

**City Council Regular Session  
September 12, 2016**

The City Council of the City of Elizabeth City met in regular session on Monday, September 12, 2016 in Council Chambers, located on the 2<sup>nd</sup> floor of the Municipal Administration Building, 306 E. Colonial Avenue, Elizabeth City, NC.

MEMBERS PRESENT: Mayor Joe Peel  
Councilwoman Jean Baker (*arrived at 7:05 p.m.*)  
Councilman Ray Donnelly  
Mayor Pro Tem Anita Hummer  
Councilman Tony Stimatz  
Councilman Michael Brooks  
Councilman Rickey King  
Councilman Darius Horton  
Councilman Johnnie Walton

MEMBERS ABSENT: NONE

OTHERS PRESENT: City Manager Rich Olson  
City Attorney Bill Morgan  
Finance Director Sarah Blanchard  
Planning Director June Brooks  
Police Sergeant Larry James  
Electric Department Superintendent Karl Clow  
Human Resources Director Katherine Felton  
Assistant Public Utilities Director Larnetta Brothers  
Inspections Director Stanley Ward  
Parks and Recreation Director Bobbi White  
City Clerk Vivian White

The City Council regular session was called to order by Mayor Joe Peel at 7:00 p.m. Mayor Peel welcomed everyone to the meeting and recognized Councilman Michael Brooks to give the invocation, after which he led the Pledge of Allegiance.

**1. Agenda Adjustments and Approval:**

Mayor Peel requested the Council's pleasure regarding adjustments to and approval of the prepared agenda.

Councilman Walton requested to remove two items from the Consent Agenda and place them on the Regular Agenda for discussion: (1) Execution of a Contractor Services Agreement for the Weatherization Assistance Program and (2) Adoption of budget amendments for year-end close out 2016-2017.

**Motion was made by Councilman Rickey King, seconded by Mayor Pro Tem Anita Hummer to approve the agenda with any necessary corrections. Those voting in favor of the motion were: Donnelly, Hummer, Stimatz, Brooks, King, Horton and Walton. Against: None. Motion carried. (*Baker had not yet arrived.*)**

**2. Statement of Disclosure:**

The City Clerk read the Statement of Disclosure. No conflict of interest disclosures regarding items listed on the agenda were made.

**3. Proclamation: Constitution Week, September 17-23, 2016**

Mayor Peel read and presented to Rebecca Thornton a Proclamation declaring September 17 through 23, 2016 to be Constitution Week in Elizabeth City. The proclamation asked all citizens to reaffirm the ideals the Framers of the Constitution had in 1787 by vigilantly protecting the freedoms guaranteed to us through this magnificent document. Ms. Thornton accepted the Proclamation on behalf of the Betsy Dowdy

Chapter of the Daughters of the American Revolution and thanked members of Council for their service to the community.

#### **4. Comments from the Public:**

Miss Emily J. White, 115 S. Ashe Street, Elizabeth City, NC presented information to the Council about the contributions made to the Elizabeth City High School Band by deceased local businessman Miles L. Clark. She informed the Council that a trust he established lives on today to assist local band students. She requested that the Council consider changing the name of Pool Street Park to Miles L. Clark Park in honor of Mr. Clark's benevolence and contributions to the many students, past and present that benefited from his generosity.

#### **5. Approval of Minutes:**

Mayor Peel requested the Council's pleasure regarding approval of the minutes.

- a. City Council Regular Session of August 8, 2016

**Motion was made by Councilman Rickey King, seconded by Councilwoman Jean Baker to approve the minutes of the August 8, 2016 Regular Session with any necessary corrections. Those voting in favor of the motion were: Baker, Donnelly, Hummer, Stimatz, Brooks, King, Horton and Walton. Against: None. Motion carried.**

- b. City Council Work Session of August 22, 2016

**Motion was made by Mayor Pro Tem Anita Hummer, seconded by Councilman Darius Horton to approve the City Council Work Session of August 22, 2016. Those voting in favor of the motion were: Baker, Donnelly, Hummer, Stimatz, Brooks, King, Horton and Walton. Against: None. Motion carried.**

- c. City Council Regular Session of August 22, 2016

**Motion was made by Councilman Tony Stimatz, seconded by Councilman Rickey King to approve the Regular Session of August 22, 2016 subject to changes.**

Councilman Walton said that it had been stated that "our lives begin to end the day we become silent about things that matter." He said that the draft minutes did not give him a good description of what went on in the meeting. He said that he did not want to have to come to Council meetings and ask for verbatim minutes, but he wanted it understood that if one person makes statements and it is written in the minutes, he wanted his statements in the minutes too, even if they were not down the line of what others were saying.

Mayor Peel inquired if there was something specific that Councilman Walton wished to be added to the minutes. Councilman Walton said "I just want it to be rewritten before it's approved because I know that there was some things said that I said – and it's not in there." He stated "I talked longer than - let's say Tony did - but then when you look at the minutes it look like all the reference came from Tony." He said "to me that's not equal justice."

Councilman Walton stated: "Everything that was said that I said should have been put in there because the things that he said was put in there." He continued: "Minutes are only taken because it's something that someone can read later on and try to involve themselves of how the meeting went." He stated: "The way these minutes are written, that's not how the meeting went."

In response to Councilman Walton's question, the City Clerk provided an explanation of the types of minutes: action only, summary and verbatim. She stated that the minutes

belong to the Council and upon vote of the Council, the Clerk would prepare the minutes in either fashion desired.

Mayor Peel restated the motion to approve the minutes with any necessary changes.

Councilman Walton stated “well I do want them changed because it was not – the meeting was not – you did not put things in there that I felt was important.”

Mayor Peel inquired if Councilman Walton would like to have what he said transcribed verbatim. Councilman Walton responded that he did not want to approve the minutes during the meeting. He said that he wanted them revised.

The City Clerk called to the attention of the Council that the approved minutes were needed in order to document the public hearings held in conjunction with grant applications. She noted that the certified minutes needed to be included with the grant application. Councilman Walton stated: “That’s why it’s more important because if a grant person reads this, they’re not getting the true story.”

