

**City Council Regular Session
April 22, 2024**

The City Council of the City of Elizabeth City met in Regular Session on Monday, April 22, 2024 in Council Chambers, located on the 2nd floor of the Municipal Administration Building, 306 E. Colonial Avenue, Elizabeth City, NC.

MEMBERS PRESENT: Mayor Kirk Rivers
Mayor Pro Tem Kem Spence
Councilman Johnson Biggs
Councilman Joseph Peel
Councilman Javis Gibbs
Councilwoman Rose Whitehurst
Councilwoman Katherine Felton
Councilman Ronnie Morris
Councilman Johnnie Walton

MEMBERS ABSENT: None

OTHERS PRESENT: City Manager Montre' Freeman
Chief of Staff Monica Cole
City Attorney Bill Morgan
Electric Superintendent Donnell White
Chief of Police J. Phillip Webster
Deputy Chief of Police James Avens
Interim Human Resources Director Anna Spence
ECDI Director Debbie Malenfant
Fire Chief Chris Carver
Deputy Fire Chief Thomas Brooks
Community Development Director Reggie Goodson
Finance Director Alicia Steward
Assistant Finance Director Brian Lewis
Public Utilities Director Dwan Bell
Parks and Recreation Director Sean Clark
Grants Management Specialist Jon Hawley
IT Director Matthew Simpson
IT Systems Analyst Pedro Holley II
City Clerk April Onley

The City Council Regular Session was called to order by Mayor Rivers at 7:04 p.m. Pastor Demetrius Stokley of Greater Faith Assembly of Christ was recognized to provide invocation, after which Councilman Biggs led the Pledge of Allegiance.

1. Agenda Adjustments and Approval:

Mayor Rivers directed the Council's attention to the prepared agenda. He asked that they add items carried forward from the Work Session to the Regular Agenda under A, including the Budget Amendment for the River City Construction Contract, the Consideration for a TDA Application for Summer Sounds, and the update from the Human Resources Committee. Councilman Walton requested the addition of a discussion about the Finance Committee to the Regular Agenda.

Motion was made by Mayor Pro Tem Kem Spence, seconded by Councilman Johnson Biggs to approve the agenda as amended. Those voting in favor of the motion were: Biggs, Peel, Gibbs, Whitehurst, Spence, Felton, Morris and Walton. Against: None. Motion carried.

2. Mayoral Proclamations / Recognitions:

a. General Federation of Women's Club – Federation Day 2024;

Mayor Rivers recognized Debbie Cherry and Rhonda Watts from the GFWC and presented a proclamation on behalf of the City Council. They noted that last year was the organization's 100th year of service. Mayor Rivers said he was always happy when he had the opportunity to recognize volunteer organizations in the community and thanked the GFWC for their service.

PROCLAMATION
GFWC-NC ELIZABETH CITY WOMEN'S CLUB
FEDERATION DAY ~ APRIL 24, 2024

WHEREAS, the General Federation of Women's Clubs of North Carolina was founded in 1902 as a statewide charitable organization, dedicated to the improvement of the communities in which they serve. With approximately 150 clubs and 4,000 members, this statewide federation contributes thousands of hours of volunteer service and over \$1 million to North Carolina each year; and

WHEREAS, the GFWC-NC Elizabeth City Women's Club is a member of the General Federation of Women's Clubs of North Carolina and the General Federation of Women's Clubs, the world's largest organization of volunteer women; and

WHEREAS, the GFWC-NC Elizabeth City Women's Club is a volunteer service organization that has been actively serving our community for over 100 years, providing crucial support for cultural, educational, health and other issues of importance to women, children and families.

NOW, THEREFORE, I, E. Kirk Rivers, Mayor of the City of Elizabeth City do hereby proclaim April 24, 2024 as **GENERAL FEDERATION OF WOMEN'S CLUB'S DAY** in Elizabeth City and encourage all our citizens to recognize and honor the countless contributions made to our city by the volunteer members of the GFWC-NC Elizabeth City Women's Club.

ADOPTED this the 22nd day of April, 2024.

