

City Council Building
Chattanooga, Tennessee
February 15, 2005
6:00 p.m.

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

PLEDGE OF ALLEGIANCE/INVOCATION

Following the Pledge of Allegiance, Councilman Lively gave invocation.

MINUTE APPROVAL

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

CLOSE AND ABANDON

MR-2004-089: Wise Properties, LLC

On motion of Councilman Lively, seconded by Councilman Littlefield,
**AN ORDINANCE CLOSING AND ABANDONING AN UNOPENED ALLEY
LOCATED BETWEEN AND PARALLEL TO THE 500 BLOCKS OF
WOODLAND AND FOREST AVENUE, MORE PARTICULARLY DESCRIBED
HEREIN AND AS SHOWN ON THE MAP ATTACHED HERETO AND MADE
A PART HEREOF BY REFERENCE, SUBJECT TO CERTAIN CONDITIONS**
passed second and final reading and was signed in open meeting.

REZONING

2004-231: City of Chattanooga

On motion of councilman Hakeem, seconded by Councilman Littlefield,
**AN ORDINANCE TO AMEND ORDINANCE NO. 6958, AS AMENDED,
KNOWN AS THE ZONING ORDINANCE, SO AS TO REZONE PROPERTIES
WITHIN THE EAST CHATTANOOGA NEIGHBORHOOD AREA, MORE
PARTICULARLY DESCRIBED HEREIN AND SHOWN ON THE ZONING
STUDY AND MAPS ATTACHED HERETO AND MADE A PART HEREOF BY
REFERENCE, FROM R-2 RESIDENTIAL ZONE AND R-3 RESIDENTIAL ZONE
TO R-1 RESIDENTIAL ZONE, SUBJECT TO CERTAIN CONDITIONS**
passed second and final reading and was signed in open meeting.

REZONING

2005-009: SBL Properties

On motion of Councilman Page, seconded by Councilman Taylor,
**AN ORDINANCE TO AMEND ORDINANCE NO. 6958, AS AMENDED,
KNOWN AS THE ZONING ORDINANCE, SO AS TO REZONE A TRACT OF
LAND LOCATED AT 6040 CENTURY OAKS DRIVE, MORE PARTICULARLY
DESCRIBED HEREIN, FROM O-1 OFFICE ZONE TO M-2 LIGHT
INDUSTRIAL ZONE**
passed second and final reading and was signed in open meeting.

REZONING

2005-015: Brian Tune

On motion of Councilman Taylor, seconded by Councilwoman Robinson,
**AN ORDINANCE TO AMEND ORDINANCE NO. 6958, AS AMENDED
KNOWN AS THE ZONING ORDINANCE, SO AS TO REZONE A TRACT OF
LAND LOCATED AT 509 EAST MAIN STREET, MORE PARTICULARLY
DESCRIBED HEREIN, FROM M-3 WAREHOUSE AND WHOLESALE ZONE
AND M-1 MANUFACTURING ZONE TO C-3 CENTRAL BUSINESS ZONE,
SUBJECT TO CERTAIN CONDITIONS**
passed second and final reading and was signed in open meeting.

REZONING

2005-016: Ready Mix USA, Inc. c/o Jessica Garrison

On motion of Councilman Lively, seconded by Councilman Littlefield,
AN ORDINANCE TO AMEND ORDINANCE NO. 6958, AS AMENDED, KNOWN AS THE ZONING ORDINANCE, SO AS TO REZONE A TRACT OF LAND LOCATED AT 607 HUDSON ROAD, MORE PARTICULARLY DESCRIBED HEREIN, FROM M-1 MANUFACTURING ZONE TO M-4 OUTDOOR INDUSTRIAL USE ZONE, SUBJECT TO CERTAIN CONDITIONS
passed second and final reading and was signed in open meeting.

TEMPORARY USE

Councilman Hakeem stated Resolutions (a) and (b) were discussed in Public Works Committee and approval is recommended.

On motion of Councilman Hakeem, seconded by Councilman Littlefield,
A RESOLUTION AUTHORIZING CHARLES EICH (CHEEBURGER CHEEBURGER) TO USE TEMPORARILY 138-A MARKET STREET, MORE PARTICULARLY DESCRIBED HEREIN AND AS SHOWN ON THE DRAWING ATTACHED HERETO AND MADE A PART HEREOF BY REFERENCE, TO PLACE SEATS AND TABLES ON THE SIDEWALKS DURING SUMMER TO INCREASE DINING SPACE, SUBJECT TO CERTAIN CONDITIONS
was adopted.

