

**City Council Building
Chattanooga, Tennessee
October 4, 2011
6:00 p.m.**

Chairman Ladd called the meeting of the Chattanooga Council to order with Councilmen Benson, Berz, Gilbert, McGary, Murphy, Rico and Scott present; Councilwoman Robinson was absent due to illness. City Attorney Mike McMahan, Management Analyst Randy Burns and Council Clerk Carol O'Neal, were also present.

PLEDGE OF ALLEGIANCE/INVOCATION

Following the Pledge of Allegiance, Councilman Benson gave the invocation for the evening.

MINUTE APPROVAL

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

SPECIAL PRESENTATION: LAKESIDE YOUTH ASSOCIATION

Councilman Gilbert asked Alonzo Martin and Willie Moseley to join him at the podium and stated before becoming a member of the City Council, "Butch" had put in many free hours for the city; that he has worked with the youth and given them opportunities. He stated from early morning to late evening he would offer all the help he could and has done many programs free in donating his time. He has established a girls' youth softball team that came in third place in the world, which is unusual because the majority of the girls on the team are African American girls and there are not that many teams in the United States that are African American; that they did very well in the competition and receive a lot of attention when they play. He expressed thanks for the time "Butch" has given noting that his wife makes reference to the time he puts in away from family.

**SPECIAL PRESENTATION: LAKESIDE YOUTH
ASSOCIATION (Continued)**

Alonzo Martin, President of the Lakeside/Washington Hills football team and Vice President of the baseball team noted Mr. Moseley is president of the baseball team; that he has been associated with this since 1991 when his first child was four. He stated he has three children with the youngest 16 and is still at the park! He stated he met "Butch" and saw the dedication he has for the children; that a lot of them do not have a father figure and he mentors a lot of children there. He stated some of them are "bad" kids but he does not "throw them away" or turn them away which makes him want to stay to put his time in. He stated he asked "Butch" to help him with football and baseball and there needs to be more to bring the kids in. At this point he recognized team members in attendance in the 7-8 year old age group noting there are a lot more than those present and acknowledged the dedication of the coaches and parents. He stated all of this is volunteerism and (he) cannot thank "Butch" enough for what he has done and is doing. He stated parents have complained about the children and what should be done and they have been reminded that "Butch" is not the police. He stated he is going to dedicate his time and all within the community should do their part. At this time he recognized "Butch" as one of their biggest volunteers for his dedication on behalf of the Lakeside/Washington Hills Youth Association. (A standing ovation was given by all in attendance.)

"Butch" stated after 32 years of working in recreation it becomes a part of your blood! He stated this is so special and he will never forget it!

Coach Willie Moseley, President of the baseball team stated Councilman Gilbert has been working with the children for a long time and noted that he taught his and Alonzo's sons. He stated Councilman Gilbert has worked beside him on the football field and his wife used to bake cakes; that he admires him for his work in the community; that he lives in the community and worked to see that there are sidewalks and football field improvements. He stated Councilman Gilbert has worked hard and diligently and presented a plaque to him at this time.

Councilman Gilbert stated he did not know about this and expressed appreciation for the plaque. He stated a lot of times we say negatives things about parents not working together but the parents really care about these kids and takes the time to provide opportunities that they would not have. He stated Councilman Rico has a semi-pro football team and noted there might be some future players within the group! He stated we need to give back to the kids and not talk about them, but put into action their belief in trying to help them. He again expressed appreciation and will keep fighting for the kids!

**SPECIAL PRESENTATION: LAKESIDE YOUTH
ASSOCIATION (Continued)**

Chairman Ladd addressed the young people from the organization and expressed hope that they know they are loved and cared for and that they see the example of making the right choices and living their lives in a good way. She stated people will watch them and recognize them; that people will always clap for you when you are doing the right thing. She stated they are very fortunate to have this community and be surrounded by the adults that love and care for them.

RECOGNITION OF COUNTY COMMISSIONERS

Chairman Ladd recognized the presence of County Commissioners Joe Graham and Tim Boyd.

AMEND CITY CODE

On motion of Councilman Murphy, seconded by Councilman Rico,
**AN ORDINANCE TO AMEND CHATTANOOGA CITY CODE, PART II,
CHAPTER 24, ARTICLE I, BY ADDING A NEW SECTION 24-49 RELATIVE
TO USE OF HAND-HELD MOBILE TELEPHONE OR PERSONAL DIGITAL
ASSISTANT PROHIBITED WHILE DRIVING**
passed second and final reading and was signed in open meeting.

REZONING

2011-093: Spike 201, LLC/Don Johnson

On motion of Councilwoman Scott, seconded by Councilman Rico,
**AN ORDINANCE TO AMEND CHATTANOOGA CITY CODE, PART II,
CHAPTER 38, ZONING ORDINANCE, SO AS TO REZONE PROPERTY
LOCATED AT 111 CROSS STREET, MORE PARTICULARLY DESCRIBED
HEREIN, FROM R-2 RESIDENTIAL ZONE TO O-1 OFFICE ZONE, SUBJECT
TO CERTAIN CONDITIONS**
passed second and final reading and was signed in open meeting.

CLOSURE

MR-2011-108: City of Chattanooga/Engineering/Bill Payne

After the Clerk of Council read the caption for this ordinance, Councilwoman Berz noted that the agenda reflects "subject to certain conditions" and that she did not hear the Clerk read that portion. The Clerk of Council responded that she did not have the version referencing "subject to certain conditions". City Attorney McMahan gave the Clerk his copy of the ordinance, however, it was realized by the Clerk of Council that the copy handed to her was not the one referencing the closure. Upon further checking with the City Attorney's office on Wednesday morning, the Clerk inquired as to the correct version of the closure ordinance and it was determined that the wording on the agenda was in error and should not have reflected "subject to certain conditions". The ordinance caption read and approved in open Council meeting was correct.

