

**City Council Building
Chattanooga, Tennessee
October 18, 2011
6:00 p.m.**

Chairman Ladd called the meeting of the Chattanooga Council to order with Councilmen Benson, Berz, Gilbert, McGary, Murphy, Rico, Robinson and Scott present. City Attorney Michael McMahan and Council Clerk Carol O'Neal were also present.

PLEDGE OF ALLEGINACE/INVOCATION

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

MINUTE APPROVAL

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

ELIJAH MCGARY

Councilman McGary recognized the presence of his second son, Elijah, age 4. He stated Elijah was present to learn more about local government and welcomed him to the meeting!

Chairman Ladd welcomed Elijah to the meeting, noting that she could not quite see him (sitting so low in his seat) but trusts he is there! She expressed hope his father would behave during this meeting!

PATRICK BENSON

Councilman Benson recognized the presence of his second son, Patrick.

PATRICK BENSON (Continued)

Chairman Ladd welcomed Patrick and expressed the hope that the Council really hopes his father behaves!

Patrick Benson immediately responded that his family also hopes his father will behave!

AMEND CITY CODE

On motion of Councilman McGary, seconded by Councilman Rico,
**AN ORDINANCE TO AMEND CHATTANOOGA CITY CODE, PART II,
CHAPTER 38, ZONING ORDINANCE, SECTION 38-208(5) OF THE UGC
URBAN GENERAL COMMERCIAL ZONE REFERENCING UNIT DENSITY
PER ACRE**

passed second and final reading and was signed in open meeting;
Councilwoman Scott voted "no".

AMEND CITY CODE

Councilmen Gilbert and Berz made the motion and second to deny the request.

Councilman McGary clarified this item is not in regard to any particular application or applicant; that it establishes a special exceptions permit that would allow applicants to come before us at a particular point in time. He stated this does not pertain to any one instance and has spoken to Mr. Price about this; that he knows his application is one but a lot of people have concerns about this. He stated this request has nothing to do with Mr. Price's application.

Mike Price of MAP Engineers stated his case is not coming before this Council, correct.

Councilman McGary stated in reference to his (Price's) particular case, it will not come before the Council for some time, correct. Mr. Price responded it would come sometime in December or January.

Councilman McGary again stated this has nothing to do with Mr. Price's situation; it is just for the special exceptions permit.

AMEND CITY CODE (Continued)

Councilman Gilbert asked if Mr. Price or anyone in his organization recommended or suggested that we have some type of form as far as making this exception for M-2.

Mr. Price stated he did discuss this with Staff and asked that it come before this body and that was done so through Councilman Benson who did look at this, "yes".

Councilman Gilbert stated technically it might not be totally Mr. Price, but it was initiated based on "want" from his organization.

Mr. Price stated this was based upon the fact the mechanism they presently have right now when they originally met with Staff was a determination that Staff made M-1 versus the M-2 zone, and we all understand the debate on that. He stated as he understands that particular meeting, it was not at all clear cut but it was a decision that was made to go with an M-2. He stated an M-1 opens up a lot of "Pandora's boxes" that he does not think they or anyone on the Council want to ever have the opportunity that others might follow and create a worse situation; that the M-2 with special use permit they feel is the best mechanism to allow them to go forward in the manner they wish to and provide the proper safety protocols as it relates to zoning in the future.

Councilman Gilbert asked people present in opposition to stand so we will have a clear understanding of who is "for" and "against" in the neighborhood. He asked those "against" to stay, several persons stood. He then asked those "in favor" to stand and three people stood however it was determined they did not live in the neighborhood.

Councilman Gilbert stated this shows the community does not want this to happen and expressed hope the Council would consider their wants as far as not voting for this.

Councilwoman Berz asked if there have been a great number of people who want to put ethanol plants in M-2 areas.

Karen Rennich of the Regional Planning Agency stated to her knowledge there have not been calls previous to this although she would not necessarily know at all. She stated there have not been any calls she is aware of since the discussion of the special exceptions permit to have an additional facility, not that they would all cross her desk; that she is not aware of any.

AMEND CITY CODE (Continued)

Councilwoman Berz asked if this was initiated by this particular issue. Ms. Rennich stated "yes", RPA was requested when this issue came up that the zoning for M-1 that would allow ethanol facilities might not be necessarily the zoning process; that it could be M-2 with a permit and they drafted a permit that would allow that.

Councilwoman Berz asked who requested it. Ms. Rennich stated it was requested by a representative on City Council.

Councilwoman Berz asked Councilman Benson if he was the person to which he responded affirmatively. She stated a representative of Council requested, for the sake of all the people who want ethanol plants around here, that there be this exception.

Ms. Rennich stated they explored the possibility of language that would allow a special exceptions permit for an ethanol facility.

Councilwoman Berz asked if that is a "yes". Ms. Rennich responded "yes", but that is not uncommon.

Councilwoman Berz stated "cool", that she is just trying to get a straight idea; that it was this whole argument that initiated this, correct. Ms. Rennich responded "yes" and stressed when they draft a permit like this it is intended to be solid and something that could be replicated elsewhere in the community, not just for one particular development. She stated it goes on the book and stays on the books and would guide someone else who would have the particular request.

