

**City Council Building  
Chattanooga, Tennessee  
July 11, 2006  
6:00 p.m.**

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

#### **PLEDGE OF ALLEGIANCE/INVOCATION**

Following the Pledge of Allegiance, Councilman Rico gave invocation.

#### **MINUTE APPROVAL**

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

#### **SPECIAL PRESENTATION: WORLD CHANGERS**

Beverly Johnson, Administrator of the Department of Neighborhood Services, stated that the World Changers had been with them during the week and had come to Chattanooga to make significant repairs for homeowners in the community. She introduced Vanessa Jackson, Program Manager with Neighborhood Services, who gave information regarding what is going on.

Vanessa Jackson stated this year marks the fourth year the World Changers have come to the City to make a lasting impression throughout the neighborhoods (in Chattanooga) by providing free home repairs. She stated that there are over 400 youth and adult volunteers from various cities providing repair in the areas of carpentry and roofing to thirty-five (35) homes in Chattanooga. She stated the project is funded through the Community Development Block Grant Program administered by the Neighborhood Services Department in partnership with the Front Porch Alliance, the Office of Faith-Based Initiatives and Brainerd Baptist Church.

**SPECIAL PRESENTATION: WORLD CHANGERS**  
**(Continued)**

Ms. Jackson noted that the Front Porch Alliance provided matching dollars. At this point she asked all the partners in attendance to stand and presented a Proclamation on behalf of Mayor Ron Littlefield, the City Council, Administrator Beverly Johnson and Deputy Administrator Anthony Sammons recognizing this week as “WORLD CHANGERS WEEK”.

**AMEND CITY CODE**

On motion of Councilwoman Rutherford, seconded by Councilman Rico,  
**AN ORDINANCE TO AMEND CHATTANOOGA CITY CODE, PART II, CHAPTER 16, ARTICLE III, BY REPEALING SECTIONS 16-44, 16-45, 16-47 AND 16-48 RELATIVE TO THE CHATTANOOGA POLICE DEPARTMENT**  
passed second and final reading and was signed in open meeting.

**2006-2007 BUDGET**

Councilwoman Robinson stated with reference to the new budget and since the Council voted to enlist the help of a committee of community leaders appointed by the Council and Mayor to develop and evaluate the recycling program, that the provision in the budget remain in place as the Mayor sent to the Council, but with the provision we have until October (with a committee in place) to make recommendations as to how we can develop a comprehensive recycling plan to include both curbside and recycling in all areas.

On motion of Councilwoman Robinson, seconded by Councilwoman Rutherford,

**AN ORDINANCE, HEREINAFTER ALSO KNOWN AS “THE FISCAL YEAR 2006-2007 BUDGET ORDINANCE”, TO PROVIDE REVENUE FOR THE FISCAL YEAR BEGINNING JULY 1, 2006, AND ENDING JUNE 30, 2007, AND APPROPRIATING SAME TO THE PAYMENT OF EXPENSES OF THE MUNICIPAL GOVERNMENT; FIXING THE RATE OF TAXATION ON ALL TAXABLE PROPERTY IN THE CITY, AND THE TIME TAXES AND PRIVILEGES ARE DUE, HOW THEY SHALL BE PAID, WHEN THEY SHALL BECOME DELINQUENT; PROVIDING FOR INTEREST AND PENALTY ON DELINQUENT TAXES AND PRIVILEGES AND TO AMEND CITY CODE CHAPTER 18, SECTION 18-123(g)**

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

## REZONING

### **2006-060: Chattanooga Housing Authority**

Councilman Rico stated that the applicant has requested this matter be deferred for sixty days. City Attorney Nelson stated that the applicant is waiting on some bids to come in and suggested that it be for a total of 91 days as this entails a multiple of seven and would end up on a Tuesday.

On motion of Councilman Rico, seconded by Councilwoman Robinson,  
**AN ORDINANCE TO AMEND ORDINANCE NO. 6958, AS AMENDED, KNOWN AS THE ZONING ORDINANCE, SO AS TO REZONE A TRACT OF LAND LOCATED AT 1 EAST 25<sup>TH</sup> STREET, MORE PARTICULARLY DESCRIBED HEREIN, FROM R-3 RESIDENTIAL ZONE AND M-1 MANUFACTURING ZONE TO C-3 CENTRAL BUSINESS ZONE, SUBJECT TO CERTAIN CONDITIONS**

**was deferred 91 days (October 10) at the request of the applicant.**

## REZONING

### **2006-114: City of Chattanooga City Council**

**Councilmen Rutherford and Rico made the motion and second to approve this request.**

Chairman Pierce stated this request has been tabled for a period of time. He stated that the opposition was heard at the last meeting and it was stated the Council would not hear it again. He stated the attorney for the property owner has asked to be heard.

Mayor Littlefield stated that he sent a letter to each member of the Council making his position clear on this case. He stated that he believes it is in the best interest that the entire tract be rezoned rather than a portion as there has been a long history with its location to the school (Barger Elementary).

Atty. Arvin Reingold expressed appreciation to the Council for allowing him to present his client's position on this matter. He stated it is an interesting position in that what the city is doing is turning the clock back 30-40 years on this property that is zoned C-2. He stated that he could remember when this property had a barbecue and restaurant there and if it is rezoned to C-5 a restaurant will not be permitted.

## REZONING (Continued)

Atty. Reingold stated there is a request for change in the zoning ordinance from C-2 to C-5 which is so unreasonable and arbitrary it constitutes a violation of the Constitution. He stated it is taking the use of a property that is totally inconsistent with what is up and down Brainerd Road. He stated there is C-2 from the (Brainerd) tunnel as far as Brainerd Road goes with adjoining residences in the back; that the property in no way is any different from property up and down Brainerd Road. He stated a change is being made in an improper manner and apparently a group of people are displeased with his client's tenant. He stated in fact, at the Planning Commission hearing he was astounded to hear a member of the Planning address this issue by saying, "why doesn't your client get another tenant -- that would cure everything". He stated you do not use rezoning to get rid of somebody you do not like in the neighborhood; that maybe this man's restaurant tenant next week might be someone they do not like and that is not the proper way. He stated that is not the proper way of regulating a tenant's conduct.

He made an analogy in reference to Councilwoman Rutherford's former profession by stating what if we had a travel agency that did not carry out their trash everyday; that if you have displeasure with a tenant, restaurant owner or whatever it might be, do not go and change zoning of the property as that is a draconian move and so inconsistent with the rights of the property owner. He stated what we are talking about is a difference in methodology; that as he read through the minutes of the previous meeting when this was discussed he read where people reported matters to the police and asked why go to the DA's office as that has been done before and Councilwoman Rutherford knows it. He asked the Council not to use the rezoning process as it is the most draconian method of restricting use of a property.

Atty. Reingold asked the Council to have courage and foresight to say this is not the way to do it and let's do it the proper way. He stated it is real strange the original zoning ordinance was for a part or a parcel; that he has gone before Planning and asked for one parcel in a block to be changed and each time he is at Planning it is said this is spot zoning. He stated this is a reversal of spot zoning as we are talking about a parcel that has a restaurant there, an auto repair shop at the other end and we are taking one parcel and changing from C-2 to C-5 because of the neighborhood. He stated this is a good Council and respectfully asked them to really view this without emotion and politics involved; that the problem is more imagined than real. He stated if this Council is going to send a message to the people who want to come down and develop a business that is the way to act; that we react rather than act and react in an unconstitutional manner that is draconian and has no place in this city.

