

**City Council Work Session
August 22, 2016**

The City Council of the City of Elizabeth City met in work session on Monday, August 22, 2016 in Council Chambers, located on the 2nd floor of the Municipal Administration Building, 306 E. Colonial Avenue, Elizabeth City, NC.

MEMBERS PRESENT: Mayor Pro Tem Anita Hummer
Councilman Ray Donnelly
Councilman Tony Stimatz
Councilman Rickey King
Councilman Darius Horton (*arrived at 5:45 p.m.*)
Councilman Johnnie Walton

MEMBERS ABSENT: Mayor Joe Peel
Councilwoman Jean Baker
Councilman Michael Brooks

OTHERS PRESENT: City Manager Rich Olson
City Attorney Bill Morgan
Finance Director Sarah Blanchard
Planning Director June Brooks
Chief of Police Eddie Buffaloe
Electric Department Superintendent Karl Clow
Assistant to the City Manager Angela Cole
Human Resources Director Katherine Felton
Public Utilities Director Paul Fredette
Fire Chief Larry Mackey
IT Director Matthew Simpson
Inspections Director Stanley Ward
Parks and Recreation Director Bobbi White
City Clerk Vivian White

The City Council work session was called to order by Mayor Pro Tem Anita Hummer at 5:30 p.m. Mayor Pro Tem Hummer welcomed everyone to the meeting and recognized Councilman Tony Stimatz to give the invocation, after which she led the Pledge of Allegiance.

1. Agenda Adjustments and Approval:

Mayor Pro Tem Hummer called for any adjustments to and approval of the agenda.

Mayor Pro Tem Hummer announced that staff had requested that the item, "Consideration – Fixed Wireless and Fiber Network Operation Lease Agreement for Eastern Shore Communications" be removed from the agenda. She recognized Mr. Olson for an update on this matter. Mr. Olson explained that Eastern Shore Communications had requested a delay of this matter to allow additional time for them to review the agreement before it is considered by the City Council.

Motion was made by Councilman Rickey King, seconded by Councilman Ray Donnelly, to approve the agenda with any necessary changes. Those voting in favor were: Donnelly, Hummer, Stimatz, King and Walton. Against: None. The motion carried unanimously. (Councilman Horton 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. Consideration – Professional Services and Support Agreement and Software License Agreement for Nexgrid, LLC:

Mayor Pro Tem Hummer called on Mr. Olson to begin the discussion of this item. Mr. Olson stated that the matter before the Council was consideration of an interim agreement with Nexgrid LLC. He noted that in addition to the draft Professional Services and Support Agreement, a draft Software License Agreement was included for consideration. He reminded the Council that the City contracted with Nexgrid to perform a pilot project for the City; and the time period for that pilot had expired. He stated that the City had not been able to fully implement the Nexgrid system, but it was not the fault of the company. He said the delay was due to the ongoing issues the City was experiencing with its conversion from the Logics Operating System to the Edmunds Operating System. Mr. Olson advised that the amount of the agreement was \$5,000; and it would allow Nexgrid to continue its services to the City for a one year period.

Councilman Stimatz stated that he was of the understanding that the City is trying to determine the industry standard for data protection, which could be referenced within the document. Mr. Olson stated that staff had not yet determined that information, and pointed out that it would be based on best practices. He also said that staff had not yet determined whether the City would host the Nexgrid system or whether that function would be carried out by ElectriCities. Councilman Stimatz asked if language could be placed in the contract to require Nexgrid to insure they will protect data in accordance with best industry practices. Mr. Olson stated that he did not see that as an issue. City Attorney Morgan stated that he felt the language requested by Councilman Stimatz should be included in Section 8.2.

Councilman Stimatz commented that he understood the City would not be exercising any of the term extensions currently stated in the interim agreement. Mr. Olson stated that the City did not anticipate exercising those provisions at this time. He said that until the conversion issues are worked out with Edmunds and the determination regarding who would host the system is made, the final term election cannot be considered.