On motion of Councilman Rico, seconded by Councilwoman Scott,

**AN ORDINANCE CLOSING A PORTION OF A RIGHT-OF-WAY NEAR
THE 1300 BLOCK OF HIXSON PIKE, MORE PARTICULARLY DESCRIBED
HEREIN, SUBJECT TO CERTAIN CONDITIONS**

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

AMEND CITY CODE

Councilman Murphy stated Mr. Bridger is out of the city and will talk with us about this next week in Committee; that representatives from the Chamber of Commerce will give a briefing about the regional strategic plan process.

On motion of Councilman Murphy, seconded by Councilman McGary,

**AN ORDINANCE TO AMEND CHATTANOOGA CITY CODE, PART II,
CHAPTER 38, ZONING ORDINANCE, BY AMENDING SECTION 38-502
AND ADDING NEW SECTIONS 38-13, 38-528, AND 38-529 TO IDENTIFY
CERTAIN AREAS OF SCENIC VALUE AND ESTABLISH A SPECIAL
EXCEPTIONS PERMIT RELATIVE TO THE REGULATION OF STRUCTURE
HEIGHTS IN SUCH AREAS**

was deferred one week.

DEFER LOAN REPAYMENTS

On motion of Councilman McGary, seconded by Councilman Rico,
A RESOLUTION AUTHORIZING THE DEFERRAL OF LOAN REPAYMENTS BY CHATTANOOGA HOUSING AUTHORITY ON BEHALF OF DOGWOOD MANOR DUE TO CASH FLOW SHORTAGE AND FURTHER PROVIDING THAT ANY EXCESS CASH FLOW RESULTING FROM THIS SUSPENSION OF LOAN PAYMENTS BE SET ASIDE AS CAPITAL RESERVES UNTIL SUCH TIME AS THE PROPERTY IS DISPOSED OF OR OPERATIONS CONSISTENTLY PROVIDE SUFFICIENT CASH FLOW WHICHEVER OCCURS FIRST, PROVIDED THIS DEFERRAL SHALL NOT EXCEED SIX (6) MONTHS WITHOUT FURTHER APPROVAL BY THE CITY COUNCIL
was adopted.

AGREEMENT

On motion of Councilman McGary, seconded by Councilman Gilbert,
A RESOLUTION AUTHORIZING THE ADMINISTRATOR OF THE DEPARTMENT OF PARKS AND RECREATION TO ESTABLISH A SALES AGREEMENT AND THE PURCHASE OF A SCULPTURE FROM CHATTANOOGA ARTIST JOHN PETREY ENTITLED, "BLUE BOY PULL TOY #1" IN THE AMOUNT OF THIRTY-TWO THOUSAND FIVE HUNDRED DOLLARS (\$32,500.00) FROM EXISTING CAPITAL FUNDS
was adopted; on roll call vote:

RICO	YES
MCGARY	YES
MURPHY	YES
SCOTT	NO
BENSON	NO
GILBERT	YES
BERZ	YES
LADD	NO

SPECIAL EXCEPTIONS PERMIT

2011-112: Meo Mio's Cajun Restaurant c/o Brian Sabo

Bryan Shults, Senior Planner with the Regional Planning Agency (RPA) stated this is a special exceptions permit request for a late night entertainment facility or night club. He gave a complete overview of the permitting process and noted that the applicant is given signage to notify the neighborhood there is a special exceptions permit request coming up and the RPA staff coordinates comments from the various department including Fire, Police, Public Works and the RPA. He stated the recommendations from RPA are incorporated into a report and given to the Council and once a permit is granted the Council has the authority to revoke a permit. He stated if a late night entertainment facility or night club is granted it is one that is operated as a place of entertainment at night for eating, drinking, dancing and provides live entertainment characterized by festival seating, music, video or live entertainment. He stated a dance floor is made available, later operating hours after midnight, low lighting levels, a stage or platform for shows and serves alcohol or allows alcohol consumption between the hours of 11 p.m. – 3 a.m. He stated the ordinance has a buffer distance requirement wherein any door, deck or patio shall be located more than 750 feet away from the nearest boundary of any residential zone -- not use but boundary. He stated the 750 buffer distance may be decreased in part or in its entirety by the Council or additional conditions can be added which protects the residential properties from nuisance issues.

Mr. Shults stated previous requests include Pinstripes with a reduction from 750 feet to 700 feet; Fanatics on Highway 15e requested a reduction from 750 feet to 200 feet and was approved; Skyzoo on Brainerd Road requested 750 feet to 700 and Council approved the reduction. He stated several months ago the ordinance allowed the Council to hear appeals of codes enforcement officers' determinations and heard the issue involving Mocha LLC on Brainerd Road which was denied as they required a reduction from 750 feet to 150. He stated no complaints of previous requests have been heard and it appears the conditions that have been placed have worked.

An aerial view of the site was shown noting that the location is the former Patrick's with the parking area toward Cummings Cove. Mr. Shultz stated the ordinance requires that the front door be 750 feet away from the residential boundary and any outdoor gathering shall be located more than 750 feet. He stated the establishment has a deck which is 75 feet from the nearest boundary in both directions of the RT-1 and RZ-1; that the RT-1 property is vacant and the RZ-1 are patio homes in Cummings Cove.

