

City Council Building
Chattanooga, Tennessee
October 16, 2007
6:00 p.m.

Chairman Page called the meeting of the Chattanooga Council to order with Councilmen Bennett, Benson, Franklin, Gaines, Pierce and Rico; Councilwoman Robinson was out of the city on business. Special Counsel Mike McMahan, 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 Bennett, seconded by Councilwoman Gaines, the minutes of the previous meeting were approved as published and signed in open meeting.

AMEND CITY CODE

On motion of Councilman Rico, seconded by Councilman Pierce,
**AN ORDINANCE TO AMEND CHATTANOOGA CITY CODE, PART II,
CHAPTER 24, SECTION 24-505, RELATIVE TO PARKING METER ZONES**
passed second and final reading and was signed in open meeting.

CLOSE AND ABANDON

MR-2007-107: Thom Mills

On motion of Councilman Rico, seconded by Councilman Pierce,
**AN ORDINANCE CLOSING AND ABANDONING THE UNOPENED 4100
AND 4200 BLOCKS OF BROAD STREET, THE UNOPENED 2400 BLOCK OF
MILL STREET AND THE UNOPENED 2400 BLOCK OF AN UNNAMED
ALLEY, MORE PARTICULARLY DESCRIBED HEREIN AND AS SHOWN ON
THE MAP ATTACHED HERETO AND MADE A PART HEREOF BY
REFERENCE, SUBJECT TO CERTAIN CONDITIONS**
passed second and final reading and was signed in open meeting.

CLOSE AND ABANDON

MR-2007-110: Bragg Point Properties, LLC

On motion of Councilwoman Bennett, seconded by Councilman Franklin,
**AN ORDINANCE CLOSING AND ABANDONING A PORTION OF THE
UNIT BLOCK OF LAUREL DRIVE, MORE PARTICULARLY DESCRIBED
HEREIN AND AS SHOWN ON THE MAPS ATTACHED HERETO AND MADE
A PART HEREOF BY REFERENCE, SUBJECT TO CERTAIN CONDITIONS**
passed second and final reading and was signed in open meeting.

CLOSE AND ABANDON

MR-2007-122: City of Chattanooga c/o City Engineer

On motion of Councilwoman Bennett, seconded by Councilman Pierce,
**AN ORDINANCE CLOSING AND ABANDONING A PUBLIC SANITARY
SEWER LINE ON A TRACT OF LAND LCOATED AT 61 AND 100 NORTH
MARKET STREET, MORE PARTICULARLY DESCRIBED HEREIN AND AS
SHOWN ON THE MAPS ATTACHED HERETO AND MADE A PART HEREOF
BY REFERENCE, SUBJECT TO CERTAIN CONDITIONS**
passed second and final reading and was signed in open meeting.

REZONING

2007-154: Deanna Duncan & Terry Cannon

On motion of Councilman Franklin, seconded by Councilman Rico,
**AN ORDINANCE TO AMEND ORDINANCE NO. 6958, AS AMENDED,
KNOWN AS THE ZONING ORDINANCE, SO AS TO REZONE TRACTS OF
LAND LOCATED AT 1642 AND 1644 ROSSVILLE AVENUE, MORE
PARTICULARLY DESCRIBED HEREIN, FROM -1 MANUFACTURING ZONE
TO C-3 CENTRAL BUSINESS ZONE, SUBJECT TO CERTAIN CONDITIONS**
passed second and final reading and was signed in open meeting.

CLOSE AND ABANDON

MR-2007-155: City of Chattanooga c/o Steve Leach

On motion of Councilman Rico, seconded by Councilwoman Bennett,
**AN ORDINANCE CLOSING AND ABANDONING SEWER EASEMENTS
LOCATED BETWEEN THE UNIT BLOCK OF LAUREL AVENUE AND 200
BLOCK OF RIDGE AVENUE, MORE PARTICULARLY DESCRIBED HEREIN
AND AS SHOWN ON THE MAPS ATTACHED HERETO AND MADE A PART
HEREOF BY REFERENCE, SUBJECT TO CERTAIN CONDITIONS**
passed second and final reading and was signed in open meeting.

RIGHT-OF-WAY NAME CHANGE

2007-159: City of Chattanooga c/o City Engineer

On motion of Councilman Rico, seconded by Councilwoman Bennett,
**AN ORDINANCE TO CHANGE THE RIGHT-OF-WAY NAME OF THE 7100
BLOCK OF SHEPHERD VIEW DRIVE TO SHEPHERD VIEW CIRCLE, MORE
PARTICULARLY DESCRIBED HEREIN AND AS SHOWN ON THE MAP
ATTACHED HERETO AND MADE A PART HEREOF BY REFERENCE**
passed second and final reading and was signed in open meeting.