Councilman Stimatz noted that the agreement does not provide a time period whereby the term extension options must be exercised. Mr. Olson stated that staff would work with the City Attorney to add language in the agreement regarding that provision.

Councilman Stimatz asked for clarification regarding the three, five and ten year extension provisions. He said that if the terms referred to are for a one-time election, it should be included in the document. He stated that provisions also should be made to insure the pricing structure is "locked in" for the term chosen.

Motion was made by Councilman Ray Donnelly, seconded by Councilman Rickey King, to authorize Mayor Joseph Peel to execute the Professional Services and Support Agreement and Software License Agreement with Nexgrid for \$5,000. Those voting in favor were: Donnelly, Hummer, Stimatz, King and Walton. Against: None. The motion carried unanimously. (Horton had not yet arrived.)

City Manager Olson requested that the motion be reconsidered. He said that since Mayor Peel was away, he thought it would be better to authorize either Mayor Peel or Mayor Pro Tem Hummer to execute the document

Motion was made by Councilman Tony Stimatz, seconded by Councilman Ray Donnelly, to reconsider the previous motion. Those voting in favor were: Donnelly, Hummer, Stimatz, King and Walton. Against: None. The motion carried unanimously. (Horton had not yet arrived.)

Motion was made by Councilman Tony Stimatz, seconded by Councilman Rickey King, to amend the previous motion to include the Mayor or the Mayor Pro Tem to execute the document when it's ready. Those voting in favor were: Donnelly, Hummer, Stimatz, King and Walton. Against: None. The motion carried unanimously. (Horton had not yet arrived.)

4. Consideration – Downtown Improvement Grant Program for FY2016-2017:

Mayor Pro Tem Hummer recognized Mr. Olson to provide the background for this request. Mr. Olson stated that staff is requesting that the City Council “bless” the Downtown Improvement Grant Program, as well as the following agenda item - the Community Support Grant Program - for fiscal year 2016-2017.

He noted that during the City Council retreat held in January 2016, members of the Council expressed a desire to expand the Downtown Improvement Grant program universally throughout the City, while still giving the downtown area first priority. He stated that staff had provided for fiscal year 2016-2017 a Priority 2 for applications from the Ehringhaus corridor to be followed by the rest of the community as Priority 3 – in that order. He pointed out that staff had amended the program guidelines in this manner to meet the Council’s desire.

Mr. Olson reviewed the three program documents: the Program Guidelines, the application, and the scoring rubric. He noted the changes made in each to accommodate the Council’s desire to expand the program. He paid particular attention to the three geographic priority areas: Priority 1 being the downtown area; Priority 2 being the Ehringhaus corridor and Priority 3 being the rest of the City. He noted the funding deadlines for each. Mr. Olson advised that the School of Government had advised that before the City can award any grants under this program, a public hearing must be held. He noted that requirement would delay the funding process by two to three weeks.

Mayor Pro Tem Hummer stated that the program has a total allocation of \$80,000 for the current fiscal year. Mr. Olson noted that only \$60,000 was left for the fiscal year, since a project approved during the last fiscal year had been paid after the start of the new fiscal year.

City Attorney Morgan noted that a Councilor had raised the issue of repayment of the grant if the property is sold within a 36-month period. He advised that he would suggest adding a provision in the Property Owner Authorization section of the application that requires execution of a note and deed of trust in favor of the City to insure that the debt was paid at closing. He said the document could be structured in such a way as to have the payment come due three years from the date of the grant funding.

Councilman Donnelly asked if Priority 2 applications and Priority 3 applications could be accepted with the Priority 1 applications. Mr. Olson stated that Priority 1 applications would be considered first; then Priority 1 and 2 applications would be accepted; and finally, Priority 3 applications would have a 60 day time period toward the end of the fiscal year to apply. Councilman Donnelly suggested that everyone should be able to apply “up front.” Mr. Olson stated that the purpose of the Downtown Improvement Grant Program is to improve the downtown area, but if applications are not received from Priority 1 businesses, the funding would be open to others.