SPECIAL EXCEPTIONS PERMIT (Continued)

Mr. Shults stated 15-16 notification letters were sent to persons within 250 feet of the property and was mailed the first of September. He noted 16 conditions are contained within the ordinance:

1. Lighting of all parking areas shall be provided; all lighting shall be directed down and away from residential areas;
2. A fully operational fire suppression system shall be installed prior to opening. The fire suppression system shall be reviewed and approved by the Chattanooga Fire Marshall's Office;
3. Chattanooga Fire Marshall's Office will conduct an occupancy load study to determine the true occupancy capacity;
4. A new site plan shall be submitted for review and approval by the Chattanooga Traffic Engineering Department. The site plan shall provide a minimum of 96 on-site parking spaces;
5. Individual on-site parking spaces shall be properly striped as indicated on the new site plan approved by the Chattanooga Traffic Engineering Department;
6. Off-street parking and access shall not be permitted from Kelly's Ferry Road;
7. Off-street parking shall not be permitted on Cummings Highway;
8. Patron access shall be from the front door only;
9. Outdoor access to the deck/patio shall not be permitted. Access shall only be through the existing building;

SPECIAL EXCEPTIONS PERMIT (Continued)

10. No amplified noise, speakers, entertainment or lighting, and no outside sale of food or beverages shall be permitted on the outdoor deck/patio;
11. The removal of existing vegetation, screening or landscaping material around the outdoor deck/patio shall not be permitted except for normal weeding and/or replacement of any dead vegetation or landscape material. Plant material replacement shall be the equivalent of landscape screening buffer Type C and meet size, species and installation requirements of Chattanooga Landscape Ordinance;
12. All exterior doors must open outward and shall remain closed at all times;
13. A minimum of two (2) outdoor security officers licensed by the State of Tennessee shall be provided between the hours of 11:00 p.m. to 1:30 a.m. when the business establishment is open for business;
14. Outdoor security officers shall be easily and appropriately identified as security officers;
15. The second building on the site shall not be used as an extension of the operation of the proposed business establishment; and
16. Applicant shall apply to the City Engineer's Office for a temporary use permit. Portions of the dumpster enclosure, wall and pond are located within the right-of-way of Kelly's Ferry Road. If the temporary permit is not granted these structures will need to be removed from the right-of-way.

Councilwoman Berz commended Mr. Shults on his presentation and questioned his earlier comment that his office had received no complaints. Mr. Shults stated when they reviewed this, the regulatory bureau had not received any complaints; that codes enforcement has not received any complaints and RPA normally would not receive complaints on these.

SPECIAL EXCEPTIONS PERMIT (Continued)

Councilwoman Berz asked if RPA is connected with the police calls, whether they get records of the police calls. Mr. Shults stated RPA does not however the regulatory bureau does.

Councilwoman Berz stated they said they received no police calls. Mr. Shults stated that is his understanding.

Councilwoman Berz stated that is interesting because they have. She stated the thing that bothers her about these and they are in her district, too, is when something can be withdrawn it puts onus on the citizenry to complain long enough and loud enough that it finally is sufficient enough to come before City Council to have it withdrawn, and then we have the lawyers' fights and all those things that go on, noting she would fight for everyone's right to do that. She stated she is a protector of quiet enjoyment in neighborhoods and it bothers her that this is so close to a neighborhood and there is an outside deck and even though everyone is acting in good faith because it is so close, should problems occur it will put onus on the people living nearby to call the police when they were there first. She stated this is bringing a nuisance to them and she is anxious to hear what the people have to say.

Mr. Shults stated he did do some checking first and that site has been used for multiple things over the years and it is his belief Cummings Cove was constructed in 2004 or 2001 and the whole problem with this issue is the 750 feet and it is hard to meet that requirement.

Councilwoman Berz stated it is difficult to meet that requirement, however, all over Chattanooga because of its land development there are neighbors that have lived there and a new place comes to them regardless of what it was used for before and it forces them to have to go to their Council person or police or whatever.

Councilman Gilbert stated Ms. Blackman's main objection was to change the title and the difference in title has been done to accommodate different situations; that the definition is still the same but the title has changed.

Mr. Shults stated correct; that just the title of the permit has changed.

Councilman Gilbert stated it is the same situation when it comes to this ordinance; that eventually if we look at places that do basically the same thing; that the only difference is with restaurants there is no dance floor and other than that, they have the same exact thing.

SPECIAL EXCEPTIONS PERMIT (Continued)

Councilman Gilbert stated someone mentioned noise and if this establishment decides not to close at 11 p.m. and serve alcohol, then they can have the noise and we have a noise ordinance but at the same time what we are trying to pass or not pass they can still have it with or without the sound.

Mr. Shults stated correct if the applicant closes at 11 p.m. on Friday and Saturday with no alcohol sales beyond that point they can open today; that simply because of the alcohol sales and the capacity the restaurant has, he has to get this permit.

Councilman Gilbert asked how the neighbors are responding to this; that it is not in his district and respects Councilwoman Scott's opinion and would like to hear from the audience as to how they feel about this. He stated the property is zoned C-2 already and it is not a zoning situation; that it is if they are wanting to serve alcohol and have a stage.

Mr. Shults stated they could open today if they were closing at 11 p.m. with no alcohol sales beyond 11 p.m.

