

City Council Building
Chattanooga, Tennessee
November 6, 2007
6:00 p.m.

Chairman Page called the meeting of the Chattanooga Council to order with Councilmen Bennett, Benson, Franklin, Gaines, Pierce, Rico and Robinson present. City Attorney Randall Nelson, Management Analyst Randy Burns and Council Clerk Carol O'Neal were also present.

PLEDGE OF ALLEGIANCE/INVOCATION

Following the Pledge of Allegiance, Admin. Steve Leach gave invocation.

MINUTE APPROVAL

On motion of Councilwoman Robinson, seconded by Councilman Franklin, the minutes of the previous meeting were approved as published and signed in open meeting.

AMEND CITY CODE

On motion of Councilman Rico, seconded by Councilman Franklin,
**AN ORDINANCE TO AMEND CHATTANOOGA CITY CODE, PART II,
CHAPTER 26, SECTION 26-7, RELATIVE TO ANIMALS IN PARKS**
passed second and final reading and was signed in open meeting.

GRANT

On motion of Councilwoman Robinson, seconded by Councilman Franklin,
**A RESOLUTION AUTHORIZING THE ADMINISTRATOR OF THE
DEPARTMENT OF EDUCATION, ARTS & CULTURE TO APPLY FOR AND, IF
AWARDED, ACCEPT A GRANT FROM THE TENNESSEE ARTS
COMMISSION IN THE AMOUNT OF TWO THOUSAND NINE HUNDRED
DOLLARS (\$2,900.00) FOR THE "ARTS SPLOURATION" PROGRAM, AND
AUTHORIZING THE REQUIRED CITY FUNDS MATCH IN THE AMOUNT OF
TWO THOUSAND NINE HUNDRED DOLLARS (\$2,900.00)**
was adopted.

ACCEPT DONATION

On motion of Councilman Franklin, seconded by Councilman Rico,
**A RESOLUTION ACCEPTING A DONATION TO THE CHATTANOOGA
FIRE DEPARTMENT FROM WAL-MART, IN THE AMOUNT OF ONE
THOUSAND DOLLARS (\$1,000.00) TO BE USED TO FUND FIRE
PREVENTION WEEK ACTIVITIES AND EXPRESSING THE GRATITUDE OF
THE MAYOR AND THE CITY COUNCIL FOR SAID DONATION**
was adopted.

ACCEPT DONATION

On motion of Councilman Rico, seconded by Councilwoman Robinson,
**A RESOLUTION ACCEPTING THE DONATION OF SMOKE ALARMS,
VALUED AT APPROXIMATELY TWO THOUSAND FOUR HUNDRED
DOLLARS (\$2,400.00), TO THE CHATTANOOGA FIRE DEPARTMENT
FROM LOWE'S AND EXPRESSING THE GRATITUDE OF THE MAYOR AND
THE CITY COUNCIL FOR SAID DONATION**
was adopted.

AGREEMENT

On motion of Councilman Franklin, seconded by Councilwoman Bennett,
**A RESOLUTION AUTHORIZING THE DIRECTOR OF GENERAL SERVICES
TO EXECUTE A MANAGEMENT AGREEMENT WITH THE CHATTANOOGA
HOUSING AUTHORITY FOR MANAGEMENT OF DOGWOOD MANOR
APARTMENTS**
was adopted.

TEMPORARY USE

On motion of Councilwoman Robinson, seconded by Councilman Franklin,
**A RESOLUTION AUTHORIZING GOLD LEAF DESIGNS TO USE
TEMPORARILY THE RIGHT-OF-WAY FOR 2646 BROAD STREET TO
ENHANCE THE EXISTING BUILDING FRONT, AS SHOWN ON THE
DRAWINGS ATTACHED HERETO AND MADE A PART HEREOF BY
REFERENCE, SUBJECT TO CERTAIN CONDITIONS**
was adopted.

TEMPORARY USE

Councilman Benson stated this matter was discussed in today's Legal and Legislative Committee and accommodations have been made by both the city and owner. He stated the former recommendation for denial has been changed to approval as they have compromised and worked things out to the satisfaction of both entities.

City Attorney Nelson stated that changes submitted give them a sixty (60) day notice to reclaim the space and the other change involves placing a pan under the abutting fans that will connect to the grease trap within the establishment.