E. Kirk Rivers
Mayor

Attest:

April D. Onley, NCCMC
City Clerk

b. Presentation of GADC Flag;

Manager Freeman advised that about a month ago, we received notice that Elizabeth City was awarded the Great American Defense Community award, making us the first Coast Guard Community ever to receive the designation. He presented the flag recognizing the designation, which would be displayed in City Hall. Mayor Rivers said there was a week-long conference in DC that he was able to attend and he learned that spouses are a big part of the service members' lives. There's a lot built into being a soldier and being a military community. The Coast Guard is not under the Department of Defense, but we do have many DoD members who reside here. He thanked the manager and the team he put together who wrote and submitted the application.

3. Presentations:

a. Presentation of FY 2022 Audit – PB Mares / Robert Bittner;

Mr. Bittner stated that some of the financial information he'd be presenting would be a bit "stale" since it was from 2022, but it would still show some trends that were likely continuing. He briefed the Council on the structure of the presentation, explaining that the annual report goes from the high-level statements to the fund level statements to the notes, then the required supplemental information, other supplemental information and the last piece is the compliance. The highest level of assurance that external auditors can provide is an unmodified opinion, which the City did receive on their financial statements. The ad valorem taxes are the largest revenue followed by other taxes. The percentage has not changed much over the past five years. Investment earnings are beginning to show up, which often weren't seen in municipal financials. The population metric was removed at one point and a metric was placed in that was just based on the general fund, but that was recently reinstated. COVID hurt everyone as far as property tax metrics, but everyone is starting to see that rebound. We are expecting a great increase in the 2023-2024 timeframe. Public Safety shows at the top of expenditure growth every year. We did have a hit during the COVID years, but there has been a bit of a comeback, which is expected to continue.

He noted that in addition to presenting the opinion on financial statements, auditors must also present the compliance and internal controls deficiencies. Material weakness is a deficiency in internal control that could cause problems with the financial reports. This year, there were six material weaknesses, which is down from 13 last year so the City is trending in the right direction. Some of these were repeat findings. The first was timeliness of the audit report. The LGC requires it by October, with an extended deadline of November and we are way past that. The second one is a material weakness with some reporting on some debt from a grant. The third is material compliance related to accounts receivable and revenues. These were items identified by sales tax and ABC revenues that were not reported properly. ABC had not paid the City their true up amount in a few years, so the City was actually owed a few hundred thousand dollars. The next issue involved procurement in the Water Department. The unofficial bidding process where they get three solicited bids, they couldn't find that the City got those, so that's where that one came from. None of those items was related to any sort of grant funds, so there were no issues there. Another finding was over-expenditure of the budget. There are specific rules about pre-audit certifications in general statute. The budget was overspent throughout the year in multiple different funds. In those situations, you should have a budget amendment that comes before the Council prior to that budget being expended. The sixth finding is timeliness of the bank reconciliation process. Last year's finding was about the bank reconciliations not being performed, but this year is just them not being performed in a timely manner. It is difficult to see things as they truly are if they aren't entered into the general ledger on time. Mr. Bittner added that from his understanding, most of if not all of these findings have been rectified.

They did have one program at the federal level and one at the state level that they tested, and they issued an unmodified opinion on both and found no weaknesses.

Statement of auditing standards are the required communications to units of government of whomever is charged with overseeing the finances and governance. Within it, they describe their responsibilities and their planned scope and timing. They had no issues with the accounting practices or policies. They agreed they are in accordance and did not identify any significant or unusual transactions or problems with management's timelines and estimates.

They did have a few audit adjustments this year that are included as an appendix. One was the debt in the water and sewer fund and one was the ABC sales tax. There are some accounting consultants in place, in the form of Greg Isley's firm and Susan Tezai.

Mr. Bittner moved on to financial performance indicators. He explained that beginning in 2021, the LGC started including performance indicators, which are items that are populated automatically. If something shows up as "red", it is considered a performance indicator, which means that the Council will need to have direct communication with the LGC. The City did complete one last year and PB Mares can help with that. The first one was the general fund balance indicator, which is getting better and higher. The late audit is an indicator and budget

violations are as well. Anything previously reported on requires a response from the Council. If you are on the UAL, they automatically require a performance indicator as well. The “additional issues” item is checked if there are performance indicators that have been the same two years in a row, which just means the LGC needs to follow up on them.