Councilman Gilbert gave an example of Applebee's and stated if anyone starts singing they should be considered a club because they serve alcohol and it is after 11 p.m., but since they do not have a stage and no one is singing it is considered a night club; that to him the principal is still the same. He stated the special permit can be revoked if they do not conduct themselves as they say they will; that if we deny all of them we should not have that in there. He stated if they say they will do what they say they will do and do not do it, then "yes", we can revoke it.

Councilman McGary referenced the language and actual conditions and inquired as to fire suppression system and asked if that is the sprinkler system to which Mr. Shults responded "correct".

Councilman McGary referenced the letter to residents, wanting to know the boundary and who was included. Mr. Shults responded that the boundary involves residents within 200 feet of the site and primarily the people located in the RZ-1 boundary, the patio homes, which involve a list of 16 people.

Councilman McGary inquired as to the substance of the letter, whether it was asking them to communicate with the RPA office, to show up or what.

SPECIAL EXCEPTIONS PERMIT (Continued)

Mr. Shults stated that the letter basically advises them that an application has been applied for a special exceptions permit for a late night event facility and if they have questions to call the RPA office and appear before City Council, advising them of the date and time of the meeting.

Councilman McGary stated in regard to police department recommendations, one of the conditions was there be a minimum of two security officers and at this time also the Fire Marshall's office will conduct an occupancy load study. He asked if that has currently been performed.

Chief Parker stated it has not been performed; that they have to do the seating and decide how the tables will be distributed and then to go in and do an occupancy load study after that. He stated if they have an open area it gives them a few more people and if they have tables and fixed seating it changes the occupancy based on what they plan to use it for.

Councilman McGary stated one of the issues discussed in the Beer Board Code Review Subcommittee, of which he and Councilwomen Scott and Berz are involved, was there would be a ratio based on the occupancy and a certain number of security officers based upon the load. He stated he would be interested to see that be one of the conditions based upon what the occupancy load actually is which would determine what security officers they will have; that the business person may say that will cost more money, but that is what it is supposed to do. He stated as Councilwoman Berz suggested the onus should be on the business; that if they are in a residential area we should make it as difficult as possible in regard to security and safety so that we are protecting those who are already there. He inquired as to whether there was any discussion with regard to cameras or the need for cameras on the parking lot or inside the building. Mr. Shults responded that was not discussed.

Councilman Benson stated he is getting tired of special permits coming before us and expressed hope he gets a special permit request when he gets to the "Pearly Gates"! He stated we're going from 750 feet from door-to-door. Mr. Shults stated in this case it is the outdoor deck.

Councilman Benson stated we are coming down to 75 feet; that they can open until 11 p.m. and thought it was 12 midnight without a special permit. Mr. Shults confirmed it is 11 p.m.

SPECIAL EXCEPTIONS PERMIT (Continued)

Councilman Benson stated when we go down to 75 feet we have never gone below 125 feet on these special permits. Mr. Shults stated one was 150 feet.

Councilman Benson stated originally when the ordinance was written it was 750. Mr. Shults stated originally it said "shall be 750 feet"; that the Council could not reduce that buffer and then it was amended November or December of last year to give the Council some room to reduce it.

Councilmen Benson stated through a special permit process. Mr. Shults responded it has always been a special permit process.

Councilman Benson stated now we are down to 75 feet; that he does not know how this group feels and does not like someone staying open until 2 a.m. in the morning selling alcohol and getting it into people that are leaving and the noise 75 feet from their property, or even 100 feet from the bedroom to the deck. He stated that concerns him and that is pretty low; that it is his wish they would just operate until 11 p.m. with the alcohol and has no objection toward that; that it will hurt property values out there; that he would be hesitant about buying close to it.

Councilwoman Scott stated when we had the community meetings one of the things we talked about was the community and the applicant would have an opportunity to speak and suggested that we now go to that portion and then more discussion following that.

Councilman McGary addressed Councilman Benson's comments by stating that he also has a difficult time with the special exemptions permits pertaining to nightclubs; that it is very problematic and we have gone through various reiterations of this particular ordinance. He stated he is committed to go into this process as many times as necessary until we get it right; that he would like for the Council to consider the nightclub ordinance itself might be flawed from the very start and would be easier for us if certain areas of Brainerd and downtown are nightclub designated areas and relax some of the actual requirements that do so. He stated when we have nightclub areas open up in residential areas it is just fraught with difficulties from the very beginning and would be easier if we already have identified certain areas of town that a night club can be opened and nowhere else. He stated this is absolute nonsense to him to be perfectly honest!

SPECIAL EXCEPTIONS PERMIT (Continued)

Ross Shram, Attorney with Baker Donelson, stated he is present on behalf of his client Brian Sabo who submitted an application for a special exceptions permit for Meo Mio's Cajun and Seafood Restaurant. He stated as noted by Mr. Shults the reason for the special exceptions permit is due to the seating capacity of the former Patrick's building and the fact that alcoholic beverages are planned to be served and it is the intention to have recorded or live music available to enhance the dining experience. He stated with all the discussions about nightclubs it is important for the Council to understand Meo Mio's is first and foremost a restaurant; that it just happens to have a building which exceeds the limitation on seating that puts it into the special exceptions category. He stated there is an existing stage and dance floor there which will not be removed so there are other elements which they felt was important that they go ahead and apply for the special exceptions permit rather than avoid the situation and run afoul potentially of those conditions and requirements.

