

MONDAY-7:00 P.M.

AUGUST 10, 2009

CITY COUNCIL

The City Council of the City of Elizabeth City held its monthly meeting on the above date and time in the City Council Chambers of the Municipal Administration Building with Mayor S. S. Atkinson presiding. Those council members in attendance were: J. M. Baker, D. B. Evans, L. A. Hummer, R. E. King, B. S. Meggs, J. A. Stimatz and V. C. Watts. Councilman E. K. Rivers was absent. Staff members attending were: City Manager R. C. Olson, City Clerk D. S. Pierce-Tamplen, City Attorney W. H. Morgan, City Manager Intern R. A. Lyons, Deputy City Clerk V. D. White, Human Resource Director K. W. Felton, Fire Chief L. M. Mackey, Inspections Director S. E. Ward, Planning Director J. C. Brooks, Finance Director S. E. Blanchard, Parks and Recreation Director J. D. Overman, Electric Director K. F. Clow, and Police Chief C. E. Crudup.

Mayor Atkinson established a quorum was present and called upon Pastor Toni Wood for the invocation after which he led the Pledge of Allegiance to the Flag of the United States of America.

1} APPROVAL OF THE AGENDA:

Mayor Atkinson called for action regarding the prepared agenda.

Councilman J. A. Stimatz asked to add a ***Closed Session for consultation with the City Attorney as per NCGS 143-318-11 (a) (3).***

A motion was made by Mayor Pro Tem J. M. Baker, seconded by Councilwoman B. S. Meggs to approve the prepared agenda to include the above noted item. Those voting in favor of the motion: Baker, Meggs, Evans, King, Hummer, Stimatz and Watts. Against: None. Motion carried.

2} CITIZEN PARTICIPATION:

Mayor Atkinson called upon the City Clerk for those having sign up to speak.

Richard Gilbert, 1623 Penny Drive spoke of his feelings and opinions regarding Oak Grove Community.

Valerie Moore, 304 Shephard Street, spoke regarding her feelings and opinions of OIC.

3} CERTIFICATE OF RECOGNITION:

Mayor Atkinson presented a Certificate of Recognition to Ms. Simone Cooper for her extraordinary public service in organizing and directing the Mariner's Wharf Film Festival.

Ms. Cooper made brief remarks and thanked Council for the recognition.

4} APPROVAL OF THE MINUTES:

Mayor Atkinson called for action regarding the minutes of June 22, 2009, Regular and Work Session minutes and July 15, 2009 Regular and Work Session minutes.

A motion was made by Councilman J. A. Stimatz, seconded by Councilman R. E. King to approve the minutes of June 22, 2009 Work Session, June 22, 2009 Regular meeting, July 15, 2009 Work Session and the July 15, 2009 Regular Meeting. Those voting in favor of the motion were: Stimatz, King, Baker, Evans, Hummer, Meggs and Watts. Against: None. Motion carried.

5} CONSENT AGENDA:

Mayor Atkinson called upon City Manager Olson to read the Consent Agenda. Following the reading by Mr. Olson, Mayor Atkinson called for a motion to approve the Consent Agenda as presented.

A motion was made by Mayor Pro Tem J. M. Baker, seconded by Councilman R. E. King to approve the following Consent Agenda as presented. Those voting in favor of the motion were: Baker, King, Evans, Hummer, Meggs, Stimatz and Watts. Against: None. Motion carried.

Consent Agenda

a} Approved the following Budget Amendments:

**BUDGET AMENDMENTS
NUMBER 2009-9
AUGUST 10, 2009**

BE IT ORDAINED by the City Council of the City of Elizabeth City that the following amendments be made to the annual budget ordinance for the fiscal year ending June 30, 2010:

SECTION I. That the Forfeiture Funds Revenue (103220.0030) and Police

Department Capital Outlay (105100.7400) be increased by \$21,600.

(To record forfeiture funds received from Department of Justice to purchase equipment.)

SECTION II. That the General Fund Insurance Proceeds (103350.8300) and Maintenance & Repairs to Cemeteries (106400.1510) be increased by \$193.

(To record insurance proceeds for repairs to fence at Old Hollywood Cemetery.)

