

MONDAY-7:00 P.M.

NOVEMBER 24, 2008

CITY COUNCIL

The City Council of the City of Elizabeth City held its second meeting of the month on the above date and time in the City Council Chambers of the Municipal Administration Building with Mayor S. S. Atkinson presiding. Council members attending were: J. M. Baker, D. B. Evans, L. A. Hummer, R. E. King, B. S. Meggs, E. K. Rivers, J. A. Stimatz and V. C. Watts. 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, Inspection Director S. E. Ward, Human Resource Director K. W. Felton, Finance Director S. E. Blanchard, Interim Fire Chief B. S. Overman, Public Utilities Director P. A. Fredette, Planning Director J. C. Brooks, Electric Director K. F. Clow and Police Captain G. F. Koch.

Mayor Atkinson opened the meeting by welcoming those attending. He called upon Pastor David Turner for the invocation after which he led the Pledge of Allegiance to the Flag of the United States of America.

1} AGENDA APPROVAL:

Mayor Atkinson called for approval of the prepared agenda.

Mayor Pro Tem Baker asked to remove from the Consent Agenda and place on the Regular Agenda ***Item #7-e-2 TA-03-08 – Request to amend the Table of Allowable Uses and Development Ordinance in 9-3.1(a) and newly created 11-4.60.1 to regulate the operation of private tourist guide service operations in all residential zoned districts.***

Councilman Stimatz asked to remove from the Consent Agenda and place on the Regular Agenda ***Item #7-d Award of Bid for the purchase of 18 additional surveillance cameras.***

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

2} COMMENTS FROM THE PUBLIC:

Mayor Atkinson asked City Clerk Pierce-Tamplen the number of individuals signed up to speak. Upon a reply of ten, Ms. Pierce-Tamplen called the first individual to the podium.

Mr. Roger Ambrose, 112 Chadburn Avenue, Elizabeth City, stated he was in favor of the regulations on signs. He feels there are still a lot of issues that have not been address and he would encourage Council to not accept the ordinance as proposed.

Mr. Warren Ellis, 312 West Main Street, Elizabeth City spoke in support of Bonnie Calliotte. He sees no reason why she should be singled out for having her little tour business. He asked to have checked the storm drain in front of the Culpepper Inn as it needs to be repaired. Finally he asked that council members speak in their microphones when speaking.

Amy Finn, 105 Harney Street, Elizabeth City advised that she and her husband are new to the area and they both support Bonnie Calliotte.

Pamela Payne, 407 W. Main Street, Elizabeth City spoke on behalf of Ms. Calliotte. She is a neighbor and she has never been inconvenienced by any of her tours.

Ms. Kit Neiderer, 904 W. Main Street, Elizabeth City spoke on behalf of Bonnie Calliotte. Ms. Calliotte promotes the history of our city and provides us additional value to our property on which you can't overlook as homeowners.

Ms. Kelly Boyd, 313 West Main Street, Elizabeth City spoke on behalf of Bonnie Calliotte. She has no objections to the tours that Ms. Calliotte has undertaken.

Ms. Cindee Herlocker, 301 West Main Street, Elizabeth City spoke on behalf of Ms. Calliotte and is in favor of her tours and teas.

Ms. Holly Koerber, 600 W. Main Street, Elizabeth City asked to applaud Council for their concern that all businesses followed the rules. She told Council what she felt their job was on behalf of the community as a whole. She also gave her support to Bonnie Calliotte.

Mr. Wayne Harris, 405 East Main Street, Elizabeth City advised that on behalf of the Albemarle Economic Development Commission he would like to say that they support the Tree Ordinance and asked consideration of passing this ordinance.

Ms. Debbie Sauls, 1961 Rivershore Road, Elizabeth City spoke on behalf the proposed Tree Ordinance. She has been involved with the Tree City application

process and specifically tree ordinance. She feels we will have a much more beautiful and healthy city with this ordinance in place.

3} APPROVAL OF MINUTES:

Mayor Atkinson called for action regarding the minutes of May 28, 2008 Budget Work Session, November 10, 2008 Work Session and the November 10, 2008 Regular Session.

A motion was made by Mayor Pro Tem J. M. Baker, seconded by Councilwoman V. C. Watts to approve the minutes from Budget Work Session, May 28, 2008, the Work Session of November 10, 2008 and the Regular Session of November 10, 2008. Those voting in favor of the motion were: Baker, Watts, Evans, Hummer, King, Meggs, Rivers and Stimatz. Against: None. Motion carried.

4} CONSENT AGENDA:

Mayor Atkinson called upon City Manager Olson to read the Consent Agenda items. Following the reading 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 Councilwoman L. A. Hummer to approve the following Consent Agenda. Those voting in favor of the motion were: Baker, Hummer, Evans, King, Meggs, Rivers, Stimatz and Watts. Against: None. Motion carried.

Consent Agenda:

a} Approved the following Budget Amendments:

**BUDGET AMENDMENTS
NUMBER 2008-12**

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, 2009:

SECTION I. That the General Fund Balance Appropriated (103990.0000) be increased by \$1,558, the Senior Center Grant (103490.6301) be increased by \$5,304, the Senior Center Grant Expenditure (106300.3301) be increased by \$3,512, and the Senior Center Grant Capital Outlay (106300.7401) be increased

by \$3,350.