Atty. Shram stated there are currently two other Meo Mio restaurants operating in West Tennessee; that the operation here is planned to be comparable to those. He stated David Turner is present and can explain the history of the restaurant as well as detail how it operates, again stating the primary purpose is to provide award winning Cajun cuisine to the diners and enhance that with alcoholic and non-alcoholic beverages and to have music which helps to create a New Orleans-type ambiance for the dining experience. He stated the inside of the restaurant reflects the New Orleans-type style and that is what is attempted to be captured. He stated when reviewing the report from the RPA they concur with the recommendations and all 16 conditions with only two exceptions; that the first that causes concerns is the prohibition of food/beverage on the outside deck; that they would like to have the privilege of patrons to choose whether they want to dine inside or outside the restaurant. He stated the other concern is the condition related to security, again reminding the Council this is a restaurant and not a nightclub; that they believe it would be more appropriate if it is determined that the restaurant is not operating in that fashion to impose the security requirements subsequent based on actual operational reports rather than on the front end.

Karen Ryan of 671 Wildflower Circle spoke in opposition to the request and stated she owns one of the RZ-1 homes. She stated she moved there in 2005 when Patrick's was there and she called the police personally several times; that if she had known she would have gotten the records then to present tonight. She stated she had the police come often who knew her by name and were always very kind and told her they could hear it but could not help her.

SPECIAL EXCEPTIONS PERMIT (Continued)

Ms. Ryan stated the noise was very loud and was so thankful when they left, expressing hope that a church or something would come in; that when she saw activity over there the last couple months she became scared. She stated she looked up Mr. Sabo's company and found it is an entertainment company and that is what it is strictly for; that it would be wonderful to have a restaurant there and had one that closed last year and would walk to it but does not think this is what it is going to be. She stated she is fearful she will be up at night; that she had to go somewhere Friday and Saturday night because she did not want to be in her peaceful home; that she has had peace for almost four years. She stated she knows her property value will decline and has no doubt about that.

Michael Leonard of 601 Outlook Circle stated he lives in the first townhome amid the RT-1. He stated he moved to his home in 2001 and the old Patrick's burned which was much more sound proof at the time; that the new building was built and it is proof positive that all windows face Highway 41, Cummings Cove and the deck was built at the time. He echoed Ms. Ryan's comments that when the new building was built and live entertainment began, every weekend it was depressing because they would hear everything and every band as there was no sound proofing due to the windows; that when the weekends came "it was over". He stated he has a deck and knows he will not be able to enjoy his deck and yard because he has been through this with the live entertainment; that he does not have any issue with the restaurant and has no problem with that. He stated if the Council does not believe how bad it is if there is live entertainment, he asked that they come out and do a sound check and they would understand that it is absolutely way too loud, reiterating that the building was not built for live entertainment.

Councilwoman Scott expressed appreciation for the residents coming out to express their views and asked Mr. Leonard to tell her what time frame the noise issue was the worst for him.

Mr. Leonard stated obviously it was most distracting after it was time for them to go to bed.

Councilwoman Scott asked for a more specific time, whether after 11 p.m. or midnight or 2 a.m.

SPECIAL EXCEPTIONS PERMIT (Continued)

Mr. Leonard stated his impression was Patrick's at the time was grandfathered-in; that he even cut something out of the newspaper when the ordinance was changed and it was not going to apply. He stated he was very encouraged when that happened. He stated he knows any time the live entertainment started which was at 9 p.m. until the time they closed at either 2 a.m. or 3 a.m.; that their enjoyment and relaxation was over!

At this point Councilwoman Scott asked Mr. Sabo to respond, however prior to that time Councilman Gilbert asked for a show of hands of persons for this or whether everyone present were against the request. No hands were raised in support of the request.

Councilwoman Scott stated in all fairness there were two community meetings and if looking at numbers there were several neighborhood members who were in support of this. She again asked to hear from Mr. Sabo.

Brian Sabo of P. O. 184, Counts, Tennessee 38326 stated the other weekend he invited all the neighbors, not just those from Cummings Cove which was announced in their newsletter and an e-mail was sent out; that person on Kelly's Ferry Road were included, as well. At the meeting he explained what he was doing to explain to them he is not opening a nightclub and answer all the questions with reference to live entertainment. He presented a copy of the menu and noted they are 80/20 split – 80 percent food and 20 percent alcohol; that he is not looking to stay open until 3 a.m. and will normally close at midnight on the weekends with the kitchen shutting down at 11 p.m. He stated he is asking for 1 a.m. due to class reunions, wedding receptions and special events such as New Year's; that he does not foresee telling people exactly at 12:01 a.m. that they would need to leave the restaurant but wants to give them time to leave. He stated he does not want to stay up at 3 a.m. and has put forth a good faith effort in bringing everybody together to explain everything. He stated the sprinkler system has been approved via the Chattanooga Fire Protection Company and showed a copy of the plan. He stated he is trying to do as much as he can and wants to be a good neighbor and wants a social impact for this area, not a negative impact. He stated this is a family restaurant and some of the things he has had will show that to them; that he is a family, sit-down restaurant and is not looking to stay open until 3 a.m. He stated for entertainment a screen has been installed with speakers indoors; that a sound check can be done, however the "rule of thumb" is to have a "conversation at the table without yelling" and that is what he is looking for.

SPECIAL EXCEPTIONS PERMIT (Continued)

Councilman Benson stated there are two things, noting the first is that he hates to see the Council act on this with the idea we can revoke it next month or the month after if something goes wrong; that he would rather the Council make certain we have a good chance to make it work on whatever we decide tonight. He stated another thing is Mr. Sabo stated he has neighbors in support which means a lot but means more if they are proximity neighbors and asked if there are close neighbors in support.