Councilman Stimatz asked if it would be appropriate to amend his motion, or have someone make a motion, that the minutes be approved subject to insertion of Councilman Walton’s nearly verbatim comments in the section on pages 14 and 15. The City Clerk responded in the affirmative.

Councilman Walton stated that he would modify his motion to that effect. Councilman King accepted the modified motion.

Councilman Brooks asked Councilman Walton if he wished his comments to be transcribed nearly verbatim for just this set of minutes or all minutes hereafter. Councilman Walton responded “no, not forward, just this.” He said “the next time I check minutes and they’re done the same way, we’ll talk about it.”

Mayor Peel asked if there was further discussion. Hearing none, he called for the vote.

**Those voting in favor of the motion were: Baker, Donnelly, Hummer, Stimatz, Brooks, King, Horton and Walton. Against: None. Motion carried.**

## **6. Consent Agenda:**

*(Note: Items “a” through “c” recommended for approval by the Finance Committee during their meeting of September 8, 2016.)*

Mayor Peel recognized City Manager Olson to read the remaining items on the Consent Agenda. Mr. Olson recommended approval of all items, as follows:

### **Beginning of Consent Agenda:**

- a. Consideration – Authorization to take advantage of the competitive bid from Rehrig Pacific Company for the 65-gallon recycling carts awarded by the Commonwealth of Massachusetts, Department of Environmental Protection; and “piggyback” the purchase of similar carts for Elizabeth City for a total delivery cost of \$100,000;
- b. Consideration – Adoption of the following various budget amendments for fiscal year 2016-2017 required for accounting purposes;

### **BUDGET AMENDMENTS**

**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 fiscal year ending June 30, 2017:

**SECTION I. That the General Fund Donations (103220.0051) and the Parks & Recreation Capital Outlay (106200.7400) be increased by \$4,066.86.**

**(To record Paths of Pasquotank’s donation for benches on bike path.)**

**SECTION II. That the Electric Fund Insurance Proceeds (303350.8300) and Second**

Delivery Point (308300.7346) be increased by \$48,998.57.

(To record insurance proceeds for damage at Second Delivery Point.)

SECTION III. That the General Fund Walmart Grant (103490.5145) and Police Department Capital Outlay (105100.7400) be increased by 2,500.

(To record Walmart Community Grant for the purchase of a computer and a smart HDTV.)

SECTION IV. That the General Fund Balance Appropriated (103990.0000) and Finance Department Professional Services (104400.0400) be increased by \$3,500.

(To appropriate funds for mandated audit of pension census data.) *Previously approved in the fiscal year ending June 30, 2016 and needs to be approved in the fiscal year ending June 30, 2017.*

This amendment will decrease fund balance by \$3,500.

SECTION V. That the General Fund Fund Balance Appropriated (103990.0000) and the Shipyard Phase II Environmental Assessment (106200.4500) be increased by \$29,907.

(To appropriate funds for Phase II Environmental Assessment at Shipyard.) *Previously approved in the fiscal year ending June 30, 2016 and needs to be approved in the fiscal year ending June 30, 2017.*

This amendment will decrease fund balance by \$29,907 from previously collected Parks and Recreation Impact Fees.

ADOPTED, this 12<sup>th</sup> day of September 2016.

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Joseph W. Peel, Mayor

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Vivian D. White, CMC/NCCMC, City Clerk

- c. Consideration – Authorization to execute a one year Temporary Occupancy Agreement for space #10-B at Southgate Mall with CD 2005-CD 1 Ehringhaus Street, LLC.
- d. Consideration – Call for a public hearing to be held on September 26, 2016 at 7:30 p.m. (or as soon thereafter as the agenda allows) in Council Chambers of the Municipal Administration Building, to receive public comment on proposed amendments to Chapter 90 - Animals of the City of Elizabeth City Code of Ordinances.

**End of Consent Agenda.**

**Motion was made by Councilman Rickey King, seconded by Councilman Tony Stimatz to approve the Consent Agenda. Those voting in favor of the motion were: Baker, Donnelly, Hummer, Stimatz, Brooks, King, Horton and Walton. Against: None. Motion carried.**

**Mayor Peel moved the agenda forward to the Regular Agenda to provide for the Public Hearings to begin at 7:30 p.m.**

**7. Public Hearings:**

- a. Hold a Public Hearing to receive comment regarding the repeal of Chapter 112 “Insulation Contractors” of the City of Elizabeth City Code in its entirety.

Mayor Peel recognized Mr. Olson to provide information on this request. Mr. Olson stated that this section of the Code was adopted in 1978 and paralleled state law at the

time. He noted that the state law was repealed in 1999 making this section of the City's Code no longer relevant. He noted that the State Building Code provides the City's building inspectors the authority they need.

Mayor Peel declared the Public Hearing open and inquired of the City Clerk if persons were present who wished to be heard. Hearing none, Mayor Peel declared the Public Hearing closed.

**Motion was made by Councilman Rickey King, seconded by Councilman Michael Brooks, to adopt the ordinance. Those voting in favor of the motion were: Baker, Donnelly, Hummer, Stimatz, Brooks, King, Horton and Walton. Against: None. Motion carried.**

**ORDINANCE # 2016 – 09 - 01  
TO REPEAL**

**Chapter 112: Insulation Contractors of Title XI: Business Regulations,  
of the City of Elizabeth City Code of Ordinances**

**WHEREAS**, because of the 1977 energy crisis, the North Carolina General Assembly enacted legislation to secure effective enforcement of the insulation and energy utilization standards of the State Building Code and to further protect the purchasers of products and services designed to meet those standards; and

**WHEREAS**, this law established, among other things, the requirement for the permitting of insulation contractors and was codified as NCGS 143-151.26 through 143-151.41; and

**WHEREAS**, during the 1999 Session of the General Assembly, NCGS §§ 143-151.26 through 143-151.41 were repealed by Session Laws 1999-393 effective August 4, 1999; and

**WHEREAS** the City of Elizabeth City Council adopted an ordinance on January 9, 1978, which required the City to issue a license to any insulation contractor who was not licensed as a general contractor under NCGS Chapter 87, or who was working under the supervision of a registered architect or professional engineer, or who was working on their own building; and

**WHEREAS**, the City's local ordinance was adopted in order to parallel North Carolina law; and

**WHEREAS**, Chapter 112 Insulation Contractors of the City's Code no longer has relevance to the City due to the repeal of NCGS §§ 143-151.26 through 143-151.41, current State Building Code inspection requirements performed by the City's Building Inspections Department and registration requirements of the City's recently enacted Business Registration Program.

**NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ELIZABETH CITY THAT:**

**SECTION I.** Effective September 13, 2016, Chapter 112 Insulation Contractors of Title XI: Business Regulations of the City of Elizabeth City Code of Ordinances is repealed in its entirety.

**SECTION II. CODIFICATION.** The provisions of this Ordinance shall be published as appropriate in the City of Elizabeth City Code of Ordinances as soon as practicable after its adoption.

**SECTION III. SEVERABILITY CLAUSE.** If any section, or part or provision of this Ordinance is declared unconstitutional or invalid by a court of competent jurisdiction, then it is expressly provided and it is the intention of the City Council of the City of Elizabeth City in passing this Ordinance that its parts shall be severable and all other

parts of this Ordinance shall not be affected thereby and they shall remain in full force and effect.

**READ, CONSIDERED, AND ADOPTED** at a regular meeting of the City Council of the City of Elizabeth City, North Carolina, during which a quorum was present, held on the 12<sup>th</sup> day of September 2016.

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Joseph W. Peel  
Mayor

Attest:

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Vivian D. White, CMC/NCCMC  
City Clerk

- b. Hold a Public Hearing to receive comment regarding amendments to Section 150.22 of the City of Elizabeth City Code to correct load control switch requirements previously approved.

Mayor Peel recognized Mr. Olson for the background on this request. Mr. Olson stated that when the City adopted the 2007-2008 budget, changes were made in the requirements for load management switches. He said that because the change was made as part of the budget ordinance, it was not included in the City Code. He said that staff had prepared an ordinance for Council's consideration, which would correct the oversight.

Mayor Peel declared the meeting into Public Hearing and inquired of the City Clerk if persons were present who wished to be heard. Upon hearing that no speakers were present, he declared the Public Hearing closed.

**Motion was made by Councilman Ray Donnelly, seconded by Councilman Darius Horton, to adopt the ordinance as modified. Those voting in favor of the motion were: Baker, Donnelly, Hummer, Stimatz, Brooks, King, Horton and Walton. Against: None. Motion carried.**

**ORDINANCE # 2016 – 09 - 02  
TO AMEND**

**Section 150.22 Load Management Switches to Comply with Action Taken by the Adoption of the Fiscal Year 2007-2008 Budget Ordinance**

**WHEREAS**, prior to July 1, 2007, the City of Elizabeth City only required the installation of load management switches on any new or substantially improved residential dwellings and also provided a monetary rebate to those utility customers with the devices installed; and

**WHEREAS**, with the adoption of the 2007-2008 Budget Ordinance, changes were made that affected the Load Management Switches section of the City's Code of Ordinances, but these changes were not carried forward and the appropriate revisions made to the City's Code.

**NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ELIZABETH CITY THAT:**

**SECTION 1.** Effective September 13, 2016, Section 150.22 "Load Management Switches" of the City's Code of Ordinances is hereby amended as provided in the following add/delete text format:

§ 150.22 LOAD MANAGEMENT- CONTROL SWITCHES.

(A.) A Load Management System is established on the City's Electrical Distribution System that can be used to reduce the system coincident peak demand.

~~(AB) Any new or substantially improved residential dwelling unit with an electrically operated storage type water heater, central heating and/or air conditioning system shall have all of the applicable items connected to a load management switch by the city prior to a certificate of occupancy. This applies to residential dwelling. All residential units with electric water heaters and central heat pump/air conditioner appliances served by the city's electrical distribution system and that are within the city's zoning jurisdiction only shall have load control switches. All switch installations shall be performed by licensed electrical contractors or qualified municipal employees; and the full cost of equipment installation and maintenance shall be paid by the City.~~

(BC) The city's ~~cycle and save office~~ Load Management Division may waive these requirements in accordance with any of the following exceptions.

(1) The city determines there is not sufficient room for the installation and servicing of load ~~management control~~ switches, or due to incompatible equipment contained in the residential structure.

(2) The occupant requests in writing to be exempt from this requirement: due to health related reasons, which have been attested by a treating physician in writing.

~~(a) Due to health related reasons; or~~

(b) The occupant has lived in the subject dwelling unit for at least three months and has no desire to receive the benefit of the applicable monetary credit for having load management switches installed.

**SECTION III. CODIFICATION.** The provisions of this Ordinance shall be published as appropriate in the City of Elizabeth City Code of Ordinances as soon as practicable after its adoption.

**SECTION IV. SEVERABILITY CLAUSE.** If any section, or part or provision of this Ordinance is declared unconstitutional or invalid by a court of competent jurisdiction, then it is expressly provided and it is the intention of the City Council of the City of Elizabeth City in passing this Ordinance that its parts shall be severable and all other parts of this Ordinance shall not be affected thereby and they shall remain in full force and effect.

**READ, CONSIDERED, AND ADOPTED** at a regular meeting of the City Council of the City of Elizabeth City, North Carolina, during which a quorum was present, held on the 12<sup>th</sup> day of September 2016.

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Joseph W. Peel  
Mayor

Attest:

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Vivian D. White, CMC/NCCMC  
City Clerk

- c. Hold a Public Hearing to receive comment regarding the repeal of Section 110.36 "Franchises Saved from Repeal" of the City of Elizabeth City Code.

Mayor Peel recognized Mr. Olson for his comments on this matter. Mr. Olson explained that staff's recommendation is for the Council to repeal Section 110.36 of the Code because the City no longer has the authority to issue franchises under NCGS 160A-319. He noted that the authority was taken over by the state some three to four years ago.

Mr. Olson stated that the public hearings being held during this meeting were necessary to correct inconsistencies found in the City Code during the recent codification.

Mayor Peel declared the meeting into Public Hearing and inquired of the City Clerk if persons were present who wished to be heard. Upon hearing that no speakers were present, he declared the Public Hearing closed.

