

**City Council Regular Session
March 24, 2014**

The City Council of the City of Elizabeth City met in regular session on Monday, March 24, 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
Councilman Ray Donnelly
Councilman Tony Stimatz
Councilman Michael Brooks
Councilman Kem Spence
Councilman Darius Horton
Councilman Montravias King

MEMBERS ABSENT: Mayor Pro Tem Anita Hummer

OTHERS PRESENT: City Manager Rich Olson
City Attorney Bill Morgan
Finance Director Sarah Blanchard
Planning Director June Brooks
Chief of Police Eddie Buffaloe
Electric Department Superintendent Karl Clow
Assistant to the City Manager Angela Cole
ECDI Director Rebecca Cross
Human Resources Director Katherine Felton
Public Utilities Director Paul Fredette
Fire Chief Larry Mackey
Parks and Recreation Director Bobbi White
City Clerk Vivian White

The City Council regular session was called to order by Mayor Joe Peel at 7:00 p.m. Mayor Peel welcomed everyone to the meeting and recognized Councilman Michael Brooks to give the invocation, after which all in attendance recited the Pledge of Allegiance.

1. Approval of Agenda:

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

Councilman Brooks requested the addition of a discussion on policy and procedures and Councilman King requested the addition of a discussion on the City Charter.

Motion was made by Councilwoman Jean Baker, seconded by Councilman Kem Spence, to approve the agenda as amended. Those voting in favor

were: Baker, Donnelly, Stimatz, Brooks, Spence, Horton and King. Against: None. The motion carried.

2. Comments from the Public:

Charlotte Underwood, 109 Craven River Court, Camden, NC thanked Mayor Peel for his dedication in organizing the Vision 2020 Initiative. She also thanked the City Council and the City Manager for recent public amenities completed such as the Dog Corner basketball courts, the Mariners' Wharf restrooms facility and the new benches and tables at Waterfront Park.

Amy Swain, 1002 Tanners Court, Elizabeth City, NC announced the formation of a new chapter of the League of Women Voters in the Albemarle area. She invited anyone interested in learning more about the League to attend the first meeting, scheduled for April 8, 2014 at 7 p.m. at the K. E. White Graduate Center.

Johnnie Walton, 401 New York Avenue, Elizabeth City, NC expressed his continuing concerns regarding the apparent division in the community and detailed his frustration with recent actions taken by the City Council. He alleged that *The Daily Advance* does not accurately report all City Councilors' actions. He stated that not all residents of the community support the Vision 2020 initiative; and he referenced his displeasure with Mayor Peel's pursuit of a local Charter school.

June Gibbs, 1918 Providence Road, Elizabeth City, NC referenced a recent article published in *The Daily Advance* about Councilman Brooks; and stated her appreciation for the way Councilman Brooks "gets out and fights for us". She also thanked Councilors Horton, King and Spence for their work. She reported that she did not support a private Charter school and did not want her tax dollars used to fund such an endeavor.

3. Approval of Minutes:

- a. **Motion was made by Councilwoman Jean Baker, seconded by Councilman Kem Spence, to approve the minutes of the February 28, 2014 City Council Planning Retreat Session I. The motion passed unanimously.**
- b. **Motion was made by Councilman Darius Horton, seconded by Councilman Michael Brooks, to approve the minutes of the March 1, 2014 City Council Planning Retreat Session II. The motion passed unanimously.**
- c. **Motion was made by Councilman Montravias King, seconded by Councilman Michael Brooks, to approve the minutes of the March 10, 2014 City Council Regular Session. The motion passed unanimously.**

- d. Motion was made by Councilman Darius Horton, seconded by Councilman Kem Spence, to approve the minutes of the March 17, 2014 City Council Special Meeting. The motion passed unanimously.