Councilwoman Scott stated she has not compared all of the names to the names of the people who came, but noted one of the names is a Beer Board member who did come and has verbally expressed support for this.

Councilman Benson stated he would have to look at the close neighbors; that if they say their property prices are going to be hurt, he has to listen to them.

Councilwoman Scott stated the Beer Board member is a property owner.

Councilman Benson stated he also has to look at property support to see if there is some special reason they want to sell theirs for a nightclub, too, and that could occur; that he wants to find out if they are proximity neighbors and inquired as to neighbors who live in close proximity of the persons present – three persons raised their hands.

Councilman Gilbert asked if the current ordinance definitely implies if a church has a wedding or party and allows alcohol to be served, as well as entertainment with dancing, would they be considered a club or not.

Mr. Shults stated it is not a club, it is a late night entertainment event facility and based on the definition adopted by the Council they would be required to have a special exceptions permit, even though temporary.

Councilman Gilbert stated there may be churches that allow alcohol. Mr. Shults stated it depends on the capacity.

Councilman Gilbert stated with capacity over 100 based on the definition we have churches would fall under the same guidelines as a late entertainment facility based on the definition. Mr. Shults confirmed that is his understanding based on the definition currently adopted.

SPECIAL EXCEPTIONS PERMIT (Continued)

Councilman Murphy referenced the form the applicant completed and stated Ordinance 12468, Section 3, Subsection (e) "talks" about our "... *reducing the distance in part or entirely and may impose additional conditions for the protection of residential properties from excessive noise or other nuisance issues depending upon the proximity and location of water, rail and road rights of way, topography, adjoining land uses or other natural or other manmade barriers to sound and noise ...*". He stated he does not know if the applicant's ideas are solicited, noting the one the Council approved was across Highway 153 and we agreed even though 153 at that location is not a controlled limited access highway a person can get on a bicycle and ride on it if they want to take their lives in their hands, but it is still four-or-five lanes and very busy, 24/7 traffic with tractor trailer rigs. He stated one of the things the intent of the Council was when we have things co-located with things like the airport that will have planes from Amazon taking off 24/7 with cargo flights roaring over neighborhoods is having that reduction from 750 feet as big a deal there and in looking at the map of this location a couple things bother him. He stated one is he is not ready to go below 200 feet unless there is a pretty clear "something else" co-located or some barrier in place in keeping with the intent of the ordinance; that the other is he does not know what it would be there as there is a "sleepy road" in Kelly's Ferry Road and the rural portion of Cummings Highway and unless someone is saying the State Patrol has a ruckus 24/7 which they are not, he is at a loss what would enable the Council in good conscience to say 75 feet is okay. He asked if there is something he is not seeing, whether there is a late night operation that goes "clang, clang, clang" all night long.

Mr. Shults responded "no"; that the Staff's report reflects a review of adjacent land use and topography.

Councilman Murphy stated he knows the topography is hilly but is in the opposite direction.

Councilman McGary stated the issue at hand is the current ordinance and reiterated we need to establish commercial corridors and get out of looking at residential areas and nightclubs because we know what people are going to say when they walk in here; that we are wasting their time and ours. He stated if we do not go that route, Councilman Murphy has hit upon something that is actually worth repeating if we as a body, whether intentionally or not, say 750 feet is the minimum, if we are going to go below that and have some type of "floor", we should put that in the ordinance so we do not waste the applicant's time.

SPECIAL EXCEPTIONS PERMIT (Continued)

Councilman McGary stated if less than 200 feet will not be considered for "A, B, and C" they will know up front whether to go through this process. He stated Mr. Shram stated earlier there were 16 conditions and his business does not agree to two of them.

Atty. Shram stated they are asking that two of the 16 conditions, 13 and 14, be removed from the conditions addressing security personnel. He stated the third request for removal is the second half of condition 10 which has to do with the sale of food and beverages on the outdoor deck.

Councilman McGary stated Atty. Shram is suggesting if the Council does not lift the conditions this is a "no go".

Atty. Shram stated "not at all"; that they are saying because of the nature of the operation it is a restaurant and not a nightclub, they understand the difficulty of trying to encompass within the special exceptions permit a vast variety of different types of businesses. He stated some of the conditions are more appropriate for businesses that are truly nightclubs, concert venues where the music and sound is the reason people are attracted. He stated as Mr. Sabo mentioned this is a family restaurant that happens to have music available, but as indicated the level of the music is to be held at a point of decibels so people who are dining can continue to have a reasonable conversation without having to yell over the noise; that it is not what Patrick's used to be which was a "honky tonk" or a place where there was greater emphasis on the entertainment factor as opposed to a restaurant.

Councilman McGary stated that may be well and good for inside, but outside is a whole different "animal" altogether; that we are talking 75 feet away from the nearest residence. He stated if there is music, sales, beer going on outside that immediately affects individuals outside as indicated by Mr. Leonard's patio.

Atty. Shram stated there would be no bar set up outside, no buffet nor speakers; that all they are asking for is the ability for a patron that comes in and decides to eat outside on the deck so they could look at Lookout Mountain and Cummings Cove that will be an option available to them.

Councilman McGary stated he understands what Atty. Shram is saying; that if there are 50 patrons outside holding a conversation at 11 p.m. or midnight, that immediately affects people who are 75 feet away. He stated he does not see how there is a compromise in that regard in lifting that condition as it "opens the door" for the very thing we are trying to fight against.

SPECIAL EXCEPTIONS PERMIT (Continued)

Atty. Shram stated it is 75 feet away with a highway in between and landscape buffers between the right-of-way of Cumming Highway and the back of the RZ-1's.