**Motion was made by Councilwoman Jean Baker, seconded by Councilman Rickey King, to repeal Section 110.36 of the Code.**

Councilman Walton requested that the City Manager provide additional explanation regarding this request. Mr. Olson stated that the City, in years past, had been able to grant cable television and other franchises. He advised that the state had taken that authority away and now issues the franchises at the state level. He noted that a telecommunications tax is collected by the state and distributed to local governments.

Councilman Donnelly inquired if the state returned all collections to the localities. Mr. Olson responded that he thought the state “took a cut” but he would check to make certain. Mr. Olson commented that telecommunications revenue has steadily increased over the years.

Mayor Peel called for a vote on the motion.

**Those voting in favor of the motion were: Baker, Donnelly, Hummer, Stimatz, Brooks, King, Horton and Walton. Against: None. Motion carried.**

**ORDINANCE # 2016 – 09 - 03  
TO REPEAL**

**Section 110.36 “Franchises Saved from Repeal” of Chapter 110 “General Licensing, Registration and Taxation” of the City of Elizabeth City Code of Ordinances**

**WHEREAS**, prior to January 1, 2007, cities and counties were authorized by North Carolina law to adopt ordinances establishing franchise agreements with cable television providers; and

**WHEREAS**, during the 2005 session of the North Carolina General Assembly, Session Law 2006-151 conferred upon the North Carolina Secretary of State the exclusive franchising authority for cable service provided over a cable system in North Carolina after January 1, 2007; and

**WHEREAS**, this law, codified as Chapter 66, Article 42, Section 66-350, replaced the authorization to award franchises provided to counties and cities under NCGS § 153A-137 and NCGS §160A-319, respectively; and

**WHEREAS**, Section 110.36 of the City’s Code of Ordinances, adopted and published by the Council on August 8, 2016, provides that all cable television franchise ordinances remain in effect and were not repealed; and

**WHEREAS**, the City of Elizabeth City has no cable television franchise ordinances still in effect that were awarded prior to January 1, 2007.

**NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ELIZABETH CITY THAT:**

**SECTION I.** Effective September 13, 2016, Section 110.36 “Franchises Saved from Repeal” found in Chapter 110 of the City’s Code of Ordinances is repealed.

**SECTION II. CODIFICATION.** The provisions of this Ordinance shall be published as appropriate in the City of Elizabeth City Code of Ordinances as soon as practicable after its adoption.

**SECTION III. SEVERABILITY CLAUSE.** If any section, or part or provision of this Ordinance is declared unconstitutional or invalid by a court of competent jurisdiction, then it is expressly provided and it is the intention of the City Council of the City of Elizabeth City in passing this Ordinance that its parts shall be severable and all other



parts of this Ordinance shall not be affected thereby and they shall remain in full force and effect.

**READ, CONSIDERED, AND ADOPTED** at a regular meeting of the City Council of the City of Elizabeth City, North Carolina, during which a quorum was present, held on the 12<sup>th</sup> day of September 2016.

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Joseph W. Peel  
Mayor

*Attest:*

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Vivian D. White, CMC/NCCMC  
City Clerk

- d. Hold a Public Hearing to receive comment regarding the repeal of Subsection "Recreation Advisory Committee" in Chapter 91 "Parks and Recreation of the City of Elizabeth City Code.

Mayor Peel recognized Mr. Olson for his comments on this matter. Mr. Olson explained that the City and County had previously executed an Interlocal Agreement, which created a joint Parks and Recreation Advisory Board. He said that agreement made it no longer necessary to have a Recreation Advisory Committee as called for in Chapter 91 of the City Code.

Mayor Peel declared the Public Hearing open and inquired of the City Clerk if persons were present who wished to be heard. Hearing none, Mayor Peel declared the Public Hearing closed.

**Motion was made by Councilwoman Jean Baker, seconded by Councilman Darius Horton, to repeal the Recreation Advisory Committee subsection of Chapter 91 Parks and Rec to include Sections 91.20 through 91.24. Those voting in favor of the motion were: Baker, Donnelly, Hummer, Stimatz, Brooks, King, Horton and Walton. Against: None. Motion carried.**

**ORDINANCE # 2016 – 09 - 04  
TO REPEAL**

**The "Recreation Advisory Committee" Subsection of Chapter 91 "Parks and Recreation" to include Sections 91.20, 91.21, 91.22, 91.23 and 91.24**

**WHEREAS**, Chapter 91 "Parks and Recreation" of the City's Code of Ordinances includes a subsection adopted on September 11, 1978, which established a Recreation Advisory Committee and its duties; and

**WHEREAS**, on April 27, 2010, the City of Elizabeth City and Pasquotank County entered into an Interlocal Agreement that consolidated the City and County parks and recreation services; and

**WHEREAS**, on June 6, 2011, the City and County entered into an amendment to the April 27, 2010 Interlocal Agreement that established a Parks and Recreation Advisory Board, its membership makeup and terms; and

**WHEREAS**, the City of Elizabeth City has not utilized a separate Recreation Advisory Committee since the departmental consolidation with Pasquotank County, rendering Sections 91.20, 91.21, 91.22, 91.23 and 91.24 obsolete.

**NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ELIZABETH CITY THAT:**

**SECTION I.** Effective September 13, 2016, the Subsection entitled “Recreation Advisory Committee” of Chapter 91 “Parks and Recreation” is repealed in its entirety to include Sections 91.20, 91.21, 91.22, 91.23 and 91.24.

**SECTION II. CODIFICATION.** The provisions of this Ordinance shall be published as appropriate in the City of Elizabeth City Code of Ordinances as soon as practicable after its adoption.

**SECTION III. SEVERABILITY CLAUSE.** If any section, or part or provision of this Ordinance is declared unconstitutional or invalid by a court of competent jurisdiction, then it is expressly provided and it is the intention of the City Council of the City of Elizabeth City in passing this Ordinance that its parts shall be severable and all other parts of this Ordinance shall not be affected thereby and they shall remain in full force and effect.

**READ, CONSIDERED, AND ADOPTED** at a regular meeting of the City Council of the City of Elizabeth City, North Carolina, during which a quorum was present, held on the 12<sup>th</sup> day of September 2016.

