



# City of Hampton

22 Lincoln Street  
Hampton, VA 23669  
www.hampton.gov

## Council Approved Minutes - Final City Council Work Session

*Mayor Donnie R. Tuck*  
*Vice Mayor Jimmy Gray*  
*Councilmember Chris L. Bowman*  
*Councilmember Steven L. Brown*  
*Councilmember Hope L. Harper*  
*Councilmember Billy Hobbs*  
*Councilmember Martha Mugler*

*STAFF: Mary Bunting, City Manager*  
*Steven D. Bond, Interim City Attorney*  
*Katherine K. Glass, CMC, Clerk of Council*

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**Wednesday, December 13, 2023**

**1:00 PM**

**Council Chambers**

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### CALL TO ORDER

Mayor Tuck called the meeting to order at 1 p.m. All members of the City Council were present except Councilman Hobbs. The City Manager, Mary Bunting, stated that she had spoken with Councilman Hobbs and he is ill.

**Present** 6 - Councilmember Chris L. Bowman, Councilmember Steven L. Brown, Vice Mayor Jimmy Gray, Councilmember Hope L. Harper, Councilmember Martha Mugler, and Mayor Donnie R. Tuck

**Excused** 1 - Councilmember Billy Hobbs

### DONNIE R. TUCK PRESIDED

### AGENDA

1. [23-0349](#) Annual Comprehensive Financial Report for the Fiscal Year Ended June 30, 2023

**Attachments:** [Presentation - Cherry Bekaert](#)  
[Presentation - Finance Department](#)  
[Memo to Council](#)  
[Annual Comprehensive Financial Report](#)

Ms. Bunting introduced Mr. Karl Daughtrey who recognized members of the finance team who were in attendance: Ms. Brittany Abbott, Ms. Marcie Dunn, Ms. Janice Anderson, and Ms. Roberta Vick. He also introduced Ms. Laura Harden, Director, Cherry Bekaert Advisory, LLC; and Ms. Shelby Brown, Audit Manager who be

making today's presentation.

Ms. Harden recognized Mr. Rob Churchman who performed an independent review after Ms. Harden and Ms. Brown completed their portion of the audit process. Ms. Harden presented the results of the June 30, 2022, audit of the Annual Comprehensive Financial Report issued on December 1, 2023.

She stated that Cherry Bekaert issued an unmodified opinion on the City's financial statements, which is the best opinion that can be received as a result of the audit.

Cherry Bekaert used the Government Auditing Standards and the Virginia Auditor Public Accounts Specification in conducting the audit. No instances of non-compliance instances were found required to be reported under the Government Auditing Standards. Ms. Harden shared that the audit did not find any material weaknesses in internal control over financial reporting.

Ms. Harden shared the results of the single audit, covering the federal expenditures of the City. Cherry Bekaert issued an unmodified opinion on the City's compliance with each major federal program, which is the best opinion that we can receive. There were no instances of material weaknesses in internal control.

She shared that no misstatements were identified during the audit.

Ms. Harden stated that the City implemented several Government Accounting Standards Board (GASB) Statements for the fiscal year ending June 30, 2023. GASB Statement No. 91, Conduit Debt Obligations, and GASB Statement No. 94, Public-Private and Public-Public Partnerships and Availability Payment Arrangements had no impact on the financial statements. GASB Statement No. 96, Subscription-Based Information Technology Arrangements increased capital assets and long-term liabilities.

Cherry Bekaert did not note any undisclosed related party transactions, significant unapproved transactions, transactions lacking in business purpose, or unusual transactions during the audit.

Ms. Harden explained that in financial statements, there are items that are considered to be significant estimates, meaning those numbers can change year over year based on the underlying assumptions that go into making those estimates. The most significant to the City's financial statements are its allowance for doubtful accounts on taxes receivable: capital asset depreciable lives: the actuarially computed pension and Other Post-Employment Benefits (OPEB) assets and liabilities, and those related deferred flows of resources and expense: and risk

management claim liabilities. She stated that the financial statement disclosures are considered to be neutral, consistent, and clear.

Ms. Harden confirmed that Cherry Bekaert is independent of the City, as is required, and has met its ethical responsibilities in accordance with the relevant ethical requirements relating to its audit. The auditors encountered no difficulties with City management in completing the audit. Ms. Harden said there will be a couple of new financial reporting and auditing changes over the next few years, but they are not anticipated to cause significant impacts.

Councilwoman Mugler requested an explanation of “allowance for doubtful accounts on taxes receivable,” referenced during the presentation. Ms. Harden explained that, based on historical estimates, is an account that management has determined might not be collected.