4. Consent Agenda:

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

Consent Agenda:

- a. Consideration – Selection of Gateway Bank as the City’s official Depository for banking services for the four-year period beginning May 2014;
- b. Consideration – Authorization for the Elizabeth City Fire Department to utilize the structure owned by Water Street Properties, Inc. at 502 Pearl Street for live fire training;
- c. Consideration – Adoption of the following Resolution in Support of a Raleigh to Norfolk Interstate;

Resolution # 2014 _____
In Support of a Raleigh to Norfolk Interstate

WHEREAS, an interstate highway between Raleigh, NC and Norfolk, VA will increase mobility between two significant metropolitan areas in our adjoining states and enhance economic development for citizens and jurisdictions along the chosen route; and

WHEREAS, the NC Department of Transportation has asked for the designation of part of the US 64 corridor (between I-440 and I-540) as the Future I-495 corridor, and a proposed interstate highway between Raleigh and Norfolk would be designated Future Interstate 44, Future Interstate 50 or another appropriate designation and would connect I-40/I-440 in Raleigh to I-64 in Hampton Roads; and

WHEREAS, the route for a proposed interstate highway between Raleigh and Norfolk would track existing US 64 from Raleigh to Williamston and existing US 17 from Williamston to Hampton Roads; and

WHEREAS, the citizens and local governments of US 17 in Martin, Bertie, Chowan, Perquimans, Pasquotank and

Camden Counties all believe an interstate highway will enhance safety, mobility and economic opportunity for their communities; and

WHEREAS, the citizens of Northeastern North Carolina share a community of interest with the Norfolk, VA area for employment, health care, shopping and recreation, and businesses now located in Northeastern North Carolina, and those being recruited to Northeastern North Carolina have an interest in a safe, fast highway route to the Port of Virginia; and

WHEREAS, the Highway 17 Association has just completed an economic impact study quantifying the benefits to Eastern North Carolina if US 17 is fully improved between South Carolina and Virginia; and

WHEREAS, according to the study, building an interstate highway along US 17 will generate an economic impact in excess of \$3 billion and create over 4,000 recurring jobs in the corridor in all sectors of the regional economy, especially agribusiness, the military and tourism;

THEREFORE BE IT RESOLVED that the City Council of the City of Elizabeth City endorses and supports the advancement of a future interstate corridor between Raleigh and Norfolk, along existing US 64 and existing US 17, and encourages the Board of Transportation, the NC Department of Transportation, the Federal Highway Administration and the Congress to pursue the project as quickly as possible.

Adopted March 24, 2014 by the City Council of the City of Elizabeth City.

Joseph W. Peel
Mayor

Attest:

Vivian White, NCCMC
City Clerk

- d. Consideration – Approval of Third Amendment to the Interlocal Agreement between the City of Elizabeth City and Pasquotank County to keep a consolidated Parks and Recreation Department for the next five years ending June 30, 2020;
- e. Consideration – Authorization for the Elizabeth City Police Department to submit a grant application to the Firehouse Subs Public Safety Foundation in the amount of \$16,408.45; and to utilize grant funding for the purchase of ten AED defibrillators to be placed in police patrol vehicles for use in the field;
- f. Consideration - Call for the first required Public Hearing to notify the citizens regarding the City’s intention to apply for CDBG-eligible grants to be held at 7:30 p.m. on April 14, 2014 in Council Chambers, 306 E. Colonial Avenue;
- g. Consideration - Call for the required second, project-specific Public Hearing in advance of submitting a CDBG Infrastructure grant for the Raw Water Transmission Main Replacement Project to be held on April 14, 2014 at 7:30 p.m. in City Council Chambers after the first public hearing soliciting citizen input for additional CDBG-eligible projects; and
- h. Consideration - Call for the required second, project-specific Public Hearing in advance of submitting a CDBG Infrastructure grant for the Herrington Road Sewer Project to be held on April 14, 2014 at 7:30 p.m. in

City Council Chambers after the first public hearing soliciting citizen input for additional CDBG-eligible projects.

End of Consent Agenda

Motion was made by Councilwoman Jean Baker, seconded by Councilman Tony Stimatz, to approve the above Consent Agenda as presented by Mr. Olson. The motion carried unanimously.