ADOPTED, this 10th day of August 2009.

Stephen S. Atkinson
Mayor

Dianne S. Pierce-Tamplen, MMC
City Clerk

b} Approved the proposed changes to the AEDC By-Laws to show Camden County's withdrawal.

c} Adopted the following Resolution approving the financing for five police cars.

**RESOLUTION # 0981
APPROVING FINANCING TERMS
FIVE POLICE VEHICLES**

WHEREAS, the City of Elizabeth City, North Carolina (the "City") has previously determined to undertake a project for the purchase of various vehicles (the "Project"), and the Finance Officer has now presented a proposal for the financing of such Project.

BE IT THEREFORE RESOLVED, as follows:

1} The City hereby determines to finance the Project through Branch Banking

and Trust Company ("BB&T"), in accordance with the proposal dated July 23, 2009. The amount financed shall not exceed \$215,000.00, the annual interest rate (in the absence of default or change in tax status) shall not exceed 3.40% and the financing terms shall not exceed five (5) years from closing.

2} All financing contracts and all related documents for the closing of the financing (the "Financing Documents") shall be consistent with the foregoing terms. All officers and employees of the City are hereby authorized and directed to execute and deliver any Financing Documents, and to take all such further action as they may consider necessary or desirable, to carry out the financing of the Project as contemplated by the proposal and this resolution. The Financing Documents shall include a Financing Agreement and a Project Fund Agreement as BB&T may request.

3} The Finance Officer is hereby authorized and directed to hold executed copies of the Financing Documents until the conditions for the delivery of the Financing Documents have been completed to such officer's satisfaction. The Finance Officer is authorized to approve changes to any Financing Documents previously signed by City officers or employees, provided that such changes shall not substantially alter the intent of such documents or certificates from the intent expressed in the forms executed by such officers. The Financing Documents shall be in such final forms as the Finance Officer shall approve, with the Finance Officer's release of any Financing Document for delivery constituting conclusive evidence of such officer's final approval of the Document's final form.

4} The City shall not take or omit to take any action the taking or omission of which shall cause its interest payments on this financing to be includable in the gross income for federal income tax purposes of the registered owners of the interest payment obligations. The City hereby designates its obligations to make principal and interest payments under the Financing Documents as "qualified tax-exempt obligations" for the purpose of Internal Revenue Code Section 265 (b) (3).

5} The City intends that the adoption of this resolution will be a declaration of the City's official intent to reimburse expenditures for the project that is to be financed from the proceeds of the BB&T financing described above. The City intends that funds that have been advanced, or that may be advanced, from the City's general fund or any other City fund related to the project, for project costs may be reimbursed from the financing proceeds.

6} All prior actions of the City officers in furtherance of the purposes of this resolution are hereby ratified approved and confirmed. All other resolutions (or parts thereof) in conflict with this resolution are hereby repealed, to the extent of

the conflict. This resolution shall take effect immediately.

APPROVED, this 10th day of August, 2009

Stephen S. Atkinson,
Mayor

Dianne S. Pierce-Tamplen, MMC
City Clerk

d) Approved the amendment to the Chemical Award for the Water Treatment Plant that would nullify the award of sodium hexametaphosphate to Water Guard and award the purchase to Carus Corporation for their bid of \$73.50 per bag for a net increase of chemical purchase for the current fiscal year of \$996.

e} Accepted bid received from Barnhill Construction in the amount of \$761,253.25 for the South Park Sports Complex.

End of Consent

6} PUBLIC HEARING:

Mayor Atkinson called upon City Manager Intern Lyons for comments.

Mr. Lyons stated the City will apply for \$850,000 in CDBG Community Revitalization grant funds to help improve housing and infrastructure in the Pearl Street area.

Mr. Lyons stated that we are seeking a 2009 DCA Revitalization Grant in the amount of \$850,000. We are considering Pearl Street area. He met with officials last Wednesday in Raleigh and they requested some modifications from what you heard earlier this year with the grant proposal that we had. Following their recommendations city staff removed Burgess and Martin Luther King streets from the project. They wanted us to scale the project down. They have been recommending that we do phases for that particular part of our community. What we are looking at now is a water and sewer project along with housing rehab along Pearl Street only. We are considering possibly 17 houses that may be modified in the future as we contact DCA. The City would be required to do a

5% match and we are looking at approximately \$42,000. The requested grant amount is \$850,000 and the deadline for submitting the grant is September 30th.