## REZONING (Continued)

Atty. Reingold concluded his comments by stating if a poll were taken of businesses up and down Brainerd Road not one of them would agree and say the property should be rezoned. He again stated this is not the proper way to address this alleged problem and asked the Council to think about it if time is needed, noting that the Housing Authority asked and received an extension and noted that there are different standards between people and persons who own property. He stated if he were someone who wanted to buy and put a full service restaurant there he could not do it as it is not permitted in C-5.

Councilman Benson stated that this came through Planning and noted that he heard everything Atty. Reingold said except that it must be said there is a way to correct what is going on there by admitting he (Reingold) knows the behavior out there is not acceptable and conducive to any neighborhood! He stated the Council is separating this property and downzoning the neighborhood part and leaving the front C-2. He stated it is his thought we are correcting a zoning mistake and knows of no other way to do it other than zone it as it should be. He stated there is a most unusual type of commercial activity carried on at this parcel and seems it can not operate for the police are there all the time; that Councilwoman Rutherford can speak more about it than he. He stated it seems Atty. Reingold would want to curb that type of unsavory behavior that intrudes into the neighborhood's bedroom window.

Councilwoman Rutherford stated before she talks about the rezoning, she wanted to tell her dear friend Arvin Reingold that she is very pleased he had a safe trip to Israel. She stated these are the facts: that rezoning is not a right it is a privilege. She stated it if were not a privilege this Council would not sit here every second Tuesday of each month and listen to zoning cases; that there would just be an office where people could go and sign up for whatever zoning they wanted. She stated Atty. Reingold's client, in her opinion, has abused the right we have given them and now we are, as Councilman Benson stated, trying to correct the problem. She stated she is not overly concerned about the trash however she is very concerned about this place if it is left as it will average about 140 to 150 police calls a year if they keep at the same rate as the first quarter of business in this operation.

Councilwoman Rutherford stated she is not doing this because a few neighborhoods complained as we have had numerous, numerous complaints from both sides of Brainerd Road, as well as property owners on Brainerd Road. She stated she does not feel in any way this could be considered taking of property; that we are not trying to tell this property owner that he can not keep a commercial zone as he can have a deli in preference to a restaurant that serves beer and alcohol.

## REZONING (Continued)

**Councilwoman Rutherford** stated these people were such a bad influence on the neighborhood before they even got to the Beer Board, the Beer Board refused to grant a permit and that in itself speaks volumes. At this point she asked those in attendance from the Belvoir and Belvoir Park neighborhoods, as well as those from the commercial district, to stand. In addressing Atty. Reingold, she remarked "Friend, I think it is time for us to approve the downzoning of your client's property". At this point she **"called for the question" on her previous motion to approve.**

Chairman Pierce expressed his thought that this is the worst action this Council has taken in the last fifteen years in trying to downzone someone out of business. He stated this is not the way to do it; that we have a police force of 471 officers and if it is that much violation going on in that building we should be able to get enough evidence to go to court and board it up. He stated the property owner has a right to rent this property. He stated just as Atty. Reingold said, we go around every time we see something we do not like and try to zone them out of business. To those in attendance he noted that he did not know why it is felt this is going to help them as the occupants of the building will still be able to operate as they will be grandfathered in as long as they are there. He stated if enough information is not gathered and presented to the DA's office or the police department they can continue for the next five years! He stated changing the zoning is not the answer to the problem. At this point he asked the City Attorney to explain whether rezoning this property would help.

City Attorney Nelson stated that the property could continue to be used as an illegal non-conforming use as long as it does not go out of business for more than 100 days. He stated as Chairman Pierce said, this could continue for five or ten years or forever, as long as they continue the use now. He stated once the use is no longer for 100 days, then it goes to C-5 and there will be some relief. He stated this is not going to solve the problem immediately.

Chairman Pierce stated that the Council is taking property rights away from the public when something of this nature is done; that he still insists that something is wrong if this much has been going on and our police department can not find enough violations to close the place down. He stated it is basically left up to the DA, the court and judge, which is where the protest needs to be taken and not to the Council for rezoning. He expressed his thought that the Mayor is wrong and Councilwoman Rutherford and each Council person that votes to support this is wrong. He stated there is no way under the sun he can support an ordinance of this type!

## REZONING (Continued)

**Councilwoman Rutherford** stated that she would like to let Chairman Pierce and her constituents know that the very next morning after this was voted on first reading, she was on the phone at 9 a.m. and called the District Attorney and Chief Freeman Cooper who told her he had already spoken to him (DA), as well. She stated we have made our effort with the DA but because we have not had a murder, rape, kidnapping or hijacking (she expressed hope there would not be any of these) he can not help us. She stated that she almost has to pray that Mr. Reingold's client's property experiences such a violent act before we can take the action that our Chairman recommends. She stated we are pursuing every avenue and Chief Parks knows his officers are over there from midnight until 5:30 in the morning; that she is not talking about one police officer but two or three and this is every time that place is open. She stated it is not a restaurant, it is a "good time house"; that it was closed down on Wilcox and they immediately came over to Brainerd Road. She stated to her there is a whole lot of difference in a restaurant vs. a "good time" establishment! She **again called for the vote.**

Atty. Reingold asked that the Council not vote on a motion of fabrication or what could happen, but to vote on reason. He stated that he represents the property owner who is a tax payer, a member of the community and one who contributes to the community. He stated that his client might have, and emphasized "might have", as he (Reingold) does not know what goes on there and does not know the facts Councilwoman Rutherford had about all the calls or anything about having to have a murder.

Councilwoman Rutherford interjected that is what the DA told her.

Atty. Reingold asked that the Council not act on emotion and noted that persons in the neighborhood do not like the tenant. He asked that the Council not deprive his client of his constitutional right under the Fourteenth Amendment of due process and equal protection. He stated that parcel is not unlike every other parcel up and down Brainerd Road and again stated that he represents the gentleman who owns the property and this is an attack upon the tenant. He noted that he has not ever met the tenant and has no way of handling an "alleged" problem. He remarked to Councilman Benson that he did not know of a problem; that it is more imagined than real; that his client would have been held before the bar of justice for all the violations alleged. He stated that he has dealt with zonings and rezonings but has never before seen anything as capricious and arbitrary as this.

Once again the "question" was called for.

