

**City Council Building
Chattanooga, Tennessee
November 19, 2002
6:00 p.m.**

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

PLEDGE OF ALLEGIANCE/INVOCATION

Following the Pledge of Allegiance, Councilman Page gave invocation.

MINUTE APPROVAL

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

AMEND CITY CODE

On motion of Councilman Lively, seconded by Councilman Taylor,

AN ORDINANCE TO AMEND PART II, CHATTANOOGA CITY CODE, CHAPTER 24, ARTICLE IX, SECTION 24-271, RELATIVE TO TRAFFIC CONTROL DEVICES

passed second reading. On motion of Councilman Taylor seconded by Councilman Franklin, the Ordinance passed third and final reading and was signed in open meeting.

REZONING

2002-071: Volunteer Behavioral Health Care Systems

City Attorney Nelson stated this matter was discussed in today's Legal and Legislative Committee meeting and both parties have agreed to rezone subject to certain conditions. He stated the conditions have been transmitted to Tom Kale, Special Counsel, as he (Nelson) has recused himself.

REZONING (Continued)

City Attorney Nelson stated a contract is required between the neighborhood association and Johnson Mental Health and may take a little while to get the responsible parties on behalf of the neighborhood association. He stated the matter should be deferred one month (four weeks).

On motion of Councilman Benson, 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 413 SPRING STREET, MORE PARTICULARLY DESCRIBED HEREIN, FROM M-1 MANUFACTURING ZONE TO C-2 CONVENIENCE COMMERCIAL ZONE, SUBJECT TO CERTAIN CONDITIONS
was deferred four weeks.

REZONING

2002-155: Dale Rhea

On motion of Councilman Lively, seconded by Councilman Page,
AN ORDINANCE TO AMEND ORDINANCE NO. 6958, AS AMENDED, KNOWN AS THE ZONING ORDINANCE, SO AS TO REZONE A TRACT OF LAND LOCATED AT 4502 OAK HILL ROAD, MORE PARTICULARLY DESCRIBED HEREIN, FROM C-5 NEIGHBORHOOD COMMERCIAL ZONE TO C-2 CONVENIENCE COMMERCIAL ZONE, SUBJECT TO CERTAIN CONDITIONS
passed second reading. On motion of Councilman Hakeem, seconded by Councilman Lively, the Ordinance passed third and final reading and was signed in open meeting.

REZONING

2002-177: Marguerite W. Parker

On motion of Councilman Taylor, 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 3204 RIVERSIDE DRIVE, MORE PARTICULARLY DESCRIBED HEREIN, FROM M-1 MANUFACTURING ZONE TO R-1 RESIDENTIAL ZONE
passed second reading. On motion of Councilman Franklin, seconded by Councilman Taylor, the Ordinance passed third and final reading and was signed in open meeting.

REZONING

2002-187: David Andrew Bostain

On motion of Councilman Franklin, 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 16 INGLENOOK DRIVE, MORE PARTICULARLY
DESCRIBED HEREIN, FROM R-1 RESIDENTIAL ZONE TO R-4 SPECIAL
ZONE, SUBJECT TO CERTAIN CONDITIONS**

passed second reading; **Councilman Pierce voted "no"**. On motion of Councilman Taylor, seconded by Councilman Franklin, the Ordinance passed third and final reading and was signed in open meeting; **Councilman Pierce voted "no"**.

REZONING

2002-189: Susan and John Dever

On motion of Councilman Taylor, seconded by Councilman Franklin,
**AN ORDINANCE TO AMEND ORDINANCE NO. 6958, KNOWN AS THE
ZONING ORDINANCE, SO AS TO REZONE A TRACT OF LAND LOCATED
AT 3950 TENNESSEE AVENUE, MORE PARTICULARLY DESCRIBED HEREIN,
FROM R-3 RESIDENTIAL ZONE TO C-2 CONVENIENCE COMMERCIAL
ZONE, SUBJECT TO CERTAIN CONDITIONS**

passed second reading. On motion of Councilman Taylor, seconded by Councilman Franklin, the Ordinance passed third and final reading and was signed in open meeting.

AMEND CITY CODE

Councilman Benson stated this matter was discussed in the Legal and Legislative Committee for the previous two weeks and approval is recommended.

Councilman Taylor stated most entities listed within the body of the Ordinance are downtown and there is panhandling all over the city and the problem is not just in the downtown area. He asked if the Ordinance could be amended to add the Chattanooga African American Museum just up from Miller Park.

City Attorney Nelson stated the Museum is within the descriptive boundary and could be added.

AMEND CITY CODE (Continued)

On motion of Councilman Taylor, seconded by Councilman Franklin, the Ordinance was amended to add the African American Museum as part of the panhandling boundary.