Councilman Walton agreed with Councilman Donnelly and stated that he felt Priority 2 and Priority 3 applications should be combined. Mr. Olson stated that there was an emphasis placed during the earlier Council retreat by members wishing to do something along the Ehringhaus Street corridor. He voiced no objection to changing that provision if the Council so desired.

Motion was made by Councilman Walton, seconded by Councilman Donnelly, “that we just go with two priorities.” Those voting in favor of the motion were: Donnelly, Hummer, Stimatz, King, Horton and Walton. Against: None. The motion carried unanimously.

5. Consideration – Community Support Grant Program for FY2016-2017:

Mayor Pro Tem Hummer stated that the Finance Committee had discussed how Community Support Grant applications should be presented, but had forwarded the matter to the Council without a recommendation.

Mr. Olson stated that the Community Support Grant Program requires that applicants make a presentation to the City regarding their request. He said that in the past few years, the presentations have been made before the Finance Committee, with the committee making a recommendation to the full City Council. He noted that in the past, other members of the Council were allowed to attend the Finance Committee meeting and participate in the discussion; however, the School of Government had ruled that that practice should be discontinued. Mr. Olson stated that the decision before the Council is whether to open up the presentations to the body whole during a Special City Council meeting or have them presented before the Finance Committee.

Councilman Walton questioned why anything dealing with money should go to the Finance Committee first. He noted that he had long had an issue with that practice.

Mr. Olson stated that the only change with the Community Support Grant application process for the current fiscal year is the requirement to hold a public hearing prior to awarding funding.

Councilman Horton pointed out that even if the presentations are made to the Finance Committee, the City Councilors as a body would make the decisions. Mr. Olson noted that even after the Public Hearing is held, issues may arise that the Council would like to address before making the award.

Members of the Council questioned if they could attend the Finance Committee meeting and sit in the gallery without participating in the meeting. The City Attorney advised that advice from the School of Government revealed that practice should be discouraged because the point could be made that a Councilor's presence could influence the outcome. Councilman Stimatz asked if attendance by non-members of the Committee would be illegal. He noted that if it were not illegal, the decision was his regarding his attendance.

Councilman Donnelly stated that one of the reasons the Finance Committee recommended this matter for discussion by the body whole was to determine the process of hearing each applicant make their presentation. He asked if the Councilors wanted to hold a Special Meeting to listen to the presentations or if the Finance Committee members should hear the presentations.

Councilman Stimatz stated that if he could not ask questions at the Finance Committee meeting, he would end up having to ask his questions during the Regular Meeting. He noted that if the participants are not in attendance during the Regular Meeting, it would create a delay in getting answers to his questions.

Councilman Horton pointed out that once the Finance Committee hears the presentations, the Council will receive a recommendation during a Regular Meeting. He noted that if questions arose, there would be time for staff to get answers from the applicants prior to the Public Hearing.

Councilman King stated that all the discussions, questions and answers could be eliminated by holding a Special Meeting of the Council to enable everyone to hear the applicant presentations.

Councilman Horton stated that he preferred having the applications heard by the Finance Committee. He pointed out that the applicants have very precise criteria that must be followed before applying; and he did not want them to have to "come up and get drilled by Council and the Finance Committee." He said he would much rather go through City staff and have the information brought back to the Council.

Councilman Walton stated that all of the Councilors need to hear all of the information all of the time.

Mayor Pro Tem Hummer asked the City Manager if all members of the Council would receive the applicant packet at the same time it is provided to the Finance Committee. Mr. Olson responded that they would.

Councilman Donnelly stated that the Finance Committee only makes recommendations to the full Council. Councilman Walton responded “it’s all about influence.”

