

**City Council Regular Session
October 23, 2023**

The City Council of the City of Elizabeth City met in regular session on Monday, October 23, 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
Councilman Javis Gibbs
Councilwoman Rose Whitehurst
Councilwoman Katherine Felton
Councilwoman Barbara Baxter
Councilman Johnnie Walton

MEMBERS ABSENT: None

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. Mayor Pro Tem Spence provided the invocation, after which Councilwoman Whitehurst led the Pledge of Allegiance.

1. Agenda Adjustments and Approval:

Mayor Rivers advised that several items would be carrying forward from the earlier Work Session. He asked that they add a Call for a Public Hearing on Garbage / Recycling; Consideration to Award Force Main Relocation for Rivershore Road / Fairfax Avenue Bridge Project; and Consideration to Adopt a Resolution of Commitment to Implement Compliant NPDES MS4 Program to the Consent Agenda. On the Regular Agenda, the Manager's Plan for Customer Service would carryover from the Work Session. He also noted that they would need to hold a Closed Session for Personnel as they did not make it to that during the earlier meeting.

Councilman Walton said he felt that the recycling and garbage conversation should be on the Regular Agenda instead of the Consent Agenda because they still needed to work out a few pieces and make sure everyone understood the process. Mayor Rivers offered that if it pleased the Council, that item could become item A on the Regular Agenda.

Councilwoman Baxter requested a discussion on River's Landing and one on the City's policies.

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

2. Comments from the Public:

There were no comments from the public.

Mayor Rivers stated that he'd like to take a moment to make everyone aware that on Monday, October 30th at 5:30 p.m. at Mariners' Wharf Park they would be honoring those who have fought against breast cancer at an event called Pink in the Park. If you or someone you know has been touched by breast cancer, you can email the name of the survivor or person who has passed on and they will be recognized during the event.

3. Approval of Minutes:

a. Consideration – Approve October 9, 2023 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, Baxter and Walton. Against: None. Motion carried.

4. Consent Agenda:

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

a. Consideration – Accept FY 2023 Law Enforcement Mental Health and Wellness Act Grant;

b. Consideration – Adopt Budget Amendment for Curb Ramp Retrofit Project;

AGENDA ITEMS

Curb Ramp Retro Fit Project Budget Amendment

Council Meeting Date:

Reference No.

2023.10.23 A

Monday, October 23, 2023

Department: Public Utilities / Streets

Public Hearing: No

Fund Number/Department Number:10-5600

BACKGROUND:

In late 2021, the General Assembly appropriated \$250,000 to the City of Elizabeth City for sidewalk improvements. This appropriation, made through the State Capital and Infrastructure Fund (SCIF), will help the City further implement our Americans with Disabilities Act Transition Plan. This spring, City staff finalized our SCIF award with the Office of State Budget and Management, and designated the funds for the "Curb Ramp Retrofit Project" (CRRP). As the name indicates, this project will retrofit noncompliant curb ramps throughout the city; limited curb repairs may also be made.

Financial Impact: One-Time

Comments:

Analysis:

The budget amendment is enclosed for review and adoption. As indicated above, the City has already received the full grant disbursement, and this amendment simply allocates the funds needed to pay the contractor. Notably, the amendment reallocates \$250,000, our full grant amount, while the contractor bid \$4,000 less than this amount. The difference will effectively serve as contingency, and may cover curb ramp repairs as needed and approved by staff. The project should be completed this fiscal year.

Department Head Recommendation: Recommendation to approve transfer request to fund the Curb Ramp Retro Fit Project.

c. Consideration – Adopt Budget Amendment for Find and Fix It Project Continuation;

AGENDA ITEMS

**Find and Fix It Project Budget
Amendment**

Council Meeting Date:

Reference No.

2023.10.23 B

Monday, October 23, 2023

Department: Public Utilities / Water & Sewer

Public Hearing: No

**Fund
Number/Department
Number:31-8280**

BACKGROUND:

As the City Council is aware, the City’s sanitary sewer system is facing excessive inflow and infiltration (I&I), which means that too much stormwater and groundwater are entering our collection and treatment infrastructure. Excessive I&I increase operating costs and could limit the City’s future growth by pushing our treatment plant over its capacity. To address these problems, the City in recent years hired WithersRavenel and the Timmons Group to study our wastewater treatment and collection systems, respectively, and these studies identified the next steps to take in combatting I&I. These steps include the ongoing “Find and Fix It” (F&F) Project, which the City Council approved on December 12, 2022. The project includes a \$659,000 effort to inspect and repair sewer lines, with an emphasis on the Pearl and Main Street sewer basins; WithersRavenel is carrying out this work. With the F&F Project, the Council also approved \$50,000 for the Timmons Group to perform an Engineering Alternatives Analysis (EAA). The state requires an EAA before it may approve increases to treatment plant capacity / discharge.