In response to Mayor Tuck, Ms. Harden explained that a City audit is a very long process that typically starts in May or June with planning and continues until the finish at the beginning of December. Constitutional offices such as the Sheriff's Office and the Commissioner of Revenue's Office are also included in the City's audit.

Mr. Daughtrey further addressed Councilwoman Mugler's question about allowance for doubtful accounts. He explained that for the first year taxes are levied on real estate, almost 99% of the amount is collected. After three years of the levy, taxes are normally written off. They use a standard formula that calculates the allowance, which is a small percentage. Personal property taxes are harder to collect with between 90-92% being collected in the first year.

Mr. Daughtrey continued the presentation with a more detailed look at the general fund summary operating results for fiscal year 2023. The general fund ended with surplus revenues over expenditures of \$7.5 million.

Mr. Daughtrey explained the different types of fund balances. The restricted fund balance is restricted by external parties and can only be spent for contractual purposes for specific purposes. The committed fund balance includes items that are formally approved by Council to be spent for specific purposes. Funds designated to be spent for capital projects are considered committed fund balances. The assigned fund balance can be set aside by Council, the City Manager, or Mr. Daughtrey for designated purposes. The unassigned fund balance is money available for Council to spend. Fiscal year (FY) 2023 ended with an unassigned fund balance of \$100.9 million versus \$91.6 million at the end of FY2022. He noted that the City has complied with the policy that requires us to maintain a fund balance at 10% of the

general fund revenues and the school operating fund revenues.

Mr. Daughtrey displayed a graph that shows revenues by classification which includes general property tax, state and federal revenues, meal taxes, lodging taxes, charges for services, and others. The largest overperformance in revenues was \$7.8 million in other local taxes. In addition, the general property taxes exceeded budget by \$2.6 million; state and federal revenues were over by \$800,000; charges for services exceeded by \$1.1 million; and the uses of money and property were over by \$4.9 million which was primary interest income.

Mayor Tuck asked if the budget was affected by people who don't register their vehicles. Mr. Daughtrey explained that the Commissioner of Revenue catches those through updates received from the Department of Motor Vehicles (DMV). There is also a license plate reader program that has been successful. If a citizen drops the insurance on their vehicle and doesn't turn in the license plates DMV will catch them and the City will hit them with a significant fine. He stated that the City does not receive any money from vehicle inspections because it goes to the business providing inspection services.

Mr. Daughtrey explained why the property taxes and consumer-driven taxes performed so well. The Treasurer's office dedicated more resources to collecting personal property taxes resulting in a collection rate of 92%. The sales and use tax grew at a rate of 3.7% due to inflation and remote sales. Meal tax has grown an average of 11% over the last three fiscal years. Restaurants are continuing to increase menu prices to offset the cost of inflation which increases meal taxes.

Vice Mayor Gray asked Mr. Daughtrey if he was able to compare trends in online sales versus local retail sales. Mr. Daughtrey said he does not have the data but the information provided to him by the Commissioner of Revenue's office is that the remote sales continue to increase each year. Vice Mayor Gray stated that he would like to understand the spending habits of consumers. He thinks it should be taken into consideration because there are so many vacant retail spaces yet the tax revenue continues to grow. Mr. Daughtrey stated that he would get the data for Council.

Councilman Brown asked if the City received any significant revenue from cable and other utilities. Mr. Daughtrey explained that the City receives a state-wide communication sales tax of about five percent. That tax has underperformed since it has been in existence due in part to consumers dropping services like landlines and cable.

Ms. Bunting stated that that tax doesn't pick up things like streaming services so as

people drop their cable in favor of streaming services, the City loses the tax. Mr. Daughtrey shared that the state had an ad hoc group that studied the tax and recommended an increase, however, the General Assembly did not make the increase.

Mayor Tuck asked Ms. Bunting if she has discussed with other city and county managers about including adjustments to the communication sales tax in the legislative package. In response, Ms. Bunting stated that they have talked about modernizing the taxes generally rather than selecting just one. The Governor will consider lowering income taxes but not increasing something else to offset it. A lot of local governing bodies have shied away from asking for a tax increase because it implies that all they want to do is take away more money.

Mr. Daughtrey explained that revenue from the use of money and property is interest income earned on investments. The Federal Reserve raised the Federal Funds rate seven times in FY23 to combat and ease inflation. When the Federal Funding rate is raised, it also raises the loan and credit card rates as well as investment rates for investments and bank accounts.

The lodging tax has recovered significantly since the pandemic. Hotels increased their prices to offset the impact of inflation which had a positive impact on revenues. According to the Virginia Tourism Corporation, Hampton saw a 12.1% increase in tourism expenditures. Hampton Coliseum experienced growth in the number of concert events and festivals, including the return of the Hampton Jazz Festival, which generated hotel demand.