(To record Senior Center grant and City match.)

SECTION II. That the General Fund Lot Clearing Revenue (103920.0010) and Planning Department Lot Clearing Expenditure (104900.4601) be increased by \$10,000.

(To record additional funding for lot clearings.)

ADOPTED, this 24th day of November, 2008.

Stephen S. Atkinson
Mayor

Dianne S. Pierce-Tamplen, MMC
City Clerk

- b} Approved the execution of agreement between Electric Suppliers, City of Elizabeth City and the Albemarle Electric Membership Corporation.
- c} Approved Award of Contract for Space Needs Study to Steward, Cooper, and Newell Architects in the amount of \$52,000.
- d} Called for a public hearing to be held for each of the following on Monday, December 8, 2008 at 7:30 p.m. in the City Council Chambers of the Municipal Administration Building:
 - 1} Consideration - Subdivision Moratorium
 - 2} Consideration – TA-04-08 request to amend §3-7.3(B), §3-7.4(C) Administrative Mechanisms of Article III of the Unified Development Ordinance
 - 3} Consideration TA-05-08 Request to amend §12-8.2(A) Historic District Overlay Requirements of Article XII of the Unified Development Ordinance.

- 4} Consideration – R-08-09 Request of Betty Lou Murphy to rezone .45 acres located on the north side of US Highway 17 from Highway Business-HB to General Business-GB.
- e} Approve the following Ordinances approving the condemnation and demolition of 409 East Broad Street, 109 Hines Avenue and 705 Hunter Street.

ORDINANCE #08113
DIRECTING THE BUILDING INSPECTOR TO REPAIR OR DEMOLISH THE PROPERTY HEREIN DESCRIBED AS UNFIT FOR HUMAN HABITATION AND DIRECTING THAT A NOTICE BE PLACED THEREON THAT THE SAME MAY NOT BE OCCUPIED UNTIL REPAIR, OR THAT THE STUCTURE BE DEMOLISHED.

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

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

WHEREAS, the owner of said structure has been given a reasonable opportunity to bring the premises up to the standards of the subject codes in accordance and pursuant to an order issued by the Building Inspector on 08-15-08; and the owner has failed to comply with said order;

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

Section 1: The Building Inspector is hereby authorized and directed to place on the building located at 409 East Broad Street a sign containing the legend:

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

Section 2: The Building Inspector is hereby authorized and directed to proceed to repair or demolish the above-described structure in accordance with his order to the owner thereof dated August 15, 2008 with the Code; and

Section 3: It shall be unlawful for any person to remove or cause to be removed said placard from any building to which it is affixed. It shall likewise be

unlawful for any person to occupy or to permit the occupancy of any building herein declared to be unfit for human habitation.

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

ADOPTED, this 24th day of November 2008.

Stephen S. Atkinson
Mayor

Dianne S. Pierce-Tamplen, MMC
City Clerk

ORDINANCE #08114
DIRECTING THE BUILDING INSPECTOR TO REPAIR OR DEMOLISH THE PROPERTY HEREIN DESCRIBED AS UNFIT FOR HUMAN HABITATION AND DIRECTING THAT A NOTICE BE PLACED THEREON THAT THE SAME MAY NOT BE OCCUPIED UNTIL REPAIR, OR THAT THE STRUCTURE BE DEMOLISHED.

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

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

WHEREAS, the owner of said structure has been given a reasonable opportunity to bring the premises up to the standards of the subject codes in accordance and pursuant to an order issued by the Building Inspector on 07-25-08; and the owner has failed to comply with said order;

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

Section 1: The Building Inspector is hereby authorized and directed to place on the building located at 109 Hines Avenue a sign containing the legend:

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

Section 2: The Building Inspector is hereby authorized and directed to proceed to repair or demolish the above-described structure in accordance with his order to the owner thereof dated July 25, 2008 with the Code; and

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

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

ADOPTED, this 24th day of November 2008.

Stephen S. Atkinson
Mayor

Dianne S. Pierce-Tamplen, MMC
City Clerk

ORDINANCE #08115
DIRECTING THE BUILDING INSPECTOR TO REPAIR OR DEMOLISH THE
PROPERTY HEREIN DESCRIBED AS UNFIT FOR HUMAN HABITATION
AND DIRECTING THAT A NOTICE BE PLACED THEREON THAT THE SAME
MAY NOT BE OCCUPIED UNTIL REPAIR, OR THAT THE STRUCTURE BE
DEMOLISHED.

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

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

WHEREAS, the owner of said structure has been given a reasonable opportunity to bring the premises up to the standards of the subject codes in

accordance and pursuant to an order issued by the Building Inspector on 09-16-08; and the owner has failed to comply with said order;

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

Section 1: The Building Inspector is hereby authorized and directed to place on the building located at 705 Hunter Street a sign containing the legend:

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

Section 2: The Building Inspector is hereby authorized and directed to proceed to repair or demolish the above-described structure in accordance with his order to the owner thereof dated September 16, 2008 and with the Code; and

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

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

ADOPTED, this 24th day of November 2008.