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Joseph W. Peel  
Mayor

Attest:

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Vivian D. White, CMC/NCCMC  
City Clerk

**8. Regular Agenda:**

- a. Consideration – River City CDC Request for Funding

Mayor Peel recognized Mr. Olson for the background on this request. Mr. Olson explained that the City Council approved, during fiscal year 2015-2016, a community support grant for River City CDC in the amount of \$5,000. He stated that the purpose of the grant was to fund the semi-annual group WorkCamp, which occurred in June 2016.

Mr. Olson stated that the City did not receive the invoices for the program’s expenses until July 2016, which was after the close of the previous fiscal year. He said that it was for that reason that City staff was forced to deny the request for funding.

Councilman Brooks requested to clarify that the Council had approved to provide \$5,000, but the organization was late in turning in their paper work. Mr. Olson responded that community support grants are reimbursable grants and the documentation for River City was received after the close of the fiscal year.

Councilman Donnelly noted that the matter came up before the Finance Committee and the Committee forwarded it for discussion by the Council in order that everyone would be aware of the circumstances.

**Motion was made by Councilman Ray Donnelly, seconded by Councilman Rickey King to fund the River City Community Development Center fiscal year 2015-2016 community support grant by adopting a budget amendment, which would decrease the General Fund by \$5,000. Those voting in favor of the motion were: Baker, Donnelly, Hummer, Stimatz, Brooks, King, Horton and Walton. Against: None. Motion carried.**

- b. Discussion/Consideration – Establishment of Uniform EEO (Non-discrimination) Policy for the City of Elizabeth City

Mayor Peel called on Mr. Olson to begin the discussion of this matter. Mr. Olson explained that during the August 22, 2016 Council meeting, discussion was held among the Councilors regarding the City's EEO policy. He stated that the policy is found in the Personnel Manual as well as in Section 30.01 of the City Code.

Mr. Olson advised that upon a request by Councilman Stimatz, Diane Juffras of the School of Government had provided a series of recommendations for the Council's consideration in this matter. He stated that Ms. Juffras believes that the City does not need an EEO policy; but if one is adopted, federal law should be followed. Mr. Olson pointed out that federal law does not address several of the classes that the City includes in its policy.

Mr. Olson stated that if the Council wished to proceed with making modifications to the City's policy, a Public Hearing must be held to gather public input on changing Section 30.01 of the City Code. He noted that a resolution would be needed to modify the Personnel Manual. Mr. Olson reiterated that he believed flexibility should be provided for staff, because the subject of Equal Employment Opportunity is currently very fluid. He said that to accomplish that goal, staff had prepared a generic policy that stated: "Discrimination by department heads or other supervisory personnel on the basis of race, color, religion, sex, pregnancy, national origin, or any other legally protected characteristic is strictly prohibited." He said that the broad terms of the suggested policy would allow for any changes made by the Courts.

Councilman Stimatz stated that he had reviewed the list of protected classes provided by Ms. Juffras and found that the list was more extensive than the policy suggested by the City Manager. He said that he felt the additional protected classes could be included and use the disclaimer at the end. He said that as it specifically relates to employment discrimination, Ms. Juffras had included the Age Discrimination Employment Act, the ADA, genetic information and present or former military status. Councilman Stimatz suggested that the EEO policy be changed as follows: "Discrimination by department heads or other supervisory personnel on the basis of race, color, religion, sex, pregnancy, national origin, age, disability, present or former military status, genetic information or any other legally protected characteristic is strictly prohibited and will not be tolerated." He stated that the issue of gender is currently in the Courts and has not been finalized in law.

**Mayor Peel asked to stop the discussion of this matter in order to conduct the Public Hearings as advertised for 7:30 p.m.**

**Motion was made by Councilman Tony Stimatz, seconded by Councilman Ray Donnelly, to table discussion until after the Public Hearing. Those voting in favor of the motion were: Baker, Donnelly, Hummer, Stimatz, Brooks, King, Horton and Walton. Against: None. Motion carried.**

**Mayor Peel returned to this item at the conclusion of the Public Hearings.**

**Motion was made by Councilman Tony Stimatz, seconded by Councilman Darius Horton to remove the item from the table for discussion. Those voting in favor of the motion were: Baker, Donnelly, Hummer, Stimatz, Brooks, King, Horton and Walton. Against: None. Motion carried.**

Mayor Peel recognized Councilman Stimatz.

Councilman Stimatz stated that City staff had also proposed several changes to the Personnel Policy Manual; specifically the section entitled "Unlawful Harassment." He stated that the section was meant to include both sexual and other kinds of harassment. He stated that he didn't believe it was a good idea to remove the sentence that staff is proposing be deleted. He said that he thought all sections should agree as to language.

He noted that in the section regarding Equal Employment Opportunity, staff was proposing amending the first sentence to read "in furtherance of this policy." He suggested that the sentence be placed back in or include a citation to Section 3.1,

which would make it unnecessary to make changes throughout the book if used as a reference point.

Councilman Stimatz asked if the City was making it clear to employees that the City does not permit reference to anyone's sexuality or gender oriented issues in any shape or form. He said that although the policy does not specifically address that matter, he felt there was enough in the policy to take care of that if need be. Mr. Olson responded that the City's labor attorney drafted that section and would be responsible for defending it should an issue arise. Councilman Stimatz made the point that members of Council do not want references to or harassment regarding anything sexual "in any way, manner, shape or form." He asked the City Attorney if the Council needed to be more specific or if the policy was adequate.

City Attorney Morgan stated "the less specific you are, the better in something like this." City Manager Olson stated that the City's labor attorney prefers the catch-all phrase because it would stay relevant throughout time.

**Motion was made by Councilman Tony Stimatz, seconded by Councilman Ray Donnelly, to call for a public hearing to change Section 30.01 of the City Code in accordance with Council's discussion.**

Councilman Brooks stated that he noticed that "marital status" was being deleted. He said that if marital status is deleted, it would still be covered under sexual orientation in his opinion because it is "one and the same." City Manager Olson commented that marital status is not a federally protected class. He noted that there was a Presidential Executive Order, which did not apply to local governments. Councilman Brooks advised that some states have adopted sexual orientation as a protected class. He said to cover the City, he would suggest that sexual orientation be added to the policy because it would also cover marital status.