AGREEMENT

On motion of Councilman Hakeem, seconded by Councilman Franklin,
A RESOLUTION AUTHORIZING THE ADMINISTRATOR OF THE DEPARTMENT OF PUBLIC WORKS TO EXECUTE A RENEWAL AGREEMENT WITH SANI-TECH JETVAC SERVICES, RELATIVE TO PROVIDING SEWER CLEANING OF THE INTERCEPTOR SEWER SYSTEM (ISS), FOR A TERM OF ONE (1) YEAR BEGINNING FEBRUARY 2006 AND IN AN AMOUNT NOT TO EXCEED ONE HUNDRED FIFTY THOUSAND DOLLARS (\$150,000.00)
was adopted.

EXTEND MORATORIUM

On motion of Councilman Pierce, seconded by Councilman Littlefield,
A RESOLUTION EXTENDING THE MORATORIUM ON CONSTRUCTION OF NEW DUPLEXES, AS SET FORTH IN RESOLUTION NO. 24279, ONLY IN AREAS UNDER CONSIDERATION FOR REZONING, MORE PARTICULARLY DESCRIBED HEREIN AND AS SHOWN ON THE MAP ATTACHED HERETO AND INCORPORATED HEREIN BY REFERENCE, UNTIL MAY 16, 2005 AND LIFTING SAID MORATORIUM IN THE REMAINING AREAS REFERRED TO IN SAID RESOLUTION NOT DESCRIBED HEREIN
was adopted.

PRELIMINARY PUD

2005-013: Harvest Active Adult Communities, LLC

On motion of Councilman Taylor, seconded by Councilman Lively,
A RESOLUTION APPROVING A PRELIMINARY PLANNED UNIT DEVELOPMENT SPECIAL EXCEPTIONS PERMIT FOR A PROPOSED PLANNED UNIT DEVELOPMENT KNOWN AS THE VILLAGE AT GREENWAY PLANNED UNIT DEVELOPMENT, ON A TRACT OF LAND LOCATED AT 1134 MOUNTAIN CREEK ROAD, MORE PARTICULARLY DESCRIBED HEREIN AND AS SHOWN ON THE MAP ATTACHED HERETO AND MADE A PART HEREOF BY REFERENCE, SUBJECT TO CERTAIN CONDITIONS
was adopted.

PAYMENT AUTHORIZATION

Councilman Littlefield stated this matter was discussed in Legal and Legislative Committee and approval is recommended.

Councilman Pierce inquired as to whether the county had acted on this. Councilman Littlefield indicated that he did not know.

Councilwoman Robinson stated that she had read that the county acted on it and it was indicated their part would come from tourist development.

Chairman Benson confirmed that he had read the same, as well.

Councilman Pierce stated that he just wanted to make sure.

PAYMENT AUTHORIZATION (CONTINUED)

On motion of Councilman Littlefield, seconded by Councilman Franklin,
A RESOLUTION AUTHORIZING ANNUAL PAYMENTS OF TWENTY FIVE THOUSAND DOLLARS (\$25,000.00) FOR A PERIOD OF THREE (3) YEARS, TOTALING SEVENTY FIVE THOUSAND DOLLARS (\$75,000.00), TO THE STADIUM CAMPAIGN CORPORATION IN SUPPORT OF ITS CAPITAL CAMPAIGN FOR INSTALLATION OF ARTIFICIAL TURF AT FINLEY STADIUM/DAVENPORT FIELD
was adopted.

OVERTIME

Overtime for the week ending February 11, 2005 totaled \$12,627.69.

