

**City Council Building
Chattanooga, Tennessee
September 7, 2010
6:00 p.m.**

Chairman Rico called the meeting of the Chattanooga Council to order with Councilmen Benson, Berz, Gilbert, Ladd, McGary, Murphy, Robinson and Scott 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, Councilwoman Berz gave the invocation for the evening.

MINUTE APPROVAL

Prior to approval of the minutes, Councilman McGary noted page 10 and the spelling of "justishability" noting that the "h" should be removed. The correction was accepted.

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

CLOSE AND ABANDON

MR-2010-075: Yerbey Concrete

On motion of Councilman McGary, seconded by Councilwoman Ladd,
**AN ORDINANCE CLOSING AND ABANDONING AN UNOPENED ALLEY
ALONG THE 1900 BLOCK OF CENTRAL AVENUE**

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

GRANT

On motion of Councilman Benson, seconded by Councilman Murphy,

A RESOLUTION AUTHORIZING THE ADMINISTRATOR OF THE DEPARTMENT OF PARKS AND RECREATION TO ACCEPT A GRANT IN THE AMOUNT OF TWENTY-NINE THOUSAND ONE HUNDRED SIXTY DOLLARS (\$29,160.00) FROM THE STATE OF TENNESSEE DEPARTMENT OF EDUCATION TO SUPPORT ENHANCED STUDENT ACHIVEMENT THROUGH THE ESTABLISHMENT AND OPERATION OF A LOTTERY FOR EDUCATION: AFTER SCHOOL PROGRAM (BUILDING BLOCKS PROGRAM)

Was adopted.

AGREEMENT

On motion of Councilwoman Ladd, seconded by Councilwoman Scott,

A RESOLUTION AUTHORIZING THE ADMINISTRATOR OF THE DEPARTMENT OF PUBLIC WORKS TO ENTER INTO AN AGREEMENT WITH ARCADIS U.S., INC. FOR PROFESSIONAL ENGINEERING SERVICES FOR PLANNING, DESIGN, AND CONSTRUCTION OF AREA 2 CLOSURE CAP FOR CITY LANDFILL, PROJECT W-10-003, FOR AN AMOUNT NOT TO EXCEED SIX HUNDRED FORTY-FOUR THOUSAND FIVE HUNDRED DOLLARS (\$644,500.00)

Was adopted.

EASEMENT

On motion of Councilwoman Berz, seconded by Councilman Benson,

A RESOLUTION AUTHORIZING THE ADMINISTRATOR OF THE DEPARTMENT OF PUBLIC WORKS TO PAY DASAC CORPORATION FOR A SANITARY SEWER EASEMENT RELATIVE TO CONTRACT W-08-010, AIRPORT ROAD PUMP STATION AND FORCE MAIN FOR TRACT 5, PROPERTY LOCATED AT 801 AIRPORT ROAD, IN AN AMOUNT NOT TO EXCEED FIVE THOUSAND EIGHT HUNDRED FIFTY-NINE DOLLARS (\$5,859.00)

Was adopted.

EASEMENT

On motion of Councilwoman Berz, seconded by Councilman Gilbert,

A RESOLUTION AUTHORIZING THE ADMINISTRATOR OF THE DEPARTMENT OF PUBLIC WORKS TO PAY DASAC CORPORATION FOR A SANITARY SEWER EASEMENT RELATIVE TO CONTRACT W-08-010, AIRPORT ROAD PUMP STATION AND FORCE MAIN FOR TRACT 6, PROPERTY LOCATED AT 000 AIRPORT ROAD, IN AN AMOUNT NOT TO EXCEED SEVEN HUNDRED FOURTEEN DOLLARS (\$714.00)

Was adopted.

GRANT

On motion of Councilwoman Robinson, seconded by Councilwoman Ladd,

A RESOLUTION AUTHORIZING THE MAYOR TO APPLY FOR AND, IF APPROVED, ACCEPT A TENNESSEE AGRICULTURE ENHANCEMENT PROGRAM GRANT FROM THE TENNESSEE DIVISION OF FORESTRY IN THE AMOUNT UP TO AND INCLUDING EIGHT THOUSAND DOLLARS (\$8,000.00)

Was adopted.