RIGHT-OF-WAY NAME CHANGE

2007-160: City of Chattanooga c/o City Engineer

On motion of Councilman Rico, seconded by Councilman Franklin,
**AN ORDINANCE TO CHANGE THE RIGHT-OF-WAY NAME OF AN
UNOPENED PORTION OF LAKE RESORT DRIVE TO TRAILHEAD DRIVE,
MORE PARTICULARLY DESCRIBED HEREIN AND AS SHOWN ON THE
MAP ATTACHED HERETO AND MADE A PART HEREOF BY REFERENCE**
passed second and final reading and was signed in open meeting.

REZONING

2007-162: Will Haisten

On motion of Councilman Rico, seconded by Councilman Franklin,
**AN ORDINACNE TO AMEND ORDINANCE NO. 6958, AS AMENDED,
KNOWN AS THE ZONING ORDINANCE, SO AS TO REZONE TRACTS OF
LAND LOCATED AT 14 MANNING STREET AND IN THE 300 BLOCK OF
WOODLAND AVENUE, MORE PARTICULARLY DESCRIBED HEREIN, FROM**

REZONING (Continued)

R-3 RESIDENTIAL ZONE AND R-4 SPECIAL ZONE TO C-7 NORTH SHORE COMMERCIAL/MIXED USE ZONE, SUBJECT TO CERTAIN CONDITIONS
passed second and final reading and was signed in open meeting.

REZONING

2007-163: John Prestwood

On motion of Councilman Franklin, seconded by Councilman Pierce,
AN ORDINANCE TO AMEND ORDINANCE NO. 6958, AS AMENDED, KNOWN AS THE ZONING ORDINANCE, SO AS TO REZONE A TRACT OF LAND LOCATED AT 875 INTERMONT ROAD, MORE PARTICULARLY DESCRIBED HEREIN, FROM R-1 RESIDENTIAL ZONE TO C-2 CONVENIENCE COMMERCIAL ZONE, SUBJECT TO CERTAIN CONDITIONS
passed second and final reading and was signed in open meeting.

REZONING

2007-167: Geoffrey Tarr

On motion of Councilman Rico, seconded by Councilwoman Bennett,
AN ORDINANCE TO AMEND ORDINANCE NO. 6958, AS AMENDED, KNOWN AS THE ZONING ORDINANCE, SO AS TO REZONE A TRACT OF LAND LOCATED AT 621 EAST MAIN STREET, MORE PARTICULARLY DESCRIBED HEREIN, FROM M-1 MANUFACTURING ZONE TO C-3 CENTRAL BUSINESS ZONE, SUBJECT TO CERTAIN CONDITIONS
passed second and final reading and was signed in open meeting.

RIGHT-OF-WAY NAME CHANGE

2007-171: City of Chattanooga c/o City Engineer

On motion of Councilman Rico, seconded by Councilman Pierce,
AN ORDINANCE TO CHANGE THE RIGHT-OF-WAY NAME OF THE 1700 BLOCK OF PETTY ROAD TO SOUTHERNWOOD DRIVE, MORE PARTICULARLY DESCRIBED HEREIN AND AS SHOWN ON THE MAP ATTACHED HERETO AND MADE A PART HEREOF BY REFERENCE
passed second and final reading and was signed in open meeting.

AMEND CITY CODE

Chairman Page noted that resolutions and ordinances on first reading on tonight's agenda have been discussed in committee either this week or last week and are recommended for approval.

On motion of Councilman Rico, seconded by Councilwoman Rutherford,
AN ORDINANCE TO AMEND CHATTANOOGA CITY CODE, PART II, CHAPTER 26, SECTIONS 26-13 AND 26-14, ESTABLISHING PERMIT FEES FOR USAGE OF VARIOUS CHATTANOOGA PARKS AND RECREATION FACILITIES, AND BY DELETING SECTIONS 26-59, 26-60 AND 26-71 THROUGH 26-90 IN THEIR ENTIRETY

passed first reading.

AMEND CITY CODE

On motion of Councilman Rico, seconded by Councilman Franklin,
AN ORDINANCE TO AMEND CHATTANOOGA CITY CODE PART II, CHAPTER 26, SECTIONS 26-22, 26-23, 26-24, 26-25 AND 26-134, AND BY ADDING NEW SECTIONS 26-26, 26-27, 26-28, 26-29, 26-30, 26-31, 26-32, 26-33 AND 26-34, ESTABLISHING THE EVENT FEES FOR USAGE OF VARIOUS CHATTANOOGA PARKS AND RECREATION FACILITIES

passed first reading.

