not believe that ECDI had to follow the same contracting rules as the City in terms of seeking bids or proposals. Councilman Stimatz asked if there was liability to the City, to which the City Attorney responded there was not.

Councilman Stimatz asked if this was a situation whereby the Zoning Administrator could rule. Mr. Olson responded that the Zoning Administrator's purview was the UDO and this regulation is contained in the City Code for which the City Council was the arbitrator.

Councilman Donnelly stated that as Council's representative on the ECDI Board, he wanted to make a motion.

Motion was made by Councilman Ray Donnelly, seconded by Councilman Darius Horton, to approve the expansion of the North Carolina Potato Festival from one day to three days as described; and make a determination that the carnival is an accessory to the festival. Those voting in favor of the motion were: Donnelly, Hummer, Stimatz, Brooks, Spence, Horton and King. Against: None. Motion carried unanimously. (Baker had not yet arrived.)

6. Consideration – Adoption of Amendments to City Council Rules of Procedure to Allow For Invocations During Meetings:

Mayor Peel recognized Mr. Olson to review this item for the Council.

Mr. Olson stated that this consideration came up during the last Council meeting, with the Councilors affirming that they wanted to go from a Moment of Silent Reflection to an Invocation. He advised that a number of procedural items needed to be taken care of before the Council could officially do that; and pointed out that it was a two-part decision. Mr. Olson stated that Councilman Brooks and Councilman Horton had been requested by the Council to draft a policy that would govern those individuals who offer invocations. He said that Rule 6 of the Council's Rules of Procedure must also be modified to reflect the deletion of the Moment of Silent Reflection and the addition of an Invocation.

He reported that Councilors Brooks and Horton had drafted a policy, which had been reviewed by the City Attorney.

Mr. Olson referred the Council to the proposed amendment to Rule 6 of the Council Rules of Procedure that had been provided in their agenda packet in an add/delete format for their consideration to effectuate the needed changes.

Councilman Donnelly stated that he had given this matter a lot of thought, reflection and prayer. He said that everyone comes to Council meetings in different states of mind, some joyful, some suffering with some type of problem or issue, some discouraged,

some with a loving spirit, some with anger. He stated that with those feelings not always being constant, he had been wrestling with the type of prayer and what prayer projects in a government body. He stated that the Council could try to make prayers non-sectarian, but he pointed out that sometimes “we leave out our atheist brothers or religions that we don’t even understand or know of”. He stated “that disrupts my spirit of what religion is all about”.

Motion was made by Councilman Ray Donnelly, that we do eliminate the Moment of Silent Reflection and amend that to a Moment of Silent Prayer.

Mayor Peel inquired if there was a second to Councilman Donnelly’s motion. Hearing none, Mayor Peel announced that the motion died for lack of a second.

Mayor Peel pointed out that the guidelines set a pretty high bar, in that if only one person “messes up”, the Councilors would be the ones to start doing the prayer. He asked if the sentence in the policy guidelines that stated “Religious leaders shall refrain from making references that are specific to any particular religion, denomination or sect or that promote particular religious figures, deities, images or symbols” was explicit enough. City Manager Olson stated that he thought the guideline was pretty inclusive, but said that staff was open to making additional changes if the Council desired.

Mayor Peel stated that he was trying to be clear on the front end in order to avoid issues later on.

Councilman Stimatz pointed out that the policy requires a copy of the guidelines be provided to those delivering the invocation. He stated that this is the Council’s prayer and not the public’s prayer. He pointed out that it “is Council’s invocation before their meeting” so the fact that others are allowed to come and give the invocation is a privilege being offered; but in reality, it is the Council’s prayer. He said he would not have a problem pulling it back in for the Council to do, if it came to that.

Councilman Brooks stated that once the person delivering the invocation is provided a copy of the guidelines and they are told what they can and cannot say in the prayer, “if their integrity is not intact and they decide to promote a particular religion, at that point, we end prayers being offered by the public”.

Mayor Peel stated that if everyone was comfortable, then he was satisfied.