Mayor Atkinson declared the meeting into Public Hearing. Since no one was present who wished to speak, Mayor Atkinson declared the public hearing closed.

A motion was made by Mayor Pro Tem J. M. Baker, seconded by Councilman D. B. Evans to authorize the City staff to apply for the \$850,000 CDBG Grant. Those voting in favor of the motion were: Baker, Evans, Hummer, King, Meggs, Stimatz and Watts. Against: None. Motion carried.

7} REGULAR AGENDA:

1} 'No Wake Zone':

Mayor Atkinson called upon Chief Crudup for comments.

Chief Crudup advised that at the last Council meeting, there was a presentation on the "no wake zone" established in the Pasquotank River surrounding the City. The residents of Pelican Pointe River Front Community have expressed concerns to City Council in reference to watercrafts operating recklessly and carelessly on the water way that borders the residential property. The residents have requested a "no wake zone" be established in the river that abuts Pelican Pointe. As a result of that request, city staff looked at our current "no wake zone" and our current ordinances. We currently have "no wake zones" already established in the Pasquotank River. Pursuant to City Ordinance Sec 26-7 there is currently a "no wake zone" established beginning at Ward Street down river to the College of the Albemarle boating dock and the boat ramp at Waterfront Park down Charles Creek to Southern Avenue. These areas have not been properly marked therefore no enforcement can take place until they are properly marked. Many years ago during the process in 1996 the City agreed to mark those areas once those areas were established in the river. Pursuant to our City Code, Article 9, Section 9.1, the City may adopt an ordinance to regulate and control the speed of vessels in the waterway within its boundary or within the extra territorial jurisdiction of the City. However, these areas must be properly marked accordingly to the Uniform Waterway Marking System to be enforced by the police and the Wildlife Commission. Staff has identified a boating infrastructure grant administered by the Division of Marine Fisheries as a potential funding source for these signs and the buoys to properly post and mark our current "no wake zones". In reference to Pelican Pointe according to City Ordinance Section 26-6.2, the City can enforce the operation of all watercrafts from exceeding a speed limit of 10 mph within an area of the river that abuts the shoreline between 50 – 300 feet from the shore and is part of the corporate city limits.

Staff is recommending tonight to allow us to proceed with the grant so that we can possibly purchase the buoys and markings for our "no wake zone" that we currently have established in the City. We also recommend including the creek of Pelican Pointe and removing the 10 mph speed limit and change it to say, "At a speed not to cause a wake." We don't have anyway to measure the speed of motor craft.

Lt. Norman Watts, Wildlife Commission, stated as he spoke to you last time, there were some questions concerning the enforcement of the various "no wake zones" that we have. He has done some checking about the possible "no wake zone" that would be established in the Creek near Pelican Pointe. We don't generally get into enforcing local ordinances. We have checked with the AG office in this particular one. The verbiage that is set up we see the possibility that we can enforce because it is a General Statute. One of the discussions with the Attorney General today was we need to make it clear if it is set up through your ordinance like it is set up now instead of going through the NCAC of rules for Wildlife Commission. It is a really complicated matter. In the full picture if you establish that through a local ordinance and the penalty would be a criminal offense, Class III Misdemeanor then we could enforce it. The other side of that coin is the way our jurisdiction is set up the misdemeanor would have to be committed in our presence. That means we would have to see the offense taking place. The best way is to go through the Wildlife Commission. As it stands right now, with talking with the AG office he looked at your ordinance and his superiors in Raleigh we all agree that if in fact if no wake buoys were set out tonight it could be enforced tomorrow. The only thing that we would ask is to make sure that they are properly posted where a boater has full knowledge of what they are doing when they enter that zone.

Mayor Pro Tem Baker asked if we were to change the local ordinance to allow you to stop people if you saw them and we got into the process of changing the NCAC Rules which she understands is a longer process like up to three years, could we concurrently enforce the local ordinance while we are attempting to enact the NCAC Rules.