CLOSE AND ABANDON

MR-2007-127: City of Chattanooga c/o City Engineer

Adm. Leach stated that the proposed mandatory referral was, in part, to straighten out some paperwork the Department had which indicated this location was part open and part closed. He stated they tried to clarify their records as to whether or not half was abandoned or if the whole thing had been abandoned. He stated the Fire Department has issues with a full closure and noted the staff in both departments feel the portion that intersects with Magnolia for a certain distance be laterally opened for access for the Fire Department and four utilities involved in the closure – Electric Power Board, AT&T, Comcast and the Chattanooga Gas Company. He stated there are lots of utilities in the right-of-way and the Fire Department would like to have it remain open. He stated Public Works does not care either way; that they just want to straighten out their records.

Councilman Pierce stated under normal circumstances when an application for closure is presented, and this was presented on behalf of the city, do we not check with the Fire Department or other utility companies as far as the closure. Adm. Leach responded "normally, yes".

CLOSE AND ABANDON (Continued)

Councilman Pierce asked if this was not done in this instance. Adm. Leach stated that a second look was taken and it was felt that it needed to remain open, reiterating that Public Works accepts it either way the Council acts. He stated the Fire Department has a safety issue that is legitimate to keep it open.

Councilman Pierce stated there is no opposition to open or close it and wanted to know the rationale as to why it is necessary for it to remain open.

Deputy Chief Flint stated that he and the Fire Marshall looked at this prior to tonight's Council meeting and there is an access problem; that there is a sidewalk and a driveway and if the alley is closed and abandoned and that party decides to build, it will limit access even more; that right now there is a carport there. He stated it is his hope there is never a fire at the Salvation Army as it would limit access.

Councilman Pierce stated from the standpoint of the Fire Department having access, we are talking about 125 feet in length; that all he can see is the fire apparatus backing in-and-out. He stated he just does not see it; that he has been a supporter of closing all alleys when they are not used and this is not being used and has not been used. He stated on behalf of the Salvation Army, they applied years ago to close it for whatever reason and the paper work was not complete and he does not see an advantage for the Fire Department to keep it open.

Chief Flint stated that they have to have access in the event of an emergency; that if there is an emergency they want as much access as they can have. He stated the Department would hate for something to occur later and this alley is not open on the front end.

Councilman Pierce stated that he did not want anyone to think he is opposed. He stated now that Public Works is supportive of leaving it open he does not have any problem with it. He stated from now on he just wants Public Works to get their "marbles together" before the matter comes to Council.

On motion of Councilman Rico, seconded by Councilwoman Bennett,
**AN ORDINANCE CLOSING AND ABANDONING AN ALLEY ON A TRACT
OF LAND BEGINNING AT THE WEST LINE OF MAGNOLIA STREET, MORE
PARTICULARLY DESCRIBED HEREIN AND AS SHOWN ON THE MAP
ATTACHED HERETO AND MADE A PART HEREOF BY REFERENCE,
SUBJECT TO CERTAIN CONDITIONS**

was denied.

ACCEPT PAYMENT

On motion of Councilman Franklin, seconded by Councilwoman Bennett,
A RESOLUTION AUTHORIZING THE ADMINISTRATOR OF THE DEPARTMENT OF PARKS AND RECREATION TO ACCEPT A PAYMENT FROM THE GREATER CHATTANOOGA SPORTS AND EVENTS COMMITTEE IN THE AMOUNT OF FIFTEEN THOUSAND DOLLARS (\$15,000.00) TO ASSIST IN THE CONSTRUCTION OF A BOAT ENTRANCE RAMP FOR ROWING EVENTS ON THE WATERFRONT
was adopted.

GRANT

On motion of Councilman Rico, seconded by Councilman Franklin,
A RESOLUTION AUTHORIZING THE ADMINISTRATOR OF THE DEPARTMENT OF PUBLIC WORKS TO APPLY FOR, AND IF AWARDED, ACCEPT A FIVE (5) YEAR GRANT (YEARS 2007 TO 2012) FROM THE TENNESSEE DEPARTMENT OF ENVIRONMENT AND CONSERVATION, DIVISION OF COMMUNITY ASSISTANCE, RELATIVE TO THE HOUSEHOLD HAZARDOUS WASTE PROGRAM, IN AN AMOUNT UP TO EIGHTY-FIVE THOUSAND DOLLARS (\$85,000.00) PER YEAR, FOR A TOTAL AMOUNT UP TO FOUR HUNDRED TWENTY-FIVE THOUSAND DOLLARS (\$425,000.00)
was adopted.

