

**City Council Regular Session
November 13, 2023**

The City Council of the City of Elizabeth City met in regular session on Monday, November 13, 2023 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
Councilwoman Rose Whitehurst
Councilwoman Katherine Felton
Councilwoman Barbara Baxter
Councilman Johnnie Walton

MEMBERS ABSENT: Councilman Javis Gibbs

OTHERS PRESENT: City Manager Montre' Freeman
City Attorney Bill Morgan
Electric Superintendent Donnell White
Chief of Police J. Phillip Webster
Human Resources Director Montique McClary
Fire Chief Chris Carver
ECDI Director Debbie Malenfant
Finance Director Alicia Steward
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 7:00 p.m. Councilwoman Whitehurst provided the invocation, after which Councilman Biggs led the Pledge of Allegiance.

1. Agenda Adjustments and Approval:

Mayor Rivers asked the Council's pleasure on the prepared agenda. Councilman Peel requested the addition of a Closed Session as allowed by NCGS 143-318.11(a)(4) for Economic Development and Business Expansion.

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, Whitehurst, Spence, Felton, Baxter and Walton. Against: None. Motion carried.

2. Mayoral Proclamations / Recognitions:

a. Max Roach Day;

Don Pendergraft of the Museum of the Albemarle was present to advise that January 10th, 2024 would be Max Roach's 100th birthday and various entities in Elizabeth City would be honoring him on that day. The ceremony will kick off at 6:00 p.m. and he asked that the City would consider proclaiming the day as Max Roach Day. Mayor Rivers stated that he was pleased to announce they'd already decided to name the day after Max Roach and he had a proclamation prepared to read into the record declaring it as such.

***PROCLAMATION
Declaring "Max Roach Day"***

*in Elizabeth City
January 10th 2024*

WHEREAS, Max Roach was one of the most influential drummers of the bebop era, a new jazz movement which he helped pioneer in the 1940s; and

WHEREAS, although some years later relocating to Brooklyn, Max Roach was a native of Pasquotank County, having been born in Newland on January 10th, 1924; and

WHEREAS, from his beginnings drumming in gospel ensembles to his more formal training at the Manhattan School of Music, Max Roach developed a unique style of playing and quickly became renowned for his incredible skills as a percussionist; and

WHEREAS, not only supremely talented as a musician, he was also known for his political commentary and intellect, which he often combined along with his recordings, becoming a spokesperson against injustice and leading the charge in the pursuit of freedom; and

WHEREAS, on what would have been Max Roach's 100th birthday, January 10th, 2024, his community will come together to commemorate his musical legacy.

NOW THEREFORE, I, E. Kirk Rivers, Mayor of Elizabeth City, do hereby proclaim the 10th day of January as **Max Roach Day** and I invite all citizens to join us as we acknowledge and celebrate a true inspiration.

ADOPTED, this the 13th day of November, 2023

E. Kirk Rivers
Mayor

April D. Onley, NCCMC
City Clerk

b. Harbor Towns Board;

Mayor Rivers announced that he was excited that Elizabeth City was going to be classified as a harbor town. He wanted to recognize that this group helped bring \$2 million to our community as part of the project. He presented a certificate and Key to the City to Chairman Didow who oversaw the board. He thanked them for their work and the many hours they dedicated to the project. Professor Didow thanked the Council for the recognition and acknowledged that this has always been a group effort. He noted that the mayor had long been their most enthusiastic supporter because he knew that it would be a boon to the entire area.

3. Comments from the Public:

There were no comments from the public.

4. Public Hearings:

a. Hold a Public Hearing – Amendment to the FY 2023-2024 Fee Schedule for the Purchase Price of “Black” Garbage Cans;

Mayor Rivers declared the public hearing open and inquired of the Clerk if there were any speakers who wished to be heard. Upon the Clerk's reply that there were none, Mayor Rivers closed the hearing.

Motion was made by Councilman Johnson Biggs, seconded Councilman Joseph Peel to adopt the ordinance amending the FY 2023-2024 fee schedule to change the purchase price of the “black” 95-gallon garbage cans to \$85 plus tax. Those voting in favor of the motion were: Biggs, Peel., Whitehurst, Spence, Felton, Baxter and Walton. Against: None. Motion carried.