**REZONING (Continued)**

On motion of Councilwoman Rutherford, seconded by Councilman Rico,  
**AN ORDINANCE TO AMEND ORDINANCE NO. 6958, AS AMENDED,  
KNOWN AS THE ZONING ORDINANCE, SO AS TO REZONE THE REAR  
PORTION OF A TRACT OF LAND LOCATED AT 4803 BRAINERD ROAD,  
MORE PARTICULARLY DESCRIBED HEREIN, FROM C-2 CONVENIENCE  
COMMERCIAL ZONE TO C-5 NEIGHBORHOOD COMMERCIAL ZONE**  
passed second and final reading; **Councilmen Robinson and Pierce voted “no”.**

**AMEND ZONING ORDINANCE**

On motion of Councilman Rico, seconded by Councilwoman Rutherford,  
**AN ORDINANCE TO AMEND ORDINANCE NO. 6958, AS AMENDED,  
KNOWN AS THE ZONING ORDINANCE, BY AMENDING ARTICLE V,  
SECTION 406, MIXED USE ZONE (MXU), BY ADDING LANGUAGE TO  
SUBSECTION (3) RELATIVE TO AREA REQUIREMENTS AND DELETING  
SUBSECTION (17)(K) RELATIVE TO PROCESS**  
passed first reading.

**AMEND ZONING ORDINANCE**

**Councilmen Rutherford and Rico made the motion and second to approve this ordinance on first reading.**

City Attorney Nelson stated that he wanted everyone to know that he made one amendment to the ordinance in their books to make the ordinance effective immediately upon adoption rather than two weeks from its passage.

Councilman Benson stated that this came before the Legal and Legislative Committee without the change and since then there have been some meetings with various groups and attorneys. He suggested adoption on first reading and “fine tuning” the ordinance in Committee next week at 3 p.m.

Phil Noblett, Special Counsel in the City Attorney’s Office, stated he and Atty. St. Charles have been working during the week to make certain revisions and suggestions have been made in two different ordinances as a result of that. He stated discussion on Mr. St. Charles’ draft would be held in Committee prior to final reading.

**AMEND ZONING ORDINANCE (Continued)**

Atty. St. Charles stated that he was present on behalf of Check Into Cash and noted that they do have a fundamental problem with the ordinance that needs to be discussed as long as there is an opportunity to fully and appropriately discuss it in Committee and they are willing to do that.

Justin Hosie was present on behalf of Title Max and other title companies and expressed agreement to meet next week to discuss the state law and other issues at that time.

Atty. Hal North expressed agreement also to work the matter out in Committee next week.

At this point Councilman Benson "called for the question".

On motion of Councilwoman Rutherford, seconded by Councilman Rico,  
**AN ORDINANCE TO AMEND ORDINANCE NO. 6958, AS AMENDED, KNOWN AS THE ZONING ORDINANCE, BY AMENDING CERTAIN SECTIONS OF ARTICLE II, ARTICLE V, AND ARTICLE VII, SECTION 107, RELATIVE TO THE LOCATION OF ALTERNATIVE FINANCIAL SERVICES WHICH INCLUDE DEFERRED PRESENTMENT SERVICES, TITLE PLEDGE LENDERS, AND PAWNBROKERS, AS DEFINED HEREIN**

passed first reading.

**CLOSE AND ABANDON**

**MR-2006-099: CBL & Associates, Shumaker, Witt, Gaither & Whitaker**

Councilman Rico stated this request is recommended for approval by the Public Works Committee.

On motion of Councilman Rico, seconded by Councilwoman Rutherford,  
**AN ORDINANCE CLOSING AND ABANDONING A PORTION OF A SEWER LINE LOCATED AT 2200 HAMILTON PLACE BOULEVARD, MORE PARTICULARLY DESCRIBED HEREIN AND AS SHOWN ON THE MAPS AND DRAWINGS ATTACHED HERETO AND MADE A PART HEREOF BY REFERENCE, SUBJECT TO CERTAIN CONDITIONS**

passed first reading.

## RIGHT-OF-WAY NAME CHANGE

### **2006-117: Mt. Canaan Baptist Church**

Pursuant to notice of public hearing, the request of Mt. Canaan Baptist Church to change the right-of-way name of the 2500 block of Boone Street to Melvin Jordan Drive came on to be heard.

A representative for the applicant was present.

Councilwoman Robinson asked if the honoree is deceased. The response was "no".

Councilman Benson stated that this request came before Planning and that question was asked and the honoree is very much alive and active. He stated that he explained to him at the time that the Council generally, and he personally, has not acted on anything for anyone while they are still alive. He stated the Council has had bad experiences in the past and had to take the name off of a building; that naming something after someone can be tenuous and a lot of problems can come from it. He stated that he intends to vote against this and there is no disrespect intended.

Councilwoman Rutherford stated that she thought the Council had a policy along the lines that Councilman Benson spoke of and asked if the Council adopted a policy.

City Attorney Nelson stated that there is not a written policy; that it certainly has been a long standing unwritten policy of the Council. He stated he can prepare a resolution for next week.

Councilwoman Rutherford expressed appreciation for City Attorney Nelson to do so and noted that she hated to say that she agrees with Councilman Benson and would not be able to vote to approve this; that it certainly is not anything personal, just a philosophy.

Councilman Page echoed the sentiments of his colleagues and stated that he feels very uncomfortable in not supporting the renaming, but since he has been on the Council that has been the policy and (he) does not see any advantageous reason to change now.

Councilman Franklin stated since he has been on the Council he has done it himself and spoke for the motion. He asked the City Attorney what the difference is in the change of a street name and right-of-way.

## RIGHT-OF-WAY NAME CHANGE (Continued)

City Attorney Nelson responded that a street is a right-of-way; that it is called a street for the purpose of people going back and forth and includes the edges of sidewalks, as well, if a neighborhood is fortunate enough to have them.

Councilman Franklin inquired about the alternate version.

Jerry Pace, Director of Development Services with the Regional Planning Agency (RPA), stated there is a condition that this must be approved by the city traffic engineer to do signs, which is the only condition.

Councilman Franklin inquired as to how many would be affected.

Mr. Pace stated that the residences face the street and the church owns the rest of the property; that the church faces north on Chamberlain and there are three property owners.

Councilman Benson stated that he failed to say there was opposition at Planning and there is an expense to changing street names, as Washington Hills residents have found out. He stated that he does not know if the opposition is present as they were people who live on the street.

Chairman Pierce stated that he has to present his position as he has been approached several times since being on the Council about street name changes. He stated former Councilman Swafford asked for the renaming for Venus Lacy Parkway and that was done; that shortly afterward, Councilman Franklin wanted to get Usher Raymond Drive name and we did that. He stated what basically happens is Pandora's Box is opened when this is done and it has become a firm policy of this Council to not name a street after a living person. He stated after Usher Raymond Drive was named, Councilman Franklin wanted to present another to be named for the Impressions and it was beginning to be a continuous outbreak of naming streets. He stated with all respect to Rev. Jordan, he can not support this ordinance at this time and does not want anyone to think it is a white-black thing. He stated he is strongly objectionable to naming streets while people are still living. He stated Carl White came to him with tears in his eyes asking for a street to be named after him and after he passed he was able to get a street named after him. He stated Ted Bryant wanted a park named after him and after he passed that was done, also. He stated he would not change from his position.