MORATORIUM

On motion of Councilwoman Bennett, seconded by Councilwoman Gaines,
A RESOLUTION DECLARING A MORATORIUM ON ISSUING OF NEW BUILDING PERMITS EXCEPT FOR SINGLE-FAMILY DETACHED RESIDENTIAL STRUCTURES IN AN AREA HEREIN BELOW DESCRIBED UNTIL JANUARY 31, 2008
was adopted.

PRELIMINARY PUD

2007-164: Windward Properties

On motion of Councilman Benson, seconded by Councilman Franklin,
A RESOLUTION APPROVING A PRELIMINARY RESIDENTIAL PLANNED UNIT DEVELOPMENT SPECIAL EXCEPTIONS PERMIT FOR A PROPOSED 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 AND DRAWING ATTACHED HERETO AND MADE A PART HEREOF BY REFERENCE, SUBJECT TO CERTAIN CONDITIONS
was adopted.

OVERTIME

Overtime for the week ending October 12, 2007 totaled \$84,555.32.

PERSONNEL

The following personnel matters were reported for the various departments:

PUBLIC WORKS DEPARTMENT:

- **JOSEPH B. WORMSLEY** – Promotion, Construction Inspector, City Wide Services, Pay Grade 13/Step 2, \$32,043.00 annually, effective September 28, 2007.
- **JESSE PENDERGRAPH** – Promotion, Heavy Equipment Operator, Waste, Pay Grade 10/Step 1, \$26,743.00 annually, effective September 28, 2007.
- **EUSI V. HAMILTON** – Suspension, (2 days without pay), Equipment Operator, City Wide Services, effective October 11-12, 2007.
- **NATHANIEL D. HOWARD** – Suspension (4 days without pay), Heavy Equipment Operator, City Wide Services, effective October 15-18, 2007.
- **JESSE THORNTON** – Suspension (3 days without pay), Equipment Operator, City Wide Services, effective October 11, 12, 15, 2007

NEIGHBORHOOD SERVICES DEPARTMENT:

- **JASON CHAUNCEY** – Resignation, Codes Enforcement Inspector, effective October 11, 2007.

CHATTANOOGA FIRE DEPARTMENT:

- **DEANGELO NEWSON** – Suspension (2 days without pay, dates to be determined), Senior Firefighter.

CHATTANOOGA POLICE DEPARTMENT:

- **MINDY MILLIGAN-DAWKINS** – Return to Duty from Family Medical Leave, Communications Officer, effective October 9, 2007.

PURCHASE

On motion of Councilwoman Gaines, seconded by Councilman Pierce, the following purchase was approved for use by the Public Works Department:

CONVERTEAM CANADA, INC. (Sole source)
R0102329/B00044999

Variable Frequency Drive Rebuild per TCA 6-56-304.2

\$59,796.00

HOTEL PERMIT

On motion of Councilwoman Gaines, seconded by Councilman Pierce, the following hotel permit was approved:

LOOKOUT LAKE BED & BREAKFAST - 3408 Elder Mountain Road, Chattanooga, TN

REFUND

On motion of Councilwoman Gaines, seconded by Councilwoman Bennett, the Administrator of Finance was authorized to issue the following refund of property tax due to State Board of Equalization exemption on 15 acres of this parcel:

BAYLOR SCHOOL -- \$1,108.82

PURCHASE

On motion of Councilwoman Gaines, seconded by Councilman Franklin, the following purchase was approved for use by the Finance Department:

ASHPAUGH & SCULCO, CPAs (Best proposal)
R0097896

Cable Auditing Services

\$20,000 plus expenses

PURCHASES

On motion of Councilman Franklin, seconded by Councilman Rico, the following purchases were approved for use by the Mayor’s Office, Information Services Division:

MOTOROLA, INC. (Sole source)
R0102895

CSR Maintenance & Support Renewal per TCA 6-56-304.6

\$23,600.00

ORACLE (Sole source)
R00103240 and R0102981

Software Update, License and Technical Support Renewal per TCA 6-56-304.6

\$37,370.18

PURCHASE

On motion of Councilman Franklin, seconded by Councilwoman Gaines, the following purchase was approved for use by the Mayor’s Office, General Services Division:

CONSOLIDATED FLEET SERVICES, INC.
R0102745/B0004503

Aerial Testing Services (*First Alarm Testing, Inc., the lowest bidder, was not eligible for award since the bid was incomplete.*)

\$9,170.00

MARTI RUTHERFORD ISSUE

Councilman Pierce stated that he needed clarification, going back to the Rutherford issue. He stated her termination and resignation was given on October 1 and it is his understanding from what he is getting from administration is that administration is insisting that she stay on the payroll through the month of October in order to qualify for the city’s insurance.