Ordinance #2023-11-01
An Ordinance Amending the FY 2023-2024 Fee Schedule
of the City of Elizabeth City

WHEREAS, each year, the City of Elizabeth City adopts a Fee Schedule, which corresponds to the annual budget; and

WHEREAS, the City Council adopted the FY 2023-2024 Budget and Fee Schedule on June 26, 2023; and

WHEREAS, within the FY 2023-2024 Budget, the Fee Schedule reported that 95-gallon “Black” refuse cans could be purchased for \$60 plus tax; and

WHEREAS, after review, it was determined that the former cost is antiquated and does not account for operational costs to deploy or maintain the containers; and

WHEREAS, the new rate for the trash receptacles has been determined to be \$85 plus tax; and

WHEREAS, this fee shall be required to be paid by any account that wishes to obtain a new “Black” 95-gallon refuse can; and

WHEREAS, during the October 23rd, 2023 City Council meeting, the Council called for a Public Hearing, which was subsequently held during the November 13th Regular Session, at which time a quorum of the membership was present.

NOW THEREFORE BE IT ORDAINED that the City of Elizabeth City Fee Schedule for FY 2023-2024 is hereby amended to include:

- I. Refuse Container (95-gallon) - \$85 plus tax
- II. All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed to the extent of such conflict.
- III. If any section, subsection, paragraph, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed severable and such holding shall not affect the validity of the remaining portions hereof.
- IV. The enactment of this ordinance shall in no way affect the running of any amortization provisions or enforcement actions, or otherwise cure any existing municipal code violations.
- V. This ordinance shall be in full force and effect and included in the City of Elizabeth City’s fee schedule from and after the date of its adoption. This ordinance may be amended from time to time with the consideration of the City Council of the City of Elizabeth and with the requisite Public Hearings associated with such decisions.

ADOPTED this the 13th day of November, 2023.

E. Kirk Rivers
Mayor

April D. Onley, NCCMC
City Clerk

b. Hold a Public Hearing – Amendment to the FY 2023-2024 Fee Schedule for Opt-in Program for Former Curbside Recycling Customers;

Mayor Rivers declared the hearing open and inquired of the Clerk if there were any speakers who wished to be heard. Upon the Clerk's reply that there were none, Mayor Rivers closed the hearing.

Motion was made by Mayor Pro Tem Kem Spence, seconded by Councilman Joseph Peel to adopt the ordinance amending the FY 2023-2024 fee schedule to adopt a \$5 fee for secondary cans.

Councilman Biggs asked if the \$5 fee would only pertain to those customers using the can as a secondary can? Mayor Rivers stated he'd like to know about people who are currently using multiple cans as well. Councilman Biggs said he felt like we'd have to charge this fee going forward but others who already had multiple cans would have to be grandfathered in. Councilman Peel stated that the intention is that there will be one can per household included with the refuse charge and any additional cans that are picked up will cost \$5 per month. Mayor Pro Tem Spence pointed out that if they pay the \$85, they're paying for a new black can. The \$5 charge is for keeping the orange can that they already have. He stated that he personally did not agree with selling a black trash can and then charging them monthly on top of it because we're not charging the people who have them now. You're double-charging in my opinion if you make them pay for the can and then have them pay \$5 on top of it. Councilwoman Felton said her recollection was that only the orange cans would be \$5 if the residents decided to keep them and the only other discussion was that the black trashcans needed to go up in purchase price because they were too low.

Mayor Rivers pointed out that for the \$85 regular black cans, if someone builds a new house, we're going to charge them for the original can. If you're going to have two cans, your second can would be the orange one. If there are duplexes or apartments, the driver has to decide where those cans go and who they belong to. He said he was under the impression that if you wanted a second can, it would be the orange can. Councilman Biggs explained that would be fine, but as it stands today, there's nothing today that says I can't just buy a trashcan upfront. The price of the can covers the City's cost of purchasing it. You have to buy the can if you set up service and then pay the refuse fee on your bill every month. I want to make sure that this fee covers any secondary can and I may have gotten a little wordy with what I was trying to say. If you have two cans at your house, this will help offset the cost it costs the City to transport the waste. If we want to say that going forward we won't send out another black can, that's fine.

