

**City Council Building
Chattanooga, Tennessee
June 10, 2008
6:00 p.m.**

Chairman Bennett called the meeting of the Chattanooga Council to order with Councilmen Benson, Berz, Gaines, Page, 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, Councilman Rico gave invocation.

MINUTE APPROVAL

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

DISTRICT 5 APPLICANT INTERVIEWS

Chairman Bennett welcomed the five applicants for the District 5 vacancy and explained each would be allowed three minutes to present themselves. She asked each to come forward to the lectern in alphabetical order and noted after the presentations the Council would vote and the person elected would be sworn in by the Honorable Judge Russell Bean.

ANGELA CLARK stated that she has lived in District 5 twenty-eight years, excluding the years she was away in Oklahoma. She stated she ran for Mayor in 2005 and believes she will be a good Council person because she knows the district well and can make a major impact in decision-making not only about District 5 but about the City of Chattanooga as a whole. She stated some of the jobs she has held would be effective in making decisions as a representative for the district as she has worked in several different service industry jobs, public housing, apartment leasing, food service and independent sales.

DISTRICT 5 APPLICANT INTERVIEWS (Continued)

At this point Ms. Clark gave a demonstration of her independent sales abilities as a former Tupperware consultant by displaying two Tupperware products with detachable spoons and the technique used in selling them. As an example of her decision-making skills, she related an incident that occurred while serving in the capacity as Teacher Assistant during a crisis situation when the principal was away from the school building. She stated that she would give direction, guidance and information and asked that the Council choose her as the next City Council leader.

BEATRICE HICKS expressed thanks to the Council for considering her application for filling the District 5 seat. She stated she had the privilege of attending the Committee meetings this afternoon and thanked the Council for their efficiency noting that she was extremely impressed and would like to serve with them. She stated that she expressed in her application if she gets this chance to serve she would be able to thank so many of the people of Chattanooga who have befriended her family since her daughter's accident in Africa in 1988; that many have done so much for them. She stated she does have another reason as her husband was born in the North Brainerd area and she was not sure it was District 5 at the time however after the death of her husband's mother in 1993 they became land owners and as long as they rented to people in the district or friends of people all went well. She stated outsiders came in and did not tell them the truth and for many years they had major problems with drug abuse and have done a lot to fight that; that they have gotten tag numbers and called the police. She stated they have had drug abuse in areas they have rental property which is causing a major problem to the neighbors; that they have a lovely neighborhood and the neighbors are getting fed up with drug abuse and it is a terrible problem and a very expensive process to get people evicted. She stated if she is elected she would get more programs in the neighborhoods involving families and try to fight some of the drug abuse and get people involved, help make them become proud of themselves and help them get jobs. She stated we need to help the young people -- both whites and blacks -- to not abuse drugs and maybe they can come back with new ideas. She thanked the Council for considering her.

THOMAS SCOTT stated that he has lived in District 5 since 1960 and has been active in a number of areas and serve in many; that the most important was on the Hamilton County School Board from 1994-1998 after which he had a long professional career in insurance and financial planning; that he has served on the Estate Planning Council since 1985 and feels these gifts or skills will be helpful in replacement of the District 5 seat. He stated he does not think progress of the district should suffer due to an interruption of leadership in District 5 and thinks his experiences would fit in quite well.

DISTRICT 5 APPLICANT INTERVIEWS (Continued)

Mr. Scott stated he has had other experiences in the district and as of now is President of the Lake Hills Neighborhood Association and is doing quite well there. He stated that his experiences would work well in fulfillment of the District 5 seat and appealed to the Council for their consideration of him.

LUTHER SHOCKLEY stated that he has lived in District 5 some forty-odd years since somewhere around 1965. He stated he is a retired principal from the Chattanooga City Schools and was trained by some of the smartest people in the world; that persons who have children aged 13-15 know what he is talking about. He stated he is pragmatic and tends to be very practical in his approach to problem solving; that he has worked with the City Council before and after that served on several agencies with the city, one being the Citizens Police Academy, adding that he is certified to administer sensitivity, diversity and psychological instruments for possible cadets going into the training academy. He stated that he has served on the block grant committee that screened applications for the division of different grant monies allocated by the city, served on the CCDFI Board set up in conjunction with the City of Chattanooga and area banks as area banks are required to put back into the community a certain amount of funds, noting that this committee was set up in conjunction with the city to screen applicants who wanted to have start-up businesses. He stated that he served as assistant principal at Brainerd Junior High School and is very familiar with that district, and also as assistant principal at Tyner Middle School and is familiar with the Airport, Washington Hills and Murray Hills areas. He reiterated that he is very familiar with the district having worked with students and kids that live in those neighborhoods and is sure that if selected as the interim Council person, he would continue to solve problems in a very practical way. He stated that he believes in problem solving that does not create an adversarial atmosphere which serves neither party any good. He expressed that he would appreciate for their vote.

WALTER WILLIAMS expressed thanks to the Council for the opportunity to speak and noted as Elizabeth Taylor said to all her husbands, "I will not keep you long"! He stated that he wanted to dispel any thought any might have as to his having time to devote to an interim position as Councilman for District 5. He stated if he had any reservation that he could not devote appropriate time to represent the interests of his fellow residents in District 5 and citizens of Chattanooga, he would not have offered his name. He stated his willingness to serve is not to advance the name of Walter Williams but to be of service. He stated as senior member of his law firm he is able to come and go as he chooses without limitation; that he has structured his law practice so he would not have to make many court appearances often and arranged it so that he would not have any trial beyond a day.

DISTRICT 5 APPLICANT INTERVIEWS (Continued)

Mr. Williams stated his practice is an office practice where clients are seen by appointment and, therefore, (he) is free to meet and work to serve District 5 residents and citizens in general in Chattanooga. He stated that he has developed a plan he is prepared to initiate if given an opportunity to serve; that he would establish a Council of Presidents made up of various association presidents throughout the district to help guide what is needed in the district. He stated he would also implement a neighbor-to-neighbor program whereby neighbors would get to know one another in the event of emergencies to have contact information as to how to reach a neighbor in the event of an emergency. He stated he would also establish safe havens for elementary and middle school children for so often parents are not able to pick children up due to emergency situations, noting that he would establish safe havens for the children to go to a neighbors home until parents arrive. He stated he would establish a District 5 business forum whereby businesses could get together and talk about problems they are experiencing in Chattanooga and, more particularly, if they are experiencing a problem within government he might be able to help them deal with it and try to streamline them. He stated these are four things he could do on an interim basis and if selected to serve whoever follows him could continue them, as well.

Chairman Bennett stated all five applicants have been heard and asked for questions or statements from Council members.

Councilman Pierce expressed appreciation to all the applicants who submitted applications for the position. He stated copies were given to all Council members on Friday afternoon for perusal over the weekend and some came to a conclusion and others were waiting to hear everyone individually. He stated he personally looked at what he had before him and came to his conclusion and at the appropriate time would nominate a name however he would rather wait to see if any others want to come with a nomination prior to his.