Motion was made by Councilman King, seconded by Councilman Donnelly, to hold a Special Meeting and have all applicants appear before the full Council. Those voting in favor of the motion were: Donnelly, Hummer, Stimatz, King, Horton and Walton. Against: None. The motion carried unanimously.

Councilman Stimatz stated that the application and supporting documents presented to the Council in this matter were not the documents presented to the Finance Committee. He stated that staff deleted the EEO policy statement from the document without a recommendation by the Finance Committee to do so.

Councilman Stimatz made a motion, seconded by Councilman Horton, to accept the Community Support Grant application and supporting documents as presented to the Finance Committee for deliberation. Those voting in favor of the motion were: Donnelly, Hummer, Stimatz, King, Horton and Walton. Against: None. The motion carried unanimously.

Councilman Stimatz stated that he had sent an email to staff stating that the EEO policy shown on the original application was not consistent with current law and regulation, or the City’s personnel manual, and needed to be corrected. He stated that he had a real problem with staff’s action to delete or alter documents that are presented to a previous group for a recommendation to the Council. He stated that practice was not acceptable. He said that the list of protected categories goes back some months when he asked a question about the City’s Code of Ordinances. He expressed concern that consensus cannot be reached within the personnel policy manual, where four different statements are contained. He stated that the only category he was interested in adding was “sexual orientation” as had been done in the approved CRC By-laws. He stated that the answer as to whether protection for “gender identity” is a protected category is still up in the air in North Carolina.

Motion was made by Councilman Stimatz, seconded by Councilman Donnelly to accept the draft document as presented to the Finance Committee with the addition of the words “sexual orientation” to the list of EEO policies; and that staff be directed to come back by the next meeting with a very simple, sublime definition of what the legally protected categories are.

Councilman Stimatz noted that several policies used by the City contain protected categories that are not EEO-protected.

Councilman Donnelly stated that he is very sensitive to the issue being discussed. He noted that at the same time, he would like a legal opinion as to what direction the City should take.

City Attorney Morgan stated that there was no question that the City’s documents do not all use the same phraseology when describing protected classes. He said that in order to get some resolution while the law was still changing in North Carolina, one suggestion received was to describe the protected classes that we know are covered under applicable state and federal law and then include a catch-all phrase that says that the City is not going to discriminate against “any other legally protected classes of individuals.” He advised that would provide some guidance regarding how a policy could be crafted while the Courts work through the situation.

Mr. Olson asked to provide some clarification on the issue. He stated that the item being considered is a Community Support Grant application and program. He said “it is not an EEOC employment document.” He pointed out that no one was being employed in the Community Support Grant program by the City. He noted that a staff member inadvertently placed the EEO provision into the document sent to the Finance Committee. He stated that he personally had the statement removed when he discovered the mistake.

Mr. Olson continued by stating “there are two separate issues here. The EEO policy does need to be changed, but not as it pertains to this document, because this document is not covered by the EEO policy that we have.” He said that an additional issue is whether to amend the personnel policy manual, which he felt was correct to do. He reiterated that the EEOC statement should never have been placed in the Community Support Grant application.

Councilman Stimatz stated that regardless the reason for the statement being removed, the Finance Committee took action on that document and he felt that was the document he should be seeing during the Council meeting. He stated that his was a procedural problem with staff making changes to documents that a committee has already ruled on, especially when the Council members are not informed. Councilman Stimatz said that regardless of what the City Manager recommended, he had made a motion. He said that he did not have a problem leaving the EEO policy in the document and whether the policy applies to the Community Support Grant document is immaterial.

Councilman Stimatz asked the City Attorney “Mr. Morgan, does it hurt us to say that that’s our EEO policy?” City Attorney Morgan responded “I think the best advice would be to not include it in a document where it’s not necessary. It is our EEO policy, but I don’t think it’s relevant to this document.” Councilman Stimatz responded “there are lots of things that aren’t relevant to stuff, what’s wrong with saying it?” Mr. Morgan said “the old adage - say as little as you need to to get the point across.” Councilman Stimatz stated “with that being said, there is a motion on the floor to; “a” keep it in, “b” modify it and “c” tell staff to get a better definition. That’s my motion and it stands.”