City Attorney Morgan stated that his opinion was that marital status refers to whether a person is married or not – not to whom that person is married.

Councilman Brooks stated "if we put sexual orientation, if North Carolina ever was to accept it, we don't have to go back to this document and put marital status, because sexual orientation will also cover it – whether it's same sex marriage or whatever."

Councilman Stimatz stated that he had considered suggesting that "sexual orientation" be placed in the policy as well as gender, but he fell back on what Ms. Juffras provided from the School of Government that the legally listed categories were the ones he mentioned. He noted that those categories are not legally protected in law at the current time. He said that all he wanted to do was include the classes that are specifically covered under federal employment law. He advised that pregnancy did not have to be called out separately because it is covered under the sex prong. He noted Ms. Juffras had advised that gender identification and sexual orientation are still being worked out.

Councilman Brooks stated that the military is a federal organization; and where females were not allowed to serve previously, they are allowed to serve now. He said "that's federal, states don't have nothing to do with it – that's federal – that's sexual orientation."

Councilman Walton stated that he agreed with Councilman Brooks. He said: "The next election is going to be very important – if things changes, you know what Mike is talking about will cover everything." He continued: "Rev. Barber on Saturday, he said, you know, things change – they changed the Voter ID law." Councilman Walton stated: "One statement he made, though, he said racism can be intentionally or unintentionally pushed out there." He asked the City Manager if there was urgency for the Council to "put in writing."

Mr. Olson responded that it was not urgent from City staff's perspective. He stated that he thought the City was adequately protected in the current policy.

Councilman Walton asked if someone else on Council had brought the matter up in the first place. Mr. Olson responded that Councilman Stimatz had brought it up in February and again in August.

Councilman Walton stated: “When people start changing laws, politically people will show you something for hope and for change, but sometimes change is not good, you know because today you might change it one way but tomorrow it may change and be another way.” He said: “I think the word sexual orientation would take care of all of that, then you won’t have to change it five months from now – because it’s going to change.”

Councilman Brooks asked if Councilman Stimatz would accept a friendly amendment to add “sexual orientation.” Councilman Stimatz and Councilman King accepted the friendly amendment.

**Mayor Peel called for a vote on the motion.**

**Those voting in favor of the motion were: Baker, Donnelly, Hummer, Stimatz, Brooks, King, Horton and Walton. Against: None. Motion carried.**

Mayor Peel announced that the Public Hearing would be held on September 26, 2016.

c. Discussion/Consideration – Flow Charts for Rezoning and Text Amendment Processes

Mayor Peel recognized City Attorney Morgan for his comments. Mr. Morgan advised that he had provided a copy of a memo he had written to the Council on August 5, 2016 along with a copy of an email from Planning Director June Brooks, which discussed her phone conversation with Adam Lovelady of the School of Government. He noted the information was in relation to the flow charts that the Council asked staff to prepare for rezoning issues and text amendments.

Mr. Morgan stated that Mr. Lovelady had agreed with staff’s earlier chart proposal with regard to the Council’s participation in the processes. He noted that the process for text amendment changes was fairly straight forward; but since Council ultimately conducts a hearing on rezoning matters and sits as a quasi-judicial body, no input from the Council should be made prior to the hearing.

Mr. Morgan stated that he felt the proper step at this point would be to have staff bring back to the next Council meeting flow charts, which incorporate the recommendations from the School of Government and his memo.

Councilman Stimatz stated that it appeared that two things were happening: one involved changes to the UDO and secondly, zoning changes, which are a different issue. He stated that he is more concerned about text amendments. He noted that NCGS 160A-387’s prohibition regarding Council being involved with the Planning Commission only has to do with initial adoption of an ordinance. He stated that all changes subsequent to initial adoption shall be submitted to the Planning Board and if no written report is received within 30 days, the governing board may proceed without the Planning Board report and are not bound by their recommendation. He said that the flow chart he had presented makes sense if the Council was going to add a new ordinance to the book. He opined that there would be two paths, one for new items whereby the Council would have to take to Public Hearing the Planning Commission’s recommendation. He stated that if the amendment is a simple change to an ordinance, the Council would not need to send what the Planning Commission recommended to a Public Hearing, thus allowing the City Council to send to Public Hearing their own revisions without Commission recommendation. Councilman Stimatz pointed out that one could infer that, subject to initial adoption, all proposed amendments (even including an entire chapter) would be subject to the second paragraph of the statute.

Councilman Stimatz said that “the answer you get from a lawyer depends on the question you ask.” He stated that since he was not sure what question was asked of the School of Government, he was not sure about the answer that Mr. Lovelady had provided.

Mr. Morgan stated that it was his understanding that the only written document that was provided to Mr. Lovelady was his memo to the Council of August 5, 2016. He said that subsequent to Mr. Lovelady's review of the memo, a follow-up discussion was held with staff.

Councilman Stimatz stated that if City Attorney Morgan would like, he would write the letter to Mr. Lovelady and include his own question. He said that he sees two levels of action that have not been addressed. He stated that he felt Mr. Morgan's August 5, 2016 memo had confused the two issues.

Councilman Walton stated that "deep down," everyone knew this discussion was dealing with the apartments; and he said "that was a messy process."

Councilman Walton stated: "Like I say, in politics when people give you answers, there's always saying why. He thinks this is going to clear up the apartment process if it comes back around again." He continued: "That's why attorney, it's your responsibility to make sure that it's done right. Don't just listen to words – silent words – because you know somebody's going to be affected." He said: "The last time we took the recommendation of the Planning Commission, they didn't get all of the facts." "If you can't get all of the facts, you can't make a good decision." "So, what they recommended to us was not good." "That's why it was sent back to them." "Am I right or wrong, Mr. Morgan?"

Mr. Morgan stated that he would not comment regarding whether it was right or wrong, but it was certainly sent back - and the determination among the Councilors was that the Planning Commission perhaps did not have all the facts. He said that it was strictly a rezoning issue.

Councilman Walton requested that the City Attorney check with all agencies to see that the Council is doing things correctly. He said: "If we are doing it right, there's no need to change it."