On motion of Councilman Benson, seconded by Councilman Franklin,
A RESOLUTION AUTHORIZING MICHAEL ADAMS TO USE TEMPORARILY THE RIGHT-OF-WAY AT THE CORNER OF MARKET STREET AND MAIN STREET TO INSTALL A SUPPLY FAN AND AN EXHAUST FAN THROUGH THE WALL OF THE MAIN STREET SIDE OF THE BUILDING, AS SHOWN ON THE DRAWINGS ATTACHED HERETO AND MADE A PART HEREOF BY REFERENCE, SUBJECT TO CERTAIN CONDITIONS

was adopted.

OVERTIME

Overtime for the week ending November 2, 2007 totaled \$10,388.13.

PERSONNEL

The following personnel matters were reported for the various departments:

PUBLIC WORKS DEPARTMENT:

- ◆ **DENNIS L. MALONE** – Promotion, Assistant City Engineer, Engineering, Pay Grade 36/Step 5, \$71,515.00 annually, effective October 8, 2007.
- ◆ **KENNETH RICE** – Hire, Traffic Electrician, Traffic, Pay Grade 14/Step 7, \$41,500.00 annually, effective October 26, 2007.
- ◆ **JOEL R. MEEKS** – Resignation, Crew Worker Senior, Traffic, effective October 30, 2007.

PERSONNEL (Continued)

- ◆ **JAMES S. HOLT** – Hire, Crew Worker Senior, Waste, Pay Grade 5/Step 1, \$20,650.00 annually, effective October 26, 2007.
- ◆ **MARK A. KERLEY** – Hire, Equipment Operator, Senior, City Wide Services, Pay Grade 8/Step 1, \$25,208.00 annually, effective October 22, 2007.
- ◆ **LEROY FITCH** – Suspension (7 days without pay), Equipment Operator Senior, City Wide Services, effective October 30 – November 7, 2007.
- ◆ **SEDARA M. BOND** – Hire, Office Assistant, City Wide Services, Pay Grade 3/Step 1, \$20,650.00 annually, effective October 29, 2007.
- ◆ **LEROY FITCH** – Lateral Transfer, Equipment Operator Senior, City Wide Services, Pay Grade 8/Step 10, \$35,796.00 annually, effective October 26, 2007.
- ◆ **JERRY L. HATTER** – Suspension (2 days without pay), Crew Worker, City Wide Services, effective November 5-6, 2007.

CHATTANOOGA POLICE DEPARTMENT:

- ◆ **JASON YOUNGBLOOD** – Resignation, Police Officer, effective October 26, 2007.
- ◆ **VICTOR J. WUGHTER** – Resignation, Police Officer, effective October 30, 2007.
- ◆ **TIFFANY D. TEAGUE** – Resignation, Animal Services Officer, effective October 31, 2007.
- ◆ **CALEB A. BROOKS** – Military Leave, Police Officer, effective November 12 – December 2, 2007.

CHATTANOOGA FIRE DEPARTMENT:

NAKIA SWAFFORD, LARRY HENDERSON, KEITH ROZZELL – Promotion, Senior Firefighter, Pay Grade 2/Step 4, \$34,417.00 annually, effective November 9, 2007.

PURCHASES

On motion of Councilwoman Robinson, seconded by Councilman Franklin, the following purchases were approved for use by the Chattanooga Human Services Department:

FLAV-O-RICH (Overall lower and better incomplete bid)
R0102222/B0004483

Milk and Dairy Products

(Price information available and filed with minute material of this date)

SARA LEE BAKERY (Lower and better complete bid)
R0102275/B0004484

Bread and Bakery Products

(Price information available and filed with minute material of this date)

HOTEL PERMITS

On motion of Councilwoman Robinson, seconded by Councilman Franklin, the following hotel permits were approved:

RESIDENCE INN BY MARRIOTT – 215 Chestnut Street, Chattanooga, TN

AIRPORT INN – 7725 Lee Highway, Chattanooga, TN

COUNTRY INN & SUITES – 5105 Highway 153, Chattanooga, TN

MOTEL 6 #700 – 77077 Lee Highway, Chattanooga, TN

PURCHASE

On motion of Councilman Pierce, seconded by Councilman Rico, the following purchase was approved for use by the Mayor’s Office, General Services Division:

JAT OIL & SUPPLY, INC. CHANGE ORDER FOR BULK FUEL LOADING
R0087548/P0023998

\$1,000,000.00 – Original Contract approved 2/14/06
509,734.00 – Change Order #1 Increase
\$1,509,734.00 – New Annual Expenditure Amount

PURCHASE (Continued)

Councilman Benson inquired as to the half million dollar amount of increase for this change order.