Manager Freeman asked that a situation in which someone wanted their second can to be black and not orange was part of the discussion. We said they could still pay the \$5 monthly fee for that because at the end of the day, any can after the first one is getting charged an extra pick-up rate. So with a new home, you'd just be paying the \$85 for the original and the monthly refuse charge on your bill but not the extra \$5 fee. Mayor Rivers said he understood that, but how do you differentiate? He knew we said we'd put a sticker on the orange cans. Manager Freeman said we'd still use the stickers for whatever the second can happened to be.

Councilman Biggs agreed that the color really doesn't matter. If we're grandfathering in all the current secondary cans, then we already know about those and we're not charging there. The black ones don't matter because they're the least of the worries. The orange ones are what we're worrying about. If someone calls tomorrow and says "I want another black can to be picked up on top of the one I already have," we need to close the loophole so they don't get it for free. We just need to change the language that says a secondary can regardless of color or size is \$5 extra monthly, effective today.

Mayor Pro Tem Spence reiterated that if they buy a black can for \$85, he did not feel it was fair for them to have to pay \$5 extra per month on top of that. I thought we just were going to have them decide if they wanted to keep the orange one and put a sticker on it and charge \$5 a month from there. Councilman Peel pointed out that if he had a black and an orange can already, why would he give up his orange can and buy a new black one for \$85? Mayor Pro Tem Spence said you wouldn't. Councilman Biggs pointed out that if the purchase price of a new can is \$85 and we're not going to charge them for having a second can, regardless of what color that can is, and he needs a second can, if he called downtown to get another can and he's not charged the fee beyond the base service then the City begins to lose money in 17 months' time. New residents have to pay for their first can and then the service fee to pick it up, \$24 per month or whatever it is, even after the can is paid for. The second can is just a \$5 convenience fee and it doesn't matter the color. It just covers the operational expense for us to pick it up and take it to the landfill. We're only talking about the service. If they want the bigger can, they have to pay for it. If not, it's just \$5 a month. Mayor Pro Tem Spence said he understood what Councilman Biggs was getting at now and he agreed with him. Mayor Rivers clarified that we're grandfathering in those who already had multiple cans. Manager Freeman confirmed that was correct. We don't have that kind of time to try to determine who has what kind of cans and where already. We're just worried about who has what going forward.

Councilman Peel said he thought if we just took the color or size out of the ordinance that would be fine. Director Bell noted that whether we tag the can or not, Customer Service will send out work orders for service. He agreed that what currently exists is grandfathered and will not incur extra charges.

Mayor Pro Tem Kem Spence amended his original motion to adopt the ordinance minus any reference to color or size of the secondary cans. Councilman Joseph Peel accepted the amendment and seconded the motion. Those voting in favor of the motion were: Biggs, Peel, Whitehurst, Spence, Felton, Baxter and Walton. Against: None. Motion carried.

Ordinance #2023-11-02

An Ordinance Amending the FY 2023-2024 Fee Schedule of the City of Elizabeth City

WHEREAS, each year, the City of Elizabeth City adopts a Fee Schedule, which corresponds to the annual budget; and

WHEREAS, the City Council adopted the FY 2023-2024 Budget and Fee Schedule on June 26, 2023; and

WHEREAS, within the FY 2023-2024 Budget, the Fee Schedule reported that Solid Waste collection fees were \$23.00, a rate which included weekly pickup of refuse and recyclables at a max of two containers; and

WHEREAS, due to large increases in recycling costs that are no longer sustainable, including vehicle wear and tear and staffing needs, the City of Elizabeth City has determined that curbside recycling will no longer be an offered service; and

WHEREAS, current customers will be given the option to repurpose their can used formerly for recyclables as a secondary garbage can for a \$5 a month fee; and

WHEREAS, those customers who do not wish to utilize their secondary can any longer will have that can removed from the premises by the Public Works Department; and

WHEREAS, any additional trash receptacles will be subject to a \$5 per month convenience fee, regardless of the size or color of said receptacle; and

WHEREAS, during the October 23rd, 2023 City Council meeting, the Council called for a Public Hearing, which was subsequently held during the November 13th Regular Session, at which time a quorum of the membership was present.