City Manager Olson pointed out that in order to amend Rule 6 of the Council’s Rules of Procedure, a super majority vote is required. He stated that there were two considerations: the first to add invocations to the order of business in Rule 6 and the second to adopt the proposed prayer policy.

Motion was made by Councilman Tony Stimatz, seconded by Councilman Kem Spence, to separate the two issues. Those voting in favor of the motion were: Donnelly, Hummer, Stimatz, Brooks, Spence, Horton and King. Against: None. Motion carried. (Baker had not yet arrived.)

Motion was made by Councilman Kem Spence, seconded by Councilman Darius Horton, to modify Rule 6 of the Council's Rules of Procedure to allow an Invocation instead of Moment of Silent Reflection. Those voting in favor of the motion were: Hummer, Stimatz, Brooks, Spence, Horton and King. Against: Donnelly. Motion carried. (Baker had not yet arrived.)

Motion was made by Councilman Kem Spence, seconded by Councilman Darius Horton, that the Council adopt the policy for invocations as presented. Those voting in favor of the motion were: Hummer, Stimatz, Brooks, Spence, Horton and King. Against: Donnelly. Motion carried. (Baker had not yet arrived.)

7. Consideration – Adoption of Resolution Revising the City's Personnel Policy Manual:

Mr. Olson stated that the Council had been provided a “red-lined” and “green-lined” copy of the proposed personnel policy manual, which included the changes that had been requested by members of the City Council after distribution. Mr. Olson advised that most of the amendments related to changes in state and federal law. He said that some grammatical errors had also been corrected. He advised that the last policy was adopted in 2006 and was preceded by a 1999 policy. Mr. Olson reported that a meeting had been conducted with an employee committee to discuss all the changes that were being proposed and provide an opportunity for them to voice any concerns.

Mayor Peel recognized Human Resources Director Katherine Felton and the City's labor attorney, John Leidy, to give their presentation regarding the proposed changes to the policy.

Human Resources Director Felton stated that she had worked with Attorney Leidy to “red-line” the current policy to bring it up to date with all state and federal regulations. She said that the employee committee did not have any major issues with the updated policy, but did point out a few grammatical changes that were needed. She reiterated that once the Council received the “red-lined copy” some changes were requested by the Councilors, which were shown as “green-line” changes in the most recent version distributed to the Council.

Mr. Olson requested that Mr. Leidy address the second paragraph on page 19 for the Council as it related to Performance Appraisals. Attorney Leidy stated that everyone agrees that appraisals are important and should be required for all employees. He stated that the key thing in his mind is that the requirement should be imposed on the supervisor to make sure that they do complete personnel evaluations. He said that the reason why he suggests that the policy not be mandatory but instead be advisory is to eliminate problems that may arise if the policy is not followed. He said that certainly if a supervisor fails to conduct appraisals and evaluations that they are expected to provide, that may be something where the supervisor needs to be counseled. He said that he did not want to be in a position whereby the City's legal position in a case is compromised because of that failure. He advised that he believed that could happen if there is a mandatory policy that has not been followed.

Mayor Peel stated that he would agree with that and questioned why the City performs employee evaluations.

Attorney Leidy stated that evaluations are done for a number of reasons, one being to provide feedback to an employee regarding their performance to give them information on what they need to improve on; and another reason is to help document those performance-related issues in the event that there is a claim that arises down the road. He said both are important reasons to conduct evaluations. He stated that frankly, evaluations should be mutually beneficial.

Mayor Peel stated that his fear regarding the suggested wording is that he thought it is incumbent upon the organization to conduct employee evaluations every year for the very reasons stated. He pointed out that the City should be evaluating people to help them grow and get better and improve their performance. He said that the way the proposed policy is written, the City could not evaluate someone for three or four years and all of a sudden decide they are not performing and want to get rid of them. He pointed out that there is no obligation on the organization to help that person grow over that period of time. He stated "I have a problem with that". He stated that he understood Mr. Leidy's point, but still thought organizationally and morally that is what the City should be doing. He said if it is stated somewhere that the supervisor is held accountable, he would not have as big a problem. He reiterated that he thought if any organization has not done what it is supposed to do, it should not have the right to "just get rid of somebody".