Mayor Peel inquired of the City Manager his impression regarding where this matter stood. Mr. Olson responded that he was confused. He noted that there are three distinct processes: one for amendments to the general City Code, one for zoning text amendments, and one for rezonings. He noted that NCGS 160A-387 has a very defined process. He said that with general City Code changes, the Council can do whatever they wish. He reiterated that land use categories in the UDO are very specific with regard to how they must be handled.

Councilman Stimatz stated that he was only concerned about zoning text changes – not rezonings. He noted that NCGS 160A-387 has two paragraphs, one referring to the process to initially adopt the ordinance. He stated that once you have the ordinances, you never have to refer to paragraph "A" again. He said that subsequent to initial adoption, all proposed amendments would follow paragraph B. Councilman Stimatz stated: "if you are doing A and the PC hands you something, you go to public hearing and then you change it – but if you're doing B, then it is up to the Council, which is when the other flow chart kicks in." He stated: "no offense, I have spent my entire life in an organization that was rule-bound. I've written federal regulations. I've reviewed stuff like this – it's pretty clear what the two paragraphs say."

Mayor Peel summarized the discussion and stated "I think what I've heard, Mr. Stimatz, you're going to try and get some other clarification." He suggested that Councilman Stimatz and City Attorney Morgan have that conversation.

Mayor Peel announced that there would be no action on this item at this time.

- d. Consideration – Execution of Agreement for Contractor Services with Residential Energy Efficiency Services for the Weatherization Assistance Program: *(Removed from Consent Agenda by Councilman Walton. Recommended for approval by the Finance Committee during their meeting of September 8, 2016.)*

Mayor Peel recognized Mr. Olson for his comments on this matter. Mr. Olson explained that the consideration before the Council is a change of name for one of the companies presently doing business for the City. He noted that Martin County Community Action had changed its name to Residential Energy Efficiency Services. He stated that the contract is the same as the previous contract. He noted that the reason for the name change was due to the status change of the company from non-profit to profit.

Mayor Peel recognized Councilman Walton for his comments. Councilman Walton asked the number of homes that had been worked on during the fiscal year to date. Mr. Olson stated that he would need to provide that information after determining the answer from staff. Councilman Walton requested the number of homes weatherized by each contractor. Mr. Olson stated that he would prepare a memo and send it to the Council.

**Motion was made by Councilwoman Jean Baker, seconded by Mayor Pro Tem Anita Hummer, to authorize Mayor Peel to execute the agreement for contractor services with Residential Energy Efficiency Services for the Weatherization Assistance Program. Those voting in favor of the motion were: Baker, Donnelly, Hummer, Stimatz, Brooks, King, Horton and Walton. Against: None. Motion carried.**

e. Consideration – Adoption of the following various budget amendments in connection with year-end closeout for fiscal year 2015-2016: *(Removed from Consent Agenda by Councilman Walton. Recommended for approval by the Finance Committee during their meeting of September 8, 2016.)*

Mayor Peel recognized Mr. Olson for the background on this matter. Mr. Olson stated that this request is to approve the final budget amendments for fiscal year 2015-16. He reminded the Council that the City’s auditor had stated that the City could make budget amendments to the prior fiscal year budget before the audit was completed. He said that all items in the amendment occurred in fiscal year 2015-16; and he reviewed each of the items for the Council.

Mayor Peel recognized Councilman Walton for his comments. Councilman Walton asked for clarification on the budget amendment concerning the Elizabeth Street Retained Earning Appropriated in the amount of \$124,499. Mr. Olson explained that the funds from the now completed Elizabeth Street project were being transferred from the capital construction account back to the Electric Fund.

**Motion was made by Councilwoman Jean Baker, seconded by Councilman Rickey King, to adopt the following budget amendments as presented. Those voting in favor of the motion were: Baker, Donnelly, Hummer, Stimatz, Brooks, King, Horton and Walton. Against: None. Motion carried.**

**BUDGET AMENDMENTS**

**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, 2016:

**SECTION I.**

	Increase	(Decrease)
<b>(103990.0000) General Fund Balance Appropriated</b>	<b>\$ 32,142</b>	
<b>(105300.0200) Fire – Salaries</b>		<b>\$ 26,719</b>
<b>(106800.0200) Human Resources - Salaries</b>		<b>2,310</b>
<b>(106800.0300) Human Resources - Overtime</b>		<b>2,824</b>
<b>(106800.1101) Human Resources - Postage</b>		<b>289</b>

**(To record overages in General Fund.)**

**This amendment will decrease fund balance by \$32,142.**

**SECTION II.**

<b>(313990.0000) Water &amp; Sewer Fund Retained Earnings Appropriated</b>	<b>\$ 26,294</b>
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(316600.0600) Hospitalization - Retirees		\$ 18,458
(316600.5950) Loss on Sale of Assets		3,336
(316600.5100) Bad Debt Expense		4,500

(To record overages in Water & Sewer Fund.)

**SECTION III.**

(413990.0000) Elizabeth Street Retained Earnings Appropriated	\$ 124,499	
(413610.9200) Transfer to Electric Fund		\$ 124,499

(303970.4000) Transfer from Elizabeth Street Project Fund	124,499	
(303990.0000) Electric Fund Retained Earnings Appropriated		124,499

(To close out inactive Elizabeth Street Project Fund to Electric Fund.)

**SECTION IV.**

(423990.0000) Knobbs Creek Bridge Fund Retained Earnings Appropriated	\$ 23,932	
(426600.1000) Transfer to Electric Fund		\$ 23,932

(303970.4000) Transfer from Knobbs Creek Bridge Fund	23,932	
(303990.0000) Electric Fund Retained Earnings Appropriated		23,932

(To close out inactive Knobbs Creek Bridge Fund to Electric Fund.)

**SECTION V.**

(443990.0000) N. Road Street Project Fund Retained Earnings Appropriated	\$ 20,640	
(446600.1000) Transfer to N. Road Street Project Fund		\$ 20,640

(103970.4000) Transfer from N. Road Street Project Fund	20,640	
(103990.0000) General Fund Balance Appropriated		20,640

(To close out inactive N. Road Street Project Fund to General Fund.)

This amendment will increase fund balance by \$20,640.

ADOPTED, this 12<sup>th</sup> day of September 2016.