Mr. Bittner advised that during the course of FY 2022, the City did implement GASB 87 on leases. This is a new standard when there are new assets acquired under a lease. For the most part, the term “operating lease” is gone unless the lease is for less than 12 months. Coming soon in FY 2023, similar to GASB 87 is 96, which deals with subscription-based tech agreements where the City will have to bring on liability and assets for long-term IT subscriptions. Most everything is going cloud-based these days so that’s where this is coming from. Coming in FY 2025, just to be aware, is statement #101 on compensated absences. The City will be required to bring on board a portion of accrued sick leave. The standard requires there to be some estimation of how much sick leave will be paid out. It will potentially transfer as a debt if you pick up someone from another municipality that carries over their own sick leave. This will apply to your own employees as well. There will have to be an estimation for the percentage that is actually used by the employees. Right now, the state and Local Government Finance Committee have been trying to figure out how they’ll do that but there’s been a lot of concern with the smaller municipalities. I imagine Elizabeth City wouldn’t have a problem.

Councilman Peel asked if what he’s referencing is the same as what recently happened with the schools. Mr. Bittner said it’s not quite the same. We carry a sick leave balance, there’s just no liability on the books for it. Now, we’ll have to carry a portion of it. Operationally, it will not make much difference, but from a record of long-term liability, it will just be another item that shows up on that document, similar to the accrued vacation that’s already on there. In the situations where sick leave can transfer over, there can be some indications if someone is coming over with a large balance you may need to take on a portion of that and accrue for it. It is not going to be an operational so much as an accounting type of item.

Councilwoman Felton asked if he was saying if the City hired someone from another agency and that person had sick leave left on the books from the other place, the City would have to pick up that sick leave. Mr. Bittner noted that most municipalities generally carry it over from place to place, because it becomes a retirement vessel. There’s never been much consideration to that because it doesn’t go over as actual time. A lot will depend on how the actual policy is fully written out. I would imagine there would be many sample policies coming out. It’s just something to be aware of, but nothing to be concerned about. Ultimately, it will make the financial statement document another page of two longer.

Manager Freeman asked if he would provide him with the fund balance total for FY 2022. Mr. Bittner confirmed that he would get that to him.

Councilman Walton said he read through the contract the City initially signed. When doing a contract, promptness would have been one of the things the City would have wanted to achieve. Both 2021 and 2022 were late and if things are consistent, 2023 will be late. Have we administratively done our part for 2022? Mr. Bittner stated that everything with 2022 is complete. Councilman Walton asked if it was better than 2021. Mr. Bittner said it was but there were some problems. The LGC did have it in their possession but they have not commented on it yet. PB Mares submitted it through the portal. Councilman Walton noted that people on social media keep coming for the Council saying there’s no improvement. Mr. Bittner stated that it’s clear there’s some improvement in that you went from 13 findings to six, and remember some of that information is stale. By the time we got the 2021 audit done, 2022 had already come and gone. If you had an issue, it would have been difficult to go back and fix it. Going forward, my understanding is that these things have been handled but we’re in an arrears situation so there can be things that are found. When you’re in an arrears situation, the likelihood of finding things is higher. I don’t think 2023 could be on time because it was due last November, but I think 2024 would be on time. Councilman Walton asked for the date the City sent his firm the last piece of information. Mr. Bittner said the last piece was received at the end of March. When they go through their review processes, which are robust, they have someone prepare the audit, then review, then someone else reviews, and then an engagement quality reviewer from another office. If they’re waiting on something that’s not ready to be

reviewed, it's not ready even if it's only waiting on one or two items. It may have more and more questions if it's gone through so many times.

Councilman Walton asked if most of the six findings were material. Mr. Bittner replied that yes, they were as PB Mares would not have presented them if they weren't. Councilman Walton asked if they were anything that would have thrown things way off. Were they easily fixable?. Mr. Bittner explained that they are still sitting with a few of them, like the late audit. Councilman Walton noted that the next one being late would affect us due to the taxes. Mr. Bittner confirmed that was correct. The new LGC rules state that as of March 31st, they would put you on the UAL and then if you have not put in your audit by June 30th, they can withhold your sales tax on the second offense. The first offense they would not withhold. There is a rule where you can request a waiver. With the way it's been written, you have time to catch up and not be withheld. The withholding amount isn't lost to you though. As soon as you submit, the money is yours because they can't take your money. You still have the opportunity to beat that. I have people in place to start 2023 in a week if it's ready to go.