City Attorney Nelson stated the Ordinance would be redrafted prior to second and third reading.

On motion of Councilman Benson, seconded by Councilman Franklin,
**AN ORDINANCE TO AMEND CHATTANOOGA PART II, CHATTANOOGA
CITY CODE, CHAPTER 25, ARTICLE I, BY ADDING A NEW SECTION 25-
45 RELATIVE TO PANHANDLING**
passed first reading.

CLOSE AND ABANDON

MR-2002-149: Judy E. Flemister

The applicant was present.

Chairman Littlefield stated this request is recommended for denial from the Planning Commission and Public Works Department.

James Eldridge spoke on behalf of his sister and the applicant, Judy Flemister. He stated that he, his sister and mother are property owners on Tremont Street and this application for closure involves abandoning the alley on Thompson Street, which has never been used or developed in any way. He stated the City has not kept up the alley for many years and has been in the subdivision plat since 1896 serving only as a sewer easement. He stated the application was originated by his sister who has a severe muscle disease; that his sister's property adjoins their mother's and closure of the alley would provide accessibility between the two residences and handicapped off street parking for her van.

Mr. Eldridge stated after filing for this application, they found out Tremont Properties wanted access to the alley to develop property owned on Thompson, which was very troubling as the alley is within six feet of his mother's kitchen, living and dining rooms. He stated this would be rental traffic and would involve more than one or two cars; that there are more than 10-15 cars on a daily basis and would be a nuisance, hazardous and would have a detrimental effect on current property value. He stated Tremont Properties has access to their properties from Thompson Street as everyone else who resides on Thompson.

CLOSE AND ABANDON (Continued)

Mr. Eldridge continued by stating no one else on Thompson accesses their property from Tremont and providing Tremont Property with this alley would be an injustice to current residential owners. He stated his family moved to Tremont Street in 1925, his mother is 77 years old and his sister has a legitimate need for the application; that what they are requesting is not unreasonable. He stated that he finds there is a conflict of interest between Bob McNutt, Tremont Properties and the Hamilton County Planning Commission and asked the Council to do what is right and close the alley. He stated that it came to his attention today that he does not have the votes needed to close this alley, which troubles him; that any member of the Council who has made up their minds before hearing the opposition is an injustice to the tax payers of the City of Chattanooga.

Chairman Littlefield stated that he does not know the minds of the other members of the Council; however, no votes have been counted on this issue that he knows of.

Bob McNutt stated that he is one of four partners with Tremont Street Properties and would like to correct a couple things Mr. Eldridge said. He stated that it is true he has lived on the street for a number of years but only recently bought the other two properties about fourteen months ago. He stated Tremont Properties purchased a lot five years ago on the upper street of substandard housing which was demolished with the intention of redeveloping at some time. He stated two years ago the lot was purchased immediately adjacent to the alley with the understanding this alley was open, unimproved, but a right-of-way. He stated to make any redevelopment possible he would need the alley open and it was bought with that understanding. He stated they do not wish to get into a quarrel with neighboring property owners. He stated with regard to the concern raised in regard to the need for handicap access for a ramp that could be done with the alley open; that he does not feel the abandonment would have any impact on that. He stated as far as being a part of the Planning Commission, he recused himself at every meeting and did not lobby anyone for this. He stated that it is hoped the Council would make a fair and impartial decision and abide by the recommendation from Planning and Public Works.

Councilman Benson stated this matter was thoroughly discussed at Planning and it is news to him that Mr. McNutt has any property here. He stated that he recalls he (McNutt) recused himself but did not know which side he was on and did not know why he was recusing. He stated this was a hard decision to reach; that the matter came with the Staff's recommendation for denial and for that reason and others Public Works recommended denial.

CLOSE AND ABANDON (Continued)

Councilman Benson stated it was the best they could do at Planning and Mr. McNutt had nothing to do with it and the two of them disagree a lot! He asked to hear Public Works' position; that Mrs. Johnson (Assistant Admin.) was present.

Admin. McDonald stated that the main reason for denial is there had been opposition and also circumstances for denial. He stated it is also felt there is another alternative in that a temporary use could be requested to do the same thing Ms. Flemister wants to do; that this is the basis for the denial.

Councilman Page stated that it is his understanding or belief that the only time to close an alley is when no one has any interest in it. He stated that he is very sympathetic to Ms. Flemister's needs and condition and wondered if there could be some kind of resolution; that he heard there are cars going by and there certainly would be a problem with closing the alley. He asked if there could be any agreement that could be reached so people are not disturbed; that he would have a hard time closing the alley if people want it to stay open and that has been the policy of the Council since he has been a part of it.