Financial Impact: One-Time

Comments:

Analysis:

To date, WithersRavenel has completed much of the “Find It” portion of the F&F Project, which included flow monitoring, smoke-testing, closed-circuit television inspection of lines, and manhole assessments of the Main and Pearl basins. There is some CCTVing left to complete; as has been previously reported to the Council, this work has sometimes been slower and costlier than expected due to clogged sewer lines that needed heavy cleaning before a camera can run through them. The proposed budget amendment would cover this remaining CCTVing.

Department Head Recommendation: Recommendation to approve transfer request to fund the Find and Fix it Project.

- d. Consideration – Award Force Main Relocation – Rivershore Road / Fairfax Avenue Bridge Project (Added During Agenda Adjustments);**
- e. Consideration – Adopt Resolution of Commitment to Implement a Compliant NPDES MS4 Program (Added During Agenda Adjustments);**

RESOLUTION #2023-10-01

AFFIRMING THE CITY OF ELIZABETH CITY COUNCIL'S SUPPORT REGARDING IMPLEMENTATION OF A COMPLIANT NPDES MS4 STORMWATER PROGRAM

A RESOLUTION to develop and implement a compliant stormwater management program that meets the requirements of the **City of Elizabeth City** National Pollutant Discharge Elimination System (NPDES) Municipal Separate Storm Sewer System (MS4) **Permit number NCS000563** to discharge stormwater, inclusive of the required Stormwater Management Plan to be prepared by the **City of Elizabeth City** and approved by the North Carolina Department of Environmental Quality.

WHEREAS, Section 402(p) of the federal Clean Water Act requires NPDES permits for stormwater discharges from municipal separate storm sewer systems; and

WHEREAS, in North Carolina, NPDES Permits are issued by the North Carolina Department of Environmental Quality; and

WHEREAS, the North Carolina Department of Environmental Quality issued the **City of Elizabeth City** its **2nd Renewal of the existing Permit NCS000563** NPDES MS4 Permit for discharge of stormwater on **n.d. (pending until permit has been issued)**; and

WHEREAS, the **City of Elizabeth City** was issued Notice of Violation number **NOV-2023-PC-0476** on **13th day of September, 2023** for noncompliance with the issued NPDES MS4 Permit; and

WHEREAS, the *City of Elizabeth City* acknowledges the specific Notice of Violation requirement to obtain a new individual NPDES MS4 Permit; and

WHEREAS, the *City of Elizabeth City* acknowledges the specific Notice of Violation requirement to conduct a self-audit of permit compliance for the balance of permit requirements not specifically audited by the North Carolina Department of Environmental Quality, and to develop a draft Stormwater Management Plan to comply with Section 402(p)(3)(B)(iii) of the Clean Water Act, 40 CFR 122.34(b) and NPDES MS4 Permit requirements, and to submit its draft Stormwater Management Plan to the North Carolina Department of Environmental Quality no later than **120 days from the 13th day of September, 2023** for review and approval; and

WHEREAS, the *City of Elizabeth City* acknowledges the specific Notice of Violation requirement to adopt a Council Resolution to implement a compliant and enforceable stormwater management program as defined by both the NPDES MS4 **Permit number NCS000563** and the required new Stormwater Management Plan, and said resolution is to be submitted to the North Carolina Department of Environmental Quality no later than **60 days from the 13th day of September, 2023**; and

WHEREAS, the *City of Elizabeth City* acknowledges the requirement to provide adequate funding and staffing to implement a Stormwater Management Program that complies with its NPDES MS4 Permit and approved Stormwater Management Plan; and

WHEREAS, the *City of Elizabeth City* acknowledges that North Carolina Department of Environmental Quality enforcement action and penalties could result from non-compliance with the specific requirements in Notice of Violation number **NOV-2023-PC-0476**; and

WHEREAS, the *City of Elizabeth City* acknowledges that any North Carolina Department of Environmental Quality enforcement action and penalties may not prohibit the U.S. Environmental Protection Agency from taking its own enforcement action for non-compliance with the issued NPDES MS4 Permit.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the *City of Elizabeth City* hereby affirms its support for development and implementation of a compliant NPDES MS4 Stormwater Program.