Councilman Donnelly asked to make a friendly recommendation to the motion. He suggested that the motion be divided into three components. Mayor Pro Tem Hummer requested advice from the City Attorney who advised that it would be proper to take a separate vote on the three issues.

Mayor Pro Tem Hummer called for a vote on separating the three issues.

Those voting in favor of the procedural motion to separate the issues were: Donnelly, Hummer, Stimatz, King, Horton and Walton. Against: None. The motion carried unanimously.

Mayor Pro Tem Hummer called for a vote to accept the version of the document that was provided to the Finance Committee, which included the EEO statement.

Those voting in favor of the motion were: Hummer, Stimatz, King, Horton and Walton. Against: Donnelly. The motion carried unanimous.

Mayor Pro Tem Hummer called for a vote to include the word “sexual orientation” in the EEO description as a protected class on the Community Support Grant Application.

Those voting in favor of the motion were: Donnelly, Hummer, Stimatz, King, Horton and Walton. Against: None. The motion carried unanimously.

Mayor Pro Tem Hummer called for a vote to direct staff to come back to the next meeting in October with a concise definition of an anti-discrimination policy.

Those voting in favor of the motion were: Hummer, Stimatz, King, Horton and Walton. Against: Donnelly. The motion carried unanimously.

6. Committee Reports:

a) EC-PC Economic Development Commission: Mayor Pro Tem Hummer, Councilwoman Baker, Councilman King and Mayor Peel

Mayor Pro Tem Hummer stated that there was not a quorum in attendance, but there was a general discussion held. She said that Commander Brown spoke at length regarding the concerns of Coast Guard families that there is little to do in Elizabeth City and that the community does not offer a lot with regard to shopping and dining options.

b) Central Communications Advisory Board: Councilman Brooks

Councilman Brooks was not in attendance.

c) Fireman's Relief Fund Board: Councilman Brooks

Councilman Brooks was not in attendance.

d) NC Eastern Municipal Power Agency: City Manager Olson and Mayor Peel

Mr. Olson stated that the Agency held its annual meeting August 12, 13 and 14, 2016. He said that a Rate Committee meeting would be held on August 24, 2016.

e) Elizabeth City Downtown, Inc.: Councilman Donnelly

Councilman Donnelly stated that ECDI had met, but he did not have a report.

f) Elizabeth City Area Chamber of Commerce Board: Mayor Peel

Mayor Peel was not in attendance.

g) Finance Committee: Mayor Pro Tem Hummer, Councilman Donnelly, Councilman Horton and Mayor Peel

Mayor Pro Tem Hummer stated that all items discussed had been forwarded to the City Council for consideration.

h) Parks and Recreation Advisory Board: Councilman Walton

Councilman Walton stated that the playground at Funjunktion was progressing.

i) Elizabeth City/Pasquotank County Airport Authority: Councilman Stimatz

Councilman Stimatz stated that applications for the Airport Manager position had been closed and the Selection Committee is reviewing the resumes. He stated that once the list of finalists had been selected, interviews would be held and the director chosen. He stated that the Coast Guard's celebration of its 100th anniversary of flight was fascinating and a great event.

j) Storm Water Advisory Board: Councilman Stimatz, Councilman King and Councilman Brooks

Councilman Stimatz announced that the board would meet on September 22, 2016.

k) Tourism Development Authority: Councilwoman Baker

Councilwoman Baker was not in attendance.

8. Adjournment:

There being no further business to be discussed, Mayor Pro Tem Hummer adjourned the meeting at 6:38 p.m.

Anita Hummer
Mayor Pro Tem

Vivian D. White, CMC/NCCMC
City Clerk