5. Public Hearing:

- a. Public Hearing to receive comment regarding amending Part II Chapter 2 Article IV Code of Ethics of the City of Elizabeth City Code of Ordinances with regard to a Conflict of Interest Policy:

Mayor Peel declared the meeting into Public Hearing at 7:30 p.m. and inquired of the City Clerk if persons were present who wished to be heard. Upon reply by the Clerk that no one wished to speak on this matter, Mayor Peel declared the Public Hearing closed.

Mayor Peel recognized City Manager Olson for a review of this request. Mr. Olson stated that this proposed amendment was requested as a part of the City's annual audit, whereby the auditor expressed concern that there were no rules in place under the existing Code of Ethics to govern all City employees. Mr. Olson referred the Councilors to the document provided by staff; and stated that the proposed amendments apply to all City employees, both elected and appointed, and reflect comments made by the Councilors during the Regular City Council Meeting held on March 10, 2014.

Councilman Stimatz stated that he had questions as to the process of investigations under Section 2-115; but was satisfied with the matrix provided by staff, which detailed who directs, who conducts and how the results of investigations are disposed. A copy of the matrix was provided to all members of Council. He expressed that since the revised language for Section 2-115 had been provided during the meeting, he was not prepared to take action on the matter at that time.

Councilman Stimatz detailed several other observations he had regarding the proposed amendments that had been provided by staff, as follows:

- In Section 2-111 Definitions, Item (3), he pointed out that the language regarding percentage of ownership (both directly and indirectly) was too broad. He asked staff to further review that section to provide clarity.
- In Section 2-112 Standards of conduct. (2) Use of official position, he commented that there is no reference to "hobbies or volunteer interests" and used the example that employees should not be doing church work or volunteer committee work on City time.
- In Section 2-112 Standards of conduct. (5) Gifts, he questioned the sentence "For the purpose of this section, the duration shall be for one calendar year at a time." Mr. Olson responded that the policy limits gifts to a value of \$25.00 per

calendar year, but multiple gifts of \$25 or under would be permitted. Councilman Stimatz countered that the policy should simply state that gifts over \$25 from any source would not be permitted in a calendar year and suggested deleting the reference to a duration.

- In Section 2-114. General disclosure (a), he pointed out that city officials are required to disclose; and he queried how the City would know if everyone else subject to the policy was complying unless they were also required to disclose. He made the point that the ordinance would be “toothless” without disclosure by everyone and requested that staff reconsider this section.
- In Section 2-114(a)(1), Councilman Stimatz suggested that “immediate members of household” should be included to reinforce information already in the definition section.

Councilman Donnelly suggested that the verbiage in the ordinance be changed in order to make the text gender neutral. Mr. Olson responded that there is a section in the City Code that makes the Code gender neutral, but expressed that it would be easy for staff to make this change.

Motion was made by Councilman Tony Stimatz, seconded by Councilman Michael Brooks, to table action on this item until staff has time to come back with answers to these questions. The motion carried unanimously.

6. Regular Agenda:

- a. Consideration – Approve the use of the Senior Center mini-bus by ECHNA during the annual Ghost Walk being held October 10 and 11, 2014 with the provision that ECHNA secures liability coverage insuring the City, reimburses the City for fuel and compensates the City-employee driver at a rate of \$25.00 per hour:

Mayor Peel recognized Mr. Olson to present an overview of this item. Mr. Olson provided a background summary of the request and reported that the provisions for approval include ECHNA securing liability insurance coverage in favor of the City, reimbursement to the City for fuel and compensation for the City-employee driver at a rate of \$25.00 per hour. Mr. Olson advised that members of the Finance Committee had forwarded this request to the City Council without a recommendation, since two members of the committee were members of ECHNA. Councilwoman Baker disclosed that she, too, is a member of ECHNA and also serves as chairman of Ghost Walk.

Motion was made by Councilman Tony Stimatz, seconded by Councilman Darius Horton, to approve the use of the Senior Center mini-bus by ECHNA during the annual Ghost Walk with the provisions as indicated by the City Manager. The motion passed unanimously.