Kirk E. Rivers, Mayor

Montré Freeman, City Manager

Dwan Bell, Public Works Director
Stormwater Program Administrator

April Onley, City Clerk

ADOPTED BY the City Council of the *City of Elizabeth City*, North Carolina the **23rd day of October, 2023** and signed in authentication there of the **23rd day of October, 2023**.

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

5. Regular Agenda:

a. Consideration – Call for a Public Hearing – Garbage and Recycling Fees (As Added During Agenda Adjustments);

Mayor Rivers requested the manager give a briefing on what would be coming forward for public hearing on November 13th. Manager Freeman said the recommendation presented was for the Council to call for a public hearing, which would be held on November 13th to discuss repurposing the orange recycling carts for a nominal fee. A second part of the discussion was changing the current purchase price for the 95-gallon also trash receptacles from \$60 to \$85. He further explained that the orange cans that we currently have, which were used up until October 15th for recycling will now be offered upon request as a secondary trash can for \$5 per month. Curbside recycling has stopped, but customers will still be able to use the can as an extra trash can for that fee. If they do not want the extra can, the City will coordinate picking those up. The process will involve the customers calling into Customer Service and advising the reps that they want to keep their orange can as an extra trash can for \$5 per month. From there, Customer Service will create a work order for Public Works. The cans will be identified with a “No Clutter in the Gutter” tag or similar.

The other piece is that currently, residents are able to purchase the black trash cans for \$60 plus tax, which is antiquated pricing that we are losing money on. We need to raise that price. After analyzing the fee, it’s been determined that price should be about \$85 plus tax. Both of these pieces involve fee changes so they’ll need to go forward for public hearing to modify the FY 2023-2024 fee schedule.

Mayor Rivers requested that this information be made available on Channel 11 and any of our social media platforms. Councilman Gibbs asked about the orange cans that are currently sitting out from people who didn’t take note of the October 15th cut-off date. Are they going to be picked up? Manager Freeman confirmed that they would carry on with picking them up until the public hearing. Mayor Rivers reiterated that the hearing will serve to allow the orange cans to be repurposed as a second can for \$5 a month and then raise the rates on the purchase of the 95-gallon black trash cans. He asked the Council if they were satisfied and ready to move forward for public hearing.

Motion was made by Councilman Joseph Peel, seconded by Councilman Johnson Biggs to call for a public hearing during the 7:00 p.m. November 13, 2023 Regular Session to discuss fee changes for the trash and recycling cans. Those voting in favor of the motion were: Biggs, Peel, Gibbs. Whitehurst, Spence, Felton, Baxter and Walton. Against: None. Motion carried.

b. Consideration – Tenth Amended and Restated Full Requirements Power Purchase Agreement (FRPPA) and Related Documents;

Mayor Rivers asked Attorney Morgan if he had any comments he’d like to share. Attorney Morgan noted that this is the 10th time the agreements had been modified to essentially establish the rate that the member cities of NCEMPA will pay and then authorize them to set their rates. He advised that we really have no choice in the matter, and it’s just something we have to adopt.

Motion was made by Councilman Joseph Peel, seconded by Mayor Pro Tem Kem Spence to adopt the amended agreement and requisite ordinance and instruct the City Attorney and City Clerk to execute, compile and return all necessary documents as needed. Those voting in favor of the motion were: Biggs, Peel, Gibbs, Whitehurst, Spence, Felton, Baxter and Walton. Against: None. Motion carried.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ELIZABETH CITY, NORTH CAROLINA, DETERMINING THAT IT IS IN THE BEST INTERESTS OF THE CITY OF ELIZABETH CITY TO APPROVE AND AUTHORIZE THE EXECUTION AND DELIVERY OF THE AMENDED AND RESTATED FULL REQUIREMENTS POWER SALES AGREEMENT BETWEEN THE CITY OF ELIZABETH CITY AND NORTH CAROLINA EASTERN MUNICIPAL POWER AGENCY

WHEREAS, the City of Elizabeth City (the "Municipality") and North Carolina Eastern Municipal Power Agency ("Power Agency") entered into a Full Requirements Power Sales Agreement (the "FRPSA"), dated as of the twenty-fourth day of September, 2015, pursuant to which Power Agency sells and each Member purchases its Full Requirements Bulk Power Supply requirements (as that term is defined in the FRPSA); and

WHEREAS, the Board of Directors of Power Agency, by motion properly made and approved at its meeting on May 25, 2023, approved and authorized the execution and delivery of Tenth Amended and Restated Full Requirements Power Purchase Agreement (the "FRPPA") between the Power Agency and Duke Energy Progress, LLC (including successors and permitted assigns, "DEP"), pursuant to which Power Agency has agreed to purchase from DEP and DEP has agreed to sell to Power Agency Power Agency's full requirements capacity and energy to serve the load of the electric power customers of Power Agency's members, the electric needs of which the members have undertaken the obligation to meet, and contingent upon a recommendation by the Rate Committee and approval by the Board of Commissioners of Power Agency; and

