

**AGENDA SESSION**  
**November 22, 2011**  
**3:00 p.m.**

Chairman Ladd called the meeting of the Agenda Session to order with Councilmen Benson, Gilbert, McGary, Murphy, Rico, Robinson and Scott present; Councilwoman Berz was absent due to personal commitment. City Attorney Michael McMahan and Council Clerk Carol O'Neal were also present.

Others present included Dan Johnson, Daisy Madison, Ron Swafford, Keith Reisman, Lee Norris, Steve Leach, Bill Payne, Richard Beeland, James Templeton, Jerry Stewart, Larry Zehnder and Dennis Malone.

Dan Johnson stated tonight's agenda calls for a special presentation from Human Services regarding their Head Start Program's receipt of the "Center of Excellence Award". He stated there are no final readings and only one **ordinance on first reading requesting a special exceptions permit.**

City Attorney McMahan stated last week the Council agreed to give Occupy Chattanooga an "up or down" vote as to whether they can occupy a city park; that this is the first step in order to occupy a city park and not be in violation of various sections of the *Code*. He stated this is a special exceptions procedure whereby the Council could authorize them to be there after 11 p.m. or authorize them to pitch a tent, but in doing so conditions would have to be set just as they are set on zoning matters when special zoning type situations arise. He stated if the Council is so inclined we could pass the ordinance and next week come back with a resolution with conditions; that this is the way he has drafted the ordinance.

Chairman Ladd asked if the conditions would be for any group requesting a permit. City Attorney McMahan stated he wrote it this way for Occupy Chattanooga or anyone who "comes down the pike" to have a uniform process and procedure for everyone.

Councilwoman Robinson stated she did not believe she has heard everything that needs to be said about it; that it worries her that we are establishing a precedent. She asked what would be the essence of this.

City Attorney McMahan responded "absolutely", that is the essence of this; that if the Council allows Occupy Chattanooga they will have to allow Al-Qaeda, for example, to do the same thing.

Councilwoman Robinson stated the Council has already spoken to this and asked if we need some sort of further articulation of what seems to be the prevailing opinion on the Council regarding camping in our parks.

City Attorney McMahan stated at the end of last week's meeting, Councilman McGary promised the folks a vote; that it was the consensus of the Council for him (McMahan) to prepare something for tonight to do that.

Councilman Gilbert stated the City Attorney “hit the nail on the head”; that he wants to get a clear understanding if we do this for this group, whether Nazis, Ku Klux Klansmen or whoever comes and asks we have to grant the same thing – correct.

City Attorney McMahan stated basically parks in general are considered public forums; that parks are available for any splinter group to come in and espouse whatever view they have. He stated the difference with Occupy Chattanooga is they do not want to honor our normal rules of the park, whereas most protest groups could march around the block and carry banners to espouse their views without pitching tents and staying all night; that Occupy is different in that way.

Councilman Gilbert stated they put up tents, too, and things of that nature. City Attorney McMahan responded “yes”; that if we open the parks up for that expressive activity it opens it up for anyone wanting to do the same thing.

Chairman Ladd stated if this is approved we could put conditions on the activities and limit what we would allow under a special permit for being in a park.

Councilman Benson stated it is his thought most know we were pleased with the way Occupy Chattanooga handled themselves down here and they were pleased with the way the police and all of us responded to their occupation. He stated he is through with special exceptions, not only for this one, but we have special exceptions for RPA zoning that is creating a lot of problems. He stated any other item for special exceptions creates problems and if we look at the history if we have normal rules that should be changed that ought to be changed, but to decide subjectively which ones deserve special exceptions is a bad “slippery slope” and he cannot support it.

Councilman Rico stated this began with zoning and it “opens a can of worms” that keeps on going; that it is not right to try to give certain people special exceptions and he cannot support it.

Councilman McGary clarified that he was approached and inquired as to the legal process for the Council to undertake to bring this to the agenda and he “walked” them through that. He stated they approached him at a Tuesday meeting and after being heard in committee thanked this body for following through on this work; that this is not his idea. He stated that he never promised Occupy we would put anything on the agenda; that the only promise was to walk them through the process. He stated were all in collective agreement to bring the matter to a “legal head” for a vote “up or down”. He expressed thanks to the Council for bringing the matter to some conclusion one way or another; that we have dealt with this concerning the legal end of it and if it passes or does not pass it will be brought to a conclusion.

Councilman Gilbert stated we have a special exceptions permit request coming tonight as the last Resolution on the agenda; that it is a matter that has been heard previously. He stated “Dickie” Hutsell and others did great work in putting in conditions as conditions make the difference and we can always revoke it.

Mr. Johnson stated **Resolutions (a) an Agreement with CARTA** to accept funds for management of the bicycle program for three years and was discussed in Legal and Legislative

Committee last week; **(b) a contract with Dillard Construction**, was discussed in Public Works last week with reference to Phase 2 of the River Street extension. He stated **(c)** is a Parks and Recreation matter involving **replacement of greens at the Brainerd Golf Course**; **(d) is for the Mayor to enter into a grant contract with TEMA** for the February 2011 severe storms; **(e) is for the Mayor to enter into a lease agreement with TDOT** for lease of property under the Market Street Bridge and **(f) is a request for a special exceptions permit** for Gwen Blackmon for use as a late night entertainment center.

#### **AGENDA: NOVEMBER 29, 2011**

Mr. Johnson stated there are no first reading for next week and noted **Resolutions (a), (b) and (c) would be discussed in next week's Public Works Committee** meeting. He stated **(d) is a special exceptions request for Occupy Chattanooga** and is related to the ordinance City Attorney McMahan talked about earlier; **(e) is a special exceptions permit** relating to late night entertainment at 6425 Lee Highway, the former Sam's Club property; and **(f) is to accept a donation from Brainerd Village** for land at Brainerd Village to be used for parking and green space.

Mr. Johnson stated there are no purchases or appointments for the evening.

#### **MINUTE APPROVAL**

**On motion of Councilman McGary, seconded by Councilman Gilbert, the minutes of the previous meeting were approved as published.**

The meeting was adjourned.