Councilman Benson expressed thanks to everyone for applying noting that all are very distinguished applicants and appreciated them offering time. He stated that he is in a position to make a motion, too, and guesses two main reasons for the one he plans to nominate is that the person has had experience on this Council as an interim and knows how an interim should perform. He stated that he spent about 35 years with him in the school system and watched him grow as an administrator and he had good judgment and wisdom. At this point he **nominated Luther Shockley; Councilman Pierce seconded the motion.**

DISTRICT 5 APPLICANT INTERVIEWS (Continued)

Councilwoman Berz stated that she did not want to speak to the motion but had a question. She stated the person serving in District 5 will be right next to her district, District 6; that discussions have started about unity in Brainerd between Districts 5 and 6 as both have the unusual interest of Brainerd Road, quality of life and economic development; that one of the things they are also interested in, even though they are working in the neighborhoods and going across imaginary lines of government, is working together. She stated she would like a response as to how each applicant feels about working together with other districts to meet the needs of the district, particularly Brainerd Road to bring it up economically relative to quality of life.

Angela Clark expressed her thought that this is a good concept to be able to make decisions not only for her district but also others; that she believes in strong economic development. She stated that there are a whole lot of different businesses and mentioned the flow of traffic where the former Red Food Store was which can affect other businesses and districts. She referenced building up the area, as well as consideration of the flood zone and traffic flow; that she sees things that can be done when decisions are brought before the Council, voting on her district's needs and different districts within the city.

Thomas Scott responded that unity is very important and it is obvious criminals know better than citizens when they leave one district to go into another. He stated unity has to be priority else the criminals will continue to cross lines and run from one district to another. He stated unity among districts will help the whole city of Chattanooga and he is one hundred percent for that.

Luther Shockley stated the situation with Brainerd Road has been going on for quite some time and it is not a new issue; that in fact, there was a lot of discussion when he served on the Council before. He stated that he was familiar with the previous representative for the Brainerd Road area and they talked about situations and knows some of the members of neighborhood associations. He stated that he tends to be a pragmatist when it comes to problem solving, so it would be only logical that districts work together and help each other individually, as well as collectively.

Walter Williams respectfully stated that he wanted to yield the floor to Ms. Hicks prior to his turn to speak. He displayed a map showing the relative position of Brainerd Road to Districts 5 and 6 and stated what there needs to be is the formulation of a business forum with all businesses along the Brainerd corridor in an effort to work a way to deal with problems they are experiencing; that there needs to be additional street signs as traffic is too fast on Brainerd Road.

DISTRICT 5 APPLICANT INTERVIEWS (Continued)

Mr. Williams stated people need to slow down so businesses can take advantage of people turning in and he has already discussed that among several people; that there needs to be work on coordinating efforts of Brainerd Road.

Beatrice Hicks stated that she thinks this is extremely important; that she lived on Old Mission Road in District 6 for many years and then it was divided. She stated she and her husband have a small business they have had for 40 years and thinks it is so important for all to get together and let small business people have advantages, as well. She stated block captains and area meetings are needed as Mr. Williams mentioned to bridge the gap and bring us together; that this is so important.

At this point Chairman Bennett asked if there were other nominations.

Councilwoman Robinson expressed sincere appreciation to the qualified candidates before the Council today noting that it speaks a lot of good about our city and particularly this district to have the quality of applicants this evening. She **placed in nomination the name of Walter Williams** as someone this Council has worked with on numerous occasions and who has appeared before us and has a close alliance with the Council. She stated that he understands the neighborhood, has a pulse on things and is the kind of candidate who could “hit the ground running” and would certainly be fair as evidenced by the vast experience he has had on the bench as Judge. With a great deal of encouragement she asked the Council to give him every consideration. **Councilwoman Berz seconded the motion.**

Councilman Page closed the nominations on the two said names.

On roll call vote:

Benson	Shockley
Berz	Williams
Gaines	Shockley
Page	Shockley
Pierce	Shockley
Rico	Shockley

DISTRICT 5 APPLICANT INTERVIEWS (Continued)

Robinson

Williams

Bennett

Shockley

Luther Shockley was elected Interim Councilman with a 6 - 2 vote.

Chairman Bennett thanked each of the applicants for their willingness to serve noting that Councilwoman Berz has great people to choose from to do the work of this district as all are willing. She also expressed thanks to the Honorable Judge Russell Bean for his willingness to be present to swear-in the newly elected Councilman.

Councilman Page stated he would be remiss if he did not thank all the applicants for applying. He stated a lot of experienced people applied and noted that we do have a good Council person to serve. He stated that he wanted to give his regards and respect to those who applied.

OATH OF OFFICE

Judge Russell Bean stated that it is an honor and privilege to do this and noted that the Council could not have gone wrong as there were a lot of good applicants.

At this point, Judge Bean administered the Oath of Office to Luther Shockley. Once the Oath was completed Judge Bean and Councilman Shockley signed the official Oath of Office document.

Upon taking his seat, Chairman Bennett asked Councilman Shockley if he had family members in attendance. Councilman Shockley noted that his daughter was present.

INTERIM BUDGET

On motion of Councilwoman Gaines, seconded by Councilman Rico,
**AN ORDINANCE PROVIDING FOR AN INTERIM BUDGET AND
APPROPRIATING FUNDS FOR THE USUAL AND ORDINARY EXPENSES OF
THE CITY GOVERNMENT FOR THE MONTHS OF JULY, AUGUST, AND
SEPTEMBER 2008, PENDING THE ADOPTION OF THE 2008-2009 ANNUAL
BUDGET**

passed second and final reading and was signed in open meeting.

2008-2009 BUDGET

Councilwoman Berz stated this matter was discussed in the Budget and Personnel Committee and approval is recommended.

On motion of Councilman Rico, seconded by Councilman Pierce,

AN ORDINANCE, HEREINAFTER ALSO KNOWN AS "THE FISCAL YEAR 2008-2009 BUDGET ORDINANCE", TO PROVIDE REVENUE FOR THE FISCAL YEAR BEGINNING JULY 1, 2008, AND ENDING JUNE 30, 2009, AND APPROPRIATING SAME TO THE PAYMENT OF EXPENSES OF THE MUNICIPAL GOVERNMENT; FIXING THE RATE OF TAXATION ON ALL TAXABLE PROPERTY IN THE CITY, AND THE TIME TAXES AND PRIVILEGES ARE DUE, HOW THEY SHALL BE PAID, WHEN THEY SHALL BECOME DELINQUENT; PROVIDING FOR INTEREST AND PENALTY ON DELINQUENT TAXES AND PRIVILEGES

passed first reading.

REZONING

2008-094: Dennis Neal, Habitat for Humanity

Pursuant to notice of public hearing, the request of Dennis Neal, Habitat for Humanity, to rezone a tract of land located in the 2300 block of East 19th Street came on to be heard.

The applicant was present; there was no opposition.

Councilmen Rico and Robinson made the initial motion and second to approve the request.

Greg Haynes, Director of Development Services with the Regional Planning Agency (RPA), stated that this request is consistent with the plan in the area and is recommended for approval from Planning. He noted there might be a little twist to the request.

Dennis Neal stated that the needs of families constantly change and it was brought to his attention within the last couple days that a townhouse development would not be in the best interest of some of his clients; that it would better benefit them and the community if he could get R-1 rather than RT-1. He stated at the same time, families are working hard and are on schedule to start some of the homes in July. He asked if the request could be approved for R-1 without having to go back to Planning and throwing the schedule "out of whack".

REZONING (Continued)

City Attorney Nelson stated that would be pretty much a major change and under the law in Tennessee any time we consider something Planning has not had we have to refer it back to them; that the Council is in the position to either approve the RT-1 or send it back to Planning.