Lt. Watts replied that he believes so.

Ms. Baker said maybe that is what we want to do. She has talked with several of the residents out there who are constituents of course.

Lt. Watts stated that the other issue was the "no wake zone" in town near the bridge. In looking through all the correspondences that the City had with our agency and also with the Corp of Engineers, he did see where the Corp of Engineers had denied the request at one time and that is for the "no wake zone" in town. You would have to have a permit through the Corp of Engineers

because it is in a coastal waterway. So, not only it would have to be passed through the Wildlife Commission it would have to be passed through the Corp of Engineers also.

Mayor Atkinson said just to put out the markers now around the bridge area would not be adequate. We have to go back to the Corp of Engineers.

Lt. Watts said he would say so. This is not like Pelican Pointe area where that is not in the Inter Coastal Waterways. He thinks we would be ok there. The Attorney General's office said the same thing. But, if you were to set them out there now downtown he would say there is an enforcement problem with that because the Corp has never checked off or given you the permit to do that.

Councilman Stimatz said he has heard or seen a couple of definitions of what our territorial jurisdictions are. One of the actions that he feels would have to happen would be Mr. Morgan, the Chief has talked about waterways within the boundaries of the ETJ. In our ordinance we talk about the Harbor Limits which are a different set of waters. The ordinance further down refers to "waters of the City" not defined. The Harbor Limits and the waters of the city may not be the same thing. It is not clear. In the ordinance that we passed in the preamble we talk about within the boundaries and the proximity of corporate limits. He thinks one of the things that we need to do is determine what waters we have jurisdictions over under what authority. If you read the Harbor Limits when in our ordinance it says, "all of that portion of the Pasquotank River and its tributaries including the banks thereof which lie within the corporate limits of the City is now define or may here and after from time to time be defined." We all know that we own part of the land over on the Camden Causeway and it is not clear where that blue line on the map should be drawn too. If it is supposed to be drawn from wherever our corporate limits end on the Camden Causeway side to where the end of our corporate limits are on this side of the river then that would encompass everything up to the boundary with the Coast Guard base and that would become our waters. This does not make an exception. It doesn't say manmade tributaries as it just says tributaries. There is a question as to what is meant by "tributaries". One thing he thinks we as a city have to do is clarify what waters we are talking about because that will help clarify for the gentlemen and the State's attorney as well. It will clarify for them where we think our jurisdiction lies. He sees conflicting non-inclusive definitions which may or may not be conflicting but they are not clarified. We as a city need to do that so we all will know what we are talking about. He would suggest when we define the boundaries of our harbor that we actually use specific points of land that we can clearly reference.

Lt. Watts said that last time Councilwoman Watts had requested some figures on boating accidents statistics in the last ten years. He contacted our people in

Raleigh and to the best of our knowledge we can find where there were 13 reported accidents in that period of time. Three were fatalities. The three fatalities were commercial fishermen. We are just talking about from the mouth of the sound in for Pasquotank River.

Mr. Atkinson said that it sounds like we need to spend some more time on this to have the definitions cleared up.

2} Appointment to Elizabeth City-Pasquotank Tourism Development Authority:

Mayor Atkinson stated that currently Kirk Rivers is the City's appointee on the Tourism Development Authority. He would like to submit the name of Jean Baker to be appointed to this Authority as the Council's representative for a two year term expiring June 30, 2011.

A motion was made by Councilman J. A. Stimatz, seconded by Councilman R. E. King to recommend to the Pasquotank County Board of Commissioners that Mayor Pro Tem Jean Baker be appointed as the City Council representative on the Tourism Development Authority for a two-year tem expiring on June 30, 2011. Those voting in favor of the motion were: Stimatz, King, Baker, Evans, Hummer, Meggs and Watts. Against: None. Motion carried.

3} Award of Bid for Fire Apparatus Truck:

Mayor Atkinson called upon Fire Chief Larry Mackey for comments.