Stephen S. Atkinson
Mayor

Dianne S. Pierce-Tamplen, MMC
City Clerk

End of Consent Agenda

5} REGULAR AGENDA:

a} Award of Bid – 18 additional Surveillance Cameras.

Mayor Atkinson called upon Councilman Stimatz for comments.

Mr. Stimatz said he was curious to get a little background on the low bidders before making a decision. Albemarle Fence Company he was a little concerned about them installing a very sophisticated camera system. He was also concerned about the difference in the total bid costs.

Mr. Anthony Overman, owner of Albemarle Fence Company came forward and gave background information on his company. Even though they are a fence company they have expertise in installing surveillance equipment. They are a total one shop and they do all of the actual installation. They have put the systems in Southgate Mall and that is a high end system. They are known as a fence company but he runs the electronic division. Cameras are his specialty and he has been doing cameras since early 90's. He is licensed by the State of North Carolina. He did the system at ECSU back in the early 90's. He has a long history of doing this type of work.

A motion was made by Councilman E. K. Rivers, seconded by Councilwoman L. A. Hummer to accept the lowest bid of \$116,662.50 to Albemarle Fence Company for the purchase and installation of eighteen (18) additional surveillance cameras. Those voting in favor of the motion were: Rivers, Hummer, Baker, Evans, King, Meggs, Stimatz and Watts. Against: None. Motion carried.

b} TA-03-08 Request to amend the Table of Allowable Uses and Development Ordinance in § 9-3.1 (A) Table 9-3-2, and newly created §11-4.60.1 to regulate the operation of private tourist guide service operations in all residential zoned districts.

Mayor Atkinson called upon Mayor Pro Tem Baker for comments.

Ms. Baker advised that this proposed text amendment is to allow for the tours and teas in the Historic District. She would suggest that we change the 11-4.60.1 (A) where it will say private tourist guide services shall be permitted in R-8 Residential and Central Business-CB Districts within the local designated Historic Districts and then the rest will remain the same. She requests that it be changed before it goes to public hearing so it will go in the correct way.

A motion was made by Mayor Pro Tem J. M. Baker that we make the above stated change and send it to public hearing on December 8, 2008. Councilman D. B. Evans seconded the motion.

Councilman Rivers said that he feels this is very stringent in that it says a non-resident cannot operate the tour. What if the owner was to get sick or unable to work they would not be allowed to continue with their business. Also, it says

that the operation of the tourist guide service operation shall be located within 250 feet of any other private tourist guide operation or bed and breakfast operation. There are a lot of different things in this amendment that he does not understand. He feels that we shouldn't do anything to hinder this business. We are creating a text and it is very stringent in this to cause someone once they start operating and it becomes a success and they go to two, three tours a day or if they are showing the downtown and she needs help, she can't hire help. It has a lot of teeth in it and it doesn't give room to grow and he feels that it is a great asset to our community and by no means does he want to obstruct the operation. Can we be provided a scaled back version so that council to review both versions?

Councilman Stimatz said that we need to think outside of the box. His problem with this ordinance is he is not sure what is being asked for. The first thing he sees is to permit guide services which would allow individuals inside residential structures and would also allow for refreshments. If that is what you are looking for he would rephrase that as, private in-home tours associated with food service. That is very specific. That is one thing. Right now Ms. Calliotte can run her tours until the cows come home. There are no restrictions except she has to meet her people downtown. She can have tours everyday all day. There are no restrictions on the time. The tour part of her business is not at risk here. The question is should we allow private in-home tours with associated food services. He does not see that reflected here. Right now the only exception of having a business in a residence allowed is in R-6 and it is a convenience store. We need to be very careful about opening up residential districts to food services in general. This is not ready for prime time. It is not even close to being ready for a public hearing. He has great concern about creating food establishments in residential districts that are going to take away business from food establishments that are already in existence in commercial, general business, central business districts. He feels this has to go back to the Planning Commission as well as the Historic Preservation Commission.

Councilwoman Hummer said that it is her understanding from things that have come before us in the past of this nature is that she really shouldn't have to be here tonight for a text change. The Planning Department should have issued her a provisional permit that is called a Limited Home Base Business Permit. It is as simple as that. It doesn't involved getting mired down in text changes and restrictions. She has already had the Department of Agricultural and the Health Department to come in and she has gone over everything she is going to do and has been approved. She thinks that we should be commending someone who has moved here and wants to market Elizabeth City and our Historic District instead of trying to make it hard for them. We talk about small businesses and this is what this is.

Mayor Pro Tem Baker said that she has been involved with this for a while and as she understands it in July Bonnie was issued a cease and desist order that said she needed to get a home occupations permit which she did go and get four or five days later. Then she received a letter from an attorney who said you also need to get something from NC Department of Agricultural which she got that as well. The hardest thing for her to get has been approval from our Planning Department because they didn't have a sample to go by that anybody in the country has ever approved or regulated teas in a historic house. In trying to get hers approved she has been going along with Planning to try to help them by recommending different wording or different suggestions to our Planning Department. The biggest hurdle still is a special use permit which is a \$500 charge in this City. This is for someone that has held tours and teas since before she was told to stop, had 7 teas for a total of 70 people. It would take her 6 months to even pay for this thing for the ability to help the city promote its history. She does not have a problem if we are more specific in the light refreshments. This could be a working document like any of our ordinances are. She does not have a problem with sending it to public hearing. She does not think we should drag out any more time as she has been trying to get this approved since June.