Mr. Eldridge stated that he called Public Works to see if the sewer main could be moved and was informed it could not be moved from one side to the other, and that "shut the door" on that. He stated that when he purchased this lot the alley was not an in use and it is not in use today; that it has never been used and the only person that could benefit would be Mr. McNutt! He stated that he thought this was a public alley and if the City could not benefit from this, it should be closed. He stated Mr. McNutt has two lots which are both zoned R-3; that if he builds three units on each lot, we are talking about six units with an average of two cars per unit. He stated the alley has never been used as such and hope that it will not be able to.

Councilman Taylor asked Admin. McDonald for clarification that a temporary use could be requested and that they cannot build on the alley.

Admin. McDonald responded "no, they could not build a building"; that they could put in steps but they would have to be removed if they are built over the sewer line.

Councilman Taylor asked what the applicant is trying to build. Mr. Eldridge responded that his sister "does not want to build anything". He stated that they do not understand the temporary use and its purpose; that who is to say in twelve months if his sister has a parking pad and detachable ramp from the front to her mother's porch, if Mr. McNutt chooses to build then he can use the alley. He stated that would not serve the purpose.

CLOSE AND ABANDON (Continued)

Councilman Taylor then asked if what Ms. Flemister is trying to do is put in a parking pad. Mr. Eldridge stated they want to put in a parking pad about twenty feet off Tremont and leave the other part grass and landscape the yard, and maybe put a detachable aluminum ramp coming down going into their mother's yard and sidewalk area. He stated he does not understand the temporary use and could not agree with that.

Councilwoman Robinson commended the Eldridge family for taking time to explain the problem to her and indicated that she has met with Mr. McNutt on a couple occasions; that this is truly a troubling situation when a family has lived in a home place as long as they have. She stated the alley has been open through there all these years though not used, and the neighborhood has "come back" and many people in the area have bought adjacent properties that were off the tax roles for long time. She stated the purchasers buying this piece in reliance on the open alleyway to Tremont leaves us really troubled to try to do the right thing here. She stated that she would like very much for the Eldridge family to consider the only avenue that is open right now short of not closing the alley and look into use of a temporary use permit. She stated Mr. McNutt has stated he does not have any intention of developing property right now, anyway, and Mr. Eldridge has pointed out that they do not want to invest in a handicap ramp only to have its use discontinue after a few months.

Councilwoman Robinson continued by stating that Mr. Eldridge's points are well taken and the Council is not bound by the Planning Agency's vote; that this is something this body takes independently and votes on. She stated she does not know what this body will do; that it seems if we adopt the recommendation by Planning and Public Works it would be because the property above this was bought in reliance on the open alleyway and that we encourage the Eldridge family and Mr. McNutt to have further understanding of how this use can be accommodated for the foreseeable future. She stated it is her understanding Mr. McNutt does plan to develop at a much later date; that the purchase was made more as an investment. At this point she **made the motion to deny; Councilman Page seconded the motion.**

Councilman Lively stated based on the presentation he, too, is sympathetic; however, as Councilman Page pointed out, in the past our policy has been to close and abandon alleys when all parties are in agreement and the Council has stuck to that.

At this point, Councilman Pierce called for the question cutting off further debate.

CLOSE AND ABANDON (Continued)

Chairman Littlefield expressed hope that the Eldridge's would be able to work out some type of temporary use arrangement.

On motion of Councilwoman Robinson, seconded by Councilman Page,
**AN ORDINANCE CLOSING AND ABANDONING AN ALLEY BEGINNING
ON THE SOUTH LINE OF TREMONT STREET AND EXTENDING TO THE
NORTH LINE OF THOMPSON STREET, MORE PARTICULARLY DESCRIBED
HEREIN AND AS SHOWN ON THE MAP ATTACHED HERETO AND MADE
A PART HEREOF BY REFERENCE**

was denied.

ACKNOWLEDGEMENT OF SUPPORT

Councilman Pierce made the motion to move Resolution 7(j) forward on the agenda; Councilman Page seconded the motion; the motion carried.

Councilmen Hakeem and Page made the motion to adopt this Resolution.

Councilman Page expressed thanks to the Tax Equity Committee for their work in regard to this effort. He stated as the Resolution reads, it encourages the county to pass a countywide half cent sales tax in areas not implemented and certainly in the unincorporated areas. He stated many municipalities do collect the half cent sales tax; that it is his belief this is a vote for education and the Committee was made up of people from education, including members of the Board of Education, CPA's and developers and a good cross section of the community. He stated it is his thought their work should be applauded as the Council passes this recommendation; that there is a provision that this will "sunset" in July of 2005.