Councilwoman Mugler asked that with such a large variance in the revenue driven by the Federal Reserve, should caution be used concerning that money since those rates will not hold forever. Mr. Daughtrey stated that by looking at trends to the future when there are significant increases in interest anticipated, less budgeted for one-time projects like capital projects won't have the fluctuation that impacts the budget.

The general fund expenditures are divided into three categories, allocation to City departments, transferred to other funds, and transferred to schools. The transfers to other funds include \$31.8 million to the debt service fund to pay a debt on the general obligation bonds; \$41.6 million to a capital project fund to cover capital projects and any potential future Council strategic projects; \$9.4 million to the convention center fund; and about \$500,000 to the golf courses for their operating subsidies.

In response to Mayor Tuck, Ms. Bunting stated that most debt the City issues is 20

years but if it is a significant size facility, a longer period can be issued. The convention center and Peninsula Town Center CDA commitments are 30 years.

Mr. Daughtrey shared information on the general fund unassigned fund balance for FY19 to FY23. The City maintains a fund balance for one-time projects and working capital purposes. Because taxes are collected in December and June, a fund balance helps maintain cash flow when the tax revenues go down. This prevents the City from having to do any short-term borrowing, provides a reserve for unseen emergencies, and helps maintain a good credit rating. Credit rating agencies expect us to maintain a certain amount of fund balance and they compare us to the national average. We are currently below what is expected.

In response to Vice Mayor Gray, Mr. Daughtrey explained that the credit rating agencies put together the school operating fund, the debt service fund, and the general fund, and they look at the fund balance as a percentage of all of those revenues. The national median for 2022 was 35.7% and Hampton was at 28%. They want the City to maintain more fund balance because if something happens with City revenues, debt service payments can still be made.

Ms. Bunting explained that Hampton has a double A+ which is the second highest rating given. It is very hard for fully developed cities that can't expand their boundaries to get a triple A+. The rating is like a credit score and it may lower costs when borrowing. It would be very hard for us to get a higher rating without bringing up the fund balance ratio.

In response to Councilwoman Harper, Mr. Daughtrey stated as part of the 2025 budget process, the City plans to use some of the fund balance to cover one-time capital projects.

In response to Councilwoman Mugler, Mr. Daughtrey stated that the financial advisors could analyze to see what it would take to get Hampton to the national median. Ms. Bunting urged caution in changing the budget to get immediately to the national median because setting it higher and not meeting the amount is worse than not meeting it at a lower level. It would be better to change it gradually over time.

Mayor Tuck stated that local governments take on more responsibility making it harder to achieve an A+++ rating. He expressed his concern that putting more money in the fund balance will put pressure on lowering the real estate rate.

Ms. Bunting explained that there are so many different factors contributing to the rating and increasing the fund balance may not make a difference in the rating. The financial advisors are best suited to tell us what to do to achieve an A+++ rating. She

reminded the public, who looked at this really big number, that it is not just the fund balance and emergency account for the City, it is also for the schools because they cannot carry a fund balance.

Mr. Daughtrey introduced Ms. Brittany Abbott, Controller, to present information on the City's government-wide financial statements. She shared that the statement is used to show government financial information in a format comparable to the private sector and provides information to assess the City's long-term financial condition or net position. She provided statistics on the current net position.

In reference to slide number eight, Councilwoman Mugler explained her thoughts on the policy percentage. In her experience in finance, if there is a policy that is being continually exceeded, changing the percentage should be investigated. She stated that she understands the argument concerning tax rates but on the average from 2019 to the present, you can't know what those numbers are going to be. For example, this year the federal rates affected Hampton's budget in a very big way. We can't always know where those numbers are going to go. Her position is that, because Hampton is continually exceeding the policy, we should take a look at it to see whether or not we should make changes.

Mayor Tuck commented that the last several years have been unusual because in FY20 or FY21 when we expected a budget deficit, American Rescue Plan Act (ARPA) funds helped produce a surplus. This year has had inflation and federal rate increases. He stated that we should look at years before the last five, possibly a 10-year trend to see if any changes need to be made.

Ms. Bunting stated that she agrees that the policy should be looked at to determine what measures to take. She stated for the record that typically in a recession, or would have been expected with a major pandemic, is that we would have dropped. This has been, as I'm sure you've seen in the news, a very atypical experience for a pandemic and a recession. Usually, in a recession, sales and meal taxes go down. It hasn't, because I think people got used to, as Carl said earlier, going out to eat as a convenience to the family and/or as a form of entertainment. So people have chosen to prioritize that in spending. But if you look at past recessions, those would drop precipitously. So some unusual things are going on that worked out to the good for the locality. I'm not complaining about it, I'd rather have what we have than the reverse. But if you look at any other recessionary period, we were having to do much different things than we're having to do so the Mayor is right that these are atypical years. For that reason, when we look, we should probably look at a 10-year, kind of rolling average as we go. And that's the kind of work that Davenport, who's our financial advisor, would naturally do.