**RIGHT-OF-WAY NAME CHANGE (Continued)**

Rev. Terna Jordan expressed appreciation to the expressions Council members shared. He stated Pastor Melvin Jordan has been the pastor of Mt. Canaan for the past forty years and noted it was strange for him to be standing before the Council because he is his son but he is not the one requesting this as they are the individuals he has served for the past forty years. He stated that he understands the position of the Council members and the expense and noted that they are not asking to rename a major thoroughfare as this is a block that the church owns about seventy percent of the land and the expense of changing a sign would not be that much as the church would be willing to do that or help the city and pay the price. He stated that we do have a Venus Lacy Parkway and an Usher Raymond Drive which was why he was surprised when he was told the Council does not name streets until after they are deceased. He stated Pastor Jordan has worked in the community and this city and was a way of recognizing him while he is alive and can still "smell the flowers" was the idea of the church to do so.

**Councilman Franklin** stated as a funeral home owner he is familiar with "smelling the flowers" while alive as there are certainly some scenarios; that he understands the sentiments of Council members. He stated he does not want to open the flood gates to name every street in the city for some person; that there is evidence all over the place, even in housing developments streets are named after board members, wives and those types of things all over the city. He stated he wanted to put a motion on the floor as he has had a long time friendship with the family and Pastor Jordan has made numerous contributions not only to the church but the city as a whole. He stated that he understands the circumstances in addition to where the church owns 70 to 80 percent of one block. At this point the **made the motion to approve on first reading; Councilwoman Gaines seconded the motion.**

On motion of Councilman Franklin, seconded by Councilwoman Gaines,  
**AN ORDINANCE TO CHANGE THE RIGHT-OF-WAY NAME OF THE 2500  
BLOCK OF BOONE STREET TO MELVIN JORDAN DRIVE, MORE  
PARTICULARLY DESCRIBED HEREIN AND AS SHOWN ON THE MAP  
ATTACHED HERETO AND MADE A PART HEREOF BY REFERENCE,  
SUBJECT TO CERTAIN CONDITIONS**

failed, on roll call vote:

Bennett	"No"
Benson	"No"
Franklin	"Yes"
Gaines	"Yes"
Page	"No"

**RIGHT-OF-WAY NAME CHANGE (Continued)**

Rico	"No"
Robinson	"No"
Rutherford	"No"
Pierce	"No"

**REZONING**

**2006-119: City of Chattanooga**

Pursuant to notice of public hearing, the request of the City of Chattanooga to rezone a tract of land located at 4267 Benton Drive came on to be heard.

There was no opposition in attendance.

Mr. Pace stated that is a piece of land left over in the R-2 zone and completes the surrounding M-1 zone. He stated approval is recommended from both Planning and Staff.

On motion of Councilwoman Robinson, seconded by Councilwoman Rutherford,

**AN ORDINANCE TO AMEND ORDINANCE NO. 6958, AS AMENDED, KNOWN AS THE ZONING ORDINANCE, SO AS TO REZONE PART OF A TRACT OF LAND LOCATED AT 4267 BENTON DRIVE, MORE PARTICULARLY DESCRIBED HEREIN, FROM R-2 RESIDENTIAL ZONE TO M-1 MANUFACTURING ZONE**

passed first reading.

**REZONING**

**2006-122: B. Paul Hatcher & Bambi L. Hatcher**

Pursuant to notice of public hearing, the request of B. Paul Hatcher and Bambi L. Hatcher to rezone a tract of land located at 1412 McCallie Avenue came on to be heard.

The applicant was present; opposition was in attendance.

## REZONING (Continued)

Mr. Pace stated this request is located in the Highland Park neighborhood fronting on McCallie Avenue. He stated the current zoning is C-5 and the request is for C-2 for a pizzeria to sell beer or alcoholic beverages. He stated Planning recommends approval with conditions that there be no adult oriented establishments except for sale of beer and alcohol. He stated the Staff supports the neighborhood plan adopted several years ago in the nineties that rezoned this area from C-2 to C-5 to help protect the neighborhood from such uses as being requested for the sale of alcohol. He stated the recommendation is for approval from Planning and denial from Staff.

Paul Hatcher, owner of the property, stated that he wants to put in a pizzeria subject to zoning approval. He stated so far he has not heard of opposition as there was no one at Planning. He stated the neighborhood association is in support and asked the Council for approval.

Fred Flint, a resident of Highland Park, was present on behalf of the neighborhood association. He stated the association is in favor of this ordinance and had a letter stating so. He stated he is a new resident and invested in this neighborhood and it is good to see momentum happening in the area; that this is the commercial investment they were looking for.

Chairman Pierce asked how long Mr. Flint has lived in the Highland Park area.

Mr. Flint responded, "About a year".

Judith Schorr of 502 Union Avenue stated that she has been a member of the Highland Park Association since 1990 and asked if the Council could delay the vote so the neighborhood could be better informed of this decision. She stated the decision came from the Board and the neighborhood itself was not made aware of this; that this is in conflict with the neighborhood plan and they have always been opposed to spot zoning. She stated they worked very hard on McCallie from the 1300 block forward in the late nineties and into early 2000 to get C-5 zoning. She stated that she personally visited every business with Jerry Pace and it was quite a challenge; that they met with several business owners and were very pleased with the C-5 zoning. She stated they have grown as a neighborhood and implemented their plan the neighborhood, county and city approved; that it has been so exciting to see the progress they have made. She stated they want to encourage a lot of business in the McCallie Shops, as they call them, and they do want a pizzeria, but when it calls for any kind of alcohol as a neighborhood they shy away from that. She again asked that the matter be tabled so it could be discussed openly before the neighborhood association to make a more informed decision.

## REZONING (Continued)

Mr. Hatcher stated with respect to Mrs. Schorr, this is the first opposition he has heard. He stated this is not spot zoning adding that C-2 zoning is all up and down McCallie; that these particular two blocks have some C-5 and C-2 and across the street is M-1 used by the Electric Power Board. He stated that he passed up a 24-hour Laundromat and there is an upscale hair salon, the Deli Man and Cake Lady Restaurant, a Pilates fitness center and Aunt Sue's K-9 Bakery. He stated he could not see a pizzeria without there being beer and alcohol. He stated that he was sorry he did to go to Mrs. Schorr's door, otherwise he would have. He stated as far as tabling, he would like to have approval and does not want to lose the tenant.

Councilman Benson stated at Planning there was no opposition; that this is similar to the type of setup on Frazier Avenue and is something people wanted. He stated he was surprised to see opposition and suggested that the matter pass first reading.

**Councilmen Benson and Rico made the initial motion and second to approve this request on first reading.**

Chairman Pierce stated that he recalled the Highland Park Association and how they came to get the zoning and how they went to each business individually. He stated the zoning did change and all agreed with what the neighborhood association was trying to do. He stated Councilman Hakeem worked hard and worked with the neighborhood, which is one of the hardest working neighborhoods we have in the city! He stated that he supports the neighborhood to allow a time for them to meet with the developer; that he is not in favor of passing things on first reading as it is almost a sign of a "go ahead". He asked that the Council slow down and pass it one week.

Mr. Pace stated that the neighborhood meeting is scheduled for July 20 at 7 p.m.

**Councilwoman Gaines made the motion to defer the matter two weeks** to allow the neighborhood association and others time to get together; **Councilwoman Rutherford seconded the motion.** She stated that she plans to be in attendance at the meeting, as well.