PERSONNEL

The following personnel matters were reported for the various departments:

PUBLIC WORKS DEPARTMENT:

- **ANTHONY D. SPEARS** – Lateral Transfer, Crew Worker Senior, Citywide Services, Pay Grade 5/Step 3, \$21,106.00 annually, effective February 9, 2005.
- **RONNIE L. JOHNSON** – Suspension (3 days without pay), Heavy Equipment Operator, Citywide Services, effective February 8-10, 2005.
- **JEFFREY C. ERLANDSON** – Hire, Plant Maintenance Mechanic, Waste, Pay Grade 11/Step 1, \$26,402.00 annually, effective February 4, 2005.
- **GARY S. SKIDMORE** – Promotion, Chief Plant Operator, Waste, Pay Grade 16/Step 10, \$47,978.00 annually, effective February 2, 2005.
- **LEON H. SHEALY, JR.** – Hire, Plant Operator Senior, Waste, Pay Grade 12/Step 1, \$27,596.00 annually, effective January 12, 2005.
- **PATRICK WADE** – Termination, Survey Instrument Technician, Engineering, effective February 8, 2005.
- **JOHN R. RICHARDS** – Resignation, Crew Worker Senior, Waste, effective February 4, 2005.

PERSONNEL (Continued)

PERSONNEL DEPARTMENT:

- **LINDA MANNING** – Return from FMLA, Administrative Sec. Sr., effective February 14, 2005.
- **JANICE SUTTLES** – Hire, Office Assistant Senior, Pay Grade 5/Step 4, \$22,041.00 annually, effective February 4, 2005.

CHATTANOOGA POLICE DEPARTMENT:

- **CYNTHIA CLARK** – Family Medical Leave, Police Service Technician, effective January 8, 2004 – March 1, 2005.
- **NEVA STINSON** – Resignation, School Patrol Officer, effective February 4, 2005.
- **MATTHEW SHANE WEBB** – Termination, Police Officer, effective February 11, 2005.
- **TROY V. CANNON** – Military Leave, Police Officer, effective March 1 – July 20, 2005.

HEARING: JOSHUA MASSENGALE

The hearing for Joshua Massengale was rescheduled for February 23 beginning at 9 a.m. with Councilmen Pierce, Benson and Robinson serving as the panel hearing the request.

CITY COURT OFFICER

City Attorney Nelson stated one of the city court officers was selected to serve in county government on the county commission. He stated we have a section of the *City Charter*, Section 3.1 which states, “*No person, while holding any office or employment under the federal, state or county government, except the office of notary public, shall be eligible to any office under said city government. No person shall have any interest, direct or indirect, in any contract with or franchise from the city while holding any office under the city government. But stockholders in corporations having such relations with the city, may be eligible to membership on the board of commissioners, but shall not vote on or interfere directly or indirectly, with any matters or questions affecting a contract or franchise between such company and the city, or its right or duty under the same. If, while any person is holding any office under the city government, he shall cease to possess any or all of the qualifications, or become subject to any of the disqualifications herein prescribed, his office shall thereby become immediately vacant. . .*”

CITY COURT OFFICER (Continued)

City Attorney Nelson stated the question arises whether the position of city court officer is an office of the city government. He stated there are two different cases, one in which it is indicated "yes" it is and another indicating "no" it is not. He there is no case in the city where he could say there was one way or the other. He asked if it is the Council's wish for him to go further and file a lawsuit to get that determined or ignore it. He asked what the Council wants him to do or give (him) instruction.

Councilman Littlefield stated if he were a notary public there would not be a problem.

City Attorney Nelson stated there is a specific exclusion for notary publics. He stated under one line of cases the sheriff, police officers and teachers have all been determined to be office holders of city government because of their duties. He stated city court officers also enjoy qualified immunity for acts they perform in the courtroom, which generally connote they would be an office holder. He stated on the other hand, another line says in order to be an office holder there should be a direct method of appointment; that there is no correlation for a specific period of time which incorporates certain duties, which we do not have for city court officers. He stated it is a matter of somebody getting together to "pick" and the only the only one that can finally do it in a binding arrangement would be a court, if we want to raise the issue.

Councilman Pierce stated that he might be the one who initiated this from the beginning because there was a group from the community who called and asked if a person can hold two positions. He stated in talking with the City Attorney, it was explained to him just as the City Attorney explained this evening. He stated that he went back and informed the community, to the best of his knowledge, that the person could not hold two positions and the information was widely spread in the community. He stated he talked with the court officer personally to alert him that there might be a conflict of interest and in return he (court officer) went to the county attorney and things seemed to have "blossomed" from there. He stated that he feels obligated we should uphold what the *Charter* indicates -- which we are governed by and all are sworn to. He stated the *Charter* states once the person accepted the commission job he was no longer employed with the city and feels the city should not take it court. He stated if the person would like to take it to court he has that responsibility. He stated that his position is that the court officer and the county have that responsibility, not the city.