ACCEPT FUNDS

On motion of Councilman McGary, seconded by Councilman Murphy,

A RESOLUTION AUTHORIZING THE ADMINISTRATOR OF THE DEPARTMENT OF PUBLIC WORKS TO ACCEPT FUNDS FROM UNUM GROUP FOR THE PURCHASE OF PEDESTRIAN LIGHTS RELATIVE TO PROJECT NO. E-10-012, UNUM CAMPUS STREETSCAPES (WALNUT STREET, 5TH STREET, CHERRY STREET, AND LOOKOUT STREET) FOR A TOTAL AMOUNT OF SEVENTY-SIX THOUSAND SIX HUNDRED TWENTY DOLLARS (\$76,620.00), AND APPLIED TO THE STREETSCAPE PEDESTRIAN LIGHT FIXTURES ACCOUNT

Was adopted.

TEMPORARY USE

Councilman McGary inquired as to the possibility of receiving an update as to the utilization rates of parking in the downtown area noting there have been more requests received for more parking; that it would be good to have an overall "feel" how much parking is currently being used with the parking decks we have, the new parking with Engel parking – just a presentation regarding utilization rates downtown.

TEMPORARY USE (Continued)

Admin. Leach responded that he would try to see if something could be presented at next week's Public Works Committee meeting; that they are very concerned about this as Main Street has become such a vibrant community and this one is a little different in that they are actually providing parking for a use going in and have solved their problems. He stated there are others in the area that have provided off street parking which has not been available before; that they would try to work something up for next Tuesday.

Councilman Murphy pointed out that is also a "moving target" that the RiverCity Company is working hard to try and do some things differently with employee parking downtown; that it is very much a "moving target" and involves privately administered parking decks for which may not publicly provide capacity utilization reports as they do not have to.

On motion of Councilwoman Ladd, seconded by Councilman Murphy,
A RESOLUTION AUTHORIZING RIVER STREET ARCHITECTURE ON BEHALF OF DAN ROSE TO USE TEMPORARILY THE RIGHT-OF-WAY LOCATED AT THE 100 BLOCK OF EAST 14TH STREET AND THE 100 BLOCK OF JOHNSON STREET, FOR THE PURPOSE OF PROVIDING PARKING, AS SHOWN ON THE DRAWING ATTACHED HERETO AND MADE A PART HEREOF BY REFERENCE, SUBJECT TO CERAIN CONDITIONS

Was adopted.

EXPRESSION OF SUPPORT

Councilman Murphy made the motion to amend the Resolution to read "... to express the City Council's 'endorsement of the expansion ...'"; Councilwoman Berz seconded the motion; the motion carried.

On motion of Councilwoman Berz, seconded by Councilman Murphy,
A RESOLUTION EXPRESSING THE CITY COUNCIL'S ENDORSEMENT OF THE EXPANSION OF THE NATIONAL PARK BOUNDARIES IN THE VICINITY OF MISSIONARY RIDGE, AS SHOWN ON THE ATTACHED MAP

Was adopted.

OVERTIME

Overtime for the week ending September 2, 2010 totaled \$10,357.57.

PERSONNEL

The following personnel matters were reported for the various departments:

INFORMATION SYSTEMS:

- **BETTYE JO WELLS** – Reduction in Force, Telecommunications Manager, effective September 2, 2010.

PARKS AND RECREATION:

- **MARK HENLEY** – Hire, Crew Supervisor 1, Range 8, \$37,900.00 annually, effective August 30, 2010.

CHATTANOOGA POLICE DEPARTMENT:

- **JORDAN MCGRATH** – Return to Duty from Military Leave, Police Officer 1, effective September 1, 2010.
- **TEIRRA NICHOLSON, EUGENIA SHERRILL** – Resignation, School Patrol Officer, effective August 2, 2010.
- **NOEL SAMPSON** – Resignation, School Patrol Officer, effective August 26, 2010.

PUBLIC WORKS DEPARTMENT:

- **JOHNNY R. THOMAS** – Voluntary Demotion, Crew Worker 1, Traffic Engineering, Range 2, \$27,040.00 annually, effective August 26, 2010.
- **DAVID L. MASSENGALE** – Promotion, Equipment Operator 3, City Wide Services, Range 8, \$30,470.34 annually, effective August 27, 2010.
- **MILTON B. STEWART** – Equipment Operator 4, City Wide Services, Range 10, \$28,405.88 annually, effective August 27, 2010.
- **MATTHEW R. BROOM** – Return to Duty from Family Medical Leave, Survey Instrument Technician, Engineering, effective August 30, 2010.