Councilman Benson asked Mr. Haynes if the applicant could use the property for R-1 even though the request is for RT-1.

Mr. Neal stated that he asked the question earlier today and was hoping that would be the case.

Mr. Haynes responded "RT-1 is only for townhouse use".

Councilman Benson asked if it can not go back to the basic R-1.

Mr. Haynes stated the zone there is M-2.

Councilman Benson asked if an R-1 could be built in M-2.

Mr. Haynes responded "no", which is why the request is to rezone; that the M-2 zone does not allow R-1.

Councilman Benson stated there would be another thirty days if the applicant wishes to change.

Councilwoman Berz asked the applicant what he wanted.

Mr. Neal stated that he prefers to build four single family dwellings.

Councilwoman Berz asked what it would take for this to be done.

Mr. Haynes stated to do single family it would have to be R-1 and would have to go back to Planning; that it probably would be scheduled for July and back before the Council in August.

Councilwoman Berz asked how this would affect the applicant.

Mr. Neal responded "by about six weeks"; that the families in the program were expecting to start the homes in mid-July and be in the homes in September.

Councilwoman Berz expressed whether this would be a hardship on the applicant and the families.

REZONING (Continued)

Mr. Neal stated that it would not be a hardship on him but there would be a hardship for the families who are excited about this part of town.

Councilwoman Berz asked if there are no other ways government can accommodate what we all want any way.

Mr. Haynes stated there is no other way he knows of in this particular situation; that the City Attorney spoke with the applicant and told him the same thing; that they brainstormed a little but there is no way. He stated that they looked at the RT-Z zone which does allow single family residential for a zero lot line zone, but again, it is a different zone and was not discussed at Planning.

Councilwoman Robinson stated that she thought when something had gone through Planning once it got to the Council we could change it.

City Attorney Nelson stated the Council can provide for something that was brought up before Planning; that the idea is to get their input on the change and if the Council does not like what was recommended, then the final word is the Council, but where they have not been able to give input because it was not a consideration before them, then the law requires they have opportunity to do so.

Councilwoman Robinson asked if the Council has authority to make a recommendation that certain zoning be changed and do a telephone call of them (Planning Commission) to get their concurrence.

City Attorney Nelson responded "no".

Councilman Pierce asked if there is any way to speak to the process; that once it goes back to Planning it will be the first of July. He asked if we have to wait 30 days after they make a decision, whether we can do it in the next couple weeks.

City Attorney Nelson stated we might be able to get it on the June agenda before Planning.

Mr. Haynes clarified that the Planning Commission met yesterday!

Chairman Bennett asked if the matter is sent back could it be speeded up.

Mr. Haynes stated there would still be another month in between.

REZONING (Continued)

City Attorney Nelson indicated there is a mandatory fifteen day advertising requirement.

Mr. Haynes stated the legalities can not be argued; that R-1 is a more restrictive zone and more compatible.

Councilman Benson stated that he could make a commitment here to support and Planning would do that; that the applicant could start with construction while . . .

City Attorney Nelson interrupted and stated that the applicant would not be able to get a building permit.

Mr. Neal stated that he could continue with Planning.

Chairman Bennett asked if the applicant wished to continue with the zoning or withdraw.

City Attorney Nelson stated the matter should be referred back to Planning.

Mr. Neal asked if the matter would be put back on the normal schedule.

Councilman Benson stated he would be happy to support the R-1; that it seems to be an ideal situation for the applicant and community.

Mr. Neal expressed appreciation for the Council's consideration and noted his thought it would be better in the community if he goes ahead with the R-1 even though it would throw him behind a little; that this would be better for everyone involved.

Chairman Bennett asked Mr. Neal if it is his wished to withdraw the request.

Mr. Haynes stated a little Staff time would be saved if the matter is kept and sent back to Planning.

City Attorney Nelson stated Mr. Neal would not have to pay the fees.

Mr. Haynes stated that a new case would not have to be opened and the matter could be reviewed at the July meeting.

REZONING (Continued)

On motion of Councilman Rico, seconded by Councilwoman Berz,
**AN ORDINANCE TO AMEND ORDINANCE NO. 6958, AS AMENDED,
KNOWN AS THE ZONING ORDINANCE, SO AS TO REZONE A TRACT OF
LAND LOCATED IN THE 2300 BLOCK OF EAST 19TH STREET, MORE
PARTICULARLY DESCRIBED HEREIN AND AS SHOWN ON THE MAPS
ATTACHED HERETO AND MADE A PART HEREOF BY REFERENCE, FROM
M-2 LIGHT INDUSTRIAL ZONE TO RT-1 RESIDENTIAL TOWNHOUSE ZONE**
was referred back to the Regional Planning Agency.

REZONING

2008-098: Eric Cummings

Pursuant to notice of public hearing, the request of Eric Cummings to rezone a tract of land located at 100 West Main Street came on to be heard.

The applicant was present; there was no opposition.

Mr. Haynes stated this request is for retail use and Planning recommends approval.

Councilman Benson asked if anything has changed since Planning.

Mr. Haynes stated that the regular C-2 conditions have been attached and parking will be to the rear; that the applicant is okay with that.

On motion of Councilman Rico, seconded by Councilman Pierce,
**AN ORDINANCE TO AMEND ORDINANCE NO. 6958, AS AMENDED,
KNOWN AS THE ZONING ORDINANCE, SO AS TO REZONE A TRACT OF
LAND LOCATED AT 100 WEST MAIN STREET, MORE PARTICULARLY
DESCRIBED HEREIN AND AS SHOWN ON THE MAPS ATTACHED HERETO
AND MADE A PART HEREOF BY REFERENCE, FROM M-1
MANUFACTURING ZONE TO C-3 CENTRAL BUSINESS ZONE, SUBJECT TO
CERTAIN CONDITIONS**

passed first reading.

REZONING

2008-100: International Association of Firefighters Local 820

Pursuant to notice of public hearing the request of the International Association of Firefighters Local 820 to rezone part of a tract of land located at 6210 Perimeter Drive came on to be heard.

The applicant was present; there was no opposition.

Mr. Haynes stated this is a "clean" zoning and involves a portion of a parcel that was left out of C-2. He stated this request places the whole parcel in the C-2 zone.

On motion of Councilman Rico, seconded by Councilwoman Robinson,
**AN ORDINANCE TO AMEND ORDINANCE NO. 6958, AS AMENDED,
KNOWN AS THE ZONING ORDINANCE, SO AS TO REZONE PART OF A
TRACT OF LAND LOCATED AT 6210 PERIMETER DRIVE, MORE
PARTICULARLY DESCRIBED HEREIN AND AS SHOWN ON THE MAP
ATTACHED HERETO AND MADE A PART HEREOF BY REFERENCE, FROM
R-2 RESIDENTIAL ZONE TO C-2 CONVENIENCE COMMERCIAL ZONE**

passed first reading.

REZONING

2008-101: Andrew T. Lancaster

Pursuant to notice of public hearing, the request of Andrew T. Lancaster to rezone tracts of land located at 4021 and 4023 Chandler Avenue came on to be heard.

The applicant was present; there was no opposition.

Mr. Haynes stated this property was originally built as a duplex but lost its legal non-conforming status due to being left vacant beyond 100 days. He stated the request is to bring it back to R-2 as a duplex so it can be renovated and legal again.