Councilwoman Berz clarified for an ethanol facility. Ms. Rennich responded "yes".

Councilman Benson stated "yes", he suggested it because when the original controversy came about it was concerning, in his opinion, a breach of the covenant because it was asking for an M-1 and it was a breach of not only the covenant but the plan for the industrial park made originally with Mr. Adamson and others at Bonny Oaks. He stated he suggested it and that is why he is going to vote "no" on the way the motion was made on this and will probably not vote when it does come to us whenever for a special exceptions for it; that he is voting to get this out of the arena of a total violation of conflict with the covenant that the county established.

AMEND CITY CODE (Continued)

Councilman Benson stated he felt if it is made into a special exceptions permit for it to be zoned in the M-2 zone that if it does pass we would not be violating the covenant. He stated he has no intention of voting for its final passage but does want to get it out of the arena of where it is breaking the county's covenant over there. He stated he is going to vote "no" on this at this point and then when it comes back he could change his mind again, but right now passing this has nothing to do with approving the ethanol other than giving a special exceptions door opening. Personally, he stated he is against even our special exceptions process which is another reason why we ought to do away with that process.

The question was called for at this time.

On roll call vote on the motion to deny:

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

The motion failed.

Councilmen Rico and Benson made the motion and second to approve the request.

At his point it was noted someone in the audience wanted to speak to the issue. Councilmen McGary and Gilbert made the motion and second to allow her to speak for a three minute timeline.

AMEND CITY CODE (Continued)

Councilman Murphy inquired as to the number of persons wishing to speak and asked how many wish to speak for it; that the Council did this last week and the same exact people spoke.

Sue Powell of 4720 Maywood Lane stated last week she spoke to the special permit process proposed to allow an ethanol pumping station in areas not currently zoned for this purpose and the vote was 5-4 for the special permit. She asked that someone change their vote and vote against the special permit process. She stated although the proposed station off Jersey Pike is not specifically being voted on at this time, it is her thought the process being voting on this evening was initiated by this project as it is evident by the people from that project being present this evening. She stated by Councilwoman Scott voting for this opens the way for the current ethanol pumping station to leave her district and be moved into her (Powell's) neighborhood. She stated she is not sure what the use of the land would be for the Manufacturers Road area but asked that she not vote for the permit tonight. She reminded the Council Mr. Price has not spoken for her community or the city of Chattanooga with regard to the ethanol pumping station; that people in this city are not aware of the proposition that would infect the entire city of Chattanooga and "open the door" for other special interest groups to ask for special exceptions permits for other projects not currently allowed. She stated special permits are dangerous and they had fought them twice in the Lake Hills area and Washington Hills fought the facility now being proposed for the community. She stated the Council's vote can "shut the door" on ethanol stations being allowed in "soft" business areas and make them choose sites zoned for their industry. She asked that the Council stand with them and oppose this special permit process.

Councilwoman Scott clarified her understanding of the terminal in her district by stating that the terminal brings in more than just ethanol; that there are different things that come through there. She stated the fact that ethanol would not come there or away from there does not eliminate the terminal being in the district so far as she knows. She stated all the infrastructure is there, that anyone selling ethanol from that location would have to sell at probably a higher cost to do that because it would require the transport from the terminal by truck over the roads to that location. She stated it is her understanding the terminal in her district does not go away, it just does not carry ethanol and then we have the reduction of the traffic that would be coming from there-to-there which will probably, in all likelihood, be something else to come in there. She stated as far she knows it is not directly just to ethanol, so nothing goes away.

AMEND CITY CODE (Continued)

Councilman McGary stated to Councilwoman Scott's defense he has done research and she is right it is a matter of logistics as the trucks pick up the ethanol and where they actually have to put it into the line if it was a shorter distance in Ms. Scott's district the terminal would stay there, but it is a shorter distance being proposed. He stated he wanted to be clear that he does not personally believe it is fair to judge the merits of this issue by looking at any future case; that whether or not he agrees with the project he believes the project has a right to be heard and this is all this particular motion would give them -- an opportunity to be heard. He stated ultimately the project will rise or fall on its own merits, but he (Price) should have his opportunity to make his case; that we are "shutting the door" without hearing what he proposes. He stated there have been many community meetings and does not speak against that; that any applicant before this body, not just Mr. Price, should have the opportunity to be heard and that is all this does; that he will have his opportunity to make his case at a future point if this were to pass.

Isaiah Van Hester, Vice President of the Washington Hills Neighborhood Association, stated he wished he could have stayed last week but has been "under the weather"; that they want the Council to have a change of heart from the M-2 back to M-1. He stated he is a product of the inner city of Memphis and realized he was born with an asthmatic condition because of the industrials in the city and he is a byproduct of that. He asked the Council to reconsider this as they do not know what is going to be the environmental effects/ills on those who are to come; that if they are to have dominion over the earth and when they look back on this one moment in time they can say they had a chance to make a difference. He stated the Council has a chance tonight to make a difference and consider the health problems that may arise in the future; that he knows there are rebuttals that have come about the ethanol and it has dragged on too long. He stated they are only asking one simple thing -- "no" to ethanol.