Mr. Leidy stated that one way to address that would be to include at the beginning of that section a sentence that reads "conducting regular and comprehensive appraisals is the responsibility of the supervisor". He stated that would make it clear where the responsibility lies. He stated that he would still recommend that the phrase used be "should" rather than "shall" so that the City is not prejudiced in the event that evaluations are not conducted and the employee is dismissed either for performance related issues or if an employee wants to make a claim of discrimination or some other type of claim and wants to say "I was never evaluated and that's contrary to the policy and is therefore evidence of discrimination".

Councilman Spence asked if appraisals would be effective if two employees were applying for the same position. Mr. Leidy responded that it could be so. Mr. Olson pointed out that it would be one of the tools the department director would consider in the overall analysis of who should get the position.

Director Felton pointed out that in the Condition of Employment section of the manual, one of the responsibilities of the supervisor or department head is making objective evaluations of individual work performance and discussing work progress or lack thereof with each employee so as to bring about needed improvements.

Councilman Stimatz stated that he found it interesting that the language was changed in the middle of that section; and he pointed out that one could read that there were two things going on: a system for evaluating work performance and a formal comprehensive appraisal. He advised that he had the same issues as Mayor Peel in

that he thought there was an obligation to the City and the employee to let them know how they are doing.

Councilman Stimatz suggested that perhaps no changes should be made at this time until all the language “is ironed out”.

Mr. Leidy stated that he could comment on the phrase “formal comprehensive appraisal” and pointed out that it is not intended to be some kind of defined term, but rather, it is simply a description of what kind of evaluation is being talked about. He stated that it may deal with performance, or conduct issues or may be broad enough to deal with a number of different things.

Councilman Stimatz stated that was his point, because it appeared there were two things going on – the first being performance on a general basis - such as working up to task; with the “comprehensive” seeming to be a separate issue.

Mr. Leidy stated that he thought what Councilman Stimatz was pointing out may be addressed in the first paragraph that states “that the manager shall develop or cause to be developed a comprehensive performance appraisal system”. Councilman Stimatz stated that he would not have a problem with that as long as everyone receives an annual evaluation of their performance.

Mr. Leidy explained why he thought there were two different standards by saying that it is one thing to require the manager to develop a system, which he can pretty easily do and is easy to tell if that has been done from year to year. He said that once the system is developed, to impose a mandatory requirement that everyone be evaluated in compliance with that at the peril of putting the City in the position where it cannot uphold its decisions because it hasn't followed that policy is, in his opinion, something the City should try to avoid. He reiterated that is why he thought there were two standards; one mandatory and one non-mandatory.

Mayor Peel stated that he would be satisfied if the policy stated that a supervisor who failed to do evaluations would be terminated; because, he explained, it was unacceptable since it was not fair to the people who work for you.

Councilman Donnelly stated that he could understand where Councilman Stimatz was coming from. He suggested that the policy just define what is meant. Mr. Olson stated that a comprehensive evaluation is different from department to department because what you are evaluating is not the same in every department. Councilman Donnelly suggested that each department should document what they want in order for everyone to be on a level playing field.

Councilman Stimatz stated that there are two levels of evaluation - the day to day evaluation versus the comprehensive evaluation, which would include a personal “learning plan – more than just getting A's and B's, it's where you want to go.”

Mayor Peel pointed out that there are two types of evaluations – formative and summative. He suggested that those are words that may need to be used to make the policy clear.

Mr. Leidy stated that he thought that was a valid point and that the policy did imply that. He said that he did not have a problem adding a statement to the effect that supervisors should provide employees feedback on a periodic or frequent basis. He pointed out that he did not think it could be regimented in any way, but an advisory requirement along those lines is fine.