Councilman Pierce asked if there is any study or land use plan in this area.

Mr. Haynes responded that a study is underway; that the Staff originally recommended deferring action at Planning until the study is complete however Commissioner Johnson explained this would enhance and be of benefit to the area if it is brought back, renovated and upgraded.

REZONING (Continued)

Mr. Haynes stated Planning felt it would be an improvement to the area and recommended the R-2 be approved.

Councilman Pierce stated this makes him leery; that so many neighborhoods and overwhelmed with duplexes. He stated once they get in a certain stage they are just left there as an eyesore and is one of the main reasons for downzoning, reiterating that he is leery about this.

Mr. Haynes stated the property was left vacant beyond 100 days.

Councilman Pierce asked if the request is on R-2 property.

Mr. Haynes responded "no, on M-1", which does not allow residential; that it was grandfathered into that zone as a legal conforming use; that duplexes are already in the M-1 zone.

Chairman Bennett inquired as to the status of the land use plan.

Mr. Haynes stated Staff is looking toward the end of summer to complete the study.

Councilman Pierce stated that he can not understand how duplexes were built in an M-1 zone.

Mr. Haynes stated duplexes are there; that the zoning happened probably before the M-1 zone was there and once the zoning was in place the duplexes were there before the zone.

Councilman Benson stated we have not heard from the applicant, yet, and would like to know about plans for keeping it up. He stated that it sounds like if the property is going to be revitalized we need to support the improvement of this property, as well as adjacent areas.

Andrew Lancaster stated that the property was purchased at the end of December and had been vacant for a long period of time; that the previous owner did not take care of it in any way as the property has been vandalized and broken into; that he purchased it and is working with Randy Ridge in Inspection to bring it back to Code, however it has been on hold for the last two months because he could not get a permit issued. He stated he is working with an outside management company to manage the property and keep it up-to-date.

REZONING (Continued)

Councilman Benson stated that he recalls Beverly Johnson sitting next to him at Planning and recommending this as she has been working with the applicant through Neighborhood Services; that she feels Mr. Lancaster's word and intentions are strong.

Mr. Lancaster stated that he had planned to work with a contractor and even started cleaning it up and was halted when he could not get a permit.

Councilwoman Berz asked if the Council should wait or do as he wishes.

Mr. Haynes stated with land use plans in other areas we usually wait until they are complete, but then there was discussion, as Councilman Benson explained, that if this is an improvement it is worth going ahead and not waiting. He stated since he is not working on the Plan he does not know what the ideas are for this area as it may suggest maintaining the manufacturing zone or go ahead with residential. He stated he is not sure what the thinking is.

Councilman Rico stated this is located in his district and recommended passage of it. He stated this will be an improvement -- that anything in that area is an improvement. He stated when Mr. Lancaster came in he was thankful someone wanted to fix it up.

Councilman Pierce stated this is something that happened in his district in the Avondale area with some developers and any time a developer comes in they do come with good intentions but the question is normally this type of property does not do anything but breed drug dealers. He stated this is one of the reasons the communities want to get rid of duplexes. He stated what we have is an absentee landlord and all they care about is whether they can get on Section 8 and get the property rented out; that this is the reason he so strongly opposes going back and reinventing what we have done in the past and there is no way he will go back. He stated he does not know how the duplexes got on M-1 property, something happened and they are there; that he can not support this. He stated there is no proof to show they were grandfathered-in.

Chairman Bennett stated that she knows a year ago there was a provision made if R-2 property has been left vacant the community could decide whether to grandfather the property in the existing zoning without changing the zone.

Mr. Haynes stated that was the special permit that was introduced last week for R-1 property; that the property was downzoned to R-1.

REZONING (Continued)

Mr. Haynes stated it has been pointed out in this neighborhood and others there are streets and blocks of single family residential homes with M-1 zoning and he is not sure how it got to manufacturing in parts of Alton Park and South Chattanooga with single family residents. He stated this request happens to be three duplexes that lost their grandfather status.

Chairman Bennett asked Mr. Lancaster if he has been in communication with the neighborhood association.

Mr. Lancaster responded "no"; that the land use plan is on the other side; that this property does not fall into the plan. He stated this property is not in the actual current plan.

Chairman Bennett asked if Mr. Haynes could verify Mr. Lancaster's statement.

Mr. Haynes stated that he assumed this whole area was being studied; that there is a current older plan and it may be within that one.

At this point Councilman Rico called for the question.

Councilwoman Gaines asked Mr. Lancaster if he has met with any neighborhood association in general in the vicinity, not just within the land use area, any other neighborhood surrounding this.

Mr. Lancaster responded "no, I have not".

Councilman Rico stated that the there has been an effort to try to get someone to clean it up and trying to get the neighborhood association together is almost impossible as they just do not come together. He stated he has tried to hold meetings and there might be two-to-three people, reiterating that it is hard to get the associations together, to find out who they are and when they are meeting.

On motion of Councilman Rico, seconded by Councilman Benson,

**AN ORDINANCE TO AMEND ORDINANCE NO. 6958, AS AMENDED,
KNOWN AS THE ZONING ORDINANCE, SO AS TO REZONE TRACTS OF
LAND LOCATED AT 4021 AND 4023 CHANDLER AVENUE, MORE
PARTICULARLY DESCRIBED HEREIN AND AS SHOWN ON THE MAP
ATTACHED HERETO AND MADE A PART HEREOF BY REFERENCE, FROM
M-1 MANUFACTURING ZONE TO R-2 RESIDENTIAL ZONE**

passed first reading; Councilmen Robinson, Pierce and Gaines voted "no"; Councilwoman Berz abstained.

AGREEMENT

On motion of Councilman Page, seconded by Councilwoman Berz,

A RESOLUTION AUTHORIZING THE ADMINISTRATOR OF THE DEPARTMENT OF PARKS & RECREATION TO ENTER INTO A PERSONAL SERVICES AGREEMENT WITH PHILIP PUGLIESE TO PROVIDE TECHNICAL SERVICES TO THE CHATTANOOGA-HAMILTON COUNTY-NORTH GEORGIA TRANSPORTATION PLANNING ORGANIZATION AS BICYCLE COORDINATOR FOR A TERM OF TWENTY (20) MONTHS IN AN AMOUNT NOT TO EXCEED SEVENTY-FIVE THOUSAND DOLLARS (\$75,000.00), WHICH AMOUNT IS TO BE SHARED BY THE CHATTANOOGA-HAMILTON COUNTY-NORTH GEORGIA TRANSPORTATION PLANNING ORGANIZATION AND THE COMMUNITY FOUNDATION OF GREATER CHATTANOOGA

was adopted.

AGREEMENT

On motion of Councilman Page, seconded by Councilwoman Gaines,

A RESOLUTION AUTHORIZING THE ADMINISTRATOR OF THE DEPARTMENT OF PARKS AND RECREATION TO ENTER INTO AN AGREEMENT WITH KLEENCO CONSTRUCTION COMPANY IN AN AMOUNT NOT TO EXCEED TWO HUNDRED TWENTY THOUSAND TWO HUNDRED DOLLARS (\$220,200.00) FOR CONSTRUCTION OF SOUTH CHICKAMAUGA CREEK CANOE LAUNCHES

was adopted.