Paul Page responded that JAT was the lowest bid. He stated there are three-to-five vendors "spot marketed" and bids are taken daily; that the lowest bidder ships in whatever is ordered. He stated one million dollars was set up for this company and a million for the other three companies; that if JAT is the lowest they get someone else's \$500,000. He noted that the prices have gone up and the increase is because JAT is the lowest bidder over the other two-or-three and they are buying more from them as the lowest bidder which increases the blanket order by this amount of money.

Chairman Page asked if this reduces the amount to a higher bid.

Mr. Page responded that they are buying the lowest bid; that they are not low all the time but most of the time.

Councilman Benson asked if this amount is half million dollars over last year.

Mr. Page responded "no"; that he did not have last year's figures.

Councilman Benson stated that this matter should have come to committee for something of this magnitude.

Mr. Page apologized for not bringing the matter to Committee and noted that everyone knows there have been price increases. He stated they are buying on the "spot market" and this is not a mandated by law, but they do have to go out and do "spot markets".

City Attorney Nelson stated that the city, presumably, is not paying some of the other bidders as much as we have set aside for them, so this is not a loss to the city although there is probably some loss because of the higher prices.

Councilman Benson responded "okay".

POST SEPARATION BENEFITS FOR MARTI RUTHERFORD

Councilwoman Bennett welcomed Chairman Page back from his trip to China and stated that the Council passed a Resolution last week regarding post separation benefits for Marti Rutherford.

**POST SEPARATION BENEFITS FOR MARTI
RUTHERFORD (Continued)**

Councilwoman Bennett stated in order to understand additional information on her status and what might have happened regarding benefits, Donna Kelley was asked to give an update and provide information. She stated three specific questions were asked: *(1) what was Ms. Rutherford's employment status with the City of Chattanooga during the period October 1-31, 2007, and during the period November 1-3, 2007?; (2) is it your determination as Administrator of Personnel that Ms. Rutherford is currently eligible to receive post-separation health and hospitalization benefits from the City? If so, under what provision of the City Personnel Ordinance is she eligible?; and (3) will the Personnel Department provide post-separation health and hospitalization benefits to Ms. Rutherford?*

Donna Kelley read from a prepared statement and stated summarily, in response to the letter *"given the complex circumstances of this situation, we are treating Ms. Rutherford's signed letter of resignation as compelling legal documentation addressing all questions raised by your letter"*.

Councilman Pierce stated that he did not understand.

Councilman Benson asked that Ms. Kelley give her response, again.

Ms. Kelley again read *"given the complex circumstances of this situation, we are treating Ms. Rutherford's signed letter of resignation as compelling legal documentation addressing all questions raised by your letter"*.

Chairman Page asked if this was Ms. Kelley's full report.

Ms. Kelley responded "at this time, that is my report".

Councilwoman Bennett stated that her job was to read the letter and questions that were delivered; that the information was requested and this is the answer back to the Council from Ms. Kelley.

Councilman Pierce stated that he wanted to ask point blank at this point what Ms. Rutherford's status is and whether she is receiving benefits as of today.

Ms. Kelley responded "yes".

Councilman Pierce stated so two days employment counted toward the end of her termination.

**POST SEPARATION BENEFITS FOR MARTI
RUTHERFORD (Continued)**

Ms. Kelley stated that she has really responded to all that she can at this point; that they are using the signed letter of resignation to apply those benefits.

Councilman Pierce asked why Ms. Kelly feels inclined to accept a letter that was turned in around the fourteenth rather than accepting the decision of the Council accepting her resignation as of October 1.

Ms. Kelley stated that she would be happy to meet with Council members if something is scheduled at another time; that this came to her today, earlier today, and right now this is the only response she can provide.

Councilman Pierce asked if she wants to wait and meet with the Council to consult with legal counsel or not give the Council any information.

Ms. Kelley stated that it is her belief counsel has recused himself in this situation.

Councilman Pierce stated that Ms. Kelley has been Personnel Director as long as he has been with the city and thinks she can answer if she wants to; that if she does not want to answer she should say so.