Councilman Stimatz pointed out that this is the City's policy and he appreciated Mr. Leidy wanting to take care of the City, but on the other side as a Councilman and citizen he has an expectation that people are getting good management. Part of that, he said, involves receiving an evaluation. He stated that if the supervisors are not doing evaluations, they should be "slapped on the wrist". He said he thought the word "shall" should remain in this section of the policy.

Mr. Olson stated that staff is gathering the Council's input and would incorporate the changes in the policy document.

Councilman Stimatz stated that he would like the Council on record on that particular word and what is done with the rest of it is minor. Mr. Olson stated that if the word remains "shall" in his opinion there is no reason to modify any of the rest of the policy. Councilman Stimatz stated that the policy refers to two separate things that needed to be defined – evaluation and comprehensive evaluation.

Mayor Peel stated that the policy may need to provide additional information for the supervisor to provide ongoing feedback and he encouraged that be included in the policy.

Motion was made by Councilman Tony Stimatz, seconded by Councilman Michael Brooks, to leave the language as it is and not change that section as it relates to the word "shall". Those voting in favor of the motion were: Donnelly, Hummer, Stimatz, Brooks, Spence, Horton and King. Against: None. Motion carried unanimously. (Councilwoman Baker had not yet arrived)

Councilman Stimatz stated that in Section 4.1 Military Family and Medical Leave, the fourth bullet "is still a tortured read". He said that bullet does not follow from the paragraph above. He said it is actually a separate condition. He pointed out that what it is saying is "this is the exception to the paragraph above". He stated it would make more sense to rewrite it to read "for care of a spouse, child, parent, or other next of kin who is covered with a covered service member, then the employee is eligible for blah, blah, blah". He suggested that this section be separated.

Mayor Pro Tem Hummer stated that the personnel policy is one of the most important documents and she pointed out that some things such as the grievance procedure have deadlines. She asked if new hires are given the personnel policy and if it is reviewed with them during an orientation. Director Felton responded that new hires are given the policy and that it is reviewed with them. Ms. Felton stated that she also gives employees a full packet of information if they wish to file a grievance.

Councilman Stimatz asked if the policy manual addressed what documents are given to new hires and if new employees signed indicating that they had received them.

Director Felton responded that it is not written in the manual, but documents are signed for by the employee. Councilman Stimatz stated that it should be in the manual.

Councilman Stimatz stated that in Section 6.2(1) there is a reference to a particular page in the manual regarding safety gear. He suggested that you should never reference a page number in case they change and pointed out the reference should be to the section of the policy.

Attorney Leidy stated that he also heard a comment about including a non-retaliation statement in the safety program section. He stated that he had penciled that in for change because he thought it was also a good idea.

Councilman Stimatz asked if the language in the section regarding sexual harassment and EEO covered gay and lesbian rights. Attorney Leidy responded that sexual orientation is not a protected characteristic under Title XII at this time. Councilman Stimatz commented that does not mean the City cannot put it in. Mr. Leidy stated that it does not mean that you can't, but pointed out there was a Bill introduced this past summer in Congress that made it through a committee that would have amended Title XII to include those criteria. He said that even if it doesn't become law, the City could include that as one of the protected characteristics; however, he stated that his recommendation is not to expand on the forms of unlawful harassment and to limit the harassment policy to forms of harassment that are unlawful. He said that the City could always take disciplinary action against someone for any type of improper conduct in the workplace, whether it constitutes unlawful harassment or not. He said that the problem is an employee who is harassed in a way that violates the policy may have a claim against the City.

Councilman Stimatz stated that he heard that same argument twenty years ago from a Coast Guard lawyer, but that didn't change the fact that it's not okay. He asked where in the current language it is protected. Mr. Leidy stated that same sex harassment is mentioned, but he did not think it was broad enough to answer Councilman Stimatz' question. He said that it is even broader under the General Conduct Policy, whereby a listing occurs of things that could lead to disciplinary action. He said that the list is provided for illustration only and is not intended to be inclusive or exhaustive and includes that employees guilty of any unacceptable behavior are subject to disciplinary action up to and including dismissal.

Mr. Olson suggested that action be tabled at this time to allow staff to make all changes and provide a clean copy to the Council for consideration.