In response to Councilman Bowman, Mr. Daughtrey stated that the operating numbers for the Aquaplex are part of the Coliseum fund. The Coliseum fund has about a \$500,000 loss for the year. Mr. Daughtrey does not have the Aquaplex numbers with him but said he would get that information and provide it to Council.

Ms. Bunting explained that the Aquaplex was opened later than intended. The City planned for a subsidy to cover the first-year startup costs, but the numbers are looking good. During the summer the Aquaplex was fully booked and had days where they had to turn people away. With a full year of operation, the City expects to see what the firm projected, which is that they would be able to manage it without subsidy.

2. [23-0366](#) Economic Growth Briefing

**Attachments:** [Presentation](#)

Ms. Bunting introduced Steven Lynch, Interim Director of Economic Development, and Mary Fugere, Convention & Visitor Bureau Director, to make the presentation.

Mr. Lynch began the presentation with a review of the Economic Development Strategic Goals which include business and job development; retail/restaurant development; tourism; and housing. The goal of business and job development is to not only create high-wage jobs but jobs that meet all skill levels in the community. Retail and restaurant development aims to increase the sales and meal tax revenue to help offset the real estate tax rate. Tourism will attract lodging, sales, and meal tax from non-residents while creating a quality of life for the residents. The housing goal aims to create new housing options.

Mr. Lynch provided an overview of a few places that have been created that are new places to work, and that will be coming online as places to work. The Phenix Commerce Center, which is NorthPoint Development, is currently in an estimated 18-month construction process for two buildings that will have 833,000 square feet. The buildings are flexible in that they can host offices, research, and anything else that falls into the light industrial category. This offers opportunities to attract new companies to the City. There will also be a new, 6,000-square-foot workforce center as part of the development which will provide an opportunity to train underemployed or unemployed persons. The City will be operating two workforce centers and is currently reaching out to identify new training partners to ensure there is the capacity and training capabilities to help the citizens prosper and grow. He shared that the City is looking forward to partnering with Versability (Resources) to provide proper training for those who are physically or mentally challenged to allow them to participate in the workforce.

Mr. Lynch shared information on the Manekin project that will be located in the Hampton Roads Center North property at Neil Armstrong and North Campus Parkways. This is a logistics center that will be receiving business from, and contributing business to, the



Virginia Port Authority. The buildings which have 506,000 square feet will operate as warehouse distribution facilities. The current expectation is that the properties will be closed on in the first quarter of 2024 followed by an 18-month construction period. This will create employment opportunities at various skill levels.

The Harbor Center Commerce Park located on Salters Creek Road has two fully leased buildings that are occupied by Huntington-Ingalls who is expected to be a long-term tenant.

The Unmanned Systems Center of Excellence is another new product contributed to by Huntington-Ingalls. This facility sits on 20 acres and created an opportunity for them to have a design and operating facility for their unmanned undersea vehicles that they are working on with the Department of Defense. They are currently at a 43-job level but are expecting the jobs to grow to 250 new over time. Mr. Lynch stated that this is the type of facility that we want to see in Hampton because it has a direct impact on the economy and the ability to create new jobs.

In response to Mayor Tuck, Mr. Lynch stated that Huntington-Ingalls has an option on additional acreage and the hope is that they will be successful enough to exercise that option and expand the facility.

Mr. Lynch provided information on various places to live in the City. He stated that the City has had success with the development of apartments, and most of the ones presented today are either operating at 100% capacity with a waiting list or are in the high 90% occupancy. The Constellation on King apartments downtown are operating slightly lower due to being in their lease-up phase. He provided images and basic information on the Ellipse Apartments, Monroe Gates, Axis at Peninsula Town Center, and The Constellation at King.

There are also new retail and renewed hospitality experiences. Hampton continues to attract small retail uses that are good for the economy and contribute to the tax base and revenue generation. He shared that he has heard from many citizens who are extremely happy that Hampton has a standalone Panera with a drive-thru. The City has not been as successful at capturing larger retailers due to various factors.

He shared that the City tries to attract and create activities of enjoyment and pleasure such as the new Latitude facility at Peninsula Town Center (PTC), which is doing very well. There is a new OneLife Fitness under construction in the old Farm Fresh building that is projected to open in the first quarter of 2024. There is a new Amazon facility currently going through the City approval process that will be located at 2000 Enterprise Parkway. The facility will be a same-day fulfillment center that will host both Amazon drivers and independent drivers.