HOTEL PERMITS

On motion of Councilman McGary, seconded by Councilwoman Ladd, the following hotel permits were approved:

HOLIDAY INN EXPRESS – 6274 Artesian Circle, Ooltewah, TN

SKY HARBOR BAVARIAN INN – 2159 Old Wauhatchie Pike, Chattanooga, TN

STAYBRIDGE SUITES – 7015 Shallowford Road, Chattanooga, TN

SUPER 8 – 5112 Hunter Road, Ooltewah, TN

HIXSON TN LODGING LLC d/b/a COUNTRY INN & SUITES BY CARLSON HIXSON – 5105 Highway 153, Hixson, TN

PURCHASES

On motion of Councilwoman Berz, seconded by Councilwoman Ladd the following purchases were approved for use by the various departments:

CHATTANOOGA HUMAN SERVICES:

ATHLETIC SPECIALTIES (Best and lowest bid) **R31621**

Replacement of Playground Surface

\$12,654.60

PUBLIC WORKS DEPARTMENT:

PETERSON PACIFIC CORP. (Lowest and best bid based upon the price submitted) **R32098/300519**

Purchase of a Blanket Contract for Parts for Horizontal Grinder (*The Trading Company submitted the lowest bid, however, the bid was not considered for award since it was an incomplete bid.*)

\$40,000.00 Annual Estimation

PURCHASES (Continued)

NALCO COMPANY (Lowest and best bid)

R31507

Purchase of a Blanket Contract for Emulsion Polymer

\$750,000.00 Annual Estimation

Councilwoman Scott asked if the \$750,000.00 what it cost us last year. Mr. Johnson responded "yes", when estimated annually, it was based on last year's cost.

CHATTANOOGA FIRE DEPARTMENT:

MRWS INDUSTRIAL (Lowest and best bid)

R31747/300514

Purchase of HazCat Unknown Substance Field Identification Systems

\$11,658.41

CHATTANOOGA POLICE DEPARTMENT:

REMOTEC, INC. (Single Source)

R33078

Purchase of Remotec Andros MK V Robot Upgrade per TCA 6-56-304.2

\$32,327.00

DONATION

The donation of a surplus 1991 Fire Squad Truck from the Hamilton County Sheriff's Office to the Chattanooga Fire Department was duly reported.

RECALL ISSUE

Councilman McGary addressed his comments to City Attorney McMahan and stated last week the Council discussed and the City Attorney requested the Council make intervention in the lawsuit concerning the recall and there was lengthy discussion. He stated he reviewed the minutes from last week particularly after Charlie Wysong spoke to the Council and read verbatim what was reflected (in the minutes):

Councilman Murphy responded by stating he specifically spoke with the City Attorney prior to today when this came up, when the "magic number" was reported to have been achieved by the Election Commission. He stated that he specifically addressed the fact that our Council was not to argue that the City Charter is not governing; however, he (City Attorney) is also not in a vacuum, so what he is going to file is something that simply says as an attorney we perceive there are these apparent conflicts between the City Charter and the State law and we want the judge to declare what the law is...

Councilman McGary then read a passage from the City of Chattanooga's Trial Brief submitted today In The Eleventh Judicial District of Tennessee Circuit Court noting page two wherein he had a question based upon some of the wording, particularly the sentence "*A city cannot enact a Home Rule Charter provision that is inconsistent with any general act of the General Assembly*". He mentioned a case contained within the paragraph and continued by reading "*TCA Section 2-5-151 authorities cities to enact a Charter provision that 'shall control with respect only to the requirements set forth in subsection (d) relating to the statutory minimum number of signatures required in a petition, and to the provision of subdivision (f)(1) relating to the seventy-five day deadline for filing a petition...'*" He stated his question is in reference to "*Any attempt via Home Rule to adopt any additional provisions to the recall provision will be inconsistent with this statute. It is clear that Chattanooga had no authority to re-enact all the provisions of Charter Section 3.18, because many of the provisions are inconsistent with TCA 2-5-151*". He reiterated that is where his question comes in; that based upon the conversation it was his understanding that the City Attorney's role in this lawsuit was to be a neutral party; however, in reading the Brief submitted by his office and signed by him (City Attorney), his statement is clearly "*Chattanooga had no authority to re-enact all the provision of State Charter 3.18 because many of the provisions are inconsistent with TCA 2-5-51*" seems to mitigate against that and is curious if he would be kind enough to explain that.

RECALL ISSUE (Continued)

City Attorney McMahan stated in the first place the judge specifically asked the parties to brief this issue and it is not something he pled in his complaint, but something the judge said he needed guidance with respect to. He stated Article 11 Section 9 of the Constitution of the State of Tennessee limits the authority of a municipal government to enact a law or an ordinance, by *Charter* referendum that is inconsistent with the State Law of General Liability. He stated he was reiterating what the case cited. He stated that is his understanding of the law of the State of Tennessee and it is his thought the judge in his holding actually held that our *Charter* amendment was intended to be an amendment to the *Charter*; that amendment 11-272 was intended only to amend Section 3.18 of the City's *Charter* and that is something the judge came up with on his own opinion based upon the briefs of the various parties that were submitted in his case and his brief was one of many. He stated that the judge asked for a brief and got the legal opinion he would have given Councilman McGary if he had asked him in person a week ago.