Motion was made by Councilman Tony Stimatz, seconded by Councilman Ray Donnelly to table action on this item until the next meeting. Those voting in favor of the motion were: Donnelly, Hummer, Stimatz, Brooks, Spence, Horton and King. Against: None. Motion carried unanimously. (Councilwoman Baker had not yet arrived).

8. Consideration – Proposed Changes to the City of Elizabeth City Cemetery Code:

Mayor Peel recognized Parks and Recreation Director Bobbi White for the staff report on this consideration.

Director White read a prepared report for the Council, which is recorded verbatim as follows:

“In trying to improve cemetery management in Old Oak Grove, Old Hollywood, and Highland Park Cemeteries, which are managed by the City, the Parks and Recreation Department requested several changes to the City’s Cemetery Code during the August 26, 2013 City Council meeting. Council tabled the matter until the September 23, 2013 work session for further discussion. Staff came before Council again on September 23, 2013; and the Council directed staff to meet with the funeral home directors to receive their input.

The City is in no way trying to prohibit anyone from being buried in a family cemetery plot. In August 2008, then Parks and Recreation Director, Jim Overman approached Council to encourage the use of a new Registration of Burial form to be submitted to the City Clerk’s office prior to burial. This form was very simple and is meant to give the City some type of record pertaining to who is actually buried in the various cemeteries. This form required that evidence be presented by Deed or Bill of Sale that would indicate ownership and filed with the City Clerk prior to the date of burial. If the family could not produce a Deed or evidence of purchase stating the location of a specific gravesite, the funeral home was to contact the Parks and Recreation Director with the location of a specific gravesite for authorization to proceed with a burial. Some funeral homes are not following the Code and are waiting until after burial to return the Registration of Burial form to the City Clerk’s office.

Staff also would like Council to adopt an additional section to the City’s Cemetery Ordinance concerning limiting what can be placed or planted at gravesites. It has become a custom in the last few years to decorate around gravesites especially at holidays such as Christmas, Mother’s Day, Father’s Day, and Easter. Solar powered lights are now being placed around graves and headstones as well as metal beds (head and foot boards), boxes, outlining sites with rocks, and planting trees, flowers and shrubs. All these are a maintenance nightmare.

Staff met with local funeral home directors on November 18, 2013 to discuss the proposed changes in the City Code concerning burials and gravesites. Funeral home representatives from Stallings, Twiford, and Robinson attended the meeting.

The minutes of the August 25, 2008 Council meeting state in Section 18.25 REGISTRATION OF BURIAL - “Every undertaker shall, prior to burial in a cemetery owned by the City, register such burial with City Clerk on a form provided by the Clerk. Such forms and registration shall contain the name, age,

sex, and race of the person to be buried and a description of the exact location at which such person is buried.” Unfortunately, some directors are not registering burials until after the burial and this is too late to probe the gravesite or to make sure that proof of ownership or right to be buried at the location is provided. Staff believes this is part of the problem associated with gravesites being disturbed.

It is estimated that only about 15% of the burials in Old Oak Grove or Old Hollywood can produce a Deed or Bill of Sale for their family owned plots because of the age of the cemeteries. Due to the lack of records, we take into consideration looking at the plot and recognizing that it belongs to the “Smith, White, or Jones family” and that whoever is going to be buried has a connection to that family or is a family member. The primary purpose of the ordinance was and still is to receive prior notification of the burial so that the City can determine if there is actually an unoccupied space available for burial. Several of these cemeteries have no records as to how the gravesites are laid out or who is actually buried in the cemeteries.

Staff is trying to make the best of a bad situation. Staff would like to see a 24 hour time frame placed on notification of burial. This would give the City Clerk’s office time to notify the Parks and Recreation Department of the location of the gravesite and time for the site to be probed. The City Clerk’s office must be notified first as the Clerk is the official record keeper of City records. Staff would also like to see a fine of at least \$100 be placed on the funeral homes if the 24-hour prior notice of burial is not given to the City on a first violation, \$300 for the second violation, and \$500 for each subsequent violation. Twiford Funeral Home representatives had issues with the 48 hour prior notification, as they sometimes have burials within 24 hours of death.