AGREEMENT

On motion of Councilwoman Berz, seconded by Councilwoman Robinson,

A RESOLUTION AUTHORIZING THE ADMINISTRATOR OF THE DEPARTMENT OF PARKS AND RECREATION TO ENTER INTO AN AGREEMENT WITH THE CHATTANOOGA AREA SWIM LEAGUE HOST TEAM TO RENT THE WARNER PARK SWIMMING POOL FOR THE PURPOSES OF THE CHATTANOOGA AREA SWIM LEAGUE CHAMPIONSHIP TO BE HELD JULY 25-27, 2008, FOR THE AMOUNT OF TWO THOUSAND DOLLARS (\$2,000.00)

was adopted.

AGREEMENT

On motion of Councilman Rico, seconded by Councilwoman Berz,

A RESOLUTION AUTHORIZING THE ADMINISTRATOR OF THE DEPARTMENT OF PARKS AND RECREATION TO ENTER INTO AN AGREEMENT WITH SCENIC CITY AQUATIC CLUB TO RENT THE WARNER PARK SWIMMING POOL FOR THE PURPOSES OF THE QUAD SWIMMING MEET TO BE HELD JUNE 6-8, 2008, FOR THE AMOUNT OF ONE THOUSAND FIVE HUNDRED DOLLARS (\$1,500.00)

was adopted.

AGREEMENT

On motion of Councilman Rico, seconded by Councilwoman Robinson,

A RESOLUTION AUTHORIZING THE ADMINISTRATOR OF THE DEPARTMENT OF PARKS AND RECREATION TO ENTER INTO AN AGREEMENT WITH SCENIC CITY AQUATIC CLUB TO RENT THE WARNER PARK SWIMMING POOL FOR THE PURPOSES OF PRACTICE FROM MAY 19, 2008 THROUGH AUGUST 2, 2008, FOR THE AMOUNT OF TWO THOUSAND DOLLARS (\$2,000.00)

was adopted.

AGREEMENT

On motion of Councilman Rico, seconded by Councilwoman Gaines,

A RESOLUTION AUTHORIZING THE ADMINISTRATOR OF THE DEPARTMENT OF PUBLIC WORKS TO EXECUTE AN AGREEMENT WITH EARTHWORX, LLC RELATIVE TO CONTRACT NO. S-06-009-103, CHATTANOOGA COMBINED SANITARY SYSTEM (CSS) MAPPING, IN AN AMOUNT NOT TO EXCEED SIX HUNDRED SEVENTY-FIVE THOUSAND DOLLARS (\$675,000.00)

was adopted.

AGREEMENT

On motion of Councilman Rico, seconded by Councilman Page,

A RESOLUTION AUTHORIZING THE ADMINISTRATOR OF THE DEPARTMENT OF PUBLIC WORKS TO ENTER INTO AN AGREEMENT WITH WEBSTER ENVIRONMENTAL ASSOCIATES, INC. RELATIVE TO CONTRACT NO. W-08-002, COMPREHENSIVE ODOR ASSESSMENT STUDY DOWNTOWN COMBINED SEWER OVERFLOW AREA, IN THE AMOUNT OF SEVENTY-FIVE THOUSAND DOLLARS (\$75,000.00), PLUS A CONTINGENCY AMOUNT OF TEN THOUSAND DOLLARS (\$10,000.00), FOR A TOTAL AMOUNT NOT TO EXCEED EIGHTY-FIVE THOUSAND DOLLARS (\$85,000.00)

was adopted.

AGREEMENT

Councilman Page stated an addendum was added to this Resolution during discussion in Committee today that is not reflected in his copy of the Resolution.

City Attorney Nelson stated that the amendment was included in the minutes of the Committee but not needed for this.

Councilman Page stated that he wanted the request to be formally inclusive which involved inviting the County Mayor and Commission to participate in this involvement.

At this point City Attorney Nelson amended the Resolution's caption and body in open meeting to reflect "*...subject to the County Mayor and Commission being asked to participate.*"

Councilwoman Berz stated there was one more issue having to do with delineation of deliverables.

City Attorney Nelson stated that portion is already included in the body of the resolutions which reads: "*The scope of work will include: assessing current library services and facilities to determine effectiveness and efficiency; assess need for additional services and/or facilities, assess community support for future changes to the library system and any additional required funding, define and produce an avenue for public input into the process, and produce a final report and presentation to the Task Force of findings*".

On motion of Councilman Rico, seconded by Councilman Pierce,

A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO AN AGREEMENT WITH THE CONSULTANT TEAM OF JUNE GARCIA AND SUSAN KENT TO WORK WITH THE MAYOR'S LIBRARY TASK FORCE IN ASSESSING THE CURRENT LIBRARY SYSTEM AND MAKING RECOMMENDATIONS FOR FUTURE ENHANCEMENTS IN AN AMOUNT NOT TO EXCEED FIFTY THOUSAND DOLLARS (\$50,000.00), SUBJECT TO THE COUNTY MAYOR AND COMMISSION BEING ASKED TO PARTICIPATE

was adopted.

(At this point Councilman Page excused himself from the meeting.)

OVERTIME

Overtime for the week ending June 6, 2008 totaled \$91,552.63.

PERSONNEL

The following personnel matters were reported for the various departments:

PUBLIC WORKS DEPARTMENT:

- ◆ **JIMMY L. YEARBY** – Return from Family Medical Leave, Crew Worker 1, City Wide Services, effective June 2, 2008.
- ◆ **ALONZO LEWIS** – Suspension (1 day without pay), Equipment Operator 3, City Wide Services, effective June 5, 2008.

CHATTANOOGA FIRE DEPARTMENT:

- ◆ **PERRY STEPHENS** – Return from Military Leave, Senior Firefighter, effective June 5, 2008.

MAYOR'S OFFICE – INFORMATION SYSTEMS:

- ◆ **NANCY ORTEGA** – Promotion, Fiscal Technician, Range 10, \$38,231.00 annually, effective April 18, 2008.
- ◆ **STEVEN REED** – Hire, Programmer, Range 18, \$41,572.00 annually, effective April 18, 2008.
- ◆ **JASON ROBBINS** – Hire, Programmer, Range 18, \$44,000.00 annually, effective April 18, 2008.

PURCHASE

On motion of Councilwoman Robinson, seconded by Councilman Rico, the following purchase was approved for use by the Department of Parks and Recreation:

SMITH TURF & IRRIGATION (Best bid)
R0107928/B0005128

PURCHASE (Continued)

Batwing Mower (*The lower bid submitted by Georgia Turf and Tractor is not recommended for award since this bid did not meet specifications.*)

\$66,302.00

PUBLIC USE OF POOL

Councilwoman Gaines inquired as to the hours of the Warner Park pool.

Adm. Zehnder stated that the pool hours are 12:30 p.m. – 4:30 p.m. noting there are open swim hours; that swim lessons are taught in the morning hours and they have a program at all recreation centers, except one, where there is a summer camp to teach every child to swim.

Councilwoman Gaines stated she would go to the web site to look at the summer programs.

Adm. Zehnder asked Councilwoman Gaines if she did not get his e-mail with the attachments.

Councilwoman Gaines responded that she did not remember; that she gets so many e-mails. She expressed thanks to Adm. Zehnder for what he does and noted she would go to the web site.