Councilman Hakeem asked for clarification as to what the Council is approving.

At this point, City Attorney Nelson read the last two paragraphs of the Resolution:

NOW THEREFORE, BE IT RESOLVED, By the City Council of the City of Chattanooga that the efforts and findings of the Blue Ribbon Tax Equity Committee are acknowledged with great appreciation for the time and personal sacrifice contributed to this important public service by each of the individual members of the committee.

ACKNOWLEDGEMENT OF SUPPORT (Continued)

BE IT FURTHER RESOLVED, That the City Council hereby endorses the principal recommendation that the half-cent sales tax for education be implemented countywide - thereby resulting in an additional \$1.5 to \$3 million for public education needs - and pledges support to the Hamilton County School Board, the Hamilton County Commission and the County Executive to accomplish this most worthwhile purpose.

Councilman Hakeem stated that it was his thought the Resolution does not have a 2005 "sunset" date.

Chairman Littlefield responded "no"; that the Resolution acknowledges their support. He stated the Committee's report included several recommendations and indicated that he did not bring the report with him. He stated the first recommendation is that sales tax should be adopted countywide and the second is if it is not passed countywide, then the issue of "sunsetting" the City's commitment to the sales tax of \$8.5 million contributed to the schools would be subject to discussion. He stated that is the way it is intended; so, rather than embark on that route that would be seen as a fight between the City and county, in order to focus on positive aspects of this effort, the Resolution was rewritten to take out "fighting" words in an effort to try to improve schools and increase funding.

Councilman Benson stated that he is glad there is no finite time line.

Councilman Pierce stated it was his thought the reason Councilman Page started the Tax Equity Committee was to look at the fairness of the half cent tax we are giving the county and come back with a good report. He stated he did not personally support the first version of the Resolution because of the "sunset" clause giving them an extended time; that we have been asking the county since 1996 to pass a half cent tax and they have not done it. He stated that it is his thought it is almost mandatory we leave that "sunset" date in there of 2005; that to take it out would destroy the whole report. He stated that it was his understanding the "sunset" clause would be left in; that if we accept the total report as this reads, it is his thought to include the 2005 "sunset" clause.

Councilman Taylor asked for a point of clarification; that in looking at the resolution it reads "*accepting and pledging support*"; that we are accepting the report that was given and he wanted to make everyone clear on that.

ACKNOWLEDGEMENT OF SUPPORT (Continued)

Councilman Taylor stated our "accepting" does not mean not pledging or taking the funding away from the county system; that even if the half cent sales tax is not passed countywide, they will still receive the support from the City, which is his understanding.

Councilman Pierce asked who will receive support. Councilman Taylor responded the "county school system" will receive funding, but it will be earmarked for the city schools within the city. He stated earmarking those dollars will not take away dollars from the county, but it can be.

Councilman Lively stated we are not saying anything.

Councilwoman Robinson stated that it is her thought what this Resolution says today is that the City Council made a request that the Blue Ribbon Committee be established and they worked hard and long and we are thanking them for their service. She stated more than that, we are accepting and pledging support of their recommendations which leaves us at a point for the county to respond. She stated that she heard today that the County Executive has already said the countywide issue would be put on the ballot in 2004. She suggested that the Council move forward in being supportive and mutually engaged in a positive program to get all Hamilton Countians in a position of adopting by Resolution our support for putting education on the ballot in the year 2004 and then that will put to rest any question about what the City is going to be doing in the future. She stated the process will take some effort from the City and County; that it is her thought it is a bit premature to try to conjecture today what the outcome will be.

Councilman Hakeem stated that the motion he made accepted the report from the Committee and pledged support in writing toward the half cent sales tax being countywide. He stated this is a two statement process; that one is to work toward the half cent sales tax being moved forward countywide, and if that is not accomplished then the option is there for us to consider one way or another. He stated the second is to redirect those educational funds or to leave as is. He stated in a sense of speaking it is not to "get the cart before the horse"; it is to allow us to move forward to move with the county in this effort. He stated if we follow the steps outlined in the recommendation, we can accomplish more; that the county has been forthcoming in working in economic development and other areas, which proves working together works! He stated he would not like for it to be perceived we are out to "dig" at this in some way; that that is not our efforts.

ACKNOWLEDGEMENT OF SUPPORT (Continued)

Councilman Hakeem stated he would also not like for it to be perceived we are promoting a tax increase on city citizens when, in reality, that is not our intent; and it must also be made clear at no time has he heard any Council person say if the funds do not go directly to the county school system, it would be used in downtown development; it would still be used for education in the school system. He clarified that is what his motion was.