**REZONING (Continued)**

On motion of Councilwoman Gaines, seconded by Councilman Rutherford,  
**AN ORDINANCE TO AMEND ORDINANCE NO. 6958, AS AMENDED,  
KNOWN AS THE ZONING ORDINANCE, SO AS TO REZONE A TRACT OF  
LAND LOCATED AT 1412 MCCALLIE AVENUE, MORE PARTICULARLY  
DESCRIBED HEREIN, FROM C-5 NEIGHBORHOOD COMMERCIAL ZONE  
TO C-2 CONVENIENCE COMMERCIAL ZONE, SUBJECT TO CERTAIN  
CONDITIONS**  
was tabled two weeks (July 25).

**REZONING**

**2006-124: Linda C. Herrick**

Pursuant to notice of public hearing, the request of Linda C. Herrick to rezone a tract of land located at 7321 Townsend Road came on to be heard.

The applicant was not present; there was no opposition in attendance.

Mr. Pace stated this request is located in the East Brainerd area long Jenkins Road. He stated the property has no public access to a public road only access by easement; that Jenkins is a narrow, heavily traveled road with homes facing Jenkins. He stated the Staff reviewed the matter and made the recommendation along with Planning to deny.

On motion of Councilwoman Rutherford, seconded by Councilman Rico,  
**AN ORDINANCE TO AMEND ORDINANCE NO. 6958, AS AMENDED,  
KNOWN AS THE ZONING ORDINANCE, SO AS TO REZONE A TRACT OF  
LAND LOCATED AT 7821 TOWNSEND ROAD, MORE PARTICULARLY  
DESCRIBED HEREIN, FROM R-2 RESIDENTIAL ZONE TO R-4 SPECIAL  
ZONE**  
was denied.

**REZONING**

**2006-125: DeFoor Brothers Development, LLC**

Pursuant to notice of public hearing, the request of DeFoor Brothers Development, LLC to rezone a tract of land located at 2310 Timberlane Trail came on to be heard.

**REZONING (Continued)**

The applicant was present; there was no opposition in attendance.

Mr. Pace stated Planning and Staff recommend approval.

On motion of Councilwoman Rutherford, seconded by Councilman Rico,  
**AN ORDINANCE TO AMEND ORDINANCE NO. 6958, AS AMENDED,  
KNOWN AS THE ZONING ORDINANCE, SO AS TO REZONE A TRACT OF  
LAND LOCATED AT 2310 TIMBERLANE TRAIL, MORE PARTICULARLY  
DESCRIBED HEREIN, FROM O-1 OFFICE ZONE TO MXU MIXED USE  
ZONE**

passed first reading.

**REZONING**

**2006-126: DeFoor Brothers Development, LLC**

Pursuant to notice of public hearing, the request of DeFoor Brothers Development, LLC to rezone a tract of land located at 2415 Elam Lane came on to be heard.

The applicant was present; there was no opposition in attendance.

Mr. Pace stated both Planning and Staff recommend approval.

On motion of Councilman Benson, seconded by Councilman Franklin,  
**AN ORDINANCE TO AMEND ORDINANCE NO. 6958, AS AMENDED,  
KNOWN AS THE ZONING ORDINANCE, SO AS TO REZONE A TRACT OF  
LAND LOCATED AT 2415 ELAM LANE, MORE PARTICULARLY DESCRIBED  
HEREIN, FROM MXU MIXED USE ZONE TO C-4 PLANNED COMMERCE  
CENTER ZONE**

passed first reading.

**REZONING**

**2006-133: Jerry Hagan**

Pursuant to notice of public hearing, the request of Jerry Hagan to rezone tracts of land located at 2409 and 2415 Jenkins Road came on to be heard.

The applicant was present; there was no opposition in attendance.

**REZONING (Continued)**

Mr. Pace stated that this request is located along Jenkins Road for single lot detached housing on zero lot lines. He stated both Planning and Staff recommend approval.

On motion of Councilman Benson, seconded by Councilwoman Rutherford,  
**AN ORDINANCE TO AMEND ORDINANCE NO. 6958, AS AMENDED, KNOWN AS THE ZONING ORDINANCE, SO AS TO REZONE TRACTS OF LAND LOCATED AT 2409 AND 2415 JENKINS ROAD, MORE PARTICULARLY DESCRIBED HEREIN, FROM R-1 RESIDENTIAL ZONE TO R-T/Z RESIDENTIAL TOWNHOUSE/ZERO LOT LINE ZONE**  
passed first reading.

**REZONING**

**2006-136: Cowart Holdings c/o Diana Van Cleave**

Pursuant to notice of public hearing, the request of Cowart Holdings c/o Diana Van Cleave to rezone a tract of land located at 1405 Cowart Street came on to be heard.

The applicant was present; there was no opposition in attendance.

Mr. Pace stated this location is the former little green house that was located across from the Southside Grill. He stated both Planning and Staff recommend approval.

On motion of Councilwoman Robinson, seconded by Councilwoman Rutherford,  
**AN ORDINANCE TO AMEND ORDINANCE NO. 6958, AS AMENDED, KNOWN AS THE ZONING ORDINANCE, SO AS TO REZONE A TRACT OF LAND LOCATED AT 1406 COWART STREET, MORE PARTICULARLY DESCRIBED HEREIN, FROM M-1 MANUFACTURING ZONE TO C-3 CENTRAL BUSINESS ZONE, SUBJECT TO CERTAIN CONDITIONS**  
passed first reading.

## REZONING

### **2006-138: City of Chattanooga**

Pursuant to notice of public hearing, the request of the City of Chattanooga to rezone tracts of land located in the 5500 block of Miller Drive came on to be heard.

There was no opposition in attendance.

Mr. Pace stated this request is located near Eastgate and was one of the major cut throughs for entrance to Eastgate. He stated with WalMart and the other commercial uses and Eastgate being an office complex once again the area is heavily traveled and the homes are no longer conducive for residential use and are more suited for office or some other use so residents could sell their properties and benefit from them. He stated the recommendation for approval comes from both Planning and Staff.

Councilwoman Rutherford stated this matter has been discussed with Planning, as well as principals of Eastgate and Henry Lukens.

On motion of Councilwoman Rutherford, seconded by Councilman Franklin,  
**AN ORDINANCE TO AMEND ORDINANCE NO. 6958, AS AMENDED,  
KNOWN AS THE ZONING ORDINANCE, SO AS TO REZONE TRACTS OF  
LAND LOCATED IN THE 5500 BLOCK OF MILLER DRIVE, MORE  
PARTICULARLY DESCRIBED HEREIN, FROM R-1 RESIDENTIAL ZONE TO R-  
4 SPECIAL ZONE**

passed first reading.

## CONTRACT

On motion of Councilwoman Rutherford, seconded by Councilman Benson,  
**A RESOLUTION AUTHORIZING THE AWARD OF CONTRACT NO. W-06-  
002-201, CITY LANDFILL AT BIRCHWOOD, AREA 3, PHASE 1 LINER, TO  
WRIGHT BROTHERS CONSTRUCTION COMPANY, INC. IN AN AMOUNT  
NOT TO EXCEED NINE MILLION THREE HUNDRED FORTY-TWO  
THOUSAND FOUR HUNDRED FIVE AND 73/100 DOLLARS  
(\$9,342,405.73), SUBJECT TO COUNCIL APPROPRIATION OF FUNDS**

was adopted.