Mr. Rivers asked that until we get this straighten out can we can't lift the cease and desist order. We should not bog her business down. He does not want her business to be inoperable until we get our act together.

Mr. Stimatz said that he would like to say if you do your research on food services the dispensing of beverages or food it is regulated not by the Department of Agricultural but by the Department of Environment Health. They are very specific. Literally anything you hand to anybody that is a food item requires you to have a permit from them. Even if Ms. Calliotte has that permit in her hands right now our zoning does not allow her to dispense food and beverage in her home. That is why we need to change the text of the UDO. As written this is not ready for a public hearing and it needs to go back to Planning staff to be crafted very narrowly, very precisely go back to the Planning Commission and Historic Preservation Commission and then they can come and recommend to us what they think is the right thing to do. That is why he will vote against the motion on the floor.

A motion was made by Councilman J. A. Stimatz to table action on this item until staff can go back and write a more focused response that addresses the issues that have been brought up tonight.

There was no second, thereby the motion failed.

Councilman Rivers asked if this motion was voted down where would that put Ms. Calliotte.

Mr. Morgan responded by saying he would recommend any motion that Council approves tonight include a provision that no enforcement action be taken against the Calliottes pending Council's determination of this matter. He is referring to the cease and desist order.

Mayor Atkinson called for action on the original motion to accept the text changes as recommended by Mayor Pro Tem Baker and call for a public hearing to be held on Monday, December 8, 2008 in the city council chambers of the Municipal Administration Building.

Ms. Watts said that this lady has been in business for over a year and sometimes we just need to step out of the box. She feels that we should work on this matter until this issue has been resolved. Money is spent here and she can not understand why we are even arguing about it.

Mr. King said that we need to at least allow this lady continue to operate until this is settled. If there is a change that needs to be done then we will make it after the public hearing.

Mr. Stimatz said that he will renew his motion

A motion was made by Councilman J. A. Stimatz to table action on this item until staff can come back with a text amendment change which addresses conducting tours from a residence; conducting tours in a residence and provision of food service in conjunction with either one and/or two. Councilman E. K. Rivers seconded the motion. Those voting in favor of the motion were: Stimatz and Rivers. Against: Baker, Evans, Hummer, King, Meggs and Watts. Motion was denied.

Mayor Atkinson called for action regarding the original motion to accept the proposed text change and forward to a public hearing on December 8, 2008.

Those voting in favor of the motion were: Baker, Evans, Hummer, King, Meggs, Rivers and Watts. Against: Stimatz. Motion carried.

A motion was made by Councilman E. K. Rivers, seconded by Councilwoman L. A. Hummer to lift the cease and desist order on D'Tours of Elizabeth City along with the no food and beverage. Those voting in favor of the motion were: Rivers, Hummer,

Evans, Baker, King, Meggs and Watts. Against: Stimatz. Motion carried.

c} Tree Ordinance and Tree Commission:

Mayor Atkinson called upon City Manager Olson for comments.

Mr. Olson stated that in the previous work session, City Staff requested three changes be made to the proposed ordinance. What staff is requesting is that you go ahead and approve this ordinance and incorporate those three changes in the ordinance and then if that is the Council desire then go ahead and appoint the members of the Tree Commission that have been submitted to the Mayor.

A motion was made by Councilwoman B. S. Meggs, seconded by Councilman R. E. King to adopt the following Tree Ordinance to become effective December 1, 2008 and to accept the Mayor's Tree Commission appointments to the Tree Commission.

- 1} Inspections of Sites: To incorporate the existing 42.85.3 (C) into A;**
- 2} Enforcement - Notice of Appeal: Section 2 where it says Board of Adjustments put a notation herein referred to as The Appeals Board;**
- 3} In assessing the civil penalty- (2) remove the words "amount of"**

Councilwoman Hummer stated that she does not see where the removal of the section under Unsafe Trees to go on private property to spray and remove trees because it would require money that we don't have. Therefore she would like to make a substitute motion.

A motion was made by Councilwoman L. A. Hummer, seconded by Councilman E. K. Rivers to remove from the proposed Tree Ordinance – Unsafe Trees – Items a, b, and c. Those voting in favor of the motion were: Hummer, Rivers, Baker, Evans, King, Meggs, Stimatz and Watts. Motion carried.