Mayor Rivers asked if the funds from the ABC board that were identified had been collected. Manager Freeman said for 2022, yes. Mr. Bitter noted that the funds were from the true-up payment. Mayor Rivers thanked Mr. Bittner for his presentation. He thanked City staff for working together to get another audit completed and moving the City a step closer to being back on track.

Motion was made by Councilman Joseph Peel, seconded by Mayor Pro Tem Kem Spence to accept the FY 2022 audit. Those voting in favor of the motion were: Biggs, Peel, Gibbs, Whitehurst, Spence, Felton, Morris and Walton. Against: None. Motion carried.

4. Comments from the Public:

Mayor Rivers inquired if there were any persons present who wished to speak before the Council. Upon the Clerk's reply that there was one, the Mayor asked that they be called to the podium.

Holly Audette – 609 West Main Street, Elizabeth City, NC – Mrs. Audette stated that over the past weekend, the Tar Heel cyclists were present in town and the feedback they received from guests was that they were thrilled with the Harbor of Hospitality. She thanked ECDI and Debbie Malenfant, as well as all of the volunteers who worked to make that event great. She wanted to talk about the impact of crime and its hindrance on Elizabeth City's progress. She was concerned that we may take a backward turn in that regard. Incidents matter, but perception does too. There were many times over the years that people believed you could not go downtown safely and she worried we would return to that way of thinking. She wanted to stop this from becoming a growing trend. One of the most significant pieces of research involving crime in a downtown area involves the hours of operation of businesses that serve alcohol. She felt everyone would be stunned to learn that an hour of extended time in a place that serves alcohol has a huge impact on crime, including rape, assault, and other various serious offenses. She urged the Council to consider some options for our venues that serve alcohol because she felt that they could be hugely responsible for changing those statistics. She suggested the Council could have a meeting with downtown businesses involved in that regard. She also briefly spoke about economic development and jobs. She felt we had an excellent economic developer and understood how difficult it was to recruit jobs to northeastern North Carolina. We have a major operation that wants to come to Elizabeth City and bring jobs paying almost \$50,000 on average. They want to come here, but every county around here wants them too. It is not often that we're going to find an employer that wants to come to our area with 25 jobs paying \$50,000 each. What are we doing to make sure that we become their location of choice? What we shouldn't do in my opinion is question them on the basis of what the law already protects us from. We have the 14th Amendment, four federal labor laws, one state labor law, all of which address how you hire and every one of them is specifically targeted to what people look like. When we delay a public hearing to try to get these jobs, we raise a concern that doesn't need to be raised. I recognize every single member of this Council cares about job opportunities for our residents and I know you're genuine about taking care of your constituents, but please be responsible when you are considering the impact of things that delay the possibilities. She reminded the Council that they don't meet their own standards for employment in the City. In Elizabeth City, the Black population accounts for less than 50% of

the total population, but the City's work force reflects a greater number of Black employees than employees of any other race. If you're in the area and have a company begging you to open the doors and you hold all the cards, why would that company say they need to deal with that? She asked the Council to be very careful and considerate when they asked for delays, even with genuine hopes of taking care of their constituents. She urged them to remember there were other considerations to keep in mind as well. She did not feel that hiring should be based on what a person looks like, but on his or her qualifications and skills.

5. Approval of Minutes:

a. Consideration – Approve April 3, 2024 Special Meeting Minutes;

Motion was made by Councilman Joseph Peel, seconded by Mayor Pro Tem Kem Spence to approve the minutes with any necessary corrections. Those voting in favor of the motion were: Biggs, Peel, Gibbs, Whitehurst, Spence, Felton, Morris and Walton. Against: None. Motion carried.

b. Consideration – Approve April 8, 2024 Budget Work Session Minutes;

Motion was made by Mayor Pro Tem Kem Spence, seconded by Councilman Javis Gibbs to approve the minutes with any necessary corrections. Those voting in favor of the motion were: Biggs, Peel, Gibbs, Whitehurst, Spence, Felton, Morris and Walton. Against: None. Motion carried.

c. Consideration – Approve April 8, 2024 Regular Session Minutes;

Motion was made by Councilman Joseph Peel, seconded by Mayor Pro Tem Kem Spence to approve the minutes with any necessary corrections. Those voting in favor of the motion were: Biggs, Peel, Gibbs, Whitehurst, Spence, Felton, Morris and Walton. Against: None. Motion carried.