Councilman Benson asked Councilman Littlefield to explain exactly what the Council is doing.

Chairman Littlefield stated the county has on two occasions attempted to get this same sales tax adopted countywide; that early on other municipalities adopted the sales tax and the smaller municipalities have chosen to keep the money and direct it as they see fit. He stated as all Council members know we get calls from those who want us to do the same thing. He stated to Councilman Page's credit, he sought the appointment of a nonpartisan City and county committee with "no axes to grind". He stated all the Council has attempted to do over the last couple weeks is to go ahead and acknowledge that the work was done and the Committee gave a report and direction. He stated the original Resolution last week more elaborately endorsed their report; that calls received today said rather than get into a fight with the county, endorse their first recommendation to once again get the sale tax passed countywide and then the other issues are moot.

Chairman Littlefield continued by stating that the intent tonight is to recognize those individuals and their work which is the way the Resolution was drafted and the way Councilman Hakeem defined the intent in his motion. He stated the Resolution acknowledges that work and takes step one, which is to support the county commission to make the sales tax countywide; that the city and county and county schools will work in an effort to make the sales tax countywide; that this is not an effort to take it out of our hands. He stated the City will no longer have discretion over the money; that all will go to the county schools as will county taxes to other municipalities. He stated that is the intent, simply to make it countywide and fair.

At this point Councilman Franklin "called for the question" on the motion to adopt.

ACKNOWLEDGEMENT OF SUPPORT (Continued)

On motion of Councilman Hakeem, seconded by Councilman Page,
**A RESOLUTION ACKNOWLEDGING THE FINDINGS OF THE BLUE RIBBON
TAX EQUITY COMMITTEE BY ACCEPTING AND PLEDGING SUPPORT FOR
EFFORTS TO INCREASE FUNDING AND TO EXTEND THE BASE OF
SUPPORT FOR PUBLIC SCHOOLS COUNTYWIDE**
was adopted.

(COUNCILMAN PIERCE EXCUSED HIMSELF FROM THE MEETING AT THIS POINT.)

AGREEMENT: TDOT

Councilman Benson stated this matter was discussed in Committee and that he has received several calls from people in this district. He stated this Resolution authorizes the City's participation in this and gives the initial amount of money required to get this done; that the date of completion is 2004.

Admin. McDonald indicated that he did not have the schedule for this project with him; that it is his belief this Resolution transfers funds to purchase the rights-of-way and that the project would start a year from tomorrow.

Councilman Benson stated this is a pressing problem he is speaking about; that everyone got the impression that improvements to Ashland Terrace would be "jumping" ahead of everything.

Admin. McDonald stated that he could discuss this matter with Councilman Benson tomorrow, as he did not have the schedule with him tonight.

Councilman Benson asked for clarification that this is the first step in getting the project started. Admin. McDonald stated that it authorizes the start of construction and to contribute our share of purchasing the rights-of-way.

City Attorney Nelson explained at the previous Public Works meeting it was stated construction would not start until February 2004 with completion late that summer or fall.

Admin. McDonald indicated that City Attorney Nelson's comments sounded right, again stating that he did not have the schedule.

AGREEMENT: TDOT (Continued)

Chairman Littlefield stated when he was elected Public Works Commissioner they were dealing with Ashland Terrace in 1987; that it has been "in the works" a long time.

Councilman Lively stated the point he wanted to make was that Ashland Terrace has been on the "drawing board" for a while and this is certainly nothing new.

On motion of Councilman Lively, seconded by Councilwoman Robinson,
A RESOLUTION AUTHORIZING THE ADMINISTRATOR OF THE DEPARTMENT OF PUBLIC WORKS TO ENTER INTO AN AGREEMENT WITH THE TENNESSEE DEPARTMENT OF TRANSPORTATION, RELATIVE TO THE ACQUISITION OF RIGHTS-OF-WAY FOR PROJECT LP#146, STP-M-9202(36), WIDENING OF ASHLAND TERRACE FROM NORCROSS ROAD TO THE CHATTANOOGA CITY LIMITS, AND TO TRANSFER SIX HUNDRED ONE THOUSAND THREE HUNDRED EIGHTY-THREE DOLLARS (\$601,383.00) FROM THE CITY OF CHATTANOOGA CAPITAL PROJECTS STREET IMPROVEMENT FUND TO THE TENNESSEE DEPARTMENT OF TRANSPORTATION FOR THE CITY'S SHARE OF THE PROJECT

was adopted.