Ms. Kelley responded, "Mr. Pierce, I agree to give responses at a time scheduled at another meeting with the Council on this"; that she received this earlier today and this is the only statement she can make right now.

Councilman Benson asked if Ms. Rutherford is a city of Chattanooga employee now or was she on November 1-3.

Ms. Kelley stated that they treated her resignation as the effective date of her resignation.

Councilman Benson asked if her resignation date was November 4.

Ms. Kelley stated that she believes that is correct.

Councilman Benson stated that her resignation was from what on November 4, the city or the Council.

Ms. Kelly responded, "her resignation".

Councilman Benson again asked, from the city or Council.

**POST SEPARATION BENEFITS FOR MARTI
RUTHERFORD (Continued)**

Ms. Kelley again responded "it was her resignation".

Councilman Benson stated that he got his answer from her.

Councilwoman Bennett stated there is a real "tug of war" going on and Ms. Kelley is caught in the middle; that what the Council was looking for was legal justification behind the decision made and that is what we continue to try to get answers for. She **made the motion that the Council confer with Special Counsel on how we should proceed and get to the bottom of that answer.** She stated Atty. Zach Green is present tonight from Attorney Dickson's office and if there are questions she would like for them to be directed to him; **Councilman Rico seconded the motion.**

Chairman Page stated that the Council would come back next week after conferring with Attorney Dickson.

Councilman Pierce stated that he would like to ask Ms. Kelly another question if it is permissible prior to carrying the motion through. He asked Ms. Kelly if she would give the date certain when the resignation was turned in.

Ms. Kelley stated she would be happy to get that for him as she does not have it.

Councilman Pierce stated that the reason he asked that question is because Ms. Kelley, along with administration, stood here on Tuesday (October 16) and said she did not have a resignation from Ms. Rutherford as of that date and would have to go back to be date certain because he talked with the Mayor that same night and said he had a resignation letter. He stated Ms. Kelley and Dan Johnson were not able to tell us and asked why it was kept secret.

Ms. Kelly responded, "Sir, I can not answer that".

At this point, Chairman Page called for the question on the motion and second to confer with Special Counsel.

Prior to taking the vote, Councilwoman Gaines stated that she is waiting for the Management Analyst to provide a copy of Ms. Rutherford's resignation letter. She addressed Ms. Kelley and stated that Ms. Rutherford's resignation was effective November 4 and she also stated in her letter that she would serve on the Council until November 4.

**POST SEPARATION BENEFITS FOR MARTI
RUTHERFORD (Continued)**

Chairman Page stated if there are no further questions a motion is on the floor; that the Council should meet between now and next Tuesday to confer with legal counsel regarding the Council's next step with regard to this matter.

At this point Councilwoman Gaines was given a copy of Ms. Rutherford's letter of resignation and stated this is significant. At this point she read the letter which states: *"This is to confirm that effective as of Sunday, November 4, 2007, I will be resigning as City Councilperson representing District 6 for the City of Chattanooga"*. She stated that she would like to make it a matter of record that the letter states she was *"resigning as a City Councilperson on November 4"*; that she (Rutherford) is a city employee and worked for the Mayor.

Councilman Benson stated that he feels this is stonewalling, which is what we have had today, this evening; that this is just putting us in a ping pong, dodge ball situation and he is tired of it! He stated he would like to go about the business of this Council as there are things hanging over us and we are not able to use our legal attorney because of this serious controversy. He stated that he wants the Council to get this into court and get it settled; that the Council ought to be tired of it and the Mayor should be tired of it; that it should go to Chancery Court for a decision.

Chairman Page stated that the Council would be discussing that next week.

Councilwoman Gaines asked if the resignation letter has been entered into the record.

The Clerk of Council noted that the contents of the letter were read and is in the record, now.

Chairman Page clarified that the Council would meet with Special Counsel with regard to the discussion this evening to decide how to move forward.

Councilman Pierce asked for a clarification on the motion; that he thought the Council would invite Special Counsel to be present next week to advise the Council publicly as to what our next move would be. He **made the motion to invite Special Council to be present at next Tuesday's Council meeting to advise the Council publicly as to the next move; Councilwoman Gaines seconded the motion.**

**POST SEPARATION BENEFITS FOR MARTI
RUTHERFORD (Continued)**

Chairman Page stated a friendly amendment has been made by Councilmen Pierce and Gaines to the previous motion that Special Counsel return next week for public review; the motion carried.