Councilman McGary stated in looking at the map he sees a highway on both sides with windows facing the neighborhood. He asked Atty. Shram if he would be able to hear conversations at 11 p.m. or midnight when everything else has slowed down if he were at this location.

Atty. Shram stated not at his volume level as some people are louder than he. He stated he does not believe that would be an issue; that the kitchen closes at 11 p.m. and the facility closes at midnight, except for special exceptions when there might be a reception. He stated it is not a 3 a.m. "honky tonk"; that when looking at the caption and wording on the special exceptions permit it seems to encompass late night entertainment facilities and that not an appropriate way to characterize the Meo Mio's restaurant proposed for this location.

Councilman Rico called for the question immediately following Councilwoman Scott's comments.

Councilwoman Scott stated she is not willing to compromise on the idea of the security conditions on this or the fact they have to be licensed; that she is not willing to compromise on the issue of disturbances at night. She suggested that we leave 1-9 conditions; that we take condition 10 and allow "no amplified speakers, entertainment outside on the deck and there not be any food or beverages on the deck after 11 p.m." and make that condition 17, in other words the deck shuts down at 11 p.m. She stated all the other conditions remain as is; that Mr. Sabo understands what the neighborhood concerns are; that she understands the applicant is not happy with all the conditions. She stated we have heard from the neighborhood and what has been proposed has not been the problems, but the residents have had bad experiences and the applicant is asking for a distance which is exceedingly short and we do not want to have disruption. She stated if the applicant is not interested in the conditions she will not support this; that if they are amenable and understands they will be brought before the Council for a hearing for potential revocation if there is disruption in this very close neighborhood she is willing to support it. She stated the question is -- what is their answer.

Mr. Sabo stated he understands and agrees.

SPECIAL EXCEPTIONS PERMIT (Continued)

Prior to casting his vote Councilman Gilbert asked that Councilwoman Scott's suggestions be incorporated in the ordinance under consideration.

County Commissioner Graham confirmed that he attended the neighborhood meetings regarding this matter.

On motion of Councilman Rico, seconded by Councilman McGary,
**A RESOLUTION APPROVING A SPECIAL EXCEPTIONS PERMIT FOR USE
OF A NIGHTCLUB LOCATED AT 4119 CUMMINGS HIGHWAY, AS MORE
PARTICULARLY DESCRIBED IN THE ATTACHED REPORT AND MAPS,
SUBJECT TO CERTAIN CONDITIONS AND RECOMMENDATION**
was denied; on roll call vote:

MCGARY	NO
MURPHY	NO
SCOTT	YES
BENSON	NO
GILBERT	YES
BERZ	NO
RICO	NO
LADD	NO

OVERTIME

Overtime for the week ending September 29, 2011 totaled \$5,079.75.

PERSONNEL

The following personnel matters were reported for the various departments:

PERSONNEL (Continued)

CHATTANOOGA POLICE DEPARTMENT:

- **PATRICIA HIGGINS** – Resignation, School Patrol Officer, effective September 27, 2011.

PUBLIC WORKS DEPARTMENT:

- **JAMES BOYNTON, JOHN CENA** – Return from Family Medical Leave, Plant Operator 2, Waste Resources, effective September 23, 2011.
- **JAMES WILSON** – Promotion, Electrician 2, Waste Resources, Range 14, \$34,201.00 annually, effective September 23, 2011.
- **JONATHAN HAGEN** – Resignation, Water Quality Specialist 1, Water Quality, effective September 29, 2011.

INFORMATION SYSTEMS:

- **MARK TIMON** – Termination, Network Engineer, effective September 23, 2011.

GENERAL SERVICES:

- **PAUL PAGE** – Retirement, Director, General Services Administration, effective September 30, 2011.

REFUNDS

On motion of Councilman Rico, seconded by Councilman Gilbert, the Administrator of Finance was authorized to issue the following refunds of water quality fees overpayments and property, respectively:

AUCTION VENTURE INC.	\$76,058.40
ALEXIAN GROVE INC./ALEXIAN VILLAGE OF TN	\$1,048.43

PURCHASES

On motion of Councilman Rico, seconded by Councilman Gilbert, the following purchases were approved for use by the various departments:

CHATTANOOGA FIRE DEPARTMENT:

FDM SOFTWARE LTD. (Sole source)

R48418

Annual Software Maintenance and Support Services per TCA 6-56-304.2

\$42,857.35

GENERAL SERVICES:

MOSTELLER'S TOWING & RECOVERY (Best bid)

R47146/301389

Blanket Contract for Towing Service for City Vehicles

\$12,000.00 - Annual approximation

DIVERSIFIED INSPECTIONS/ITL INC. (Lowest and best bid)

R47010/301333

Blanket Contract for Aerial Safety Inspection Services

\$10,000.00 – Annual approximation

ADAMS MOTORSPORTS & GRAPHICS (Best bid)

R46151/301277

Blanket Contract for Making and Installing Police Car Decals

\$40,000.00 – Annual approximation

PURCHASES (Continued)

LAKESHORE FENCE, LLC (Lowest and best bid)

R46537/301391

Blanket Contract for City Wide Fencing Materials, Repairs and Installation

\$500,000.00 – Annual approximation

PUBLIC WORKS DEPARTMENT:

DIVERSIFIED INTEGRATION INC. (Only bid)

R47353/301346

Blanket Contract for Motorola Moscad Telemetry Service and Support

\$50,000.00 – Annual approximation

MID-SOUTH EQUIPMENT (Lowest and best bid)