On motion of Councilman Rico, seconded by Councilman Benson,

AN ORDINANCE TO AMEND CHATTANOOGA CITY CODE, PART II, CHAPTER 38, ZONING ORDINANCE, SECTION 38-2 DEFINITIONS; ARTICLE V, SECTION 38-301 M-1 MANUFACTURING ZONE, SECTION 38-321 LIGHT INDUSTRIAL ZONE; SECTION 38-528 M-2 LIGHT INDUSTRIAL ZONE; AND ARTICLE VI, DIVISION 2 OTHER SPECIAL EXCEPTIONS TO ESTABLISH A SPECIAL EXCEPTIONS PERMIT FOR ETHANOL TRANSFER FACILITY

passed second and final reading and was signed in open meeting; **on roll call vote:**

AMEND CITY CODE (Continued)

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

REZONING

2010-081: MAP Engineers, LLC/Arthur Yother/Charles Clark

On motion of Councilman Rico, seconded by Councilwoman Scott

AN ORDINANCE TO AMEND CHATTANOOGA CITY CODE, PART II, CHAPTER 38, ZONING ORDINANCE, SO AS TO REZONE PROPERTY LOCATED AT 1106 AND 1112 O'HENRY DRIVE, MORE PARTICULARLY DESCRIBED HEREIN, FROM R-2 RESIDENTIAL ZONE TO C-2 CONVENIENCE COMEMRCIAL ZONE, SUBJECT TO CERTAIN CONDITIONS

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

REZONING

2011-043: Englewood Enterprises, LLC/Leroy Hurst & Bickerstaff PL/JDK Real Estate, LLC

Councilmen Gilbert and Berz made the motion and second to deny this request.

REZONING (Continued)

Councilman Murphy inquired if it is the intent of the applicant to proceed under the regime just passed on second reading.

Mike Price stated "it is"; that if it is the will of the Council to deny it is fine with him; that if they can withdraw they will do that; whatever is the will of the Council.

At this point a roll call vote was attempted on the motion to deny; however, Councilman Benson asked for a point of information.

At this point Councilman Murphy made the motion to "lay the matter on the table" with Councilman Rico seconding the motion.

Councilwoman Berz noted that the applicant said he would withdraw the matter. Councilman Benson stated the matter is not discussable since the motion has been made to defer the matter.

Councilwoman Berz stated the motion could be overridden and made the motion to override with Councilman Gilbert seconding the motion.

Councilwoman Berz stated the applicant said the Council can deny it or he can withdraw it and asked the applicant if he would like to withdraw. Mr. Price responded "we will withdraw".

On motion of Councilman McGary, seconded by Councilwoman Berz,
**AN ORDINANCE TO AMEND CHATTANOOGA CITY CODE, PART II,
CHAPTER 38, ZONING ORDINANCE, SO AS TO REZONE PROPERTY
LOCATED AT 6162 ENTERPRISE PARK DRIVE, MORE PARTICULARLY
DESCRIBED HEREIN, FROM M-2 LIGHT INDUSTRIAL ZONE TO M-1
MANUFACTURING ZONE**
was withdrawn.

RECONSIDER REZONING

2011-104: The Palms on Concord, LLC

City Attorney McMahan stated during the 3 p.m. meeting he was asked to research two questions by the Council and one deals directly with the next item on the agenda, The Palms on Concord Rezoning matter; that it is covered by the rules of the City Council, Page 7, paragraph E, sub-paragraph 3:

RECONSIDER REZONING (Continued)

“...No matter, either ordinance, resolution, or special permit, having been duly considered and rejected at one meeting, may be placed on the agenda by either a Member of the Council or the administration for further consideration until SIX (6) MONTHS (minimum of twenty-four (24) official weekly meetings) following original consideration of the matter unless a majority of the Council votes to place the matter on the agenda...”. He stated item VI(b) should not be considered unless a majority of this Council votes to place it on the agenda.

City Attorney McMahan stated the other matter he was requested to research was negative statements in a motion and read from *Robert's Rules, 9th Edition*, page 102: *“...it is preferable to avoid a motion containing a negative statement even in cases where it may have a meaning since members may be confused as the effect voting “for” or “against” such a motion. Rather than moving, for example, that the association go on record as not in favor of the proposed public bond issue, it should move to be opposed or declare its opposition to the bond issue. In this connection it should be noted voting down a motion or resolution that would express a particular opinion is not the same as adopting a motion expressing the opposite opinion; if the motion is voted down no opinion has been expressed. A member may be in complete agreement contained in the resolution but feel his organization should remain silent on the matter and he may vote against the resolution for such reason”*.

Chairman Ladd stated a motion is needed to place the matter on the agenda for consideration.

Councilmen Murphy and Rico made the motion and second to place the matter on the agenda; Councilwoman Robinson recused; the motion carried.

Councilmen Rico and Benson then made the motion and second to approve the request.

Councilman Benson stated he made a mistake last week and that is why he asked that the matter be reconsidered as this is located in his district; that he did not do a good job in representing his district last week as there was no opposition to it. He stated he has concerns about what is going to happen out there if we do not let the development be built out and a lot of people are worried about it because along the freeway we tend to have some problems with homeless and others that come in there. He stated they are half way through this already with abandoned buildings; that it is right on the edge of this district and another few feet it is in Mrs. Berz' district.