A motion was made by Councilwoman B. S. Meggs, seconded by Councilman R. E. King to adopt the following proposed Tree Ordinance incorporating those changes made and accept those members of the Tree Commission. Those voting in favor of the

motion were: Meggs, King, Baker, Evans, Hummer, Meggs, Rivers, Stimatz and Watts. Against: None. Motion carried

**ORDINANCE #08116
URBAN FORESTRY ORDINANCE
2008**

WHEREAS, the City Council of the City of Elizabeth City wishes to establish **an Urban Forestry Ordinance** for the City of Elizabeth City; and

WHEREAS, the City Council of the City of Elizabeth City desires to provide rules and regulations associated with the trees, shrubbery, vines and other plants within Elizabeth City by adoption of an ordinance.

NOW, THEREFORE, BE IT ORDAINED, that the City of Elizabeth City Council adopts the following as the Urban Forestry Ordinance for the City of Elizabeth City's Code of Ordinances, by reference.

Chapter 59-1 Purpose and intent

The City of Elizabeth City, believing that trees and our Urban Forest have a profound effect on the quality of life in the community, deems it necessary and desirable in the interest of public health, safety and the general welfare to enact this ordinance for the preservation, planting, care, replacement and safe removal of trees and shrubbery located on city property and rights of way without denying the reasonable use and enjoyment of real property.

It is the purpose of this ordinance to promote and regulate the planting of new trees and shrubbery; to vigorously encourage the management and protection of existing trees and shrubbery, including their root systems; to regulate the preservation, replacement and removal of trees and to enhance the quality of life through sustainable urban forest practices and increase the benefits that trees provide, including, but not limited to the following:

- Absorption of carbon dioxide and returning of oxygen
- Enhancement of property values
- Improvement of storm-water runoff
- Increase knowledge and job opportunities in the area of Urban Forestry
- Maintenance and improvement of the City of Elizabeth City's appearance
- Prevention of damage to property and person
- Provision of shade for cooling
- Reduction of soil erosion and the increase of rainwater infiltration.
- Screening of noise, dust, and glare

This ordinance provides full power and authority over all trees, plants and shrubbery located within the city's right-of-way, and all parks, cemeteries and other public grounds owned by the city; and to trees, plants and shrubs located on private property that constitute a hazard or threat to public property or public welfare.

Definitions:

Arborist – An individual trained in arboriculture, forestry, landscape architecture, horticulture or related fields and experienced in the conservation, management and preservation of trees.

Arborist, Certified – A person who is licensed by the International Society of Arboriculture (ISA) as a professional to perform arboricultural work in North Carolina.

Canopy Manager- designee of the City Manager from among city employees to oversee management of the City's Urban Forestry program.

City right of way- an area of land that is the City of Elizabeth City's property. This may include sidewalks, grass, streets and city owned buildings.

Designee- a person that is appointed by the city manager or department head to inspect or perform government work. A city employee or contracted private businessperson can be a designee to include an arborist or horticulturist, when deemed necessary.

International Society of Arboriculture – A worldwide professional organization dedicated to fostering a greater appreciation for trees and to promoting research, technology, and the professional practice of arboriculture.

Property Owner - the person shown as registered owner of said property as recorded in the County Public Registry of Deeds.

Pruning – The act of removing, or cutting back parts of a tree or shrubbery.

Tree – A living wood plant with an erect perennial trunk and a definitely formed crown.

Tree (property holding) - is determined by which part of the tree is located on a property. If more than fifty (50) percent of the tree's trunk is located on a property then it is determined to be the property of that owner.

Tree Topping – The removal or cutting back of major portions of a tree by any pruning practice resulting in more than one-third (1/3) of the foliage and limbs being removed. This includes any pruning that leads to the disfigurement of the normal shape of the tree. Topping is also referred to as "heading", "stubbing" or "dehorning".

Shrubbery- is a bush, hedge, vine or other low lying plant or growth.

Street (or) Highway- the entire width of every public right of way when any part thereof is open to the use of the public, as a matter of right, for purposes of vehicular and pedestrian traffic.

Urban Forest- the collection of trees, shrubs, other vegetation and associated natural features that make up the city tree canopy and its growing zone.

Urban Forestry Management Plan- a document that provides for the inventory, development, conservation, and care of the urban forest resources of the city.

Chapter 59-2 Urban Forestry Commission

The City Council shall establish The Elizabeth City Urban Forestry Commission (ECUFC), consisting of seven members who are appointed by the Mayor with the approval of City Council. All members shall reside in Pasquotank County with no more than two members living outside of the corporate city limits. Members of this commission shall serve without compensation.

Members will be appointed to staggered three-year terms. Additionally, the City Manager may appoint ex-officio non-voting members. The Commission shall select annually from among its members a chair and vice-chair. Members may be appointed to no more than three successive terms. ECUFC members may be removed by the City Council at any time for failure to attend three consecutive meetings or for failure to attend thirty percent or more of the meetings held within any twelve month period or for any other good cause related to non-performance of duties. Vacancies resulting from resignation or from a member's failure to attend the required number of meetings shall be filled by the Mayor with approval of the City Council.

The Canopy Manager shall serve as secretary to the commission. The Commission may request information on trees located on city property and shall

receive in a timely fashion, reports from the Director of Public Utilities. The Commission shall receive regular reports from the Director of Planning and Community Development on landscaping and buffering plans for new developments and alterations to existing developments. The commission shall promote city canopy growth and maintenance within city limits.