MARTI RUTHERFORD ISSUE (Continued)

Councilman Pierce stated personally, he has a problem with that and feels like someone has resigned from their position and based on that now we are going to turn around, as far as administration he understands is concerned, and award them for what they have done; that we are giving them credit for time served that was not legitimately served and elected as a district representative. He asked administration to come and explain to the Council why this move is being made at this time and any justification for doing so. He stated he would like for other Council members to express their views and thoughts as to whether this is in the best interest of the city.

Dan Johnson stated that administration's position is that we do not have a letter of resignation turned in to personnel, yet, so we are taking no position as to what date is involved. He stated when we get a letter of resignation personnel can act.

Councilman Pierce stated that he wanted to comment on that; that the letter has been requested and we have been informed from her attorney that she has the letter but there no way they can force her to turn in the letter of resignation. He stated that he does not know any body can say she did not resign when she publicly called a press conference, cleaned out her office three days prior to resignation and a Council person stood in her presence at the news conference and heard her say she resigned. He stated this Council acted and accepted her resignation; that for whatever reason it is his thought administration is just disrespectful to this Council to ask this Council to keep her on the payroll for one more month; that he just does not "see it". He stated in light of that, he asked that administration be audited for some of the "goings on" in administration. He stated if we are going to audit everyone and have them live by the rules, we should live by the rules; that we are not here to play favoritism.

Mr. Johnson stated that he knows of no rule they have not followed; that there is no letter of resignation and no date she resigned as of and to act without some formal declaration would be improper and we have not done so, yet.

Councilman Pierce stated that he would like for the City Attorney to address the issue.

Councilman Benson stated that Mr. Johnson has his confidence and great respect, however, at the same time, as a Council member, we are not dealing with an administrative employee. He stated during last week's Legal and Legislative Committee he specifically asked the City Attorney what does it take to exercise her resignation and he said one of two things: in writing or informing the Chairman of the Council.

MARTI RUTHERFORD ISSUE (Continued)

Councilman Benson stated the Chairman responded that he had been called before she went on the platform to publicly resign; that it seems like we are victims of camaraderie and paternalism, here, and we can not do that as that is a "slippery slope" if we selectively and subjectively enforce our personnel policies. He stated what Councilman Pierce is asking is whether we have done this for others and that is scary; that this person resigned and we have a responsibility to correct it and not to make two wrongs out of it. He stated it is his thought whether we like it or not, we have to move on this, and as a Council we tried to move on this before personnel got involved; that the Council took a vote last week as a matter of record and accepted her resignation and Mr. Johnson was sitting here.

Mr. Johnson asked "as of what date".

Councilman Benson responded "last Tuesday", that is the date when the Council accepted it. In speaking to the City Attorney, he stated Councilman Pierce asked him to speak legally as he (Benson) does not want to do anything legally wrong.

Mike McMahan, Special Counsel from the City Attorney's office, stated that it is his thought we came to the position of what administrative and legislative functions are; that normally speaking, an employee resigns to the Mayor and the personnel director and the day is set forth as the day of resignation which becomes the effective date. He stated this is an unusual circumstance in that Ms. Rutherford did not submit a letter of resignation, which was one of the concerns raised last week, but submitted a verbal resignation. At this point he stated he is reminded of the Senator who recently went through the same thing and went on public, national television and resigned and then a couple days later decided to get his guilty plea overturned and has not resigned as of today. He stated in a position for this office the attorney's office has administration taking one position and the Council another and we are not in a position to really advise either party upon exactly what the law will be. He stated this is such a unique circumstance and doubts if he looked for any precedence he would find one; that it has come down to a situation of whether administration has the right to make the decision or the Council has the right.

Councilman Pierce stated in light of the Congressman Atty. McMahan was speaking of he gave a date certain of his resignation and before that date certain came up he withdrew it; that as he sees it he was within his right to withdraw. He stated, but again, this person was an elected official of this body of government and this Council, the legislative body, which is not governed by administration.

MARTI RUTHERFORD ISSUE (Continued)

Councilman Pierce stated he may be wrong and if he is he would like to be corrected; that we set our rules and administration sets their rules. He stated we are dealing with one of our own and we have done what, he feels, was the right thing and administration is coming in and telling us to leave her on the payroll for one month. He stated that it is his thought administration is overstepping their boundaries as far as separation of government and does not think the two should be combined.