In response to Mayor Tuck, Mr. Lynch shared that the Amazon facility will be one of

multiple in the region.

Mr. Lynch shared that the City was happy to see the renovation of all of the rooms at the Embassy Suites because this full-service hotel is needed to support the Hampton Roads Convention Center and is an economic driver to our tourism.

Mr. Lynch shared that as owners of the Boo Williams Sportsplex through the Economic Development Authority, we have recently completed improvements to the facility. This includes the replacement of two deteriorated courts, the installation of a new fire alarm system, and enhanced security with cameras inside and out. He stated that the City is very happy to have Mr. Williams operating the facility and will continue to take steps to maintain it.

Mr. Lynch introduced Ms. Fugere to continue the presentation.

At 2:27 p.m., In between Mr. Lynch and Ms. Fugere, Mayor Tuck called for a 10-minute recess.

Upon return from the break, Ms. Fugere provided information on various entertainment facilities in Hampton. She shared that in 2021 the City purchased enough Sports Court to allow for the addition of 12 more basketball courts at the Boo Williams Sportsplex. This allows Boo and the Convention and Visitor Bureau (CVB) to bring tournaments with 20-court capability, putting the City on par with other sports venues in the region, the state, and the mid-Atlantic.

The Hampton Roads Convention Center (HRCC) has a new caterer, Savor. The City is very happy with the transition and the positive feedback received from its clients. Improvements have been made to the colored LED lights on the exterior as well as the lighting systems in the ballroom and exhibit hall. As a result of the transition in catering services, renovations were also done in the catering kitchen.

The Aquaplex opened in October 2022 and has had a consistent calendar of national and regional swim meets and competitions that have generated an estimated \$15.8 million in economic impact. There are three meets in November and December of this year followed by the collegiate season with Colonial Athletic Association (CAA) Swim and Dive Championships. The A10 Swim and Dive Championships are on schedule for February 2024. A national record was recently set at the Aquaplex, giving it a lot of notoriety and a positive reputation. Ms. Fugere shared that the splash park had 30,000 day pass visitors over the summer in addition to the 250 season passes sold. There is a new general manager and a new swim team, the Hampton Virginia Current (HVA) based at the facility.

The Hampton Queen, owned by Hampton Roads Harbor Tours, is a new attraction in downtown Hampton that was brought to fill the void left by Miss Hampton. It operates two,

two-hour tours daily, Wednesday wine nights, and special charters. The Hampton Queen is included in the Sea-to-Stars ticket available to all visitors. In addition to the harbor tour, the ticket includes the Virginia Air & Space Science Center (VASSC), the Hampton History Museum, and the Fort Monroe Visitor and Education Center.

Councilman Brown asked, if the previous boat was the Miss Hampton, why couldn't the new one be named the Miss Hampton II? Ms. Fugere explained that the previous boat was the Miss Hampton II which was preceded by the Miss Hampton I in the 1980's. She stated that the owner of the boat determines the name.

In response to Councilman Bowman, Ms. Fugere stated that the Aquaplex and HRCC received national architecture and design recognition as well as public relations recognition for the Aquaplex opening.

In response to Vice Mayor Gray, Ms. Fugere shared that the overall economic impact in the City is just under \$300 million. The Virginia Tourism Corporation provides economic impact data for each of the localities in Virginia. It accounts for hotel stays, dining, visitor activities, and more. She explained that this economic impact figure is based on a calculator that the CVB subscribes to through Destinations International. Every time CVB books a piece of business, they add all the activities such as where the visitor is coming from; whether the percentage of participation in an event is local or whether everyone is coming in for the event; their schedule, and free time; opportunities to dine and shop; and what there is in the vicinity of the venue.

Mr. Lynch continued the presentation with information on the City's strategic property acquisitions. He stated that one of the things the City is very conscious about is investing in itself. Strategic acquisitions of properties are made for properties that may be used in the future for a public purpose, but also properties that are purchased that will roll back on the tax rolls as fully developed properties. One of the more recent purchases is 112 Kings Way which sits adjacent to the Macy Carmel building. This parcel will allow the City to complete a square block so that when the property gets developed it will create a better opportunity at that site. There are currently two tenants in the building who have been made aware of the City's plans to demolish the structure. Economic Development will be working closely with those tenants to relocate them within the City.

The City is about to take possession of a very small but important parcel of 1.11 acres in the Bright's Creek area which has strategic assets from the ingress/egress from the interstate.

Another more recent acquisition was the 2.33 acres of property on Ivy Home Road which is currently unsightly. The City will be demolishing the existing improvements to prepare it for future use and clean it up since it can be seen from both land and water.