RECONSIDER REZONING (Continued)

Councilman Benson stated he has had nobody object to it out there and have had some say it is better to go ahead and let this be passed and be approved than let it go back to the bank. He stated he voted against it last week and wants to change his vote; that he abstained to wait for more information and has the information, now. He urged the Council to please consider what is best for District 4.

Councilman Gilbert stated he knows what Councilman Benson said about the community and wanted to hear from Mr. Price his point of view of the community surrounding the apartments and how they feel.

Mr. Price stated to this point to the process of advertising of the signs, going through the Planning Commission process and now through two meetings here there has been no one stating any opposition whatsoever. He stated his in-laws live in the subdivision directly behind this and they have had no one come to them expressing any opposition; that most of the people honestly that live on this side of Concord Road where the development is proposed are rental properties and generally everyone on the east side of Concord Road are all homeowners. He stated to his knowledge there is no one in opposition.

Councilman McGary stated he wanted to be on record indicating his vote would be changed, also; that he voted against the project last week for the sake of Planning where it was indicated there was a density issue. He stated he has had an opportunity to actually visit the proposed site, had a chance to see the quality of the work already there and actually overshot the mark and ended up further than this location and got a chance to see the surrounding area and, as indicated, there are apartments already there; that it is mixed between residential and apartments. He stated this particularly project will not add any more density that is already there and has given him an opportunity to reconsider his vote and will be voting for this, as well.

Councilwoman Scott asked for clarification that she heard the Clerk read this was an "R-2 going to an R-3" and the printed agenda has an "R-2 going to R-2". The Clerk of Council clarified that she double checked with the City Attorney because she noticed it had "R-2 to R-2" on the agenda and knew that was incorrect; that he corrected it for her causing her to read it correctly from "R-2 to R-3".

Councilwoman Scott verified that the Clerk read it correctly and it was a typo on the agenda and we are voting "R-2 to R-3". The Clerk of Council responded "yes".

RECONSIDER REZONING (Continued)

Councilwoman Berz stated her vote in no way indicates the goodness or badness of this property; that, again, there is a bigger issue there. She stated this is in a special overlay zone and there are other items coming up in this zone that are not going to be okay because people have already been talking about they do not want, that she is speaking, for instance, about the Pancake House. She stated her point is if you choose not to continually review laws and this one is 10 years old because this city is always growing and changing. She stated we need to change the laws and continually review the laws and change them otherwise we are looking arbitrary and capricious; one is okay and one is not okay; one project we like, another project we do not like. She stated we cannot use excuses; that we are making excuses like "this one is further along" and "this one was contemplated to be an office and people wanted a restaurant". She stated those are not proper distinguishing factors; that we have to be real careful. She stated she will be voting against it but as she told the proponent of the project it is her thought it is a good project, a great idea; that it is her thought you have to stick with the plan we voted for, noting she did not vote for it as somebody did 10 years ago, or think about being a little more relevant and change the plan. She stated that is the only reason she is voting against it and she is voting against it.

Councilman McGary expressed total agreement with Councilwoman Berz' sentiment noting the land use plan was updated in 2001, however that is not his district and he cannot speak to that; that Councilman Benson is aware and to his point he does believe to some degree it is an injustice to hold up project until that process occurs. He stated if we know it is a 10 year gap we have to make some decisions in the process; that the claim or term being arbitrary and capricious is a very important claim to take head-on because he does not want to be party to that in any way. He stated in his comments earlier he wants to factor in the surrounding area, community response, and the applicant has already agreed to all the conditions listed within, so those are the factors he wants to be on record; this is not arbitrary or capricious but taking into effect what is before us. He stated ideally if the law was updated and there was a plan in effect, perhaps this would be changed in the plan, we do not know that, but in the meantime we do have to make decisions given the fact here is a law that does need to be addressed.

RECONSIDER REZONING (Continued)

Councilman Benson stated he understands what Councilwoman Berz is talking about and is very sensitive to that, which is one of the reasons he was hesitant about supporting this, then he began to look at it. He stated it is sort of like your body, your heart needs more attention than your toenail; that this is a "toenail" in the land use plan, right in the extremity of the body of our plan. He stated we are going to revise the plan but we cannot let somebody go in and "eat the heart out", which is the one they are wanting on Gunbarrel without it destroying the systematic approach to making this plan even better. He stated we can on the fringes where the "toenails" are and that is what we have done; that Mr. Price might have been the engineer as we changed something on the plan on the other end on the border because the plan borders other districts. He stated it is hard to be arbitrary and stop it there, one each from the other district, and that is why he feels that is what he would call it; if it is wrong it is not a mortal sin, so that is why he is supporting it.

At this point Councilman Rico called for the question.