Atty. McMahan stated that definitely "puts a nail on the head"; that there is separation of powers between the Mayor's office as Chief Executive and Chief Administrator and the Legislative body.

Mr. Johnson stated that he wanted to point out that they have not asked for any one month extension and do not have a date of termination nor resignation.

Councilman Franklin stated that he has two questions and asked for clarification regarding last week's meeting when the Council asked the attorney to give them an opinion on whether the resignation was valid or not.

Atty. McMahan stated that as best he can recall the first concern that was raised was about a resignation in writing and then it was decided based upon evidence she did give a verbal resignation to the chairman, the Council came back in formal meeting and said we are going to accept her resignation and create a vacancy immediately whatever date that was last week. He stated when the Council voted there was no question her resignation was effective last Tuesday.

Councilman Franklin stated that the resignation was given at two instances where it would be binding and one of those was to effectively communicate with the Chair of the Council, is that not correct. Atty. McMahan responded "yes".

Councilman Franklin stated he hates this as much as anybody to see this happen like this, but unfortunately it is something out of the Council's accord, however his last question is if there is a conflict between legal representation between Council and administration, what are the options. Atty. McMahan stated if the Council were to go forward and if they feel so strongly about this position that they would want to challenge the Mayor's authority, that would put the city attorney's office in a position that the Council would need to obtain their own counsel to challenge the Mayor's decision if he, in fact, made a contrary decision.

MARTI RUTHERFORD ISSUE (Continued)

Councilman Benson stated last week during the Legal and Legislative Committee our action to oust Ms. Rutherford was aborted strictly because she resigned; that we stopped court action in Chancery Court and she stopped it in Circuit Court because she resigned that day when she told Chairman Page and we accepted it on Tuesday night. In addressing Mr. Johnson, he stated being intellectually honest with yourself, he (Johnson) knows that is sufficient; that there is nothing that says an elected official has to get a letter. He expressed his thought that the Council should have started ouster proceedings last week.

Councilman Pierce stated all he is trying to do is act before the fact and not after. He stated if we continue to hold her here on the payroll for another month, which is what is trying to be done and we have to obtain our own attorney, it will take time and money and we will be acting after the fact and opening ourselves up for a lawsuit as she will have something to sue the city on then. He stated this is what he is trying to get to the point, now, do we act after the fact or before it happens. He stated that the only thing we can do is vote our opinion and administration can do their will. He stated administration has no right dealing in Council business and administration did not hire this person; that we have done what was expected for us to do lawfully and with what administration is trying to do every citizen in this city should be crying out. He asked if this is the way we will deal with taxpayers' money; that it is his thought administration is misleading the entire city to say we should leave this person on the payroll.

Councilwoman Bennett asked Mr. Johnson if he were satisfied with the vote the Council took last week, whether there is any question about when Ms. Rutherford officially resigned. She stated action was taken last Tuesday to declare her seat vacant and if there is any question about the date of her official resignation the Council took official action last Tuesday to declare her seat vacant October 9. She asked if that clarifies anything for administration in terms of the resignation date.

Mr. Johnson stated he did not think that was mentioned in the proceedings and asked if it was in the minutes.

Councilman Benson stated that it was in the minutes.

Mr. Johnson stated they have not received official notice of a resignation date on her form to personnel. He stated if the Council would like to say that was the date then they will proceed.

MARTI RUTHERFORD ISSUE (Continued)

Councilwoman Gaines addressed the City Attorney and asked at this point in affirming the fact, what kind of evidence would we have to have; that we have Ms. Rutherford on video and on the internet announcing her resignation. She asked what is necessary to make this happen.

Atty. McMahan stated that he does not know; that unless it is submitted in writing we will not get any more.

Councilwoman Gaines stated the Council was told three weeks ago that we did not need one as she has felt all along and several others.

Atty. McMahan stated that it was felt there was sufficient evidence that would probably be sustained by law if it were challenged and decided she resigned on or before last Tuesday night.

Councilwoman Gaines stated that was very moot and confusing; that several on the Council asked on several occasions about written resignations. She asked when City Attorney Nelson would return to the office. Atty. McMahan stated that Mr. Nelson is in-and-out of the office.

Councilwoman Gaines addressed Mr. Johnson and asked how long has he or administration known that they needed a written resignation and did they notify the Council office with a concern they had not received it.

Donna Kelley stated that they were concerned; that in attempting to apply for benefits uniformly, not just because of the issue at hand right now, we do have responsibility to fairly and uniformly distribute benefits of employees and officials. She stated what came up in this transaction was an effective date and at the time they did not have an effective date. She stated that she knows an announcement of resignation was made and knows the Council accepted it last week; that it was not her understanding it was accepted on a given date.