Mr. Lynch stated that the City is working on numerous projects for next year and hopes to

be announcing additional acquisitions.

Councilman Brown acknowledged the great work staff did on the Boo Williams parking lot restriping and the beautiful shrubs and trees that were planted.

Mr. Lynch added that over 400 new parking spaces were generated with that project which will allow for more orderly parking when there are large tournaments such as the Nike Women's Basketball Tournament.

Vice Mayor Gray expressed his thanks to Mr. Lynch and Ms. Fugere for their reports. He added that when we hear the presentations on how the revenue streams are performing strong, trending up each year, it demonstrates that the City is in a good position. He shared that, in Hampton as well as when he travels to other cities, he sees the redevelopment driven by the transitional housing that the younger generation wants. Having received an annual report from a neighboring locality included in an edition of Inside Business, he shared his hope that Hampton will consider creating an annual report to provide data telling the public what's happening in the City. He noted that false chatter on social media commentary is that people and businesses are leaving the City because they don't like it anymore when in reality, that is not what is happening. The U.S. Census Bureau shows that our population has increased. Vice Mayor Gray shared that Dr. Haynes recently shared with him that the fall school enrollment is up. He reiterated that Hampton needs to tell its story, that good things are happening in the City, and that what they may hear through social media and other sources may not necessarily be the truth.

Councilwoman Mugler agreed with Vice Mayor Gray that Hampton needs to continue to tell its story. She referenced the bags that were handed out at the State of the City which contained a good data sheet from the school division containing the numbers Vice Mayor Gray was talking about.

### 3. [23-0128](#) Public Business Caselaw and Legislative Briefing

**Attachments:** [Presentation](#)

Ms. Bunting shared that a recent public business case law determination (Gloss v. Wheeler) has impacted the actions City Council members need to take when attending neighborhood meetings and other community gatherings. The public must understand the new challenges we face. She introduced Ms. Meredith Jacobi, Deputy City Attorney, to make the presentation.

Ms. Jacobi explained that earlier this year the Virginia Supreme Court decided a case that came out of Northern Virginia, that greatly expanded what is now considered a public meeting under the Virginia Freedom of Information Act (FOIA). This requires more advanced planning, more notices, and more invitations to the public, for things like local neighborhood meetings, civic league meetings, and other types of stakeholder meetings that weren't previously considered meetings of the City Council. This new definition of public business states that, "a topic is public business if it is pending before the public

body at the time or is likely to come before it in the foreseeable future," which has opened up a broad potential list of topics. The practical change that this decision has made has been to narrow or even abolish what has been referred to as the informational or listening-only meeting.

Before this court case, three or more members of Council would have been able to attend a tour of a local economic development project, or historically, culturally significant house or artifact, and as long as there was no discussion amongst them, giving assignments to staff, in other words, if they were only listening, that was not a public meeting requiring notice, public access, and minutes under the VFOIA. The court has now said that even a gathering whose motivating purpose is to inform the electorate will fall outside of the exception if its purpose expands into something that allows for discussions relating to the transaction of public business. Ms. Jacobi noted that there is a footnote in the case that indicates that even considering such an item, in other words, listening, can now become a public meeting. Once that line is crossed, the gathering becomes a meeting under VFOIA. If it hasn't been properly noticed, access to the public appropriate for the meeting hasn't been provided, and if someone isn't taking minutes, it could become a violation of the code. This requires a certain amount of advanced planning because no more than two Council members can appear at any meeting where public business discussion, transaction, or listening might take place. If three or more Council members are going to attend, the VFOIA public notice requirements must be followed. This means it needs to be advertised to the public with the topics that might be discussed, reasonable public access has to be accounted for depending on what type of subject matter meeting it is, and what type of attendance is expected. There also has to be an agenda and someone has to take minutes which have specific statutory requirements including, date, time, meeting location, Council members who are present and absent, and a summary of discussion on any public business matters that take place. Presumably, if Council members are attending a neighborhood meeting, they are not taking a vote about something because that wouldn't be a regularly scheduled meeting of City Council, but if any discussion takes place about public business, that would also have to be in the minutes.

Mayor Tuck expressed concern about the way the minutes have to be structured, listing which members are present and which are absent because it becomes a reflection on them even though they may not have been planning to attend the meeting. He asked if it allowed an explanation that members didn't sign up to attend the meeting.

Ms. Jacobi explained that the minimum VFOIA requirement for minutes to be compliant says that it needs to be marked as members present and members absent. An explanation is permitted but not required so whoever was marked absent could explain during minute approval or some notation could be added to the minutes.

Ms. Bunting recommended that when these have to be done, we use the language that the Clerk uses when it is noticed, that it is not an official meeting of the City Council as a

body but rather a neighborhood meeting (or other type of meeting), and three or more Council members may attend or will have attended.