SEWER EASEMENT

On motion of Councilman Hakeem, seconded by Councilman Page,
A RESOLUTION AUTHORIZING THE PURCHASE OF A PERMANENT SEWER EASEMENT FROM HECTOR AND CHERIE MARTINEZ, RELATIVE TO CONTRACT NO. 73B-3, HIXSON MARINA COLLECTION SYSTEM, PARCEL NO. 101-56.16, TRACT NO. 032.1, FOR A TOTAL CONSIDERATION OF SEVEN HUNDRED FORTY-FOUR DOLLARS (\$744.00)

was adopted.

SEWER EASEMENT

On motion of Councilman Page, seconded by Councilman Hakeem,
A RESOLUTION AUTHORIZING THE PURCHASE OF A PERMANENT SEWER EASEMENT FROM HEACATOR AND CHERIE MARTINEZ, RELATIVE TO CONTRACT NO. 73B-3, HIXSON MARINA COLLECTION SYSTEM, PARCEL NO. 101-56.12, TRACT NO. 028.1, FOR A TOTAL CONSIDERATION OF ONE THOUSAND ONE HUNDRED SEVENTY-ONE DOLLARS (\$1,171.00)

was adopted.

SEWER EASEMENT

On motion of Councilman Franklin, seconded by Councilman Page,
A RESOLUTION AUTHORIZING THE PURCHASE OF A PERMANENT SEWER EASEMENT FROM HECTOR AND CHERIE MARTINEZ, RELATIVE TO CONTRACT NO. 73B-3, HIXSON MARINA COLLECTION SYSTEM, PARCEL NO. 101-56.11, TRACT NO. 112, FOR A TOTAL CONSIDRATION OF EIGHTY-SEVEN DOLLARS (\$87.00)
was adopted.

TEMPORARY USE

On motion of Councilman Franklin, seconded by Councilman Page,
A RESOLUTION AUTHORIZING CINDY WILLIARD TO USE TEMPORARILY THE CITY'S RIGHT-OF-WAY OF THE 600 BLOCK OF CREST DRIVE TO INSTALL A DRIVEWAY, SUBJECT TO CERTAIN CONDITIONS
was adopted.

TEMPORARY USE

On motion of Councilman Hakeem, seconded by Councilman Franklin,
A RESOLUTION AUTHORIZING NICO'S SALON TO USE TEMPORARILY THE CITY'S RIGHT-OF-WAY AT 612 GEORGIA AVENUE TO INSTALL AN AWNING, SUBJECT TO CERTAIN CONDITIONS
was adopted.

EMINENT DOMAIN

On motion of Councilman Page, seconded by Councilman Hakeem,
A RESOLUTION AUTHORIZING THE OFFICE OF THE CITY ATTORNEY TO INSTITUTE EMINENT DOMAIN PROCEEDINGS AGAINST C. B. HARBOR, III, ET UX, FOR PERPETUAL CHANNEL IMPROVEMENT EASEMENTS ON TRACT NOS. 600E, 604E AND 605E, MORE PARTICULARLY DESCRIBED HEREIN, RELATIVE TO THE RIVERBANK STABILIZATION PROJECT
was adopted.

EMINENT DOMAIN

On motion of Councilman Lively, seconded by Councilman Taylor

A RESOLUTION AUTHORIZING THE OFFICE OF THE CITY ATTORNEY TO INSTITUTE EMINENT DOMAIN PROCEEDINGS AGAINST C.E.M.C., LP, FOR A PERPETUAL CHANNEL IMPROVEMENT EASEMENT ON TRACT NO. 601E, MORE PARTICULARLY DESCRIBED HEREIN, RELATIVE TO THE RIVERBANK STABILIZATION PROJECT

was adopted.

FINAL PUD

2002-065: S. Reginald Ruff, III

Admin. McDonald stated that this Resolution should be delayed until the plan is finished and the opportunity for review with the Mayor and Planning. He stated a three week deferral would be sufficient.

On motion of Councilman Benson, seconded by Councilman Franklin,

A RESOLUTION APPROVING A PROPOSED FINAL PLANNED UNIT DEVELOPMENT SPECIAL EXCEPTIONS PERMIT FOR A PLANNED UNIT DEVELOPMENT KNOWN AS THE SPENCER J. MCCALLIE HOMES PLANNED UNIT DEVELOPMENT, ON A TRACT OF LAND LOCATED AT 3500 KIRKLAND AVENUE, MORE PARTICULARLY DESCRIBED HEREIN AND AS SHOWN ON THE FINAL PLANNED UNIT DEVELOPMENT PLAN ATTACHED HERETO AND MADE A PART HEREOF BY REFERENCE, SUBJECT TO CERTAIN CONDITIONS

was deferred three weeks.

OVERTIME

Overtime for the week ending November 15, 2002 totaled \$70,151.45.