WHEREAS, by motions properly made and approved at meetings on June 7, 2023 and June 8, 2023, the Rate Committee and the Board of Commissioners, respectively, recommended that staff execute and approve the FRPPA in the name and on behalf of the Power Agency; and

WHEREAS, on September 22, 2023, the Board of Directors of Power Agency adopted Resolution BRR-10-23, which, among other things, (i) ratified the approval and execution of the FRPPA by the Chief Executive Officer in the name and on behalf of Power Agency and (ii) authorized Power Agency to execute and deliver to each Member an Amended and Restated Full Requirements Power Sales Agreement (the "Amended and Restated FRPSA") to give effect to the transactions contemplated by the FRPPA; and

WHEREAS, Power Agency has caused to be furnished to the Municipality each of the following: (i) the FRPPA, (ii) Resolution BDR-10-23, and (iii) an executed Amended and Restated FRPSA, dated as of September 22, 2023; and

WHEREAS, the City Council of the Municipality (the "Governing Body") has taken into consideration the benefits which might be achieved by approving, executing and delivering the Amended and Restated FRPSA.

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

1. After due consideration to the contents of each of the preambles set forth above and to each of the documents referred to in such preambles, the Governing Body hereby finds and determines that it is in the best interests of the Municipality to enter into the Amended and Restated FRPSA.

2. The Governing Body hereby authorizes and directs that the Amended and Restated FRPSA be executed for and on behalf of the Municipality by the Mayor and Clerk, sealed with the seal of the Municipality and delivered to the Power Agency in the form and substance of the Amended and Restated FRPSA presented at this meeting.

3. The Governing Body hereby directs the Clerk to furnish or cause to be furnished to Power Agency a certified copy of this ordinance together with the executed Amended and Restated FRPSA.

4. The Governing Body hereby directs the Clerk to file with the minutes of this meeting (i) the FRPPA, (ii) Resolution BDR-10-23, and (iii) the proposed Amended and Restated FRPSA as presented and available at this meeting.

5. This Ordinance shall become effective upon its adoption.

ADOPTED this _____ day of _____, 2023.

Mayor

ATTEST:

Clerk

(SEAL)

c. Discussion – Manager’s Plan for Customer Service (As Added During Agenda Adjustments);

Manager Freeman advised that he had a three-part plan to work on some of the issues in Customer Service. Earlier this year, Customer Service had gone to a four-day work week in an effort to attract talent, but they were going to briefly pause that practice. Five-day work weeks would begin again, effective tomorrow. He’d also looked into the phone system and discovered quite a few problems. For example, if four people are calling at the same time, the fourth caller gets kicked out of the system. The IT Department has already been in discussions with the vendors. We’re also looking at a 1-800 number to take payments, as we believe the current number has fees that are excessive to the citizens so we’re trying to find a new vendor that offers a flat rate instead of a percentage. He explained his reasoning for taking Customer Service back to a five-day work week was because he needs all of the Customer Service employees on the ground while we work through this. What we had worked at one time, but the calls have grown as the city has grown.

Director Simpson said that on Friday afternoon, they established a focus group comprised of members of Finance, Customer Service, IT and Councilwoman Felton to participate in testing for the phones. They did discover some issues with voicemail, particularly in Customer Service. After several attempts, they determined that the voicemail is not working in Customer Service, so they've sent that on as a request for repair. Once the voicemail is working properly, they have an option to add a call attendant, which will put the customers in a phone queue, where it will tell them how many minutes they have until they speak with a live person.

Director Simpson explained that there are two migrations happening in November. The first is in reference to Tyler, as ElectriCities is leaving the server business. We had two options; one was to send it to Tyler and have them host it for \$38,000 or host it ourselves, which is what we decided to do. We will have to shut down Customer Service at 8:00 a.m. on November 7th. The migration will take between four and six hours. That afternoon, we will go live with our in-house server. We will monitor the server for the next few weeks to make sure the functionality is intact. We will be able to accept credit cards in office finally, which was something Tyler gave up on with us. It will also speed up the back-end processes and transactions will take place faster. The other migration is in inventory management. We will finally be leaving Logics and going to Edmunds, which will give us a better experience and better performance. He noted that although Customer Service would be closed for a period on November 7th, the payment kiosk would still be open and available. Manager Freeman noted that this process has to be done on a workday and not a weekend because they did ask about that.