NOW THEREFORE BE IT ORDAINED that the City of Elizabeth City Fee Schedule for FY 2023-2024 is hereby amended to include:

- I. Residential Refuse (weekly pick up, maximum 1 container)
- II. Commercial Refuse (weekly pick up, maximum 1 container)
- III. Opt-In Program for Secondary 65-gallon Can - \$5 per month (Must be set up with Customer Service and can must be tagged for the program).
- IV. All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed to the extent of such conflict.
- V. If any section, subsection, paragraph, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed severable and such holding shall not affect the validity of the remaining portions hereof.
- VI. The enactment of this ordinance shall in no way affect the running of any amortization provisions or enforcement actions, or otherwise cure any existing municipal code violations.
- VII. This ordinance shall be in full force and effect and included in the City of Elizabeth City's fee schedule from and after the date of its adoption. This ordinance may be amended from time to time with the consideration of the City Council of the City of Elizabeth and with the requisite Public Hearings associated with such decisions.

ADOPTED this the 13th day of November, 2023.

E. Kirk Rivers
Mayor

April D. Onley, NCCMC
City Clerk

5. Approval of Minutes:

a. Consideration – Approve October 23, 2023 Work Session Minutes;

Motion was made by Councilman Johnson Biggs, seconded by Councilwoman Katherine Felton to approve the minutes with any necessary corrections. Those voting in favor of the motion were: Biggs, Peel, Whitehurst, Spence, Felton, Baxter and Walton. Against: None. Motion carried.

b. Consideration – Approve October 23, 2023 Regular Session Minutes;

Motion was made by Councilwoman Katherine Felton 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, Whitehurst, Spence, Felton, Baxter and Walton. Against: None. Motion carried.

6. Consent Agenda:

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

- a. Consideration – Accept Abstract of Votes from 2023 Municipal Election;**
- b. Consideration – Adopt Amended Resolution for Bond Inducement;**

RESOLUTION AMENDING RESOLUTION GIVING PRELIMINARY APPROVAL TO ISSUANCE OF MULTIFAMILY HOUSING REVENUE BONDS TO FINANCE THE ACQUISITION, REHABILITATION AND EQUIPPING OF WOODSTOCK APARTMENTS I, II AND III

WHEREAS, the City Council (the “City Council”) of the City of Elizabeth City, North Carolina (the “City”) met in Elizabeth City, North Carolina at 7:00pm on the 13th day of November, 2023; and

WHEREAS, pursuant to Section 160D-1311(b) of the General Statutes of North Carolina, the City is granted the power to exercise directly the powers of a housing authority organized pursuant to the North Carolina Housing Authorities Law, Article 1 of Chapter 157 of the General Statutes of North Carolina, as amended (the “Act”); and

WHEREAS, the Act in N.C.G.S. § 157-9 gives the City acting as a housing authority the power “to provide for the construction, reconstruction, improvement, alteration or repair of any housing project” and “to borrow money upon its bonds, notes, debentures or other evidences of indebtedness and to secure the same by pledges of its revenues”; and

WHEREAS, on April 10, 2023, the City Council adopted a resolution (the “Preliminary Resolution”) giving preliminary approval to the issuance of the City’s multifamily housing revenue bonds in an amount not to exceed \$17,000,000 (the “Bonds”), the proceeds of which would be loaned to an affiliated or related entity of Fitch Irick Corporation, a North Carolina corporation (the “Company”), to finance the acquisition, rehabilitation and equipping of a qualified residential rental project known as Woodstock Apartments I, II and III, consisting of 206 units and located at approximately 1401 Walker Avenue in the City (the “Development”); and

WHEREAS, the Borrower has determined that the amount of tax-exempt debt to be provided to finance the cost of the Development is more than originally anticipated, and has requested the City to amend the Preliminary Resolution to increase the amount of the Bonds to an amount not to exceed \$30,000,000; and

WHEREAS, the Borrower will request an allocation of volume cap under Section 146 of the Internal Revenue Code of 1986, as amended, for the Bonds in the amount of \$30,000,000 from the North Carolina Federal Tax Reform Allocation Committee, based on the recommendation of the North Carolina Housing Finance Agency;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ELIZABETH CITY:

1. The City hereby confirms the determination it made in the Preliminary Resolution that the Development will involve the acquisition, rehabilitation and equipping of a multifamily housing facility, and that therefore, pursuant to the terms and subject to the conditions hereinafter stated and the Act, the City agrees to assist the Company in every reasonable way to issue bonds to finance the acquisition, rehabilitation and equipping of the Development, and, in particular, to undertake the issuance of the City’s multifamily housing revenue bonds (the “Bonds”) in an amount now estimated not to exceed Thirty Million Dollars (\$30,000,000) to provide all or part of the cost of the Development.