R47303/301345

Purchase of One (1) Telescopic Fork Lift

\$96,800.00

GUTHRIE SALES & SERVICE (Only authorized distributor)

R47585/301360

Purchase of One (1) Fairbanks Morse Vertical Turbine Pump

\$15,914.00

UTILIPATH, LLC (Only bidder)

R45198

Blanket Contract for Utility Boring & Trenching Services

\$26,000.00 – Annual approximation

PURCHASES (Continued)

INFORMATION SERVICES:

ACS GOVERNMENT SYSTEMS (Single source)

R48919

Purchase of Annual Banner Maintenance per TCA 6-56-304.6

\$69,623.02

CHATTANOOGA POLICE DEPARTMENT:

HAUS KENNELS (Single source)

R49081

Purchase of Two (2) Dual Purpose Canines per TCA 6-56-304.2

\$14,500.00

TREASURER'S OFFICE:

RYDIN DECAL (Lowest bid)

R47038

Vehicle Decals

\$10,350.00

EMERGENCY PURCHASE

The emergency purchase for demolition and cleanup of trees/brush caused by storm at Summit of Softball Complex for the Parks and Recreation Department on R49734 to Dillard Construction, Inc. in the amount of \$18,742.00 was duly reported and signed in open meeting.

BOARD APPOINTMENT

On motion of Councilman Rico, seconded by Councilman Gilbert, the following Board appointment was approved:

MULTICULTURAL AFFAIRS ADVISORY BOARD:

- Appointment of **BRENDA HAMMOND** for a three year term expiring September 27, 2014.

SOUTH CHICKAMAUGA CREEK AREA GREENWAY OPENING

Councilman Gilbert stated a wonderful time was had by all at the grand opening of the South Chickamauga Creek greenway that happens to be in his district! He stated Public Works and Parks and Recreation Departments have done a great job and encouraged everyone to stop by as it is really wonderful; that the Civil War and Trail of Tears was explained and it was a great time for everyone. He expressed thanks to Council persons Murphy and Berz for their attendance.

COMMITTEES

Councilwoman Scott scheduled a meeting of the **Personnel, Performance and Audit Review Committee for Tuesday, October 18.**

Councilman Murphy scheduled a meeting of the **Legal and Legislative and Safety Committee for Tuesday, October 12** to look at redistricting data and the tool we have to see how it works; that Mr. Burns will educate us about how it works. He stated he does not expect changes to be made and there will be an opportunity for the public to provide input at every redistricting meeting, as well as via e-mail at redistricting@chattanooga.gov and a separate telephone number set for people who do not have e-mail to provide input in case they cannot come to the public meetings. He stated there will also be a briefing from both RPA staff and the Chamber of Commerce on the status of the regional strategic plan which is in the context of a deferred unanimous zoning recommendation from the Planning Commission that has been deferred for some time.

COMMISSIONER TIM BOYD

Commissioner Tim Boyd of 1106 South Seminole stated he was asked by constituents to bring about the issue of special exception permits and reminded Councilman Benson that we talk about exceptions to permits all the time; that one is in their co-district and one outside either of their districts. He stated the first one is the redistricting of the M-2 Bonny Oaks permit for the allowance of special use, i.e., the ethanol terminal. He reminded the Council in the spirit of the Bonny Oaks Business Park as opposed to industrial park when that park was established over 25 years ago the founders of the park fought very, very hard to develop the spirit of the park that did not include industrial applications, even though the name has "industrial" in it. He implored the Council that the ethanol terminal does not go along with the spirit of the park and even though the County Commission voted to allow the sale of the property for such use, he suggested that the Council think long and hard about reassigning a special use permit to M-2.

Commissioner Boyd stated if the M-2 properties are researched as he has done there are only two parcels of land that have allowed a railroad spur on M-2 property: one at the corner of Holtzclaw and Main occupied by Modern Maid and is now a box company and the other parcel is in South Chattanooga in a very old former industrial part of Chattanooga. He stated to initiate the use of railroad spurs in M-2 will set a precedent outside the downtown area; Bonny Oaks Business Park is obviously outside the downtown area. He stated the other special use permit is on Gunbarrel Road and asked the Council to strongly not allow a special use or change of zone; that Councilman Benson mentioned spot zoning and noted he, too, is against spot zoning but is for planning; that in both areas there was much time and effort spent to zone these properties and make good planning use of the land. He implored the Council to consider not allowing the M-2 special zoning in Bonny Oaks Industrial Park or the rezoning on Gunbarrel Road for the proposed IHOP.

Councilman Gilbert asked Commissioner Boyd to mention the spurs described earlier that are allowed downtown and the other areas they are not allowed.

Commissioner Boyd stated it is not the issue that M-2 allows or disallows, it is the precedent set by the community. He stated of all the M-2 zoned properties within Hamilton County, not talking about just the city of Chattanooga, within Hamilton County only two parcels of M-2 zoned property have railroad spurs on them — the former Modern Maid and the other one in South Chattanooga.

COMMISSIONER TIM BOYD (Continued)

Councilman Benson stated he did not know Commissioner Boyd was coming and expressed appreciation for his presence as he represents two blocks behind the proposal on Gunbarrel, again noting his appreciation of serving the neighbors there. He stated he wanted to give him accolades for representing his district even though it is a city agenda item.

ADJOURNMENT

Chairman Ladd adjourned the meeting of the Chattanooga Council until Tuesday, October 11, 2011 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)**