Councilman McGary stated his question more specifically is if it is the City Attorney's opinion, particularly with the item he (McGary) just read, the City Attorney was still maintaining a neutral stance.

City Attorney McMahan responded "yes"; that our stance was essentially neutral on this case; that we asked for declaratory judgment on all the important issues in the case. He stated they asked for a declaratory judgment with how many signatures were required, a declaratory judgment about when the election was to be held, a declaratory judgment about whether or not it would be November, whether or not it would be a two-or-three step process, a declaratory judgment with respect to the petitions that may be filed against Council members, however, the Court did not entertain and told us he was not going to entertain that section of the lawsuit that we filed on behalf of the city. He stated in other words on behalf of the city he asked the Court to tell us what we were supposed to do and the Election Commission also. He stated we have to remember this was basically a four-way petition: a petition filed by Mr. Littlefield, we filed as intervening plaintiffs, the Election Commission filed as a defendant and also asked for declaratory judgment on these same issues; that in other words all parties went into Court asking the Court to declare what the law is in Tennessee with respect to recall petitions.

RECALL ISSUE (Continued)

City Attorney McMahan stated the parties basically stipulated all facts because they are pretty much all known -- how many petitions were filed, how many petitions were filed with the correct date, how many petitions were put on different forms -- all these things are facts that the parties found out through discovery and basically the whole case was stipulated and the Court was asked to rule upon the questions of law and the Court only chose to rule on two questions: (1) on whether or not Section 3.18 applied or TCA 2-5-151 applied and that would determine the number and (2) the judge decided since 2-5-151 applied, whether or not 3.18 would apply as the number, would require that all petitions be dated and as he recalled 5,000 were undated. He stated the judge ruled, and if the Council had been there today he (City Attorney) asked no questions of any witness, made an opening statement in which he explained to the Court how our *Charter* was amended in 2002 and why it was amended; that the purpose it was amended in 2002 was to change to make sure the *Charter* was clear with respect to the powers of the City Council and the power of the Mayor. He stated the only change in Section 3.18 in 2002 was to eliminate the reference to the Board of Education members being recalled and the reason for that was effective June 30, 1997 the city was completely out of the "school business" and no longer had a Board of Education, so that clause was completely surplusage and in that same *Charter* amendment they omitted the whole title that dealt with the School Board. He stated other than eliminating useless provisions, that whole *Charter* enactment of 2002 only dealt with the powers of the City Council and the power of the Mayor to straighten them up as the *Charter* existed when it was the Commission form of government that changed by operation by Court Decree; that 2002 was the first year they cleaned up the *Charter* to make it read like a Mayor-Council form of government. He stated that he explained all that in Court and did nothing further and clarified that he has no reservations whatsoever that he followed the directive of the Council. He stated if the Council sends him to Court they have to realize exigent situations will change; that the Judge asked for trial briefs on a specific question and he is obligated as an Officer of the Court to give him a brief on the question he asked and if something comes up in trial that he did not expect he would respond to it as he believes would be in the city's best interest.

Councilwoman Scott asked for clarification that the City Attorney said the only thing that had changed with the 2002 amendment were the two issues that he brought up, but was the whole rest of the *Charter* approved.

RECALL ISSUE (Continued)

City Attorney McMahan stated if he is remembering right, as he printed it all this morning because it is 230 pages type written, that the whole *Charter* from Section 1 to the end Section number was re-enacted in 2002. He stated in reality it was re-codified in his opinion because when the *Charter* amendment was rewritten the City Council made very few changes; that they went through the *Charter* week-by-week, section-by-section, title-by-title and went over it to see what they would change that was already in there; that they went over this about six-or-eight Legal and Legislative Committee meetings as reflected by minutes which were submitted to the Court for the Court to review so the Court could determine what the City Council's intention was when they enacted those *Charter* amendments.

Councilwoman Scott asked if it is the practice of the City Attorney's office to look at the *Charter* again to see if it is in conflict with the State, any part of it when it is re-enacted.

City Attorney McMahan stated that he could only state according to the minutes of March 5, 2002 where Section 3.18 was considered there is no indication from those minutes that the City Attorney or the City Attorney's office recognized that there may be a conflict between Section 3.18 and TCA 6-2-151; that if it was known it was not discussed and apparently not recognized at that time.