Chief Mackey advised that the City budgeted \$480,000 in the current Fiscal Year to purchase this piece of equipment. This funding is allocated as \$257,500.00 from the FEMA Grant and \$232,000.00 for which the Finance Department has secured an installment purchase plan. The total cost for this apparatus and all equipment to place it in service is approximately \$478,000.00. Staff is recommending that the bid be awarded to Triad/Pierce for the demo truck at \$404,527.00.

A motion was made by Councilwoman B. S. Meggs, seconded by Councilwoman L. A. Hummer to award the bid for the Fire Apparatus Truck to Triad/Pierce for \$407,527; and give them the flexibility if that truck is not available we authorize them to buy the custom model for the \$435,352.00. Those voting in favor of the motion were: Meggs, Hummer, Baker, Evans, King, Stimatz and Watts. Against: None. Motion carried.

8} COMMENTS AND INQUIRIES ON NON-AGENDA ITEMS:

Mayor Atkinson stated he would go around the table for comments.

City Manager Olson stated he had no further comments.

Councilman Stimatz said that a lot of things have been going on in the City. A lot of great things downtown and he hopes everybody takes advantage of them. The activities last week were excellent in terms of the Coast Guard Day and the National Night Out. The event on Friday night was very nice and the weather was perfect. It is a start of letting our folks at the Coast Guard base and the various commands that live in our community know how much they mean to us. He hopes we will continue to do that.

Councilwoman Meggs stated adding to Mr. Stimatz's remarks as she feels it was a very good event. Another item she would like to address is she received a call that really did upset her. It was about this woman that was a nurse for this elderly man that had a snake in his house. She called 911 and they told her that there was nothing that they could do. It ended up with them telling her to call the Animal Control but they couldn't do it. It just kept on going and here this woman was standing there with the snake to the door and couldn't get out to get anybody. She ended up fighting with that snake. Her arms were black and blue. If that isn't an emergency she hopes she never has one. She knows we have a representative on the 911 committee and she thinks that you don't leave a person in the lurch. Send someone to help a person when they are in that position.

Mayor Pro Tem Baker said that the snake was a two and half foot long water moccasin. She doesn't know how it got into the house but it was a very dangerous snake. The lady was bruised up from falling into the furniture and things like that when she was trying to get away from the snake. She understands that we have reported it and some amendments have been made to policy. Hopefully that will not happen again, but it was plenty scary for everybody.

Coast Guard Day was very good. She helped out there also. A lot of us were there. She had a comment from a new resident that had come to Elizabeth City because he got transferred here and he said, boy you guys really do up Coast Guard Day really big. It has not been like this in any other place that he has been. It was a nice feather in our hats.

She attended a couple of other meetings last week. One was the Water Committee Meeting on Wednesday with the County. They gave updates on their

RO project and updates on construction of different water lines and different issues with the County and the City and she would like to say that Paul Fredette did a good job defending the City in our contract that we are still waiting on agreeing with the County on whether our transmission line, whether we are going to help fund that back to the developer, etc. Some more information is going to come on that. She thinks at our joint meeting we will have more information. The other meeting that she went to was the quarterly Legislative Affairs Committee in Raleigh on Thursday morning. They were just kind of summarizing the bills that have gone through Raleigh this year and to prepare us for items that we may be facing next year. One which will be the continuing annexation bill because it did pass the house. It could come back and be eligible for consideration on the short session that starts in May. That looks like it is going to be a problem for municipalities. We will continue to watch that and this committee will continue to bring information back to the communities. She loves being on this committee. She thinks she takes more than she gives to it but it is a really good place for information. The Mayor is on the sister committee that deals with finances and stuff but we deal with the nuts and bolts of things rather than how we are going to pay for them. The budget had just passed two days before the meeting and a lot of the conversation revolved around some of the money in the budget being replaced by federal stimulus money and the concern that if the revenue doesn't come back and the economy improves we are going to be looking at an even larger deficit in the next year or two. They have their work cut out for them in Raleigh. We are going to lose about two thirds of what we received from our beer and wine taxes because of budget cuts.