At this point the vote was taken on the original motion by Councilmen Bennett and Rico to meet with Special Council prior to next Tuesday; the motion carried.

Chairman Page thanked Ms. Kelley for sharing her thoughts with the Council.

Later in the meeting it was determined that several Council people would be out next week in attendance at the National League of Cities (NLC) annual convention and wondered if the meeting with Special Counsel Dickson should be scheduled two weeks out.

Councilman Benson stated that the Council should meet with Atty. Dickson sooner; that the Council does not need to "drag this out".

Atty. Zachary Greene, Associate to Atty. Dickson, stated that Mr. Dickson is scheduled to return on Thursday night and noted that he does not know his schedule but would be back on Friday.

Councilman Franklin inquired as to whether it is possible to get in touch with him or if Atty. Dickson was on personal vacation. Atty. Greene responded "yes".

In noting that Atty. Dickson could possibly be available on Friday, he inquired as to whether the Council would suggest meeting on Friday or Monday.

Councilman Franklin stated that the meeting should be scheduled as early as possible.

Councilman Bennett stated Atty. Greene could check with Atty. Dickson and get back with the Council.

Chairman Page stated that he would take Chairman's liberty and ask that the Clerk of Council, Carol O'Neal, coordinate an attorney/client meeting for Friday or Monday of next week and notify everyone as to when that is to be. He asked that Council members make Mrs. O'Neal aware of their available dates. He stated that the Council would sit down with Special Counsel to deliberate and get information as to which direction to move.

COMMITTEES

Councilwoman Bennett thanked Ms. Kelley and her staff for making the health clinic presentation today at the Budget, Finance and Personnel Committee. She stated the clinic is a shining example of creativity. She reminded Council members that she would be in attendance at the National League of Cities meeting on next Tuesday.

Councilman Benson stated that the **Legal and Legislative Committee would meet on Tuesday, November 20 at 3 p.m.**; that time will have to be spent on the transportation services ordinance in an effort to get it under control for not only the Taxi Board but other modes of transportation as complaints are being received and the Ordinance needs to be corrected. He stated that he wants to move on and get rid of this issue.

Councilman Rico reminded Council members of the meeting of the **Public Works Committee scheduled for Tuesday, November 13 at 3 p.m.**

STEVEN RAPPOLEE

Steven Rappolee of 2400 Westside Drive spoke on behalf of the citizens of Chattanooga for the Chattanooga Medical Research Institute. He stated that an ordinance was submitted to the Clerk of Council in regard to modifying the *Charter's* section involving referendums. He stated they propose dissolving the chapter dealing with the Electric Power Board (EPB) with an affirmative vote by the citizens of Chattanooga. He stated in reference to the state law mentioned in committee earlier, EPB would transfer its debt and assets to a non-profit entity conducting medical research, a 501(c)(3) entity would attempt to transfer to an ownership plan. He requested that the ordinance he e-mailed and presented this afternoon be entered into the record. **(A copy of the document is filed with minute material of this date.)**

Mr. Rappolee stated that he spoke with the City Attorney briefly and noted if the City Attorney looks at the ordinance it does not mention any state law that supersedes it. He asked if there has been a law that supersedes this that does not apply to home rule.

City Attorney Nelson stated all cities across the state have a provision for recall and also for referenda that was adopted roughly three-to-four years ago. He stated the Constitution of the State provides that when there is conflict between a *City Charter* and state law the state law prevails and, generally, that is what this is. He suggested that Mr. Rappolee get a copy of that state law and to govern himself accordingly.

STEVEN RAPPOLEE (Continued)

Mr. Rappolee asked if cities make notes to this effect in the sections of the *Charter*.

City Attorney Nelson stated when state law changes a *Charter* change is submitted to the populace to let them vote on it, but this is so fresh we have not done any *Charter* changes since then.

ADJOURNMENT

Chairman Page adjourned the meeting of the Chattanooga Council until Tuesday, November 13, 2007 at 6:00 p.m.

CHAIRMAN

CLERK OF COUNCIL

**(A LIST OF NAMES OF PERSONS IN ATTENDANCE IS
FILED WITH MINUTE MATERIAL OF THIS DATE)**