- b. Consideration - Adoption of Resolution Endorsing the Negotiation of Definitive Agreements for the Sale of Certain Generating Assets Owned by NCEMPA:

Mayor Peel recognized Mr. Olson to provide an explanation of this request. Mr. Olson reported that on March 21, 2014, Graham Edwards, CEO and David Barnes, General Counsel, of Electricities, Inc. met with the City Council during a Special City Council Meeting to discuss this matter. He stated that Mr. Edwards and Mr. Barnes made several statements for the record and then reviewed the proposed sale of NCEMPA generating assets more fully in Closed Session due to non-disclosure agreement requirements. He explained that the proposed resolution is straightforward and is being recommended for adoption by City staff.

Councilman Stimatz commented that one-third of the cost of the City's power has to do with debt. He stated that by selling these assets the debt will be reduced, which will provide the City an opportunity to reduce its electric rates.

Motion was made by Councilman Tony Stimatz, seconded by Councilman Kem Spence, to adopt the following resolution as described and presented by staff. The motion passed unanimously.

**RESOLUTION # 2014 _____
OF THE CITY OF ELIZABETH CITY, NC CITY COUNCIL
ENDORING THE NEGOTIATION OF DEFINITIVE AGREEMENTS
FOR THE SALE OF CERTAIN GENERATING ASSETS
OWNED BY NORTH CAROLINA EASTERN MUNICIPAL POWER AGENCY
TO DUKE ENERGY PROGRESS, INC. AND FOR POWER SUPPLY**

WHEREAS, the City of Elizabeth City, NC (the "Municipality") and the North Carolina Eastern Municipal Power Agency ("Power Agency") heretofore have entered into an Initial Project Power Sales Agreement, as amended, and a Supplemental Power Sales Agreement, as amended, pursuant to which, among other things, the Municipality purchases from Power Agency and Power Agency sells to the Municipality all of the Municipality's All Requirements Bulk Power Supply, as such term is defined in the Supplemental Power Sales Agreement; and

WHEREAS, a portion of the All Requirements Bulk Power Supply sold by Power Agency to the Municipality and purchased by the Municipality from Power Agency is derived from the Power Agency's undivided ownership interest in the following electric generating units jointly owned by Power Agency with Duke Energy Progress, Inc. ("DEP"): Brunswick Units Nos. 1 and 2, Harris Unit No. 1, Mayo Unit No. 1 and Roxboro Unit No. 4 (collectively, the "Joint Units"); and

WHEREAS, City Council of the Municipality (the "Governing Body") has been advised by representatives of Power Agency that Power Agency has been authorized by its Board of Directors and by the Board of Commissioners of the Power Agency to negotiate with DEP on an exclusive basis definitive agreements pursuant to which (i) Power Agency would sell and DEP would purchase all of Power Agency's ownership interests in the Joint Units, and (ii) Power Agency and DEP would enter into a full requirements power purchase agreement pursuant to which DEP would sell and Power Agency would purchase all of the power and energy required by Power Agency to provided full requirements power supply services to the City of Elizabeth City and to all other members of Power Agency (the "Proposed Transaction"); and

WHEREAS, representatives of Power Agency also have advised the Governing Body that if the Proposed Transaction is consummated the proceeds to be derived from the sale of the Joint Units, when combined with other funds available to Power Agency, may not be sufficient to pay or provide for the payment of the principal of and premium, if any, and interest on all revenue bonds heretofore issued by Power Agency to finance the acquisition of the Joint Units; and

WHEREAS, representatives of Power Agency confidentially presented to the Governing Body the confidential results of the preliminary financial analyses of the Proposed Transaction undertaken by and at the request of Power Agency to determine the projected effect of the Proposed Transaction on Power Agency and its participants; and

WHEREAS, the Governing Body, having taken into consideration the confidential information concerning the Proposed Transaction presented to the Governing Body by representatives of Power Agency.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Elizabeth City:

1. The Governing Body has given due consideration to the confidential information concerning the Proposed Transaction presented by representatives of Power Agency at this meeting and hereby finds and determines that it is in the best interests of the Municipality for representatives of Power Agency to negotiate a definitive agreement with DEP concerning the Proposed Transaction.
2. The Governing Body hereby endorses the action of the Board of Directors and Board of Commissioners of Power Agency authorizing representatives of Power Agency to negotiate a definitive agreement with DEP concerning the Proposed Transaction.
3. The Governing Body hereby directs the City Clerk to cause to be furnished to Power Agency, if requested, a certified copy of this resolution.
4. This resolution shall become effective upon its adoption.