Councilman Murphy stated he does not think he has ever done anything in this job that was arbitrary or capricious; that we should be careful about using that term because it is the standard by which we get overturned on most of our legislative conduct; that most of our legislative conduct is held to the arbitrary and capricious standard. He stated we are legislators; that Councilman Benson has outlined his reasons for wanting to vote for this and he is talking about it being at the edge of the land use plan and last week he was all but begging us to pass it! He stated if that is a good enough reason for Mr. Benson he is not going to say it is arbitrary and capricious; that Councilwoman Berz is taking – and expressed appreciation for it – the land use plans very seriously and does not think she subscribes to Mr. Benson's notion that just because it is out close to the edge of the land use plan that, therefore, it is not somehow in the land use plan. He stated her basis for decision making is fine, but he has not heard anything that was arbitrary and capricious about virtually any decision this Council has made ever in his tenure here. He stated he would vociferously disagree with some of the decisions made and he voted that way sometimes and knows others wanted to run him "up a flag pole" more than once, but it does not mean that he did not have a rational reason for supporting what he supported or voted for what he voted for. He asked that we not preordain that any decisions that we are making are arbitrary and capricious; that it is almost as if you are trying to set up a lawsuit and he does not think that serves anybody.

RECONSIDER REZONING (Continued)

Councilman Murphy stated if our votes are from the record clearly based on something that is “spinning a wheel” or flipping a coin, yes, we are guilty of arbitrary and capricious conduct, but just because we have different legislative “lines in the sand” does not make it arbitrary.

Councilwoman Rico again called for the question.

On motion of Councilman Rico, seconded by Councilman Benson,
AN ORDINANCE TO AMEND CHATTANOOGA CITY CODE, PART II, CHAPTER 38, ZONING ORDINANCE, SO AS TO REZONE PROPERTY LOCATED AT 1515 NORTH CONCORD ROAD, MORE PARTICULARLY DESCRIBED HEREIN, FROM R-2 RESIDENTIAL ZONE TO R-2 RESIDENTIAL ZONE, SUBJECT TO CERTAIN CONDITIONS

passed first reading; **on roll call vote:**

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

SIGNATURE AUTHORIZATION

On motion of Councilman McGary, seconded by Councilman Rico,
A RESOLUTOIN AUTHORIZING DAN L. THORNTON ACTING DIRECTOR OF THE GENERAL SERVICES DIVISION, TO SIGN VOUCHERS, REQUISITIONS, AND OTHER NECESSARY DOCUMENTS FOR AND ON BEHALF OF THE MAYOR’S OFFICE, RELATIVE TO RENOVATION OF THE

SIGNATURE AUTHORIZATION
(Continued)

**MAYOR'S OFFICE, RELATIVE TO RENOVATION CAPITAL FUNDS,
PURCHASING, REAL ESTATE, AND BUILDING AND FLEET MAINTENANCE
EFFECTIVE AS OF OCTOBER 5, 2011**

was adopted.

SPECIAL POLICEMAN

On motion of Councilman Benson, seconded by Councilman McGary,
**A RESOLUTION AUTHORIZING THE APPOINTMENT OF TIFFANY
NEWCOMB AS SPECIAL POLICE OFFICER (UNARMED) FOR ANIMAL
CARE TRUST d/b/a MCKAMEY ANIMAL CARE AND ADOPTION
CENTER, INC., TO DO SPECIAL DUTY AS PRESCRIBED HEREIN, SUBJECT
TO CERTAIN CONDITIONS**

was adopted.

INTERLOCAL AGREEMENTS

On motion of Councilman Rico, seconded by Councilman Murphy,
**A RESOLUTION AUTHORIZING THE EXECUTION OF INTERLOCAL
AGREEMENTS WITH THE CITY OF EAST RIDGE AND THE CITY OF RED
BANK FOR THE CITY OF CHATTANOOGA TO PROVIDE TRAFFIC SIGNAL
EQUIPMENT MAINTENANCE SERVICES AND TRAFFIC SIGNAL TIMING
MANAGEMENT SERVICES**

was adopted.

AGREEMENT

On motion of Councilman McGary, seconded by Councilwoman Berz,
**A RESOLUTION AUTHORIZING THE ADMINISTRATOR OF EDUCATION,
ARTS, AND CULTURE TO ENTER INTO AN AGREEMENT WITH FRANKLIN
ASSOCIATES ARCHITECTS, INC. TO DESIGN, PREPARE FOR BID, AND
OVERSEE PHASE I OF THE RENOVATION OF THE SOLIDERS & SAILORS
MEMORIAL AUDITORIUM COMMUNITY THEATRE FOR A STIPULATED
SUM NOT TO EXCEED EIGHTY THOUSAND DOLLARS (\$80,000.00), PLUS
REIMBURSABLE EXPENSES NOT TO EXCEED TEN THOUSAND DOLLARS
(\$10,000.00)**

was adopted.

SPECIAL POLICEMAN

On motion of Councilman Rico, seconded by Councilman McGary,
A RESOLUTION AUTHORIZING THE APPOINTMENT OF D. STACY MORRISON AS A SPECIAL POLICE OFFICER (UNARMED) FOR THE CITY OF CHATTANOOGA PUBLIC WORKS DEPARTMENT, TO DO SPECIAL DUTY AS PRESCRIBED HEREIN, SUBJECT TO CERTAIN CONDITIONS
was adopted.

SPECIAL EXCEPTIONS PERMIT

2011-106: MAP Engineers/Michael A. Price

City Attorney McMahan stated Karen Rennich of the Regional Planning Agency called his attention to the confusing way this Resolution is written; that the applicant really wants to abandon the PUD previously approved and the project and no special exceptions permit is involved at this time. He stated if permitted to do so, he could reword the caption of the Resolution to read *“abandon the planned unit development on property located at 1515 North Concord Road”*, which was done in open Council meeting.