6. Consent Agenda:

Mayor Rivers read the Consent Agenda item into the record, as follows:

a. Consideration – Purchase of New Handguns Using Equitable Sharing Funds;

Mayor Rivers requested the Council's pleasure on the Consent Agenda.

Motion was made by Mayor Pro Tem Kem Spence, seconded by Councilman Javis Gibbs to approve the Consent Agenda. Those voting in favor of the motion were: Biggs, Peel, Gibbs, Whitehurst, Spence, Felton, Morris and Walton. Against: None. Motion carried.

7. Regular Agenda:

a. Items Carried Forward from Work Session (*As Added During Agenda Adjustments*);

i. Consideration – Budget Amendment – River City Construction Contract;

Motion was made by Mayor Pro Tem Kem Spence, seconded by Councilman Johnson Biggs to approve the budget amendment for River City Construction. Those voting in favor of the motion were: Biggs, Peel, Gibbs, Whitehurst, Spence, Felton, Morris and Walton. Against: None.

to retirees so we can make sure we capture them, and all other days are for current employees. Our annual biometric screenings will be from June 3rd to June 6th at Knobbs Creek in the gymnasium. The second session of Mental Health Mondays will be coming up in May, as well as Lunch-and-Learn in June, which will be geared at meal prep.

Mayor Rivers thanked the Wellness Committee and declared that it was inspirational to see the amount of time that they put into ensuring the employees understood the benefits of eating well and being healthy. He asked the directors to stress to their employees that they should engage in these programs and take part in some of these events. These are free to employees and should be encouraged. He was still personally stuck on salad in a jar because that was such a great event and he was glad to know the City was continuing to prioritize health.

b. Consideration – Project White Eagle;

Motion was made by Councilman Joseph Peel, seconded by Councilman Johnson Biggs to call for two public hearings at the 7:00 p.m. May 13, 2024 Regular Session for Project White Eagle. One hearing will be to consider a State of NC economic incentive by way of a Building Reuse Grant and one will be to consider a State of NC economic development incentive by way of application to OneNC.

Councilman Walton said he felt it was good to have debate on certain issues because anytime someone had passion for something, it was important to hear that person out. He didn't believe anyone was saying they didn't want Project White Eagle to come. All he'd asked for was someone to bring him some additional information. Manager Freeman advised that he did have additional information if the Council would like to hear it at this time. Councilman Walton noted that the speaker who came forward during the comment period was a lot like him. She brought up the point of the NBA and there were many Black people on NBA teams but there are no Black people in the audience because they can't afford to go to a game. If we're going to have to pay \$10,000 for this company to get a grant, this money comes from all over the City. If you're going to take my money, at least respect me enough to give me a few positions and don't let one of them be the guy taking the trash out. If you don't change your attitude about things, it'll always stay the same and progress will never happen. He remembered when TAMSCO came and during Vision2020, he'd remarked that they weren't hiring people like they should. Three months later, they had to close down and pay the City the money back that we'd put up for them. He pointed out that he was talking about real -life experiences. He was going to vote for it, but he wanted to change the attitude on who should work there. No one company should just be one color or one race. We just need to have equality about things. I like to see things done fairly and right.

Councilwoman Felton said in 1793 when Elizabeth City was founded and incorporated, the City's complexion was the opposite of what it looks like now. It's time for us to look at rebalancing it again. The first time Mr. Hinton talked about White Eagle, I mentioned my concerns to him at that time. Had it been revisited, I don't think there would have been any hold up. My question is just about how White Eagle plans to make sure diversity and equity will be included in the hiring practices.