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Joseph W. Peel, Mayor

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Vivian D. White, CMC/NCCMC, City Clerk

**9. Comments and Inquiries on Non-Agenda Items:**

Councilman Brooks stated that the City needs to support Elizabeth City State University as much as possible, especially during homecoming. He noted that the University is part of the City's wealth. He encouraged everyone to also support the City's youth and the US Coast Guard Base. He noted that all those things represent the City's future.

Councilman Stimatz had no further comments.

Councilman Horton had no further comments.

Mayor Pro Tem Hummer had no further comments.

Councilman King had no further comments.

Councilwoman Baker had no further comments.

*(Clerk notation: Most of the following comments by Councilman Walton are provided in a modified verbatim format.)*

Councilman Walton stated that Councilman Brooks had a good point to try to keep the young people here. He said that when Chancellor Franklin was at the University, there was nothing but compliments from "this place here." Councilman Walton stated: "It took the Board of Governors to say – hey, she's not the best – that's not the pathway to



prominence for this City.” He stated: “So, you know, people talk about rebranding in Elizabeth City. That’s all I’ve heard. Rebranding Elizabeth City. What do we want it to be?” He stated: “My point is, what do WE (*emphasis added*) want it to be, not do one or two people want it to be.” He continued: “On September 20, 2016, couple days ago, I knew I knew Mr. Thompson from somewhere. But he’s a realtor. He made statements in the paper and one of them – go down about four paragraphs – he said they presented – he’s talking about the CVB – Convention Board – they presented a scenario in which a family would see us online, sign up for tours and then come to town. While here, they’ll spend one day enjoying the Museum of the Albemarle, and two or three other museums in the area, then come back and spend another night there - here.” He stated: “In the morning they would spend their time either kayaking, visiting a farm, or touring lighthouses. Goss proposes using resources of the region to entertain and inform visitors while making Elizabeth City the Albemarle regional destination.”

Councilman Walton stated: “They are trying to make it, Mike, a retirement city – and which I don’t have anything to do with it because I’m there. But we cannot forget the youth. We don’t do half enough for youth, but we’re talking about recruiting retirees, you know?” He said: “As I was about to say earlier, Dr. Barber said there’s intentional racism and then there’s unintentional racism – unintentional and intentional. If we just let things go and don’t say anything about it, it’s our fault because we’re silent. We got to treat everybody the same. We cannot, because it’s a black person, fire someone – I know this is personnel – but this is just a reference. You can’t fire someone for not cleaning a bathroom – or not reporting for a Fourth of July event. And then you take a person - move them from one area – and Morgan Jethro was doing a great job of writing grants – but now we don’t have her anymore. But we put another person in that position that’s probably never written a grant – but it’s a different story because one of them is black and the other one is white. Something is wrong with that picture.”

Councilman Walton continued: “And then we talk about changing the flow chart of who’s in line to work in our system. We want to move people up the ladder so they can continue doing what we are doing. I hope this is not what we’re continuing. Because I can’t kayak, ya’ll trust me. I don’t think many of us on this podium can kayak. If that’s what we are pushing for - right, you’re dreaming. If that’s what we’re pushing for, it won’t work. So, we got to try to support the masses, rather than just a certain few. Thank you, Mayor. Thank you Miss Anita.”

Councilman Donnelly stated that he had a few points to bring to the City’s attention. He stated that he appreciated Emily White coming forward and recommending changing the name of Pool Street Park. He said that if the City could look into that situation he would appreciate it. He noted that the Clark Foundation had continued to contribute to the band in Elizabeth City and had been doing so for years. He stated that his second concern dealt with beautification of the City. He said that he had been contacted by an individual representing a group that believed in beautifying the City. He stated that they wanted to know how to make it look better. He noted that the orange barrels were now gone from Elizabeth Street, but the City is considering purchasing orange recycling bins. He asked if there was any way that a more neutral color could be obtained. Mr. Olson stated that the City Council could determine the color, but noted that the City has already purchased 700 of the orange containers. He stated that initially the project was a joint grant application with Pasquotank County. Mr. Olson said that the County is also changing to the orange color. Councilman Donnelly suggested that the City should advertise the reason for the orange color choice. Councilman Donnelly stated that he had noticed, as a walker through the downtown area, that pedestrians no longer have the right of way. He stated that drivers do not recognize the signs in pedestrian crosswalks. He said that he had also heard of several accidents and near-accidents involving cyclists and motorists. He suggested that the cycling club and the Parks and Recreation Department could partner to remind drivers to share the road.

Councilman Brooks asked about placing a four-way stop at the intersection of Herrington Road, Shepard Street and McMorrine Street. Councilman Donnelly agreed that there was a need for that signage.

Mayor Peel reminded everyone about the Joint City-County Meeting scheduled for Thursday, September 15, 2016 at Arts of the Albemarle.

**10. Closed Session as allowed by NCGS §143-318.11(a)(6) to discuss Personnel Matters.**

Mayor Peel requested a motion to go into Closed Session.

**Motion was made by Mayor Pro Tem Anita Hummer, seconded by Councilman Darius Horton to go into closed session as allowed by NCGS 143-318.11(a)(6) to discuss Personnel Matters. Those voting in favor of the motion were: Baker, Donnelly, Hummer, Stimatz, Brooks, King, Horton and Walton. Against: None. Motion carried.**

Mayor Peel declared a five minute recess at 8:31 p.m. after which the Council reconvened in Closed Session.

**Motion was made by Councilman Darius Horton, seconded by Councilman Tony Stimatz, to come out of Closed Session. Those voting in favor of the motion were: Baker, Donnelly, Hummer, Stimatz, Brooks, King, Horton and Walton. Against: None. Motion carried.**

The Council returned to Open Session at 9:14 p.m.

**Motion was made by Councilman Darius Horton, seconded by Councilman Rickey King, to hire Ms. Angela Cole as the Assistant City Manager and that she receive the said salary. Those voting in favor of the motion were: Baker, Donnelly, Hummer, Stimatz, King, Horton and Walton. Against: Brooks. Motion carried.**

**11. Adjournment:**

There being no further business to be discussed, Mayor Peel adjourned the meeting at 9:15 p.m.

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Joseph W. Peel  
Mayor

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Vivian D. White, CMC/NCCMC  
City Clerk