PURCHASE

On motion of Councilman Rico, seconded by Councilwoman Gaines, the following purchase was approved for sue by the Chattanooga Police Department:

COMMERCIAL CONCEPTS (Best bid)

R0109434/B0005229

Eurotech Executive Office Chairs (*ErgoGenesis and ATD-American were ruled non-responsive since they failed to submit all the proper documents with their bids.*)

\$16,957.20

ACCEPT DONATION

On motion of Councilwoman Robinson, seconded by Councilwoman Gaines, acceptance of the donation of four 18" Aluminum Frame Mountain Bikes, valued at \$1,000.00 each, from BMW of Chattanooga to the Chattanooga Police Department for use by the Chattanooga Police Mounted Bike Patrol was duly approved.

PURCHASE

On motion of Councilwoman Gaines, seconded by Councilman Pierce, the following purchase was approved for use by the Mayor's Office, Information Services Division:

ROSS SYSTEMS OF ATLANTA, GEORGIA (Single source) R0108847

Annual Software Maintenance per TCA 6-56-304.6

\$27,774.49

BOARD RE-APPOINTMENTS

The following Board re-appointments were made to the **BOARD OF SIGN APPEALS:**

- ◆ On motion of Councilman Rico, seconded by Councilman Pierce the re-appointment of **REGINALD FERGUSON** for a three year term expiring June 30, 2011, representing District 8, was approved.
- ◆ On motion of Councilman Benson, seconded by Councilwoman Berz, the re-appointment of **BRAD ALLEN** for a three year term expiring June 30, 2011, representing District 4, was approved.
- ◆ On motion of Councilman Rico, seconded by Councilwoman Gaines, the re-appointment of **LOU MUSE** for a three year term expiring June 30, 2011, representing District 1, was approved.

NOTE OF THANKS - BUDGET PREPARATION

Chairman Bennett expressed thanks to Adm. Madison, her staff and all department heads for an outstanding budget process this year, noting her appreciation to everyone.

LAST CHANCE AGREEMENT

City Attorney Nelson stated last week he was asked to give an opinion on the last chance agreement in public works. He stated that a copy of his opinion was been placed in each Council member's mailbox this afternoon; that he found an article in the *American Law Reports* (ALR) which pretty well covers the subject. He quoted the excerpt from the article which has been spread upon the minutes:

It is well established that a federal employee can waive future appeal rights in a last chance agreement. To overcome a waiver of the right to appeal contained in a last chance agreement, an employee must prove either compliance with the last chance agreement, that the agency breached the agreement, or that the employee did not knowingly and voluntarily enter into the agreement. The propriety of a personnel action against a civil service employee is a matter generally resting in the sound discretion of the employer agency.

City Attorney Nelson stated two Tennessee cases have mentioned last chance agreements that have been used; that one of them is Donald Rutherford vs. Northwest Airlines, Inc. and the second is the City of Memphis wherein the court in one of the two cases cited indicated a number of police officers who entered last chance agreements in Memphis had been terminated upon violation of their agreement. Finally, he noted, this is the second time this issue has been before the Council; that the first time was in the spring of last year and at that time the Council declined to grant a hearing, so it is not without precedent from even this Council. He stated in looking through the ALR of the 55 cases mentioned 50 of them upheld this particular agreement and five went the other way. He stated the evidence is pretty overwhelming that last chance agreements are legal and can be entered into as a contract by an employer with this employee.

Councilman Pierce asked for clarification whether it is a contract by the employee or the department head.

LAST CHANCE AGREEMENT (Continued)

City Attorney Nelson responded "both"; that it takes two to enter a contract and it must be a consideration going both ways. He stated in the first instance the employer is waiving his right to fire someone and bringing them before the Council and the employee is gaining the benefit of additional time on the job for a one year period if he can "keep his nose clean", then he gets to continue working and the last chance agreement goes way, then the second time around he has already given up his rights.

Councilman Pierce stated if that is city policy it should be across the board for every department and not just a selected department. He stated he is inclined to ask if this is a recommendation from the Mayor's office or some policy set up by department heads. He asked who the deciding factors are in the case; that he knows in making a recommendation to dispose of someone the Mayor "signs off", but to him it is taking rights away from people and he just can not see it. He stated that he knows what the City Attorney has said but he just does not accept it.

Councilwoman Berz stated that she did not receive a copy of the document in her box and wanted to ask the esoteric question of what "knowing and voluntary" means.

City Attorney Nelson responded that it means that a person has been apprised of the charges, knows what they are and they choose not to contest them at that point in time.

Councilwoman Berz stated voluntary is one thing; that she heard talk last week about the concept of coercion.

City Attorney Nelson stated that voluntary means just what it says, going into an agreement voluntarily realizing they give up certain rights in return for the right to continue working.

Councilman Benson stated that he wanted to preface his comments by stating that he has total confidence in Jim Templeton, the supervisor who signed the last chance agreement and this does not relate to his actions. He stated that he has a little concern about where some of this is used where due process and just causes are required. He stated he knows some supervisors that used this last chance in reference to a fire cracker having been fired; that in the mind of the supervisor he knew no notice had been posted regarding this. He stated employees shot fire crackers but if a sign had been posted referencing a last chance then if anyone ever did anything else they would not get a hearing.

LAST CHANCE AGREEMENT (Continued)

Councilman Benson stated it is his belief some supervisors could deliberately use this as a rouse rather than ever taking an appeal and this worries him a bit. He stated knowing and voluntary is tied into that; that he knows it is legal and has been used in the school system and sometimes principals knew they did not have a good case if it ever got to the Board, then they would go the last chance.

Councilwoman Gaines asked if the City Attorney could tell her if there is any one in any other department in the city government that makes use of this policy.

City Attorney Nelson stated that he did not know whether they do or not.

Councilwoman Gaines asked Ms. Kelley whether the last chance agreement is used in other departments; that it seems we may have to look at administration as to who may want to use this.

Adm. Donna Kelley stated that there have been two other departmental occurrences that come to mind that have been used in the past.

Councilwoman Gaines asked if this is standard policy for other departments.

Adm. Kelley expressed appreciation for the comments made; that it is her thought from what she has seen this is truly a last chance. She stated it is not easy from administration's standpoint when they are going to lose someone a department may have had for a year or many years. She stated what she has seen from other departments is this is truly a last chance for both of them.

Councilwoman Gaines asked if it is up to the department, director or administration as to whether they want to use this policy.

Adm. Kelley responded "yes, it is".

Councilwoman Gaines stated that she finds it interesting that only one department makes use of that. She stated there was no intent to put Ms. Kelley "on the spot" and expressed thanks to her.

Councilwoman Robinson stated what she is hearing is that an employee had a choice of either getting fired right there and take a chance in a personnel hearing or they can go back to work and resolve to do better about following the rules and regulations and it is as simple as that. She stated if they are fired then the personnel policy is not used and if they are given another chance then it is used.

LAST CHANCE AGREEMENT (Continued)

Councilwoman Gaines stated that she understands; that the point she was trying to make or understand from the personnel director is that this is not used generally or is used by only one department. She stated most people have an opportunity to appeal a hearing and why would it be public works and used on one or two occasions as Adm. Kelley referenced.