Those voting in favor of the motion were: Biggs, Peel, Gibbs, Whitehurst, Spence, Felton, Morris and Walton. Against: None. Motion carried.

c. Update – Violent Crimes Reduction Initiative (Funding From Congressman Davis);

Chief Webster explained that the ECPD had applied for these funds in 2023, and Jon Hawley led the way in helping them get them. The department will be seeking to purchase four items with the funding. The first item is a NIBIN machine, which "fingerprints" shell casings. Another item is a shot spotter to detect gunfire in the city. The third is an automated fingerprint machine, which gives nearly instant feedback on fingerprints left at crime scenes. The last piece is a mobile device forensic extraction unit. When we get the proper search warrant, we can go into that mobile device and track suspects possibly linked to a crime. At the time we did the application, we had quotes that are now stale so we are in the process of getting new ones. We reached out to Congressman Davis about getting the funds and were told we had to go through the application process. We don't know when exactly the funds will drop, but it's like

we're applying for something we have confirmation we'll get. We will update the Council as soon as we hear a specific date.

Mayor Rivers asked if that as they move forward in the budget, they make sure that all the new equipment works together and can tie into one another. Chief Webster confirmed that was a priority.

d. Discussion – Finance Committee (As Added During Agenda Adjustments);

Councilman Walton stated that prior to the 2022 election; the Council had rules and regulations about how they'd handle the Finance Committee. They had many discussions about the committee, nearly to the point where they decided to disband it. He did not believe that three people should be deciding how the City spends money and those were some of the points they discussed back then. We came up with a standalone committee. We already have rules in place. Are we going to go back to the rules that already exist? If we haven't changed the policy, the policy is what we go by. He noted that he'd given everyone a copy of the rules he was referencing, but there were a few members who were not present. He did not believe this committee was something that needed to be changed or should have been changed. He felt the Council should return to the earlier practice.

Mayor Rivers responded that as the mayor, one thing he stood behind was doing things the right way and that's how he did things. He reminded the Council that when the various committees were established each year, he received an 8-0 vote on the selected chairpersons each committees. He noted he could pull the date from the meeting if anyone would like to see that. The Council has voted twice to accept his recommendations. Councilman Walton asked the City Attorney if that counted. Attorney Morgan replied that an 8-0 would count as a super-majority vote.

Councilman Walton reiterated that he did not believe that only three people should be able to talk about finances. He wanted to be able to talk to Robert Bittner if he wanted to. Mayor Rivers stated that Councilman Walton could absolutely talk to Robert Bittner if he wanted to, and confirmed that he was on the Finance Committee. All members of the Council also belong to the Finance Committee/ He'd asked that all the chairs from each committee act as a point person to help give the rest of Council insight into the individual departments, but the entirety of the Council were on the Finance Committee. The manager and department heads represented policy. Sometimes you can be heavy on one side and not the other, but you need a balance.

Councilman Walton opined that was not a good way to look at it because no one should be that deep into those finances except the manager and the finance director. Mayor Rivers stated he treated everyone around the dais as a point person. Councilman Walton reiterated that not everyone required the right to talk about finances or question the finance director. Mayor Rivers noted that as the mayor, he could not vote except in the case of a tie, but he could appoint to committees. Every member on the City Council is on the Finance Committee. Councilman Walton did not feel that everyone was really on the committee. He believed the committee changed when it was fit for it to do so. Mayor Rivers reminded Councilman Walton that he had voted to accept his recommendations, and they had passed 8-0. He had the opportunity to say no. Once it's in, it's there. When we bring the appointments back after the next elections, you can vote differently if you feel differently.

7. Closed Session – As Allowed by NCGS 143-318.11(a)(3) – Consultation with City Attorney, NCGS 143-318.11(a)(5) Acquisition of Property / Contract Negotiation And NCGS 143-318.11(a)(6) Discussion of Personnel;

Motion was made by Mayor Pro Tem Kem Spence, seconded by Councilman Joseph Peel to enter Closed Session as allowed by NCGS 143-318.11(a)(3) for consultation with City Attorney, NCGS 143-318.11(a)(5) for Acquisition of Property / Contract Negotiation and NCGS 143-318.11(a)(6) discussion of personnel at 8:29 p.m. Those voting in favor of the motion were: Biggs, Peel, Gibbs, Whitehurst, Spence, Felton, Morris and Walton. Against: None. Motion carried.

Mayor Rivers announced there would be a brief recess while the room was cleared.

The Council returned to open session at 10:29 p.m.

8. Adjournment:

Having no further business to be discussed, Mayor Rivers adjourned the meeting at 10:29 p.m.

E. Kirk Rivers
Mayor

April Onley, NCCMC
City Clerk

DRAFT