Vice Mayor Gray commented that there are minutes on tonight's agenda for three meetings that were not official Council meetings. He attended two of those meetings, but in the third, he is listed as being absent, but those minutes don't explain his absence. He asked for that item to be pulled so he could explain his absence for the record. That way when the minutes are searched later on, there is a full explanation of why he was not in attendance. He stated that the problem that occurs when three or more Council members attend a meeting, whether official or not, is the need for documentation of who is and is not there. He noted that as the Mayor mentioned, it can reflect negatively on those who don't attend when they don't have to be there.

Mayor Tuck shared that this is in the legislative package to try to get this changed and he believes other localities are as well. Any changes that are made will not take effect until the Governor signs off on the legislation.

Ms. Bunting stated that unless it is passed as emergency legislation, it most likely would not take effect until July 1, which means we would have to continue checking calendars to determine if someone has to attend to record minutes.

Councilman Brown explained that Council members attend various meetings and may attend a particular meeting occasionally and not every month because it is not required. He asked if these minutes need to be pulled from the agenda at each meeting so Council members can provide the reason they were not in attendance. Ms. Jacobi explained that it is not a legal requirement and it is understandable that a Council member may want to explain to their constituents that they are not being snubbed. Whether or not the minutes are pulled for explanation is up to Council and Ms. Glass.

Mayor Tuck stated that he is going to allow Ms. Jacobi to continue the presentation but feels that Council needs to discuss amongst themselves, with guidance from the City Attorney's office, because one of the things they want to do is to avoid getting into a situation where more than two members are going to a meeting. As an example, he shared that on the next Thursday, three people are scheduled to go to two different meetings on the same day, which means minutes have to be taken at two different meetings on the same day.

Ms. Bunting suggested that, with Council's agreement, the action on the minutes on tonight's agenda be deferred so that new language can be put in and the minutes brought back for approval. She stated that whatever language is developed would address the issue of every Council member explaining their absence during the approval process.

Mayor Tuck commented that an explanation should probably be given to the public as to why a particular meeting was noticed the way it was and other meetings were not.

City Attorney Cheran Ivery explained that because of the definition of public business and the expansion of that, it cannot be assumed that Council members would attend the meetings and remain silent and just observe. When there is a meeting at which the discussion of public business is expected to be discussed, Council must be forewarned so they can plan accordingly.

Ms. Jacobi explained that it is about the topic rather than the action, agenda, or quorum so listening only is no longer a safe haven. She concurred with Mayor Tuck that the City Attorney's Office and Two Capitols are working on legislative correction by asking the FOIA Council and its subcommittees to consider a change. At this point it is predicted that the legislative proposal that's most likely to succeed will clarify that, for it to be a public meeting, a discussion has to be required, which would put the state of the law back before *Gloss v. Wheeler* where listening only at an information meeting would not require public notice or minutes.

Mayor Tuck stated that Council would need to have an agreement that they will rotate meetings or a policy statement that says they will rotate meetings and not put themselves in a position where more than two will go unless it is one of those special meetings like the town hall meetings, or the Coliseum Business Improvement District (BID) meetings. He opened the floor for discussion by Council.

Ms. Ivery clarified for Councilwoman Mugler that the FOIA section of the state code requires that attendance be reported in the minutes as Council members present and Council members absent.

Vice Mayor Gray stated that if Council members attend the Downtown Hampton Development Partnership (DHDP) meetings it can be assumed that they are talking about the businesses downtown and could easily notice that with the information that public business is expected to be discussed. But when Council members attend neighborhood association meetings they don't necessarily go intending to speak, however, they also don't know when or if a topic of public business is going to come up. These meetings are not required but the Council members attend so they can find out what is going on in the neighborhoods. He suggested that this can be handled by working out between the seven Council members which two are going to show up and they can be scheduled in advance. With 30+ civic neighborhood association meetings they could attend, the state court ruling has caused a problem for Council that is not going to go away until they change it at the state level, so the best way to fix it amongst themselves is to decide how to limit the number of people who will attend meetings.

Councilman Brown asked if a meeting had been noticed and three Council members attended but didn't answer any questions about City business, is it appropriate to say they cannot discuss City business in the meeting?

Mayor Tuck responded by saying that more than likely, Council members in attendance at a meeting are going to be asked if they wish to say anything. One of the reasons they attend these meetings is to find out what the issues and concerns are for the City, so if there is a question that can be addressed, he tries to do so.

In response to Councilman Brown, Ms. Ivery stated that the minutes have to be very summary and she does not see an issue with Council members taking the minutes if staff provided them with what they needed to document. She added that Ms. Bunting offered her staff, if they were in attendance, to take minutes.