ADOPTED this 24th day of March, 2014.

Joseph W. Peel
Mayor

ATTEST:

Vivian D. White, NCCMC
City Clerk

(City Clerk notation: Mayor Peel declared a five minute recess at 7:25 p.m. after the disposition of this agenda item to allow for the scheduled 7:30 p.m. Public Hearing. At the conclusion of the recess, the meeting continued for the Public Hearing.)

- c. Consideration – Adoption of amendment to the City Council Rules of Procedure Order of Business to provide for the reading of a Statement of Disclosure *(requires two-thirds vote)*:

Mayor Peel advised that a motion to table this item would be in order, since it is directly related to the Code of Ethics amendment consideration, which had been tabled earlier in this meeting by the Council.

Motion was made by Councilman Tony Stimatz, seconded by Councilman Michael Brooks, to table the consideration of adoption of amendment to the City Council Rules of Procedure Order of Business to provide for the reading of a Statement of Disclosure until after the Council passes its policy on ethics. The motion passed unanimously.

7. Addition to Agenda by Councilman Brooks – Policies and Procedures

Mayor Peel recognized Councilman Michael Brooks for his comments. Councilman Brooks stated that during the previous City Council meeting, he had made a motion, which Mayor Peel denied and ruled out of order, at which time Mayor Peel quickly adjourned the meeting. He reminded the Council that a ruling by the Mayor to declare a motion out of order may be appealed to a vote of the Council. He stated that he did not have an opportunity to make such an appeal during the previous meeting because the meeting was so quickly adjourned.

Councilman Brooks also addressed a recent Daily Advance column written by Bud Wright. He stated that Mr. Wright had accused him of being a bully in the article. He advised that he had sent a letter to Mr. Wright directing him to cease and desist or legal action would be imposed upon him. Councilman Brooks further stated that if Mr. Wright wrote another article defaming his character or the character of his beloved mother and father, he would put legal proceedings against him.

8. Addition to Agenda by Councilman King – City Charter

Mayor Peel recognized Councilman King for his comments. Councilman King stated that his comments referred to Article 4, Section 4.7 – Council-Manager Relationship; and he read the following excerpt: “The Council shall hold the City Manager responsible for the proper management of the affairs of the City, and the City Manager shall keep the Council informed of the conditions and needs of the City and shall make reports and recommendations as may be requested by the Council or deemed necessary by the City Manager.”

Councilman King stated that it was the job of the elected officials to hold the City Manager responsible for everything that happens in the City, and declared that “the buck stops at this dais”. He stated that when the City employees’ morale remains low after the Council had constantly tried to work with the manager and nothing had been done, there was a serious problem that affected the entire City. He said that he would not sit idle any longer, and entered the following motion:

Motion was made by Councilman Montravias King, seconded by Councilman Michael Brooks, that the Council terminate the City Manager’s contract effective immediately.

Mayor Peel called for discussion of the motion.

Councilwoman Baker stated that Mr. Olson had done a great deal for the City and the motion to terminate him was unconscionable. She expressed that although Mr. Olson

was not as “warm and fuzzy” as some wanted him to be, he had done good things for the City and for people. She pointed out that during the Work Session, an item had been tabled in order for all members of Council to be present. She stated that she did not think an item this crucial and critical should be considered without everyone present.

Councilman Stimatz concurred with Councilwoman Baker and entered the following motion. Councilman King objected and stated that a motion was already on the floor. Mayor Peel advised that the motion to table was a procedural motion.

Motion was made by Councilman Tony Stimatz, seconded by Councilman Ray Donnelly, to table action on this matter until the full Council can meet. Those voting in favor of the motion were: Baker, Donnelly and Stimatz. Opposed were: Brooks, Horton, King and Spence. Motion failed.