**AGREEMENT**

On motion of Councilwoman Rutherford, seconded by Councilman Rico,  
**A RESOLUTION AUTHORIZING THE ADMINISTRATOR OF THE DEPARTMENT OF EDUCATION, ARTS & CULTURE TO EXECUTE AN AGREEMENT WITH EASTGATE TOWN CENTER, LLC FOR A TEMPORARY USE OF CERTAIN FACILITIES LOCATED AT 5600 BRAINERD ROAD, EASTGATE TOWN CENTER, CHATTANOOGA, TN 37411, FOR THE OPERATION OF THE EASTGATE SENIOR ACTIVITIES CENTER**  
was adopted.

**FUNDING AGREEMENT**

On motion of Councilman Rico, seconded by Councilman Franklin,  
**A RESOLUTION AUTHORIZING THE MAYOR OF THE CITY OF CHATTANOOGA TO ENTER INTO AND EXECUTE A PLANNING FUNDING AGREEMENT WITH NEXTEL OPERATIONS, INC. FOR THE PLANNING PHASE OF THE 800 MHZ RECONFIGURATION AS ORDERED BY THE FEDERAL COMMUNICATIONS COMMISSION (FCC) TO BE COMPLETED BY NEXTEL**  
was adopted.

**FUNDING AGREEMENT**

On motion of Councilwoman Rutherford, seconded by Councilman Franklin,  
**A RESOLUTION AUTHORIZING THE MAYOR OF THE CITY OF CHATTANOOGA TO ENTER INTO AND EXECUTE A RECONFIGURATION PLANNING PHASE AGREEMENT WITH MOTOROLA, INC. FOR THE PROVISION OF PLANNING PHASE SERVICES OF THE 800 MHZ RECONFIGURATION**  
was adopted.

**ACCEPT DONATION**

On motion of Councilwoman Rutherford, seconded by Councilman Franklin,  
**A RESOLUTION ACCEPTING THE DONATION OF ONE (1) LIFEPAK 10 CARDIAC MONITOR DEFIBRILLATOR TO THE CHATTANOOGA FIRE DEPARTMENT FROM MEMORIAL HOSPITAL**  
was adopted.

**AGREEMENT**

On motion of Councilwoman Rutherford, seconded by Councilman Franklin,  
**A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO AN AGREEMENT WITH THE TENNESSEE DEPARTMENT OF TRANSPORTATION (TDOT) RELATIVE TO FEDERAL PROJECT NO. BR-STP-2-(71) AND STATE PROJECT NO. 33010-2228-94, SR-2 (LEE HIGHWAY) BRIDGE AND APPROACHES OVER CSX RAILROAD AT LM 16.10**  
was adopted.

**SIGNATURE AUTHORIZATION**

On motion of Councilman Franklin, seconded by Councilwoman Rutherford,  
**A RESOLUTION AUTHORIZING ANTHONY O. SAMMONS, DEPUTY ADMINISTRATOR OF THE DEPARTMENT OF NEIGHBORHOOD SERVICES, TO SIGN VOUCHERS, REQUISITIONS AND OTHER NECESSARY DOCUMENTS FOR AND ON BEHALF OF THE DEPARTMENT EFFECTIVE JULY 12, 2006**  
was adopted.

**PRELIMINARY PUD**

**2006-130: Kluting & Wolfe Construction, LLC**

On motion of Councilman Rico, seconded by Councilman Franklin,  
**A RESOLUTION APPROVING A PRELIMINARY PLANNED UNIT DEVELOPMENT SPECIAL EXCEPTIONS PERMIT FOR A PROPOSED PLANNED UNIT DEVELOPMENT, KNOWN AS THE WEBB ROAD RESIDENTIAL PLANNED UNIT DEVELOPMENT, ON TRACTS OF LAND LOCATED IN THE 4500 BLOCK OF WEBB 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.

**PRELIMINARY PUD**

**2006-134: ABT Properties/Aaron Smith**

The applicant was present; there was no opposition in attendance.

**PRELIMINARY PUD (Continued)**

On motion of Councilman Rico, seconded by Councilwoman Rutherford,  
**A RESOLUTION APPROVING A PRELIMINARY PLANNED UNIT DEVELOPMENT SPECIAL EXCEPTIONS PERMIT FOR A PROPOSED PLANNED UNIT DEVELOPMENT, KNOWN AS SOUTHERNWOOD VILLAGE PLANNED UNIT DEVELOPMENT, ON TRACTS OF LAND LOCATED AT 1700 AND 8600 PETTY 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.

**QUITCLAIM DEED**

On motion of Councilman Rico, seconded by Councilman Franklin,  
**A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE A QUITCLAIM DEED TO TRANSFER CERTAIN REAL PROPERTY LOCATED AT 2213 BENNETT AVENUE, TAX MAP NO. 146N-Y-008, TO THE CHATTANOOGA COMMUNITY HOUSING DEVELOPMENT ORGANIZATION, INC.,**  
was adopted.

**OVERTIME**

Overtime for the weeks ending June 30, 2006 (\$10,898.20) and July 7, 2006 (\$92,675.27) totaled \$103,573.47.

**PERSONNEL**

The following personnel matters were reported for the various departments:

**PUBLIC WORKS DEPARTMENT:**

- **WARREN MINES** – Lateral Transfer, Crew Worker, Stormwater, Pay Grade 11/Step 3, \$28,988.00 annually, effective June 21, 2006.
- **BARRY J. CHILDRESS** – Family Medical Leave, Crew Worker, City Wide Services, effective June 26 – September 18, 2006.
- **CEDRIC L. NEAL** – Suspension (12 days without pay), Equipment Operator, effective June 1 – 20, 2006.

## PERSONNEL (Continued)

### CHATTANOOGA FIRE DEPARTMENT:

- **GEORGE RATLEDGE, JR.** – Leave Without Pay (FMLA expired), effective June 21-July 21, 2006.
- **ROBERT LAMAR HENRY** – Retirement, Captain, effective July 7, 2006.
- **RONALD JONES** – Retirement, Captain, effective July 7, 2006.

### PARKS AND RECREATION DEPARTMENT:

- **DAN KRAL** – Resignation, Director of Parks, effective July 6, 2006.

### NEIGHBORHOOD SERVICES DEPARTMENT:

- **ANJANET BROWN** – Hire, Code Enforcement Inspector, Pay Grade 11/Step 1, \$27,194.00 annually, effective July 5, 2006.

### CHATTANOOGA POLICE DEPARTMENT:

- **STONEY MORTON** – Resignation, Police Officer, effective July 6, 2006.
- **SANYA G. SHAFFER** – Voluntary Demotion, Police Records Clerk, Sr., Pay Grade 5/Step 1, \$20,000.00 annually, effective July 7, 2006.
- **JAMES T. CARROLL, BOBBY K. RODGERS** – Promotion, Lieutenant, Pay Grade P3/Step 7, \$54,613.00 annually, effective July 21, 2006.
- **SHAWN L. HICKEY, DAVID T. RODDY** – Promotion, Lieutenant, Pay Grade P3/Step 3, \$46,296.00 annually, effective July 21, 2006.
- **EDWIN D. MCPHERSON** – Promotion, Lieutenant, Pay Grade P3/Step 4, \$48,376.00 annually, effective July 21, 2006.
- **DAVID T. WOOSLEY** – Promotion, Lieutenant, Pay Grade P3/Step 6, \$52,534.00 annually, effective July 21, 2006.