Ms. Ivery clarified that if a meeting has been noticed, there would be a plan in place to take care of minutes. Meetings that have not been noticed where three Council members show up would be an issue.

Discussion occurred between Council members regarding the communication and rotation of meetings.

Mayor Tuck invited the Clerk to participate in the discussion as it would make it easier for her team as well as Council.

Ms. Glass stated that the calendars do present a problem but there are very simple fixes. She suggested that Council members go through the recurring entries on their calendars at least a month in advance and decide which ones they are attending. One of the deputy clerks provides an automated spreadsheet every Thursday that as soon as the number says three, flags it red. For any that show three or more attending, Ms. Glass sends an email letting them know and asking if anyone is willing to yield. Most of the time someone agrees to yield but on the occasions they don't she notices the meetings and very brief summary minutes are prepared.

Ms. Glass suggested that, for the minutes on tonight's agenda, Council defer them to allow them to be reworked to reflect some of the information contained in the notice and they can be approved at the next Council meeting. Those records will be maintained in the Council office as required by law, but it is not her intent to mix them with the legislative and work session minutes.

Ms. Glass stated that she feels very comfortable and competent that she and her three deputies can keep Council's calendars straight. She is willing to continue to communicate with Council regarding attendance and, if three or more are attending, will do the notice. She appreciates the Manager and Attorney's guidance that staff can do the minutes for the meeting. Sometimes it's just a question of resources and how Council wants to use those resources. She stated that the staff is prepared to support whatever Council decides amongst themselves.

Mayor Tuck asked for input on how Council wishes to proceed.



Councilwoman Mugler proposed that, as the Clerk suggested, item five containing the meeting minutes be pulled so the language can be reworked explaining that these meetings are not meetings of the City Council. She agreed with the Mayor's suggestion to create a list of the meetings and have the rotational situation set up. If someone ends up on a rotation, they can attend or they can let others know they're not able to attend this month if someone wants to go. She stated that if there is no formal arrangement between them, there will be no way of knowing who's going to one of these meetings.

Councilman Brown, Councilwoman Harper, Councilman Bowman, and Vice Mayor Gray stated their agreement with the suggestion to create a rotation list and asked that if someone can't make it they let the others know. Councilman Hobbs was not in attendance to offer his comments.

In response to Ms. Glass, Ms. Bunting stated that her understanding is that staff would get a list of all the various groups, note their meeting schedule, and assign them so everyone gets their turn.

Ms. Glass stated that her office would be happy to generate the first draft of the list and asked that Council allow the recurring meetings from their calendars to be removed, to which there was agreement.

In response to Councilman Brown, Ms. Glass stated that all routine neighborhood association meetings would be listed and assigned in the rotation. Mayor Tuck stated that if a Council member's preference is not to go to a particular meeting, they can say so.

## REGIONAL ISSUES

There were no regional issues to report upon.

## NEW BUSINESS

There were no items of new business.

## CLOSED SESSION

4. [23-0336](#) Closed session pursuant to Virginia Code Sections 2.2-3711.A (.1) and (.3) to discuss appointments as listed on the agenda, to discuss the performance of the City Manager, City Attorney, and the City Clerk, and to discuss the disposition of real property in the Buckroe area of the City, where discussion in an open meeting would adversely affect the bargaining position or negotiating strategy of the city.

At 3:37 p.m., a motion was made by Councilmember Martha

Mugler and seconded by Councilmember Steven Brown, that this Closed Session - Motion be approved. The motion carried by the following vote:

**Aye:** 6 - Councilmember Bowman, Councilmember Brown, Vice Mayor Gray, Councilmember Harper, Councilmember Mugler and Mayor Tuck

- 5. [23-0198](#) Consideration of Appointments to a Hampton VA 250 Committee
- 6. [23-0363](#) Consideration of Appointments to the Board of Zoning Appeals

**CERTIFICATION**

- 7. [23-0348](#) Resolution Certifying Closed Session

A motion was made by Councilmember Hope Harper and seconded by Councilmember Chris Bowman, that this Closed Session - Certification be approved. The motion carried by the following vote:

**Aye:** 6 - Councilmember Bowman, Councilmember Brown, Vice Mayor Gray, Councilmember Harper, Councilmember Mugler and Mayor Tuck

**ADJOURNMENT**

The meeting adjourned at 4:43 p.m.

**Contact Info:**  
Clerk of Council, 757-727-6315, [council@hampton.gov](mailto:council@hampton.gov)

\_\_\_\_\_  
Donnie R. Tuck  
Mayor

\_\_\_\_\_  
Katherine K. Glass, CMC  
Clerk of Council

Date approved by Council \_\_\_\_\_