Lee Norris stated that he is inferring from comments that apparently public works is going "willy-nilly" and using this to "beat people over the head". He stated that he wanted to clear up something; that this agreement is exactly what it says, the employee gets one last chance to modify his or her behavior and conform to the rules and policies which involves becoming a productive member of the city's work force. He stated the first use, to his knowledge, was in January of 2004 and since 2004 up and including this particular incident the agreement has been used five times in four years and that is it. He stated out of five times, three of those employees are still employed by the city; that they took the last chance offered and conformed to policies and became productive employees and are still here. He stated if he had not used this, chances are all of the employees would have been fired and this is not used lightly. He stated there are progressive disciplinary measures in place within the *Code* and within the department of public works and they use them, but when it comes down to a very egregious discipline breach or continued disciplinary issue this last chance for employees to "get with the program" and become productive members of the work force is used. He stated three out of five times are pretty good odds, five times since January of 2004 and it is not used lightly.

Councilwoman Gaines stated that it should not have been used at all and should be under one policy in this government. She stated all should flow under one policy and due process and that is what it is; that the little time she has been here she sees the differences in departments and how people handle things. She stated that she may not be here but at some point this city government will conform; that we can not have this for a certain group.

Councilman Pierce stated that he does not have a problem with the last chance if it is policy, that it is just the idea of denying a person the right to a hearing. He stated if that part is taken out, then, when it is signed it is fine; that if an employee requests a hearing we ought to be willing to listen and see if he was justly fired is all that he is saying. He stated that is what this body is here for -- for the purpose of public hearings of personnel and as elected officials to make final judgment as to their livelihood. He stated that it is his thought the Council should listen to the hearings.

LAST CHANCE AGREEMENT (Continued)

Councilman Benson stated that public works is a most unusual department; that he even worked in it himself before he first started teaching and it takes a lot of acumen to know how to handle it. He stated other departments can use the last chance and their supervisor or director chose not to from what is available in the city; that it is legal and can be used by anybody. He stated all departments are unique however public works is very unique and has real strong leadership. He stated his problem is the same as Councilman Pierce's, that it seems un-American not to be able to have a hearing; that a person signing this can take it to Chancery Court.

City Attorney Nelson stated that it is his belief the person has waived that, too. He stated the point is that he does not have a right to a hearing; if he refuses to sign this last chance agreement he would be terminated right then and there and entitled to a hearing, so he gets a choice whether he wants a hearing right then or wants another chance.

Councilman Benson commented that the person still does not have a right for a hearing; that there can be all kinds of vast judgment used by all levels of employees. He stated that the last chance could be signed during emotionalism and a lot of problems and (he) hates the person can not even take it to Chancery Court.

Councilwoman Robinson stated that it is her belief what she heard from public works is that this is what it is, a last chance along with a litany of infringements on rules or breaking rules or behavior problems or any number of things that can get someone in trouble and if we did not have this document many people would get fired on the spot. She stated the things she likes about this is that it is a last chance, a last chance to get back to the job and become valued members of our community. She stated if they do not fit in and not going to obey the rules, then public works has the choice they can fire or give them one last chance. She stated sometimes when young people hear this is their last chance they really grow up and go to work.

Councilwoman Gaines stated that her concern with this document has nothing to do with the two young men; that it does not say the jobs they do are not appreciated. She stated that she read one line which tells her a person has a problem and they have to sign the document and ***“voluntarily waives their right to appeal, the right to file a grievance and the right to file civil action in court”***. She inquired as to what is due process; that if someone told her she would lose her job she would sign the papers to keep her job and then, low and behold, there is no option to appeal or go to a court!

LAST CHANCE AGREEMENT (Continued)

Councilman Pierce stated what brought this all about is the young man who is present; that he does not know whether the Council will give him a hearing or not. He stated if the young man speaks before the Council tonight he could prejudice himself. He stated the Council has not come to a conclusion and the Council needs to think about this young man's livelihood. He asked if the Council would give the young man a hearing or allow him to come as any other citizen and address the Council as to what has happened to him.

Councilman Benson stated last week the City Attorney was asked to come back with a position and he has told us the last chance agreement is legal.

City Attorney Nelson responded "correct".

Chairman Bennett stated that is the City Attorney's opinion back to us.

Councilman Pierce asked if there is no way the Council could talk to the young man.

City Attorney Nelson stated that is not a legal question.

Councilman Pierce asked if the Council is going to let the young man speak; that if the Council is not going to give the young man a hearing they could vote on that now.

Chairman Bennett asked if Councilman Pierce is making a motion.

Councilman Pierce stated that it is his feeling the young man should have a hearing and it is his right. At this point he **made the motion that the young man should have a hearing; Councilwoman Gaines seconded the motion.**

City Attorney Nelson stated at the bottom of the memorandum it says, "...To overcome a waiver of the right to appeal contained in a last chance agreement, an employee must prove either compliance with the last chance agreement, that the agency breached the agreement, or that the employee did not knowingly and voluntarily enter into the agreement...".

Councilwoman Berz stated that is why she asked the question about "knowing and voluntary"; that legal counsel has said it is a binding contract unless "knowing and voluntary" requisites are met. She stated that it is her thought we can not "open up"; that we have a department that has policy and there is a contract here.

LAST CHANCE AGREEMENT (Continued)

Councilwoman Berz stated she is hearing there is a conflict between what is legal and what many people think might not have been right, and, be that as it may, if this gentleman speaks tonight, if she correct in assuming that the only thing he would speak about is "knowing and voluntary", because if not, then we have to abide and support our own contract. She stated the other thing is that any citizen can get up in front of us and talk about whatever he or she wants to talk about and what she does not want is for him to in any way prejudice his rights should the contract be voidable in some way.

City Attorney Nelson stated he is trying to figure out Councilwoman Berz's question!

Councilwoman Berz stated if a contract can be voided for lack of "knowing and voluntary", then the only thing he would speak about would be that or otherwise would he prejudice any future rights – that is her question. She stated the commentary is that the department of public works does a really good job and this contract has been around for a long time. She stated she is not against the department of public works; that it is apparent we are bothered about a practice in the city and that is the comment she needed to make.

City Attorney Nelson stated there are three things that would obviate the contract which Councilwoman Gaines read. He stated that it is his thought it would be up to Mr. Toney or whoever to convince the Council that one of those three things applies in order to keep the contract from being breached again. He stated anything he does say, however, is on the record and could be used against him.

Councilwoman Berz stated that is the "catch 22" she was hearing and was bringing this up for the Council's attention.

Councilman Benson stated that it is his thought the Council is making a dangerous practice when getting into last chances. He stated the last chance is fine but to take away rights for an appeal scares him even it is a last chance; that the Council would be compounding what he thinks is wrong, already, and we would be doing another wrong if we pass this motion to give Mr. Toney a hearing and would be subverting our supervisors and managers. He stated that it is his thought if the Council does not like this last chance agreement they are using we need to meet to see if some other mechanic could be used to give these people a last chance and not deny them their rights. He stated to overcome it now would erode their authority and it scares him; that we have to have strong authority in that department and other departments. He stated he can not support the motion.

LAST CHANCE AGREEMENT (Continued)

Councilman Pierce stated that he would have to have the last word; that this Council has an obligation and that is to give employees a hearing and that is our last chance. He stated to have a policy that supersedes the Council's authority and a person not have a right to appeal the last body for a hearing is what he is looking at; that the Council can not take a state law and supersede a federal law or take a city law that supersedes a state or county law. He stated the last chance agreement denies what this Council is here for – a last chance hearing. He stated to take away the right for a hearing bothers him.