CITY COURT OFFICER (Continued)

Chairman Benson asked if the person is terminated. Councilman Pierce stated it is his understanding he is terminated. Chairman Benson asked if this is automatic.

City Attorney Nelson stated if he is holding an office, we are "chasing our tail"; that it is a matter of who takes the initiative.

Councilman Page stated that the question has been raised and we have raised it; that it is his belief to "clear the cloud" from the situation we must pursue to have it clarified in court. He suggested that the City Attorney and City Council clarify the matter and not put the burden upon the applicant or court clerk; that this is vague in our *Charter* and something we need to do for clarification at the expense of the city. He expressed support for Councilman Pierce's recommendation that we go to court for clarification.

Councilman Pierce stated that he has no problem with this and inquired as to the cost that would be incurred in taking the matter to court. He stated the county was aware this existed prior to the appointment.

City Attorney Nelson stated the county does not have any problem with the person being an employee of the city and also being an officer of the county. He stated the problem is in the *Charter* of the city and if he is an officer of the city, then his position has become vacant when he accepted the county post. He stated the question is whether he is an officer.

Chairman Benson asked if the City Attorney is saying the person is not on the payroll as of the date he took the job.

City Attorney Nelson stated those are matters to be determined "on down the line"; that if he continues to work pay would be awarded on the basis of quantum meruit, meaning he would not be cut out and would receive pay for the value of services. He stated in answer to Councilman Pierce's question, the court cost would not be excessive; that the only time we are talking about is additional attorney time. Councilman Pierce stated he has no problem with that.

Councilman Pierce made the motion to proceed with getting an opinion from court whether the person can hold two positions; Councilman Page seconded the motion.

CITY COURT OFFICER (Continued)

Councilman Franklin stated that we need clarification of this matter and indicated there have been two different instances documented and referenced a city police officer serving as the Mayor of East Ridge and a case several years ago involving former Councilman William Cotton.

City Attorney Nelson stated the matters involved Daniel Thomas and Ronald Swafford are the previous cases. He stated if they were just employed with a city agency it would not matter; however, Vince Dean does not factor into this because this Section speaks in terms of the federal, state or county governments and East Ridge is none of those. He stated Bernard Gloster was the Mayor of Lakesite and was a police officer. He stated when Ronald Swafford went back to the County he had to resign because of this provision. He stated there was an earlier case when Daniel Thomas filed a lawsuit against Ronald Swafford and the city indicating Ron could not run for the City Council because at that time he had been an employee of the county. He stated the court held he could run but if elected, before being sworn in, he must take an option; that an excellent opinion was given by Judge Peoples that upheld this portion of the *Charter*.

Councilman Lively stated the first thing we need to ask is whether the court officer is an employee or an appointed officer; whether officer is just a title or if he is actually an appointed officer.

City Attorney Nelson stated it is his understanding that one of the factors why he could not say officer is that it is not set forth in city court; that a court officer is employed or appointed by the judge of that division is the way he understands it happens. He stated the judge determines the officer's duties; that he acts as bailiff and process server. He stated there is no provision in the Charter or in the ordinance code relating to that position. He stated on the other hand we do pass a budget ordinance every year which includes it, yet it does not go forth to specify how a person is appointed for what term and that type of thing.

Councilman Pierce asked what benefits the person receives while in that position.

City Attorney Nelson stated employees and officers are more or less the same, with one or two exceptions.

Chairman Benson stated this is the only intellectual, honest and objective way to seek a solution.

Councilwoman Robinson called for the question on the motion and second by Councilmen Pierce and Page; **the motion carried**.

COMMITTEES

Councilman Littlefield scheduled a meeting of the Legal and Legislative Committee for Tuesday, February 22 at 3 p.m.

Councilman Hakeem scheduled a meeting of the Public Works Committee for Tuesday, March 8 at 4 p.m.

Councilman Franklin reminded Council members of the meeting of the Parks and Recreation Committee on Tuesday, February 22 at 4 p.m.

ADJOURNMENT

Chairman Benson adjourned the meeting of the Chattanooga Council until Tuesday, February 22, 2005 beginning 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)