PERSONNEL

The following personnel matters were reported for the various departments:

PUBLIC WORKS DEPARTMENT:

- ✍ **MARK A. PHURROUGH** – Hire, Crew Worker, Sr., Citywide Services, Pay Grade 5/ Step 1, \$18,100.00 annually, effective November 13, 2002.

PERSONNEL (Continued)

- ✍ **BENJAMIN J. ABSHER** – Resignation, Tree Trimmer, Citywide Services, effective November 15, 2002.

CHATTANOOGA FIRE DEPARTMENT:

- ✍ **DAVID G. BURNETT** – Promotion, Senior Firefighter, Pay Grade/Step F4C/3, \$37,993.00 annually, effective November 15, 2002.
- ✍ **SHAWN K. REESE** – Promotion, Senior Firefighter, Pay Grade/Step F2A/4, \$31,497.00 annually, effective November 15, 2002.
- ✍ **JACK A. THOMPSON, PERRY J. STEPHENS** – Promotion, Senior Firefighter, Pay Grade/Step F2A/3, \$30,150.00 annually, effective November 15, 2002.

RONNY MCMILLIAN – Military Leave, Firefighter, effective September 19, 2002.

COMMUNITY SERVICES DEPARTMENT:

- ✍ **LENORA F. BRITMAN** – New Hire, Planner, Community Development, Pay Grade/Step 14/2, \$30,542.00 annually, effective November 15, 2002.

CHATTANOOGA HUMAN SERVICES DEPARTMENT:

- ✍ **FAITH LACEY** – Termination, Teacher, Head Start, effective October 31, 2002.

CHATTANOOGA POLICE DEPARTMENT:

- ✍ **DARIN LINKINS** – Resignation, Police Cadet, effective November 12, 2002.
- ✍ **ANNETTE E. JOHNSON** – Voluntary Demotion, Records Clerk, No change in salary, effective November 15, 2002.
- ✍ **LAURA BOSTICK** – Retired (25 years of devoted service), Police Officer, effective October 31, 2002.

PERSONNEL (Continued)

✍ **GERRY DAVIS** – Suspension (2 days without pay), effective October 9–10, 2002.

PURCHASE

On motion of Councilman Taylor, seconded by Councilman Page, the following purchase was approved for use by the Department of Finance and Administration, Building Maintenance Division:

HAYWORTH INC. C/O BUSINESS INTERIORS OF KNOXVILLE (Single source, State Contract TSWC-230) R0064988

New Call Center Furniture Systems per TCA 6-56-304.02

\$11,226.98

BOARD APPOINTMENT

On motion of councilman Hakeem, seconded by Councilman Taylor, the following board appointment was approved:

TAXI BOARD:

✍ Appointment of **FRED CODY** for a term ending March 9, 2004.

BETTER HOUSING COMMISSON MEETING AND RECEPTION

Admin. Curry reminded Council members of the final meeting of the Better Housing Commission and reception on Thursday, November 20 beginning at 2 p.m. in the Council Assembly Room. He stated the Commission is scheduled to work on their last day in a meting that is anticipated to be an hour's duration. He stated a reception would follow in the Council lobby area.

HEARING: CINEMA I

Chairman Littlefield stated that the hearing for Cinema I is scheduled for Monday, November 25 beginning at 9 a.m. He stated the Attorney representing Cinema I is present and would like to speak to the Council.

Atty. Arvin Reingold stated that he is one of the attorneys representing Cinema I. He stated he and one of the co-counsels have a conflict; that his is personal as he is having surgery and the other is unable to be here. He asked that the hearing be delayed one week until December 2.

Chairman Littlefield stated that he discussed this matter with Atty. Reingold and the City Attorney can give specifics of our limitations. He stated we are heading into the holiday season and people tend to get scattered. He stated it would be his recommendation that in spite of the conflict and Atty. Reingold's client having three attorneys and the case laid out before the City Council, it will be a matter going to court. He stated that he seriously recommends no delay in the matter.

City Attorney Nelson stated the City Code states after notice of revocation has been given to the establishment the City is bound to proceed and offer a hearing to the establishment and complete the process within twenty-two (22) days; not only the process of having the hearing, but must file action in Chancery Court to get the Judge to approve it if, in fact, the Council goes along with closing it. He stated there is the provision in the City Ordinance that the 22 days is subject to a five-day extension if the applicant agrees to the request. He stated the 22 day period outlined will end November 30, so if the Council wants to extend the period, require the applicant to extend it on the back end of the conditional five days in case the Council approves what the Mayor has done, in which time the City could file that declaratory judgment in Chancery Court.