Councilman Walton asked if this will affect personnel at all? Do we need to add more people to the force to make it work? Director Simpson said no. Manager Freeman explained that for the migration, he will be here, as will IT and Customer Service and they won't need anyone else. Mayor Rivers asked what we budget for ElectriCities for hosting. Director Simpson said \$26,000. We'll be saving about \$12,000, and the cost could have risen quite a bit if we had to outsource our hosting. Mayor Rivers asked if he'd be coming back next month with implementation and revamping? Manager Freeman said that was correct and would. He intended to have a flow chart and an update on the migration as well as an update on where they were with the phones. Some of the new changes would be rolled out by that point. Councilman Gibbs asked if the shut-down date had been made public yet? Manager Freeman said only as of this discussion. He hadn't wanted to announce it to the public prior to announcing it to the Council.

d. Discussion – River's Landing *(As Added During Agenda Adjustments);*

Councilwoman Baxter stated that December 1st, 2022 was the last compliance inspection for River's Landing and a few of the apartments failed. She spoke with one of the landlords today and they told her they are ready for the City to come in and perform a compliance inspection. They'd shared with her that they're just waiting on the City to set up the date. She asked the manager if he knew when he might be able to get those inspections scheduled? Manager Freeman said he'd been speaking with the inspection crew and they'd been working with River's Landing and the owner to begin going through the process. He wasn't aware that they were ready for inspection, but they have been working with them. He will move forward with getting that scheduled and taken care of. He was very happy with the working relationship they've created and the steps they've taken and how far they've come. Councilwoman Baxter asked if he knew when the next task force meeting would be? Manager Freeman said he'd reached out to a mutual contact two weeks ago, but didn't want to move forward until he knew exactly where River's Landing was in the process. Councilwoman Baxter noted that they'd discussed weatherization and would like to know about that as well. Manager Freeman stated that there was a position that was being revamped as the old listing for minimum housing inspectors didn't cover everything it should. Councilwoman Baxter asked how the applications were going for the new housing inspector. Were we getting any possible candidates? Manager Freeman shared that they haven't found a qualified applicant yet. They have several positions open in Community Development, including another planner, building inspectors, and the director. The position is posted and they're looking for that person daily. They haven't found any interest yet, but he is hopeful we'll get there over the break.

e. Discussion – City’s Policy (As Added During Agenda Adjustments);

Councilwoman Baxter said she was not sure if everyone was aware that the City is in violation of our own policy as far as the personnel policy manual is concerned. She passed out a document detailing Section 6 of the policy, which referenced Political Activity.

Councilwoman Felton said that she wrote this policy and this policy is the current one that’s being used until HR revamps the one being worked on. According to the document here, it is as she wrote it and she will say that it’s incorrect. All of the City policies must mirror General Statute. Statute also states that if a policy is written incorrectly, state or federal guidelines, in this case 160A-169, will take precedence. A City employee can run for office. They cannot take a seat on Council as long as they are an employee and they cannot campaign on company time, but they can do it after their work time. If the policy handbook is against statute, the statute takes precedence. Item D should also state “while on City time.” She reiterated that this was her error as she wrote it, but it was not tested and if it had been, she would have referred back to statute.

Manager Freeman said the budget was passed with funding including for revision of the policy. Things have changed significantly in today’s world and there are several things in our manual that will need to be updated. We have reached out to one private entity and we have also reached out the NC League to see if they can help us out a bit cheaper. The same challenge with the League is like that with Rural Water, which is they can do it much less expensively, but everybody wants them to do it, so it takes a while for them to get to us. Councilwoman Felton stated that it’s vitally important that handbooks get updated every five years, which is how she used to do it when she was the HR director.

Mayor Rivers said he would like to send this to the HR Committee during the next Work Session to analyze what’s been brought up so we can verify that we’re not in conflict with the state. We may want to get this taken care of immediately while we wait on the rest so we can take the necessary steps to get this in order now.

6. Closed Session- As Allowed by NCGS 143-318.11(a)(6) – Discussion of Personnel
(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)(6) for Discussion of Personnel at 7:42 p.m. Those voting in favor of the motion were: Biggs, Peel, Gibbs, Whitehurst, Spence, Felton, Baxter and Walton. Against: None. Motion carried.

The Council returned to open session at 8:30 p.m.

7. Adjournment:

Having no further business to be discussed, Mayor Rivers adjourned the meeting at 8:30 p.m.

E. Kirk Rivers
Mayor

April Onley, NCCMC
City Clerk