**PERSONNEL (Continued)**

- **JAMES A. BLANTON, BRYAN S. CHURCHWELL, TIMOTHY F. COMMERS, MARCUS S. EASLEY, JEROME M. HALBERT, JAMES P. HEADDEN, KEVIN D. KINCER, RANDALL B. NOORBERGEN, REBECCA S. SHELTON** – Promotion, Sergeant, Pay Grade P2/Step 5, \$44,150.00 annually, effective July 21, 2006.
- **JONATHAN R. CHAMBERS, JERRI A. (SUTTON) WEARY** – Promotion, Sergeant, Pay Grade P2/Step 2, 438,702.00 annually, effective July 21, 2006.
- **CRAIG W. JOEL** – Promotion, Sergeant, Pay Grade P2/Step 3, \$40,518.00 annually, effective July 21, 2006.
- **ROBERT J. LEWIS** – Promotion, Sergeant, Pay Grade P2/Step 4, \$42,335.00 annually, effective July 21, 2006.
- **TONYA A. RANSOM** – promotion, Sergeant, Pay Grade P2/Step 2, \$36,886.00 annually, effective July 21, 2006.

**PURCHASE**

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

**CHATTANOOGA TIMES FREE PRESS** (Only source)

Publication of Leisure Guide Supplement and printing

\$13,140.19

**HOTEL PERMITS**

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

**LAMAR'S** – 1020 East M. L. King Boulevard, Chattanooga, TN

**CLARION HOTEL** – 407 Chestnut Street, Chattanooga, TN

**BOARD APPOINTMENTS**

On motion of Councilman Rico, seconded by Councilman Franklin, the following board appointments were approved:

**HISTORIC ZONING COMMISSION:**

- Appointment of ***WILLIAM STUART WOOD*** for a five year term expiring May 1, 2011.
- Appointment of ***MARY BARNETT*** for a five year term expiring May 1, 2011 representing District 7.

**PURCHASES**

On motion of Councilwoman Rutherford, seconded by Councilman Rico, the following purchases were approved for use by the Mayor’s Office:

**METRO SERVICE (Lowest and best bid)**  
**R0091017/B0003331**

HVAC Unit, Wellness Clinic II for Personnel

\$22,336.00

**BEST ONE TIRE OF CHATTANOOGA (Lowest and best bid)**  
**R0089466/B0003166**

Tires, Fleet Maintenance, Div. II

\$40,432.49

**AARON’S PEST CONTROL (Lowest and best bid)**  
**R0088810/B0003279**

City Wide Pest Control

\$25,000.00

## NORTH RIVER TOWN HALL MEETING

Councilman Page announced that a town hall meeting would be held on July 24 at 5:30 p.m. at the North River Civic Center. He noted persons involved include the Mayor and city staff and that all Council members are invited. He stated he and Councilwomen Bennett and Robinson would be in attendance and asked everyone to place this on their calendars.

## COMMITTEES

Councilman Benson scheduled a meeting of the **Legal and Legislative Committee for Tuesday, July 18 at 3 p.m.**

Councilman Franklin scheduled a **Safety Committee meeting for Tuesday, July 25 at 3:30 p.m.**

Councilwoman Rutherford reminded Council members of the **Arts and Education Committee meeting scheduled for Tuesday, July 18 at 4 p.m.** to hear an update from Allied Arts.

A meeting of the **Parks and Recreation Committee was scheduled for Tuesday, July 18 immediately following the meeting of the Arts and Education Committee.**

**(Councilman Rico excused himself from the meeting at this point.)**

## BOB STANLEY

Bob Stanley stated that he spent 22 years as a fireman and police officer with the City and went on a medical disability pension in 1988 from the department. He stated at that time he appeared before the pension board and was told his pension would be taxed as if he were working a job and he had to pay the taxes. He stated that he was sent the 1099 forms and has been paying taxes for nearly eighteen years. He stated that he received a letter in May from the pension board and an IRS letter that noted that his pension should not have been taxed all those years; that thousands and thousands of dollars have been deducted not only from his check but others who retired on disability pension. He stated that he went to the pension board and asked for the names of other disabled firemen and was refused this information.

### **BOB STANLEY (Continued)**

Mr. Stanley stated the letter from the IRS was dated back sometime in March but he did not get it until May 10; that it looks like someone is trying to cover their tracks! He stated that he does not believe this was done intentionally, but the Pension Board has millions of dollars that the firemen and policemen in the city have contributed. He stated he should have been given the information he requested; that he is not speaking just for himself but for the other people who are in the same "boat".

City Attorney Nelson stated that Mr. Stanley's matter is one that the Council has no jurisdiction over; that it is solely between him and the pension board. He stated that this pension change was early in the nineties, as he recalled. He reiterated that this is a matter under which this body (Council) has no authority or jurisdiction. He stated it is a matter Mr. Stanley would have to discuss with the Pension Board and if they are not cooperative, he suggested that he speak with his own attorney to see what can be done.

Mr. Stanley stated there are three firemen, three policemen and a city representative on the pension board and he and others should have been informed that their pensions should not be taxed.

Chairman Pierce suggested that Mr. Stanley talk with an attorney.

Mr. Stanley noted that he has talked with some but they are not willing to take the case. He stated this issue is being mishandled and it has cost him many thousands of dollars as he and his wife have filed jointly over the years.

Chairman Pierce stated that he would ask someone from the pension board to come in and explain to the Council what is going on in this matter

Mr. Stanley again noted that he had requested the names of the other firemen and policemen on disability and was refused.

Deputy Chief Randy Herron stated that the confidentiality issue is probably why the names were not released.

Chairman Pierce stated that the Safety Committee would meet in two weeks and a report from the pension board could be given at that time.

## CYNTHIA CASH

Cynthia Cash expressed concern about the old cemetery in district five that is located on Talley Road that is known as the Rogers Family Cemetery. She stated that she has information about the cemetery and is concerned about what is going on; that she is not certain whether it is being cleaned up as trees are being clear cut. She stated that she wondered if there is a plan to build on it.

Councilman Franklin stated that nothing can be built on a cemetery; that they might be clearing brush.

Mrs. Cash stated that a house has been built on the corner and she did not know if the markers were going to be bulldozed.

Councilman Franklin stated that he would check to see what the boundaries are; that the person who built the house might be trying to subdivide to see if he could get legal lots and might be trying to build another house or two on that property.

Mrs. Cash stated that the last burial was in 1896 and she would really hate to see the cemetery destroyed.

Councilman Franklin asked the City Attorney if he were correct in thinking that any legal cemetery of any sort, whether family or otherwise, has to be registered through the state and can not be disturbed.

City Attorney Nelson responded "correct" and noted that it is a good thing it is being cleaned up.