Commission volunteers will have residency in the corporate limits of Elizabeth City. Meeting schedules shall be posted in a public forum. The Secretary or his/her designee will be responsible for keeping minutes. The commission will define a quorum as four members being present. Tree Commission members will declare when they are in a direct conflict of interest on certain issues in accordance with the standards of Article IV of city ordinances.

The Commission will also have the power to accept funds granted to the Commission from government, private or non-profit organizations. The City of Elizabeth City shall act as a fiscal agent for the Commission and must approve all expenditures. The Commission shall promote planting and replacement of trees in Elizabeth City. The Commission shall also submit a budget for the Arbor Day and training/representative activities. The Commission shall start education activities to inform residents on matters concerning trees and shrubbery. The Commission shall formulate and adopt rules of procedure under which it will operate. The Commission may also assist the Planning or Public Works departments and/or the City Manager in any tree related issues.

The Commission's duties and responsibilities will include, but not be limited to the following:

1. Help develop and maintain the City Urban Forestry Management Plan for the inventory, development, conservation, and care of the urban forest resources of the city.
2. Coordinate or conduct special projects for the betterment of the urban forest.
3. In cooperation with the Canopy Manager, develop and keep current detailed standards and specifications for Urban Forestry management based on the most up-to-date research by North Carolina State University and the International Society of Arboriculture.
4. Request information on trees located on city property and receives in a timely fashion, reports from the Directors of Public Utilities, Parks and Recreation.

5. Receive regular reports from the Director of Planning and Community Development on landscaping and buffering plans for new developments and alterations to existing developments.
6. Encourage and promote canopy growth and maintenance within the city.
7. Organize and manage the City's Arbor Day celebration and provide representation at urban forestry related events. In addition, submit a proposed budget to City Council by March 1, for the Arbor Day activities.
8. Initiate educational activities to inform residents on matters concerning the Urban Forest.
9. Report to the City Council by March 31, on the state of the urban forest.

Chapter 59-3 Trimming, pruning, planting and removal of trees and shrubbery

- (a) No person shall remove, destroy, cut, prune or otherwise treat any tree or shrubbery having its trunk or a portion thereof upon any city property or right-of-way or contract with another person to perform such acts without first obtaining a written permit from the Public Works Director except as herein set forth.
- (b) No person shall plant or contract with another to plant any tree or shrubbery on any city property, except as herein noted, as stated in City Ordinance Section 74-9 (Plantings in right-of-way). Plantings under utility lines as stated in the Unified Development Ordinance (UDO) are not allowed.
- (c) Public and private utilities shall submit written specifications for pruning, trenching or grading around trees and shrubbery on city property to the Public Utilities Director for approval. A utility company shall not be required to obtain a permit for routine maintenance operations affecting trees and shrubbery having their trunks upon city property so long as such work is done in strict accordance with the specifications as approved by the Public Utilities Director or City Manager Designee. A utility company is required to obtain a permit to remove any tree or shrubbery on city property. Approved written specifications shall be valid for two years, after which new specifications or a request for an additional two-year extension of the previously approved specifications must be made by the utility company.
- (d) Clear Cutting- City Properties shall not be clear-cut during the conduct of urban forestry activities. To maintain the visual character of the site from adjoining properties and right-of-way, a vegetated perimeter buffer shall be maintained while site development or redevelopment occurs. 32-foot wide buffer

of naturally existing vegetation shall be maintained along all boundaries of the property being forested that adjoin other properties. Along public rights-of-way, a 50-foot buffer of existing vegetation shall be maintained, exclusive of areas required for access to the site.

(e) Tree Topping – Under no circumstances will tree topping be allowed.

(f) Guidelines for planting, pruning, protection and removal for trees and shrubbery are available in the Elizabeth City Urban Forest Standards and Specifications established and kept current by the Elizabeth City Urban Forest Commission.

Chapter 59-4 Trees and shrubbery abutting city property to be kept trimmed; responsibility of owner

(a) Trees, shrubbery, flowers, bushes or vines standing in or upon any lot or land abutting city property and having branches, limbs, trunks, or other parts projecting onto city property shall be maintained by the owner of the property on which such trees, shrubbery, flowers, bushes or vines are growing so as not to interfere with the free and safe passage along the city right-of-way by pedestrians and vehicular traffic.

(b) If the owner of such property does not keep this growth from projecting onto city property, the Public Utilities Director may order its removal from city property. The order shall be in writing to the owner and shall be acted upon within 30 days from the time of the receipt of the order. If, after 30 days, the owner has not responded or acted to remove the projecting growth from such trees or plants, then the Public Utilities Director may enter upon the private property to perform the work necessary to correct the condition and bill the owner for the actual costs incurred as stated in City Ordinance Section 42-88 (Cost of Abatement) and Section 42-89 (Remedy not exclusive). In situations deemed by the Public Utilities Director to constitute an imminent threat to the public health, safety or welfare, the Public Utilities Director may act without prior notification to the property owner.

59-5 Inspection of sites

(a) In accordance with Section 42-85 3(c), the Public Utilities Director or his/her designees may periodically inspect areas subject to the provisions of this chapter.