Councilwoman Hummer said there are some things going on in the Second Ward that really aren't very pleasant. Over the past three weeks there has been a number of breaking and entering, mostly vehicles, but not all. A possible or attempted home invasion and over the weekend one resident had her whole set of wrought iron patio furniture stolen off her porch. This is in the Maple Street, Cedar Street and Colonial Avenue area. Of course all of these things were reported and the Chief has had his officers out investigating them. She thinks the residents would appreciate some extra patrolling.

Councilman King said that tomorrow night he has a 911 Advisory Board meeting and he will bring back at the next work session the change in the policies for this snake incident. He would like to thank Dennis Gordon and Ms. Howe for coming out to the Eastern Star Church of God last Thursday night. They did the weatherization program and he thinks every citizen should have the opportunity to listen to this program. It was very informative for the church members and him.

Councilwoman Watts said that she wants to touch on what Mr. King was saying. She is still receiving phone calls from people that cannot afford to pay their

electric bill. People are having a tremendous hard time. The City is not willing or just unable to give at this time any more monies that can be budgeted to help folks. She would like to call out to and plead with the community and those of us who are able to give that we would find a non-profit organization somewhere that we can be of assistance to those folks that are in need. There are many elderly people, you just don't know. She gets calls everyday that truly need our help. She hopes that we will not forget them. The other thing she would like to ask Mr. Olson has there every been a revitalization grant for the area of Oak Grove that you can talk of.

Mr. Olson said not that he is aware of.

Ms. Watts said the speaker mention that they have been coming up here for years pleading for help and she hasn't seen one person from the Pearl Street area up here. She is new with this and she is sorry if she says or ask things that might be silly to you all but to the people out there it sounds pretty decent. It sounds pretty smart. For years they have been coming up here and we can't find a grant that will help them. Why have we waited so long and yet we are doing nothing now.

Councilwoman Evans said he would like to make a couple of comments. One is about the National Night Out. He attended that and we definitely have some future pro baseball pitching stars out there. There was one kid that hit me every time. The police department did a great job with the canines. It was a great event. We enjoyed watching that. There were many other vendors out there.

Mayor Atkinson said the Coast Guard Day was very good. It was a great event. The National Night Out was also great. This week he has had an occasion to have on-going conversation with Captain Bennett and Captain Harding and Commander Don Dryer on issues pertaining to the waterway. He can't tell you how helpful they have been in helping him address some issues that need to be taken care of.

9} CLOSED SESSION:

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

A motion was made by Councilman J. A. Stimatz, seconded by Councilwoman V. C. Watts to retire into Closed Session for consultation with the City Attorney as per NCGS 143-318.11 (a) (3) pertaining to underground electric service; upkeep and maintenance of Rose Harbor property; 706 Riverside Avenue and Hugh Cale Resource Center's sub- recipient; and consideration of Closed Session minutes as per NCGS 143-318.10. (e). Those

voting in favor of the motion were: Stimatz, Watts, Baker, Evans, Hummer, King and Meggs. Against: None. Motion carried.

10} RETURN TO REGULAR SESSION:

A motion was made by Councilman J. A. Stimatz, seconded by Councilman D. B. Evans to return to Regular Session. Those voting in favor of the motion were: Stimatz, Evans, Baker, Hummer, King, Meggs and Watts. Against: None. Motion carried.

11} CLOSED SESSION ITEMS:

a} 706 Riverside Avenue:

A motion was made by Mayor Pro Tem J. M. Baker, seconded by Councilman J. A. Stimatz to authorize the City Attorney to file a complaint with the Superior Court declaring a taking under NCGS 40 -41 of 3 feet of 706 Riverside Avenue. Those voting in favor of the motion were: Baker, Stimatz, Evans, Hummer, King, Meggs and Watts. Against: None. Motion carried.

b} Closed Session Minutes:

A motion was made by Councilman J. A. Stimatz, seconded by Councilman R. E. King to approve the Closed Session minutes as presented. Those voting in favor of the motion were: Stimatz, King, Baker, Evans, Hummer, Meggs and Watts. Against: None. Motion carried.

12} ADJOURNMENT:

There being no further business to come before the Council at this time, Mayor Atkinson adjourned the meeting at 9:19 p.m.

Dianne S. Pierce-Tamplen, MMC
City Clerk

Stephen S. Atkinson
Mayor