Councilman Benson expressed concern about this having been approved previously and now getting down to this; that he wants to make certain the road is built in there and wants that as a condition.

Mr. Price responded “yes”, that would be made a condition; that a site plan has been submitted.

Councilman Benson inquired as to the other exit and wanted to know why there is a request to abandon this one.

Mr. Price stated they have one piece of property with two PUDs overlaid and they do not want two; that they want to get rid of the first one.

On motion of Councilman Benson, seconded by Councilman Murphy,
A RESOLUTION APPROVING ABANDONMENT OF A PLANNED UNIT DEVELOPMENT ON PROPERTY LOCATED AT 1515 NORTH CONCORD ROAD
was adopted.

AGREEMENT

On motion of Councilman Rico, seconded by Councilman Murphy,

A RESOLUTION AUTHORIZING THE ADMINISTRATOR OF THE DEPARTMENT OF PARKS AND RECREATION TO ENTER INTO AN AGREEMENT WITH TOWER CONSTRUCTION COMPANY TO CONSTRUCT A MAINTENANCE BUILDING AT THE CITY'S EAST LAKE PARK, IN AN AMOUNT NOT TO EXCEED TWENTY-EIGHT THOUSAND SIX HUNDRED EIGHTEEN AND 11/100 DOLLARS (\$28,618.11)

was adopted.

OVERTIME

Overtime for the week ending October 13, 2011 totaled \$8,092.40.

PERSONNEL

The following personnel matters were reported for the various departments:

NEIGHBORHOOD SERVICES, COMMUNITY DEVELOPMENT:

- **CHABRELLE HAIGLER** – Hire, Administrative Support Assistant 2, Range 7, \$24,306.00 annually, effective September 25, 2011.

CHATTANOOGA POLICE DEPARTMENT:

- **RANDALL BELL** – Suspension (7 days without pay), General Supervisor, effective September 29-October 7, 2011.

FINANCE DEPARTMENT:

- **CARLA COUSIN** – Hire, Accountant 1, Range 17, \$42,000.00 annually, effective October 5, 2011.
- **CARLA COUSIN** – Resignation, Accountant 1, effective October 7, 2011.
- **KAREN DAVIS** – Hire, Accounting Technician 1, Range 8, \$25,521.00 annually, effective October 14, 2011.

PERSONNEL (Continued)

PUBLIC WORKS DEPARTMENT:

- **CURTIS COLE, III** – Resignation, Water Quality Specialist 1, Engineering, effective October 24, 2011.
- **LUTHER CAMPBELL** – Demotion, Crew Worker 1, City Wide Services, Range 2, \$28,418.37 annually, effective October 12, 2011.
- **LUTHER CAMPBELL** – Suspension (7 days without pay), Crew Worker 1, City Wide Services, effective October 12-20, 2011.
- **SAMUEL WEBB** – Hire, Monitoring Technician, Waste Resources, Range 12, \$31,021.00 annually, effective October 7, 2011.
- **ROY CURRY** – Lateral Transfer, Monitoring Technician, Waste Resources, Range 12, \$43,518.99 annually, effective October 7, 2011.

RETURN OF GRANT FUNDS

Admin. Zehnder stated there is a need to return grant funds from the 2008 Omnibus Community Enhancement Grant from the State of Tennessee; that they have spent the majority of the money but there is a balance of \$30,000 that they were not able to spend from. He stated there was a right-of-way acquisition that did not go through and they reluctantly have to give it back to the State.

Councilwoman Scott stated that is just amazing with all the things that have been spent, this one failed through!

Admin. Zehnder responded that he was “sorry to disappoint you”!

BOARD REAPPOINTMENTS

On motion of Councilman Benson, seconded by Councilwoman Berz, the following Board reappointments were approved:

BOARD REAPPOINTMENTS (Continued)

CHATTANOOGA METROPOLITAN AIRPORT AUTHORITY BOARD

- Reappointment of **A.E. (GENE) VEAZEY** for a three year term expiring October 18, 2014.

HISTORIC ZONING BOARD:

- Reappointment of **W. STUART WOOD** for a five year term expiring October 18, 2016.

VENDOR NAME CHANGE

On motion of Councilman Benson, seconded by Councilwoman Berz, approval was given to change the vendors name from Mac's Tire Recyclers to **LIBERTY TIRE RECYCLING, LLC** on R30310 for the Public Works Department.

PURCHASES

On motion of Councilman Benson, seconded by Councilwoman Berz, the following purchases were approved for use by the various departments:

SPECIALIZED OPERATIONS SERVICES INC. (Lower and better bid)
R48686/301408

Blanket Contract for Chlorination System Parks

\$100,000.00 – Annual estimation

L T MASCO CO. (Best bid)
R48023/301378

Blanket Contract for Instrumentation Maintenance and Support Services

\$25,000.00 – Annual estimation

PURCHASES (Continued)

J S DISMUKE CO. INC. (Lower and better bid)

R49742

Purchase of Two (2) Vacuum Regulators

\$7,000.00

PARKS AND RECREATION DEPARTMENT:

INTEGRATED STRUCTURAL SERVICES, INC. (Lowest bid)