Councilwoman Gaines asked Ms. Kelley when she (Kelley) and former Councilwoman Rutherford were reviewing her files, did she notify Mrs. Rutherford to get that in writing from her or our office.

Ms. Kelley responded "no, I didn't".

Councilwoman Gaines stated upon her resignation from the county after she notified them everything "floated"; that it is amazing the personnel department – and she noted she is not "kicking" them around – would decide two-to-three weeks later that that is what is needed and then "stop the show".

MARTI RUTHERFORD ISSUE (Continued)

Ms. Kelley stated that is not what happened. She stated in her (Rutherford) case, she had already retired from the city once before; that there were questions with regard to her benefits layout and at that time we contacted our actuary for assistance in calculating her benefits.

Councilwoman Gaines stated what she is saying is if personnel knew her payroll would have to continue another month or two and continue to pay her, would not you say to yourself, personally even, we need to see about this, otherwise continue to pay this person for two-to-three months; that maybe we need to make sure the Council is informed so they will have notice to say this is what you need to do, otherwise we will have to pay the former Councilwoman another year.

Ms. Kelley stated since Ms. Rutherford returned to the Council and was drawing benefits from her first time being in office, it did not occur to anyone in the department to check her birth date.

At this time Councilman Benson stated he would like to make a motion to make it clear for the record to reaffirm her resignation and acceptance of her resignation as of the date she talked to our Council Chairman, Monday, October 1; that October 1 would be her date of resignation.

Councilman Benson made the motion to reaffirm the acceptance of Ms. Rutherford's resignation as of October 1, which was recorded and given to our Chairperson; Councilwoman Gaines seconded the motion; the motion passed unanimously.

Councilman Pierce addressed Ms. Kelley and stated that he talked with her last week and basically it is his thought at the time prior to their conversation Ms. Rutherford had just visited her office. He asked if Ms. Rutherford was aware of all of this or did Ms. Kelley bring it to her attention if she stayed what would take place.

Ms. Kelley stated as best she could recollect, Ms. Rutherford asked to come to discuss retaining her medical benefits and it was under what form they would be retained. She stated within the provision of the *Code* one of the methods is a person's sixty-second birthday and ten years of service.

Councilman Pierce stated that he understands that and asked why Ms. Rutherford came to her office.

MARTI RUTHERFORD ISSUE (Continued)

Ms. Kelley stated because that is where the personnel office and benefits area is located.

Councilman Pierce asked why she talked with her about benefits if she had not resigned.

Ms. Kelley stated because she had fully announced.

Mr. Pierce repeated "she had announced". He turned to Mr. Johnson and stated that this is about the Wellness Center and it is his thought certain keys may need to be returned; that she is no longer a city employee and those benefits are available to the public.

Ms. Kelley stated normally that happens at the point of exit; that when we get someone's resignation and they come in it is at that point that happens and that has not happened, yet.

Councilman Pierce responded "just as long as it is going to happen".

Councilwoman Gaines addressed the City Attorney and asked where we go from here; that it seems we are still saying that Ms. Rutherford is not officially off the Council. She stated there is nothing personal in her inquiry and asked Ms. Kelley about how she feels about the action taken tonight.

Ms. Kelley stated tonight the Council clarified the effective date to satisfy her; that last week the Council accepted her resignation with no effective date announced. She stated that the Council may have had the intention but it was not clear to her to actually record it and discuss the basis of that date.

Councilman Page stated that it is his thought if there is a question in any one's mind Ms. Rutherford has resigned and it was accepted last week and for clarity we adopted another motion tonight. He stated if there are no other questions this matter should be resolved as she has resigned and the Council has accepted it twice, now. He stated the Council is ready to move on.

COMMITTEES

Councilman Benson stated that the interim **Legal and Legislative Committee** met today in a work session on various ordinances on trying to make Chattanooga an animal friendly town; that it is his thought good ordinances will be presented at next week's **meeting at 3 p.m. on Tuesday, October 23.**

COMMITTEES (Continued)

Councilman Franklin reminded Council members of the **Parks and Recreation Committee meeting scheduled to immediately follow Legal and Legislative.**

Councilman Rico announced that the **joint Safety and Public Works Committee meeting would be held on Tuesday, October 30 at 3 p.m.**