It was also suggested by Rodney Robinson of Robinson Funeral Home and Richard Kelly of Twiford Funeral Home that the City be responsible for the digging of the graves and then charge the funeral homes for this service. It was suggested that a rate of \$800 Monday thru Friday, \$900 for Saturday, and \$1000 for Sunday and all holidays be charged. They feel that having the City be responsible for digging the graves was the only way to keep occupied graves from being disturbed. However, representatives from Stallings Funeral Home were not in favor of the City digging the graves or changing the notification of burial time from 48 hours to 24 hours.

No one attending the meeting seemed to mind the “Failure to Notify the City Clerk within 24 hours prior to burial” fines. Any fines accrued by the funeral home will be passed along to the customer. It must be understood that with the 24 hour deadline, Parks and Recreation must have a person on call for weekends and holidays. This person will be responsible for meeting the funeral home representative at the cemetery and probing the site.

Staff would also like to see the City adopt an ordinance that limits what can be placed at a gravesite to include not allowing the planting of trees, flowers, bushes, or shrubs; no artificial lighting and limiting free standing decorations to

one stand or vase of flowers unless the headstone itself has vases attached to the stone.

Staff recommends that Chapter 18, Section 18-2 be amended to read: "Every undertaker shall no less than twenty four hours prior to each burial in a cemetery owned or maintained by the City, register such burial with the City Clerk on forms provided by the Clerk. Such forms and registration shall contain name, age, sex, and race of the person buried and a description of the exact location at which such person is to be buried, date of service and a copy of the Deed or Bill of Sale or evidence that the person has a right to buried at that site. In addition, every undertaker shall within twenty four hours prior to each burial in Old Oak Grove, Old Hollywood, and Highland Park Cemeteries provide a duplicate copy of the registration form to the Parks and Recreation Department and department shall probe the burial site to determine if a new grave may be dug at said location. Failure to notify the City Clerk, and the Parks and Recreation Department within twenty four hours prior to a burial will result in a \$100 fine to the funeral home on the first violation, a fine of \$300 for the second violation, and a \$500 fine for each subsequent violation."

Staff also recommends that Chapter 18, Section 18-6 be added to the code to read: "No grave shall have more than one free standing flower arrangement or decoration at a grave site two weeks after burial. Placing artificial or solar lights, trees, toys, decorations or more than one free standing vase of flowers will not be permitted on or near grave sites. Trees, bushes, flowers or shrubs will not be allowed to be planted in any city maintained cemetery without prior consent from the Parks and Recreation Director or City Manager." Signs stating the Code requirement will be placed at all cemetery entrances.

Staff does not recommend that the City start digging all graves in City maintained cemeteries due to the costs of purchasing the necessary equipment as well as the overtime associated with the task.

With adopting the above amendment and new Code, staff believes it can help to control the disturbances of gravesites as well as make these historical cemeteries become better maintained. Staff will certainly adhere to Council's wishes and directions.

We do call by motion, call for a public hearing to be held on February 10, 2014 at 7:30 p.m. in City Council Chambers to receive public comment regarding proposed modifications to Section 18 of the City Code requiring a 24-hour notice to the City Clerk and the Parks and Recreation Department prior to burial and allowing only one free standing flower arrangement."

Mayor Peel thanked Ms. White for her report and announced that the Council was out of time for the Work Session.

Motion was made by Councilman Tony Stimatz, seconded by Councilman Darius Horton, to move action on this item to the regular meeting as well as the next following item on the agenda to the regular meeting agenda.

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

9. Committee Reports:

Deputy Clerk notation: This item was moved to the regular session agenda by the preceding motion.

10. Adjournment:

There being no further business to be discussed, Mayor Peel adjourned the meeting at 7:00 p.m.

Joseph W. Peel
Mayor

Vivian D. White, NCCMC
Deputy City Clerk