Councilman Stimatz commented that he saw this “train leaving the roundhouse a long time ago”. He stated that it had been the desire of a “certain clique of this City to get rid of Mr. Olson for quite some time”. He said that to put things in perspective, the City had received over \$60 million in grants during Mr. Olson’s tenure that provided for major infrastructure improvements. He pointed out that the issue being brought was regarding the handling of personnel matters; and that currently Mr. Olson and Mayor Peel were working to resolve the issues. He expressed his desire to receive the results of that ongoing effort before any more steps were taken. He made reference to major City initiatives pending, the details of which the Councilors are aware, that Mr. Olson’s presence and involvement could critically impact. He stated that in the overall scheme – “where we are – where we are going – what needs to be done” – it was clear to him that Mr. Olson needs to remain as City Manager. He stated that, like Councilwoman Baker, he found it interesting that an item was tabled during the Work Session because all members of Council were not present, yet on an issue as important as terminating the City Manager, the same consideration is not given. He noted that Mayor Pro Tem Hummer is the longest serving Councilor – “the Grand Dame of Elizabeth City politics” – and that if anyone could speak to this issue, she could and should be afforded that opportunity. *(Clerk Note: Mayor Pro Tem Hummer was absent due to a recent surgery.)*

Councilman Donnelly stated that it was important for the Council to look at the big picture and not micro-manage what’s going on. He stated that the City has major projects under construction in the City and major grant applications about to be submitted; and pointed out that those things don’t just happen without a fulltime city manager. He posed the question if the Councilors realized how long it would take to secure another manager with the background and expertise of Mr. Olson. He also asked if the Council realized the details of Mr. Olson’s severance package. He stated that he believed Mr. Olson had done a superb job for the City and that the Council would make a major mistake to vote in favor of the motion on the floor.

Councilman Spence stated that he had always relied on prayer before making decisions and always tried to practice fundamental fairness. He stated that he was the one who requested that Mayor Peel and Mr. Olson meet with City employees and that process was not yet complete. He stated that at the end of the day when he looks in the mirror, he has to look at himself and live with his decisions.

Councilman Brooks called for the question.

Mayor Peel stated that the Council is aware of some things that are getting ready to occur in the City; and said that without Mr. Olson here, he did not think it would happen. He referenced the jobs and opportunities that will be affected by the ill-timing of this action.

Councilwoman Baker stated that “it is obviously personal, because if you vote for this motion, you don’t give a damn what happens – you don’t give a darn about what happens in Elizabeth City.”

Councilman Stimatz asked for a roll call vote, which revealed the following:

Councilman Brooks – Yes
Councilman Stimatz – No
Councilman Horton – Yes
Councilman King – Yes
Councilwoman Baker – No
Councilman Spence – No
Councilman Donnelly – No

The motion failed.

9. Comments and Inquiries on Non-Agenda Items:

Mayor Peel called for comments and inquiries on non-agenda items:

- Councilman Brooks – No comments.
- Councilman Stimatz – No comments.
- Councilman Horton – No comments.
- Councilman King stated that his motion failed, but that he would continue to stand by his beliefs. He stated that “no lie shall live forever”. He said that he would continue to stand up for everyone in the City, including the employees, and would continue to ask for the manager’s termination at every meeting.
- Councilwoman Baker announced that she had been in Georgia celebrating the birthday of her firstborn daughter on March 17, 2014 (*making reference to her absence during the Special City Council Meeting*).
- Councilman Spence stated that he knew some would be upset by his vote; but expressed that every decision he makes has a reason and that he must live with his decisions. He further stated that he may not make everyone happy, but he stands by what he believes to be right. He vowed to continue to fight for City employees, just as he has in the past.
- Councilman Donnelly requested that the Councilors continue to do their homework and pay attention to what is going on.

(City Clerk note: Councilman King left the meeting prior to adjournment at 8:08 p.m.)

10. Adjournment:

There being no further business to be discussed, Mayor Peel adjourned the meeting at 8:10 p.m.

Joseph W. Peel
Mayor

Vivian D. White, NCCMC
City Clerk