Chairman Littlefield stated this illustrates the complexity of what we will get into if we start delaying action; that he has the greatest respect for Atty. Reingold as they have been friends for a long time and they often disagree. He stated that it is his belief the matter has been appropriately scheduled; that there are three attorneys and all of them have associates. He stated it is not, in his opinion, a complex case to bring to the Council; that it would be a more complex case in court. He stated it is his recommendation that the Council "stick" with the dates as prescribed.

HEARING: CINEMA I (Continued)

Atty. Reingold stated first, the twenty-second day falls on a weekend; that the next business day is December 2, a legitimate date according to his calculations. He stated the thirtieth is on a Saturday, a non-business day, and December 2 is a legitimate day. He stated secondly, as Counsel (Nelson) knows, he does not see anything so stressful that seeks to accommodate his client's choice of attorneys in this case that is so devastating. He stated that he takes exception that this is not an important case; that he thinks his client, who is a tax paying citizen, has the right to choice of counsel and if counsel has a conflict he has a right to ask for that. He stated he has practiced for a long number of years, and finds it quite uncomfortable to find a matter, such as this, could not be delayed one week. He stated he has followed this proceeding in the City for many years, and rarely have found a matter not delayed or postponed for a week when asked by others. He stated this citizen or businessman may not have the esteem or standing in the community others have had or perceived. He stated that the company is entitled to co-counsel and asking for a delay of one week is not so compelling and inconvenient it could not be granted.

Chairman Littlefield stated that Atty. Reingold's client requested a hearing and the Council responded with a date; that in all fairness, the Council is inconvenienced by coming on a Monday and perhaps sitting all day. He stated if it is too inconvenient for Atty. Reingold's client's attorney to be here, he does not think that is the Council's issue; that it is up to him (Reingold) and his fellow co-counsel for their client to find a way to be present.

Councilman Benson inquired as to Atty. Reingold's surgery. Atty. Reingold stated the surgery would not be incapacitating; that he had not planned to come into the office on Monday. He stated the other counsel who is out of the city has other commitments. He stated that he has scheduled things in court months and months in advance and has cancelled; that court cases are accommodated by the courts.

Councilman Benson suggested that the hearing could be held on Wednesday. Atty. Reingold stated that would be impossible; that he could not be present tomorrow and there is other counsel.

Chairman Littlefield stated that we have given them the date and the safest course is to stick closely to procedures and not start deferring from it for one reason or another. At this point he **asked if there was a motion to change the date; there was none.**

HEARING: CINEMA I (Continued)

Chairman Littlefield stated that he informed Atty. Reingold when he called that it was not up to him as Chairman or the City Attorney to change the date; that it is the Council as a whole and hearing no motion from any member the hearing will be held on Monday, November 25 beginning at 9 a.m.

Atty. Reingold stated that he did not expect the Chairman to make the decision for the rest of the Council.

Chairman Littlefield indicated that he was not criticizing Atty. Reingold for that. Atty. Reingold responded that he appealed to Mr. Littlefield as the Council's Chairman.

Chairman Littlefield stated that this is why the arrangement was made for Atty. Reingold to make his presentation to the Council at this point on the agenda. He asked that he talk with his fellow counselors and client and have someone present; that the Council plans to hear the City's case.

COMMITTEES

Councilman Benson scheduled a meeting of the **Legal and Legislative Committee for Tuesday, November 26 beginning at 3:30 p.m.** City Attorney Nelson asked Council members to peruse the copies of the eight Ordinances distributed earlier relating to the horse and buggy transportation services for discussion at the meeting.

Councilman Hakeem stated the **Public Works Committee is scheduled to meet on Tuesday, November 26 at 4 p.m.**

Councilwoman Robinson stated today in the Parks, Recreation, Arts and Culture (PRAC) Committee meeting updates were given regarding the outstanding programs being run at the Brainerd and South Chattanooga Recreation Centers. She stated in addition, word has been received that local PRAC programs won awards for excellence in four competitions at the State meeting recently. She expressed congratulations to everyone for their good work!

2002- 136: TROY COX REZONING

Councilwoman Robinson stated the rezoning case for Troy Cox on Ashland Terrace that was tabled by the Council should be referred back to Planning for further consideration.

2002- 136: TROY COX REZONING (Continued)

On motion of Councilwoman Robinson, seconded by Councilman Franklin, the rezoning case for Troy Cox (2002-136) was returned to Planning for further consideration.

ADJOURNMENT

Chairman Littlefield adjourned the meeting of the Chattanooga Council until Tuesday, November 26, 2002 at 6 p.m.

CHAIRMAN

CLERK OF COUNCIL

**(A LIST OF NAMES OF PERSONS IN ATTENDANCE IS
FILED WITH MINUTE MATERIAL OF THIS DATE)**