R46613

Installation of Bicycle Pavement Markings

\$70,400.000 – Estimation

GENERAL SERVICES:

GOV CONNECTION, INC. (Lowest and best bid)

R48149/301393

Laptop Mounts and Docking Stations

\$38,156.00

SOUTHERN PUMP & TANK CO. (Best bid)

R45591/301242

Blanket Contract for Fueling Station Service and Repair

\$25,000.00 – Annual estimation

PRO CHEMICAL PRODUCTS, INC. (Lowest and best bid)

R48249/301386

Blanket Contract for Truck Wash Chemicals and Service

\$10,000.00 – Annual estimation

PURCHASES (Continued)

SHRED-IT (Lowest and best proposal)

RFP48077

Blanket Contract for City Wide Shredding and Recycling Services

\$20,000.00 – Annual estimation

INFORMATION SERVICES:

MOTOROLA (Single source)

R49482

Annual Motorola CSR System Maintenance Renewal per TCA 6-56-304.6

\$32,568.00

REJECT BIDS

Councilwoman Scott inquired as to the lap tops and docking stations and the rejection of the bids.

Dan Johnson explained that the rejection is for the installation; that the lap tops and docking stations are two separate bids with the installation being separate, as well.

Councilwoman Scott clarified that one bid is for labor and the other is for the purchase to which Mr. Johnson responded "yes".

On motion of Councilman Benson, seconded by Councilwoman Berz, the rejection of bids to Install Laptop Mounts and Docking Stations on R48201/301394 for General Services was duly approved.

EMERGENCY PURCHASE

The emergency purchase of Fueling Station Repair Services from Southern Pump and Tank on R50199 for General Services was duly reported and signed in open meeting.

CITY ATTORNEY'S REPORT

City Attorney McMahan reported that this week's summary of activities reflects the O'Neal vs. City of Chattanooga case involving a second rekindling of a fire involving the fire department where the home had been thoroughly sprayed. He stated our fire department used thermal imaging to find any embers that may still be in the wall; that he is very pleased the court granted a summary judgment. He stated it is his belief this will never go to trial as the final disposition for that case; that there was a lot of work involved with this case and is pleased with the outcome.

City Attorney McMahan stated the case involving Rebecca Little vs. the City of Chattanooga involves Ms. Little wanting to be deannexed wherein she filed a public records request which included in excess of 40 hours worth of staff time. He stated there were two full days in court and it was a very contentious matter; that the court in that case ruled we had not exerted any bad faith.

The City Attorney stated the third case was the first contested case involving the Carlos Woodruff, Sr. personnel hearing before an Administrative Law Judge. He stated in this instance the individual went into the hearing and admitted that he was guilty of having a second job and requested the hearing due to his thinking the punishment was too severe; that his objection was not to the 14 day suspension but he had been deprived of the ability to work an extra job for six months. He stated in the report the Administrative Law Judge apparently felt the punishment was too much under the circumstances and reduced the amount of off-duty job work that can be done.

Councilwoman Scott stated after the city spends an enormous time in court and in preparation for defending these cases, how is it that we can be made whole for not doing anything wrong but yet being accused of doing something wrong.

City Attorney McMahan responded that the law is all stacked against us on that matter; that we have a duty as public officials to do our very best to respond responsibly and reasonably to public records requests even though it takes a tremendous amount of time to do so. He stated the law is not in our favor in that regard but we are a public body so we have to take some of the loss!

Councilwoman Scott stated she is not arguing for the fact that public records should be distributed, but arguing in response to what we did essentially, as she understands it, there was a request for an enormous amount of records, those records were delivered and then the objection from the other side is that they were overwhelmed with records.

CITY ATTORNEY'S REPORT (Continued)

City Attorney McMahan stated he thought the objection was they thought we might have missed a few; that there is always an issue, especially when they were asking for records going back to the 1970's which, if they existed, have long since passed the retention policy of the city.

Councilwoman Scott stated if vindicated we have still spent an inordinate amount of city tax payers' money defending being right!

City Attorney McMahan stated we do recoup under open the records law, not always but we do under certain circumstances recoup the staff time and hourly rate for staff and copy costs of documents; that we were paid probably less than \$1,000 with respect to all the records they requested and obviously the expense to us was much larger than that.

AUTHORIZATION TO SETTLE

City Attorney McMahan stated Atty. Fritz sent each Council member a memorandum and has spoken to most on the Council regarding Brenda K. Bishop vs. City of Chattanooga. He stated the case involved a slip and fall accident in a parking garage near the Hamilton County Health Department and we determined that the sidewalk was defective in that area. He stated Atty. Fritz is recommending a proposed settlement of \$26,500.00 and recommends approval.

On motion of Councilman McGary, seconded by Councilman Murphy settlement in the amount of \$26,500.000 was duly authorized.

Councilman Murphy stated he really appreciates the new system of doing things with City Attorney McMahan providing weekly reports; that before, this Council and the tax payers were only reading about or learning about those that did not go our way and this one report regarding the fire case alone was in excess of half million dollars! He stated it is that kind of work out of the city attorney's office and has known for years that they do an excellent job for tax payers and provide an outstanding value to us. He again complimented him and his staff and expressed thanks for the new procedure! (At this point a round of applause was given by Council and those in attendance!)