2. The Authority intends that the adoption of this resolution be considered as an expression of official intent toward the issuance of the Bonds within the meaning of Treasury Regulations Section 1.150-2 promulgated by the Internal Revenue Service pursuant to the Internal Revenue Code of 1986, as amended.

3. All other terms of the Preliminary Resolution remain in full force and effect.
4. This resolution shall take effect immediately.

Council member _____ moved the passage of the foregoing resolution and Council member _____ seconded the motion, and the resolution was passed by the following vote:

Ayes: _____

Nays: _____

Not voting: _____

* * * * *

I, April Onley, City Clerk to the City of Elizabeth City, North Carolina, DO HEREBY CERTIFY that the foregoing is a true and complete copy of so much of the proceedings of the City Council for the City of Elizabeth City, North Carolina, at a regular meeting duly called and held on November 13, 2023, as it relates in any way to the resolution hereinabove set forth, and that such proceedings are recorded in the minutes of the City Council.

WITNESS my hand and the seal of the City Council of the City of Elizabeth City, North Carolina, this 13th day of November, 2023.

(SEAL)

April Onley, City Clerk
City of Elizabeth City, North Carolina

- c. **Consideration – Call for a Public Hearing – Rezoning – RZ 01-23;**
- d. **Consideration – Accept Land Parcels / Submit Letter to NCDOT for Sitework;**
- e. **Consideration – Award of Design Services for Water Street Transformation Project;**

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

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

7. Regular Agenda:

- a. **Any Item Removed from the Consent Agenda;**

There were no items removed from the Consent Agenda.

- b. **Update – Rivershore Road Easements;**

Attorney Morgan said that he had good news to share on the Rivershore Road Bridge Project, which included five easements. He praised Director Bell and RJ Lassiter for their work on meeting with the property owners and noted that it was a huge undertaking. All of the easements have been signed and recorded with the Register of Deeds. The moratorium goes into effect February 1st, so we will have to wait a bit, but a lot of advance work has been completed. He explained that the moratorium involves aquatic wildfire and environmental concerns so we are often held up to those in NC.

Councilman Biggs asked if the City could put out something like a flow chart about what's been done and what needs to be done on this bridge because people think it's a small undertaking and that couldn't be further from the truth. There's a lot that has to go on here and after you take the moratoriums into consideration, there's even more. We need to put something out there detailing just how much goes there and then how we get held up by circumstances beyond our control. Manager Freeman asked if they could give him until next week, and then he could get something up on that for sure.

Manager Freeman noted that he did want to take a moment to recognize Deputy Chief Avens before the Council retired to Closed Session. Deputy Chief Avens was voted president and keynote speaker of his graduating class at AOMP last week. He was proud of what he'd done at the Administrative Officer Manager Program at NC State over the last 11 weeks. Deputy Chief Avens thanked the manager and the Council as well as Chief Webster for the opportunity and the support. He finished the program with four As and one B+ and he felt that he got out of it what he put into it. He was proud that he was selected to be the class president and that he had the opportunity to learn so much while he was there.

Manager Freeman shared that Elizabeth City had been selected to be featured at a conference due to their partnership with Fybe. He would be a panelist in Durham beginning tomorrow.

8. Closed Session- As Allowed by NCGS 143-318.11(a)(4) – Economic Development and Business Expansion *(As Added During Agenda Adjustments);*

Motion was made by Mayor Pro Tem Kem Spence, seconded by Councilman Johnson Biggs to enter Closed Session as allowed by NCGS 143-318.11(a)(4) for Economic Development and Business Expansion at 7:45 p.m. Those voting in favor of the motion were: Biggs, Peel, Whitehurst, Spence, Felton, Baxter and Walton. Against: None. Motion carried.

Mayor Rivers announced there would be a brief recess to clear the room.

The Council returned to open session at 8:33 p.m.

9. Adjournment:

Having no further business to be discussed, Mayor Rivers adjourned the meeting at 8:33 p.m.

E. Kirk Rivers
Mayor

April Onley, NCCMC
City Clerk