(b) The Public Utilities Director or his or her designees may conduct such investigations as deemed reasonably necessary to carry out the duties as prescribed in this chapter and may enter at reasonable times upon private

property as defined herein, for the purpose of inspecting trees and shrubbery subject to the provisions of this chapter. No person shall refuse entry or access to any authorized representative or agent of the city who requests entry for the purposes of inspection and who presents appropriate credentials, nor shall any person obstruct, hamper or interfere with such representative while in the process of carrying out official duties.

(c) If through inspection it is determined that a person has failed to comply or is no longer in compliance with the provisions of this chapter, a notice to comply shall be served upon that person by registered mail, returned receipt requested or by hand delivery from the public works director. The notice shall state the violation and describe that action which will be necessary to comply with this chapter.

59-6 Enforcement

(a) Notice and appeal.

(1) Any person who violates any provision of this chapter shall be notified by the City Manager or his or her designee of the specific violation by certified or registered mail, return receipt requested, or by hand delivery. The notice shall set forth the nature of the violation, the measures required to comply with this chapter, if compliance is at all practicable, and a reasonable time period within which compliance must be made.

(2) If any aggrieved person disagrees with a decision of the public works director, such person may request a hearing within ten working days of receipt of the notice of violation. The request must be in writing and directed to the Tree Commission's secretary. The Tree Commission's secretary shall then forward the request to the Board of Adjustment, hereinafter appeals board. In considering whether to consider a complaint, the Board of Adjustment shall proceed in the same manner as the City Council when considering conditional use permit applications (Section 4-7.7)

(3) The Board of adjustment may modify amend or revise the decision being appealed. The decision of the appeals board shall be served upon the appealing party by registered or certified mail, return receipt requested, or by hand delivery.

(4) If any aggrieved party is dissatisfied with the decision of the appeals board, an appeal may be taken to the Pasquotank County Superior Court. Notice of the appeal must be filed within 30 working days of receipt of the

appeals board's decision. The parties may stipulate that the appeal to the Pasquotank County Superior Court shall be a review of the record only, as in the nature of a writ of certiorari.

(5) Any aggrieved party may request an injunction to preserve the status quo during the pendency of any appeal in accordance with applicable North Carolina law.

(b) Civil penalty. Any person who violates any of the provisions of this chapter shall be subject to a civil penalty. The amount of the civil penalty shall be no more than \$500.00. Each day of a continuing violation shall constitute a separate violation.

(1) The appeals board shall determine and assess the civil penalty, if any, at the time of the appeals hearing, if one is requested. In the absence of an appeal, the Public Utilities Director shall submit a request to the chairperson of the appeals board who shall assemble the appeals board and assess the civil penalty with supporting documentation upon prior notice to the violating party of the date and time of the appeals board hearing. At least ten days notice shall be given to the violating party of the date, time and location whereby the appeals board will consider the request to assess a civil penalty.

(2) In assessing the civil penalty, the appeals board shall take into consideration the amount of money that the violator would be required to spend in order to be in compliance with the provisions of this chapter, the amount of money saved by the violator in violating the ordinance, the cost of replacement of any removed tree, shrubbery or regulated tree and other factors that it may deem relevant. (3)

(3) To determine the specific amount of the civil penalty for damage or destruction to regulated trees, the appeals board shall use the standard tree evaluation formula provided by the International Society of Arboriculture, as it may be amended from time to time. The standard tree evaluation formula is made a part of this chapter and adopted herein by reference. The appeals board shall have no discretion to vary the cost figures set forth in the formula.

(c) Criminal penalty. A violation of this Chapter subjects the offender to a civil penalty, pursuant to the authority granted by N.C. Gen. Stat. sec. 160A-175, and does not subject the offender to the criminal penalty provisions of N.C. Gen. Stat. sec. 14-4.

(d) Injunctive relief. Whenever there exists reasonable cause to believe that any person is violating this chapter or any standards adopted pursuant to this chapter or any term, condition or provision of an approved permit, the city may, either before or after the institution of any other action or proceeding authorized by this chapter, institute a civil action in the name of the city for a mandatory or prohibitory injunction and an order of abatement demanding the violator to correct the unlawful condition upon or cease the unlawful use of the property.

ADOPTED, this 24th day of November 2008.

Stephen S. Atkinson
Mayor

Dianne S. Pierce-Tamplen, MMC
City Clerk

Mayor Atkinson asked to put in the record the members that will be serving on the Tree Commission. They are: Adam Mason, Clay Foreman, Mike Cox, Travis Burke, Heather Griffin, Debbie Sauls, Holly Cook-Wood and Donald Campbell. In this group we have a groundskeeper, an attorney, a County Extension Director, a trained arborist and three master gardeners. He thinks we really have a good selection and he is very happy to have these people serving.

d} December Work Session:

Mayor Atkinson called upon Mr. Olson for comments.

Mr. Olson stated that staff has a couple of issues which needs to be discussed prior to the first of 2009 in a work session setting. Therefore, we are requesting that a work session be scheduled for 5:00 p.m. on December 8, 2008.