Councilwoman Berz stated as Chairman of the Budget and Personnel Committee points are well taken about revisiting the matter if appropriate, however, the application is not retroactive. She stated the real issue tonight is what we want to do about this gentleman and the concern she has is the "catch 22" she mentioned if it is said anyone can speak and he (Toney) speaks and as City Attorney Nelson says it jeopardizes him.

Chairman Bennett stated that the motion is that Mr. Toney be granted a hearing and depending upon the vote of the Council he will know whether the Council is willing to hear him. She stated a motion is "on the floor".

Councilman Benson stated that he is worried when a superior tells someone "if you sign this you are giving up your right to a hearing" and for us to come in now at this point and say "no more of this in the future or get something worked out" – he does not know how we can erode the authority of our management.

Chairman Bennett stated everyone has had a chance to respond to the motion by Councilmen Pierce and Gaines and noted there has been plenty of discussion.

Councilman Shockley asked the City Attorney Nelson after this agreement has been signed and it is said it is legal and binding, does the Council have the right to override the document.

City Attorney Nelson stated the Mayor has the authority; that the Council has legislative and quasi-judicial authority. He stated the Mayor would have the right, but the Council has legislative and quasi-judicial powers. He noted if the Council did choose to grant a hearing, then it would have to be on whether those three points are coerced; if not, on whether the person is guilty of the original charge and also could public works bring in that latest incident which is obviously what triggered the termination. He stated a strong argument could be made either way.

LAST CHANCE AGREEMENT (Continued)

Councilman Gaines stated that it would have to be proven the gentleman does not understand.

City Attorney Nelson responded "he (Mr. Toney) would have to prove".

Councilwoman Robinson stated the burden of proof is on him (Mr. Toney).

Councilwoman Berz asked "on what".

Councilman Pierce responded "on termination".

At this point Councilwoman Berz inquired as to a motion to have a hearing on the issue of the understanding "piece".

Chairman Bennett inquired as to what Councilwoman Berz means.

Councilwoman Berz stated as the City Attorney stated Mr. Toney can speak without breaching the contract on knowing and understanding of it without jeopardizing anything further; that it is her thought that is something that needs to happen. She stated anything that happens in personnel will not be retroactive; that this man has a problem now.

City Attorney Nelson stated he does not know the facts of this case at all, one way or the other; that he is just passing along the last chance agreement in the abstract.

On roll call vote on the motion and second by Councilmen Pierce and Gaines to grant a hearing:

BENSON	"No"
BERZ	"No"
SHOCKLEY	Abstained
GAINES	"Yes"
PIERCE	"Yes"
RICO	"No"

LAST CHANCE AGREEMENT (Continued)

ROBINSON	"No"
BENNETT	"No"

The motion failed with votes tallying 2-"Yes"; 5-"No"; 1-Abstention.

Chairman Bennett stated the matter would be discussed further in the Budget and Personnel Committee and do research that needs to be done.

ROBERT NEAL

Robert Neal of 310 Clifton Terrace in Clifton Hills, stated that he has no problem with street numbers; that when it was set up houses were listed by lot numbers. He stated that he lives at 310 and the reason is because houses are only on one side of the street and they never had any problem. He stated all of them received a letter two weeks ago noted that they have a community meeting once a month and someone could have come to talk to them to mention this; that he discussed this with Councilman Pierce. He stated he is now listed at 2911 and two houses down a house is listed in the 2800 block in the curve. He stated within a mile of his house there are at least five-to-six houses and only the good Lord knows where an ambulance would go if it were called to 2911! He stated that he discussed the matter with Jill Webster who said the problem started when 911 was called to 3904 Clifton Terrace; that they got in his area and drove down to 3104 and how they missed it, he does not know! He stated because of a problem with one call they are changing 25 different addresses and people do not like it. He stated that he made a list of things they would have to do and people they would have to call and there are at least a dozen – social security, insurance agents, businesses, friends, drivers license bureau – this is no simple matter! He stated they are to discuss the matter with Steve Leach and it was suggested they call Bill Payne. He stated what is done is done!

Chairman Bennett stated Mr. Leach is present and is in the rear of the room.

Mr. Neal stated that he wanted the Council to know he did not think they would do this without consulting people.

Councilman Pierce asked if there is any way for someone to go to the neighborhood association meeting on the second Thursday at 6:30 p.m.

Mr. Neal stated the meeting is this coming Thursday at Caruthers Park.

ROBERT NEAL (Continued)

Councilman Pierce stated Mr. Neal has known him since he was a kid and lived next door.

COMMITTEES

Councilman Benson scheduled a meeting of the **Legal and Legislative Committee for Tuesday at 3 p.m.**

CYNTHIA STANLEY-CASH

Cynthia Stanley-Cash stated she is a resident of District 5 and President of the North Brainerd Neighborhood Association. She stated that she attended the Legal and Legislative Committee when the Council considered the guidelines for the interim appointment and what she expected was to hear the candidate say they would not run for the seat, unless she missed it.

Chairman Bennett stated that the applicants' letters indicated they would not run for the seat.

Ms. Cash stated that she did not see the resumes and it was said in the meeting they would be asked to verbally state they would not run.

Councilman Shockley confirmed he would not run for the District 5 seat in November.

Ms. Cash invited Councilman Shockley to the North Brainerd Neighborhood Association meeting the third Monday of each month at Dalewood Middle School. She then admonished Councilman Pierce for his rudeness while Ms. Clark was responding to Councilwoman Berz's question.

Councilman Pierce expressed appreciation for Ms. Cash's chastising and noted since each were being honest if she would be a candidate in November.

Ms. Cash stated that she would let him know on the deadline date; that she is planning on it.

ED TIMMONS

Ed Timmons, 6574 East Brainerd Road, stated that he spoke about the last chance agreement which gives opportunity for a person to have another chance; that he was present to speak in terms of due process. He stated Mr. Toney is not able to give his side of the story and the Council does not know why he was terminated. He stated the Council should revisit the last chance agreement; that city employees do have a voice and due process and should be able to give their side of the story.

Chairman Bennett stated that the matter has been sent back to committee to answer some of the questions that have been raised.

KEVIN TONEY

Kevin Toney, 1200-B Thomas Lane, Hixson, expressed agreement with Mr. Timmons' comments. He stated that he has no objection to the last chance agreement; that no one knows what went on and no one has heard his side of the story – no one has heard him. He stated some things need to be looked into as things are not going right. He stated he does not have a job anymore and does not have anything to lose, reiterating that things need to be investigated down there. He stated he was employed one year and was the best garbage man he could be; that when he questioned the possibility of moving up he was told he was insubordinate. He stated anyone can carry a bag and throw it in the back of a hopper which does not require any skill; that he went to them saying that he wanted something with a skill and "stirred something up". He stated that he does not have anything else to lose; that plainly and simply his six year old son could take a bag or can and throw it in the back of a hopper. He stated that he wanted to go to construction and learn a skill; that he would rather use his brain than his body. He stated he is 32 years old and does not want to be on a garbage truck for several years as he has more to offer and has higher expectations than that. He thanked the Council for allowing him to speak.

ADJOURNMENT

Chairman Bennett adjourned the meeting of the Chattanooga Council until Tuesday, June 17, 2008 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)**