AUTHORIZATION TO SETTLE (Continued)

Councilman Gilbert inquired as to the sidewalk involving this case. City Attorney McMahan responded that the sidewalk was defective a half inch, which is enough to catch a heel or even a flat shoe heel. He stated the half inch depends upon where it is; that if it is in a heavy traffic area if it were in a residential area they might have been able to defend it, however if it is a heavy traffic area it is difficult to defend that kind of defect.

Councilman Benson stated we are more vulnerable when it has been reported to 311 and we have not gone over and repaired it in a timely manner.

BUDGET ALLOCATION

Councilman McGary inquired as to the status of the former dollars allocated to the Multicultural Chamber, wanting to know if there is any thought today as to the entity to receive the funds.

Dan Johnson responded that he has not received any requests for funds and the allocation remains in our treasury.

Councilman McGary asked that Mr. Johnson elaborate on what an entity should do to request the funds.

Mr. Johnson stated the request would have to be sent through the Council in conjunction with the procedure that is sent to agencies; that they would have to be a 501c3 organization.

Councilman McGary stated since we have passed the budget with the dollar amount is it Mr. Johnson's decision as to how to spend those dollars and he would make a recommendation, is that his understanding.

Mr. Johnson responded "no"; that they have to have a request; that as far as he is concerned we are not going to spend those dollars; that during the budget process the budget submitted to Council did not have any appropriation in that line item; that it was added for another type organization similar to the Chamber.

Councilwoman McGary asked Councilwoman Berz as a point of order whether it was his understanding that the staff brings the recommendation to the Council.

BUDGET ALLOCATION (Continued)

Councilwoman Berz stated Randy Burns sends out the letters to the agencies and after all the requests come in they go to Admin. Madison and administration; that administration comes forth with a budget and their recommendations and the Council "massages" it. She stated as Mr. Johnson stated with the Multicultural Chamber the administration recommended no allocation there; that we came back later and said we want dollars there for some like agency. She stated administration has the dollars there and they have not been spent; that at this point what would happen is the same process again. She stated the letter comes from us and any request goes through the administration and administration always presents the budget and we "yea" or "nay"; that right now what we have is a request to the administration that that money remain in the budget and that is where we are right now.

COMMITTEES

Councilwoman Scott stated the **Personnel, Performance and Audit Review Committee** met today and will meet again on **Tuesday, November 8 from 2-3 p.m.** to discuss a draft ordinance relating to progressive discipline.

Councilwoman Robinson scheduled meetings of the **Joint Housing and Neighborhood Services and Legal and Legislative Committees in two educational sessions with the first scheduled for Tuesday, October 25 from 2-3 p.m. and the meeting after that for the full Council November 1 at 3 p.m.** She stated it is interesting the discussion we had tonight because it is what we want to bring forth with the joint committees with the full Council present, which is the changing housing needs in our city which goes way beyond that dealing with growth and what we want to look at; that RPA will prepare a compendium of our neighborhood and land use plans. She stated we will take a look at those because that is the foundation of so many of our zoning decisions and they do need to be looked at and in some instances updated. She stated we will be hearing from Public Works and Neighborhood Services regarding codes and receive statistical information from our local realtors association with regard to housing and areas of growth and where projected growth is in the city and county. She stated we have a short turnaround because many on the Council will be touring VW and will have to hurry back for the 2 p.m. meeting and expressed hope as many as possible will be present.

COMMITTEES (Continued)

Councilman Murphy stated the **Legal and Legislative, Police and Fire Committee will meet on Tuesday, October 25 immediately following the Agenda session.** He stated there are no known police or fire business he is aware of and will be taking up again redistricting. He stated it is time we actually start to look at drawing new lines; that Mr. Burns has suggested and has been looking at starting with the map going left to right, west to east that would be District 1 and 2; that those districts also are adjacent to Districts 3 and 7 and to some extent if downtown is counted and North Chattanooga, District 8. He asked the Council to think about those, primarily Districts 1 and 2 and to understand anything they are adjacent to is subject to discussion, also. He stated any other matters within the Committee's jurisdiction will come before the Committee.

Councilwoman Berz stated by next week Council members will receive a form letter that will be going out to all the agencies which will be distributed by Carol O'Neal from me. She stated she would like Council members to edit the letter used last year to meet the needs of the Council as we talked about from no one receiving any funding to people can expect limited funding, whatever; that attached will be the forms used last year and any editing that the Council wants to do to please do so. She stated if she does not hear from Council members she will assume they agree with everything as they need to get them out because the agencies are working on their budgets right now.

Councilman Benson stated the meeting he announced last week for Economic Develop Committee has been postponed; that the attorneys are not ready at this time to present to the Council. He stated the subject will be the tax increment funding (TIF).

Councilwoman Scott asked if that meeting is related to a specific location or just general tax increment funding.

Councilman Benson responded "yes"; that it is in Councilwoman Scott's district where they want the TIF on the mountain.

NEXT WEEK'S AGENDA: OCTOBER 25, 2011

Chairman Ladd stated next week's agenda was discussed earlier during the Agenda session.

ADJOURNMENT

Chairman Ladd adjourned the meeting of the Chattanooga Council until Tuesday, October 25, 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)**