JOHNNY HOLLOWAY

Johnny Holloway, Vice President and Moderator of the Rainbow PUSH Coalition, commended the Council for what they did tonight. He stated that he was one of the plaintiffs in the case more than sixteen years ago that changed this government from Commission to Council form for many reasons, one of which was "seen" tonight regarding the division of government and administration. He stated the Mayor did not have any business fooling with the Council's decision and it is his thought that is what we saw tonight -- somebody overstepped their bounds. He stated the next comment he would like to make while talking about giving Ms. Rutherford something should be a full investigation of what she did -- did she really vote illegally living in District 5 and voting in District 6; that somebody should look at it and the city's Attorney General should. He stated next, if she were illegally violating the law she should pay everything back she received if the law is fully carried out; that those things really need to be looked at to be just and moral in your decision. He stated that there is a need to look to see if the Voting Rights Bill was violated in her actions. He stated then, there are the moral bases as this should be a notice to elected officials that she went before the election voting registration office and indicated she lived in one place and actually lived in another; that they need to look real close not only at the people that signed her petition as to where they live but people running for office to make sure they live where they say they live. He stated something needs to be done as he personally will not rest until we get some kind of ruling as to whether she was legally right in her actions. Thank you.

Later in the meeting Chairman Page thanked Mr. Holloway for being a leader in the community.

OMAR NAVEED MINHAS

Omar Naveed Minhas stated that he lives in Councilwoman Bennett's district. He read from a three-page statement and noted Chattanooga has experienced an incredible revitalization and development over the past fifteen years primarily under the hands of former Mayors Corker and Kinsey, with guidance from RiverCity Company, his father, and many other great leaders

OMAR NAVEED MINHAS (Continued)

which was largely the reason he moved back to Chattanooga where he vowed initially he would never return. He stated Chattanooga is his home again, it is where he grew up and along with him are many of the future leaders of this city who are present to convey what they want with their Chattanooga that today's leaders are leaving behind for them. He stated they are the young professionals, the new educators, developers, lawyers, accountants, newlyweds, the socialites and the energy; that they are Chattanooga and are making a stand. He stated today they are charged with the responsibility to speak their voices out of concern, compassion and conviction.

Mr. Minhas continued by stating his parents instilled in him care for others and has been taught to guide, help and assist those in need, however, there is only so much that can be done for a person in their life. He stated people in need can normally find someone that will help them but until the individual makes a personal commitment and shows signs of self-motivation and determination, they will continue to rely on others. He stated homelessness has plagued our nation and our cities and with the city's current plan, our beloved downtown; that many homeless people are looking for a place to fall back on and yet others really do need the help. He stated more energy, money and attention should be devoted to programs and staff who can identify and place individuals who seek help and provide permanent placement. He stated as future leaders of this community they are opposed to the proposed homeless complex as it will have a negative impact on the vision and positive development of our city; that they have major concerns about its proximity to new developments, the UTC campus, to some of their favorite restaurants, to the nightlife and to all the tourists whose millions of dollars a year strengthen the economy of our city and help sustain our growth. He reiterated that they are adamantly opposed to the proposed homeless complex.

Mr. Minhas continued reading his statement and concluded by asking that Council members ask themselves three questions when they go home tonight: (1) is the homeless complex the best use of land given the conditions of growth and development surrounding the former Farmers Market; (2) is there an alternative location that would provide a cheaper land basis and not interfere with business, college, tourists and residential; and (3) politics aside, do Council members personally feel this is best for their Chattanooga and his.

At this point Mr. Minhas asked members of the young professional's organization in attendance to stand. *(A copy of Mr. Minhas' statement is filed with minute material of this date.)*

OMAR NAVEED MINHAS (Continued)

Chairman Page stated that he understands their concerns and expressed hope for a resolution to the problems that have been brought to the Council's attention. He stated there is a committee working on this and it is hoped something can be stabilized and done constructively over the next few weeks.

MATTHEW B. HODGES

Chairman Page asked Mr. Hodges if his comments were in reference to the same issue as Mr. Minhas', to which Mr. Hodges responded "yes".

Matthew B. Hodges stated the major thing he wanted to say was the vote for SETHRA is being used as a scapegoat sneaking in behind them. He stated no one wants it and it is hoped the Council can see it for what it is.

Councilman Pierce expressed appreciation for the comments made and noted that a plan is supposed to be in place and he is not comfortable with it. He stated it is his thought they are still trying to piecemeal this thing together and SETHRA is one of the pieces and he does not know how the other providers will accept this. He wished them all luck and noted this is all he can say at this point.

Councilwoman Bennett stated that the speakers are from her district in North Chattanooga and expressed appreciation to them noting that this is not just a downtown issue but it is obvious it is a community-wide issue.

ADJOURNMENT

Chairman Page adjourned the meeting of the Chattanooga Council until Tuesday, October 23, 2007 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)**