A motion was made by Mayor Pro Tem J. M. Baker, seconded by Councilman R. E. King to schedule a Session for Monday, December 8, 2008 at 5:30 p.m. in the City Council Chambers of the Municipal Administration Building. Those voting in favor of the motion were: Baker, King, Evans, Hummer, Meggs, Rivers, Stimatz and Watts. Against: None. Motion carried.

e} Special Meeting in December:

Mr. Olson advised that last Friday he met with the auditors who are performing the audit of the Hugh Cale Revitalization Strategies Grant. They are ready to give a presentation for the City Council and they are requesting that it be held some time the week of December 15th.

A motion was made by Mayor Pro Tem J. M. Baker, seconded by Councilman R. E. King to call for a special meeting to be held on Monday December 15, 2008 at 5:30 p.m. in the City Council Chambers of the Municipal Administration Building for presentation and discussion of the Hugh Cale Revitalization Strategies Grant audit. Those voting in favor of the motion were: Baker, King, Evans, Hummer, Meggs, Rivers, Stimatz and Watts. Against: None. Motion carried.

f} Discussion of Joint City/County Storm Water Ordinance:

Mayor Atkinson called upon Public Utilities Director P. A. Fredette for comments.

Mr. Fredette presented an update on the Storm Water Drainage Design Manual as well as the Storm Water Ordinance. This Storm Water Design Manual is the first major planning document drafted jointly by the City and the County. This manual establishes specifications such as ditches, culverts and retention ponds. The ordinance gives officials the regulatory authority to enforce the requirements of the manual. One of the provisions in the draft ordinance is a requirement that drainage facilities be maintained by the property owners in a development. The ordinance will give local authorities the power to enforce the manual. He feels that public education is very important as homeowners need to understand the policy and why these policies are necessary.

Mr. Fredette answered questions from the Council.

6} COMMENTS AND INQUIRES ON NON-AGENDA ITEMS:

Mayor Atkinson stated that he would go around the dais and any member of Council could make comments.

City Manager Olson stated he had no further comments.

Councilman Stimatz stated he had no further comments.

Councilwoman Meggs asked Council to look at the green paper that was placed on the dais about illumination of the Christmas tree lights.

Councilman Rivers asked what was the status of the sign ordinance now.

Mr. Olson said that we have not scheduled a public hearing yet as we need additional work to be done. Staff will bring it back at a later date.

Mr. Rivers wished everyone a Happy Thanksgiving.

Mayor Pro Tem Baker said she would like to expound on what Betty said. Friday's celebration starts at 6:00 p.m. at the Courthouse and then there will be caroling down the street and to the Virginia Dare Arcade. The Christmas tree lighting will take place at the Courthouse. At the arcade Santa Claus will be there and Mrs. Claus will be reading a story after that at the Page After Page. There is a lot going on Friday night downtown.

She also wanted to mention that last meeting we didn't have time for comments so she didn't get to say what a great success she thought the Downtown Waterfront Market was. A lot of thanks to Wayne Harris and to the Mayor and certainly Denise for getting that thing off the ground. It was a huge success.

One other thing she wanted was a report on the traffic calming? We read a report in the Daily Advance but she wanted a little more than that.

Councilwoman Hummer stated she had no further comments.

Councilman King stated he had no further comments.

Councilwoman Watts said that she wanted to wish everybody a Happy Thanksgiving. She wants to thank Pastor Charles Foster for opening up the house of his church, Holy Trinity Missionary Baptist Church at 607 S. Road Street. Also she wants to thank Pastor McDonald, the minister of Olive Branch Missionary Baptist Church at 510 Brooks Avenue. They are both opening their doors for Amen Ministries to come in and to serve the community. She extended an invitation if you know anybody at all who would celebrate Thanksgiving alone to tell them to come by their way. We certainly will have food there for a plenty for everybody. If you don't feel like getting out, give us a call and we will come to you. Everyone is welcome to come and share with us. Thanks to everyone who donated.

She would like to ask Mr. Fredette as we are almost approaching January and she hopes that things are still under way and following suit as we pursue Oak Grove.

Councilman Evans asked Mr. Olson about Ranch Drive.

Mr. Olson responded that he has instructed the City Attorney to send a letter on behalf of the City to the developers of that area to discuss the items that they are missing from their subdivision plan.

Mayor Atkinson reminded everyone to be very aware of the pedestrian marked crosswalks downtown during the holidays. It is a state law that cars must stop if pedestrians step in a marked crosswalk that you have to yield or stop for that individual. The police department is out in full force and they will be watching this.

We have a special Holiday event that is going to be taking place down at Mariner's Wharf from 11:00 a.m. to 3:00 p.m. It will be a holiday market. It is going to be a bid success. We have somewhere in the neighborhood 20± vendors. We are very excited about that.

He also wished everybody a Happy Thanksgiving. The Jaycees Christmas parade will be immediately following the lighted boat parade on December 6th.

7} ADJOURNMENT:

There being no further business to come before the Council at this time, Mayor Atkinson adjourned the meeting at 9:15 p.m.

Dianne S. Pierce-Tamplen, MMC
City Clerk

Stephen S. Atkinson
Mayor