## TIMOTHY CRANE

Timothy Crane stated that he is a vendor on the riverfront and referenced the change in zoning for the property by the Walnut Street Bridge. He expressed concern about what he has heard wherein it has been stated that all the vendors would be done away with and wanted to know exactly what is going on.

City Attorney Nelson stated that there was a transfer of property of administration from the city to the Friends of the Festival; that a lease had been entered into with Mr. Crane to provide vending at three different locations for which \$50 was paid for each location.

### TIMOTHY CANE (Continued)

City Attorney Nelson stated the problem with it is the City Council has already passed an ordinance that indicates vending cannot be done there so the Friends of the Festival could not legally lease that to him (Crane). He stated there is one provision in the contract lease agreement that says either party may cancel at any time so it is thought the proper thing would be to revisit the zoning and return the check to Mr. Cane as it was made out to Friends of the Festival and not the city, anyway. He stated that he received information this afternoon at a quarter of six and will be working on preparing an ordinance that will be brought to the Council if Councilwoman Robinson can get another vote next week. He stated he cannot tell what it will say as he has to look at the information he has been given.

Mr. Crane stated that this is what he does for a job and all who showed up this weekend were put on hold; that this is how he pays his bills.

City Attorney Nelson stated that it is his thought Mr. Cane was previously in an area where he was permitted to be on the Walnut Street Bridge which is an area where vending is prohibited so he can continue there. He stated as to the other two locations it is his belief they are in a prohibited area.

Chairman Pierce asked Mr. Crane to come to the Legal and Legislative Committee meeting next week and have the matter clearly "ironed out".

Mr. Crane stated when he received the contract he invested thousands in stands as he thought the contract was legal and understood they could cancel as long as he did a good job.

Chairman Pierce stated the matter would be discussed in committee next week.

### CHARLES PAYNE

Charles Payne, President of the Washington Hills Neighborhood Association, stated that they have an issue before the Council; that the neighborhood association has a covenant they have been trying to work on and he wanted to address some issues that have developed over the last two years. He stated they are now facing another subdivision and inquired about an ordinance and how it affects them where there is subdivision of a plat where several lots are made out of that plat involving an issue on Irvin Road. He stated what has happened is that they were told that any subdivision of any lot would be subject to the smallest house in the neighborhood; that they now have three lots that are being duly processed as the lots seem to get smaller than the smallest house.

### CHARLES PAYNE (Continued)

Mr. Payne stated there is a duality effect where they have heard about the name changing of the street and are looking at addresses being changed pursuant to this issue regarding the subdivision; that it probably would not have happened if the subdivision had not occurred.

Mr. Payne referenced a letter from the previous property owner and noted that he did not know if they were "duped" to the point that he was told only two houses would be on the property; that there are a lot of contractors coming in getting "under the wire" with a sixty foot frontage as long as they meet the setback requirements. He stated under the guise of buying property he is not sure if it has been said this person would reside in the area as a resident rather than a commercial venture for profit by dividing three parcels to make a profit and then making it smaller than any lot. He stated they have been before the Council and most recently the Public Works Committee and the previous property owner, Lewis McDonald, said he did not agree to this. He stated that the Association has a restrictive covenant that prohibits any house or lot to be less than 100 feet; that he knows the city's ordinance says sixty feet, yet they want to have 100 feet. He asked if they could be allowed to speak before the Legal and Legislative Committee or be placed on the Council's agenda as they want to be heard on this major issue.

At this point, Chairman Pierce noted that Mr. Payne's three minute speaking time was up.

Councilman Franklin asked if it were possible more time could be allowed as they want it to be known this is a situation happening all over the city and it seems that Washington Hills is being targeted. He stated that he spoke with Jerry Pace about possible remedies that could be explored such as having a moratorium on those parcels of land that would be subject to this type of happening in the neighborhoods or communities. He stated an acre lot is being subdivided into three lots which is the crux of the problem and they are trying to figure out if there is some way a moratorium could be placed on those parcels of land that are in established subdivisions that would undermine the character of the neighborhood and depreciate the value of homes. He stated he would like to research with the City Attorney to see what remedies could be put in place to cease and desist that type of development as these practices are happening all over the city at-large and everyone has been subject to this at one time or another. He stated he would like to get clarification for the Washington Hills residents as to what ramifications or legal bounds they have as it relates to subdivision covenants and the issue about the size of a lot of least.

### **CHARLES PAYNE (Continued)**

City Attorney Nelson stated as to the size of the lots, this is in an area that has been renewed and a minimum of 7,500 square feet is all the city can enforce. He stated they (Washington Hills residents) approached the city about putting a moratorium on those buildings on the property and quoted from a decision of the U.S. Supreme Court in 1987 regarding the beneficial use of property. He stated if there are valid subdivision covenants that would be the route that should be followed.

Councilwoman Rutherford stated that she spoke with Henry Yankowski and reminded him two-to-three months ago this had come up in committee, particularly the part about no lot should be smaller than the smallest existing lot; that he said he had done research on it and the reason he had not brought it back was because some property owner on Swann Road was interested in selling and dividing. She stated that she would ask him to go ahead and get something prepared if this could be added to the Legal and Legislative Committee meeting and hopefully we can entertain something as far as infill housing goes.

Councilman Franklin stated Mr. Yankowski has prepared a plat for the neighborhood association in order to see the actual size of the lots that has been passed on to Mr. Payne. He stated some developers who are looking to make a dollar will take the property and subdivide it; that persons could be "bamboozled".

### **PEARL BROGDON**

Pearl Brogden of Irvin Road stated that she knows Mr. McDonald and noted that he did sell his property to a builder who assured him they were going to do two 100 foot lots. She stated once they got his (McDonald's) signature they did what they wanted to do. She stated that he knows about the covenant and their covenant does stand.

City Attorney Nelson stated that he has not seen the covenant and if they have a legal covenant they need to contact an attorney to get him to bring it to the attention of the owner of the lot.

Ms. Brogden stated that she has talked to the owner but he has said he has signed the papers and was going to build two houses; that Mr. McDonald has had a stroke. Chairman Pierce stated that it could be binding if it is not part of the deed.

City Attorney Nelson stated unless there is a valid covenant it could be.

**PEARL BROGDON (Continued)**

Councilman Benson suggested that the mater be taken to Chancery Court.

Councilman Franklin asked if the city or county would have jurisdiction.

City Attorney Nelson stated that all we can do is enforce our rules and regulations; that if they are not sufficient that is the purpose of the covenant that a lot of neighborhoods have. He stated all we can do is enforce the city's regulations.

**GARY STROUD**

Gary Stroud stated that his daughter is sixteen years old and a vendor at the end of the Walnut Street Bridge on the sidewalk where it is legal. He stated that he has a couple questions and noted after this year she would get a job elsewhere as there have been some difficulties this year. He asked why the contract was not bid out or did not go through the normal process.

City Attorney Nelson stated that it is assumed that it did.

Mr. Stroud stated no one knew anything about it and it was not recorded in the newspaper.

City Attorney Nelson assured Mr. Stroud that it will be in the future.

**ADJOURNMENT**

Chairman Pierce adjourned the meeting of the Chattanooga Council until Tuesday, July 18, 2006 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)**