Councilman McGary stated given the ruling today whereby the State Constitution supersedes the City *Charter*, if we as a Council have a desire to uphold our recall provision whereby we as a Council would like to have the opportunity to decide a number, what would be the City Attorney's counsel going forward in order to do that.

City Attorney McMahan stated we were a party to the lawsuit which gives the City Council the authority if they would so direct to appeal the Judge's decision today. He stated aside from that the Council would need to determine that themselves; that the State Statute gives the Council the right to determine the number of people it would take to sign a recall petition; in other words that is one of the two things the State Statute allows the Council to do and the other thing is it allows the Council to determine how many days petitioners would have to collect the signatures to require a recall. He stated if the Council wanted to change the provisions of the *Charter* to make it more or less difficult to recall one of themselves or the Mayor they can do another referendum.

RECALL ISSUE (Continued)

City Attorney McMahan stated the next time a referendum can be held would be August 2012 which is the next General Election; that a recall petition can only be held at a General Election in an August or November election in even years and the next one is 2012. He stated the Council could propose a *Charter* amendment to submit to the people in 2012 to fix the numbers where the Council thinks they ought to be determined.

Councilwoman Scott stated last week we talked about revisiting the *Charter* to evaluate the parts of it that were perhaps obsolete; that she would like to request that when we do that the City Attorney's office look at each part of that in relationship to State law and determine we are not enacting something that is in conflict, or if we do we have legal grounds to do that.

City Attorney McMahan responded "yes"; that he would really suggest that we do it the way it was done before and take a Chapter at a time in Legal and Legislative Committee so people will not focus on too much all at one time. He stated it would certainly be a good idea as there are still provisions in the *Charter* which are outdated and there could be some additions or deletions the Council would want to make based upon policy matters.

COMMITTEES

Councilwoman Scott scheduled a meeting of the **Economic Development Committee for Tuesday, September 21** immediately following the Agenda Session to review PILOTs for Wrigley and IBI.

Councilwoman Robinson stated the Health, Human Services and Housing Opportunities Committee met today and heard from Albert Smith who updated us on two projects: one at the corner of Main and Market for mixed use with apartments and a second project on Walnut Street for a mixed use with a number of apartments, as well as the new Miss Mag Nursery. She stated no Council action is required and this will not come up again unless there is further discussion of it; that it was essentially to affirm the city's commitment to mixed use developments and more apartments and rental property in our downtown with all the new jobs coming in downtown as there are a total of 55,000 jobs now. She stated it is believed these apartments will fill a real important segment of our market.

COMMITTEES (Continued)

Councilwoman Ladd reminded Council members of the meeting of the **Public Works Committee scheduled for Tuesday, September 14** immediately following the agenda session.

AGENDA: SEPTEMBER 14, 2010

Chairman Rico stated the agenda for Tuesday, September 14, 2010 was discussed earlier this afternoon during the Agenda Session.

CHARLIE WYSONG

Charlie Wysong of 6872 Robin Drive stated he was involved with the recall movement; that they worked diligently to achieve the numbers that were specifically given to them that the Hamilton County Election Commission voted on. He stated after hearing the Judge's ruling and after hearing Mr. McMahan's explanation of the City *Charter* and how we can have an amendment to our *Charter* but the provision was never enacted he does not understand that. He stated that was what was ruled today that we have a City *Charter* that had never been enacted but amended; that he does know if it makes any sense to the Council but it does not to them. He stated they are frustrated and feel they are in a carnival shell game with the city government; that they came up with the exact number and carefully followed the laws and instructions they were given and now when they come to a successful number of signatures for recall they then say "the pea is not under that one and will try another one" and shift it again! He stated it is disgraceful that city government can operate like this and cheat the people again and again of their rights! He stated it is his thought there needs to be many things that the Council needs to think about as to how the citizens of this city can express themselves; that they have a right to self-government; that the power of the government rests in the hands of the people. He stated they can alter reform or abolish the government so says the Tennessee Constitution and the Declaration of Independence. He stated when they come to a successful conclusion to alter or reform the government it is said "not today, we did not enact that statute back yonder; we amended it but did not enact it". He stated it is disappointment, not so much that they did not achieve their goal, but to know that they are standing in front of men and women who care so little about this city and the citizens that they could make arguments like were made in court today to deprive them of their legitimate right to alter, reform or abolish the government.

CHARLIE WYSONG (Continued)

Councilman Murphy addressed Mr. Wysong and stated that he (Murphy) has not read the judge's ruling but half of this Council did not exist in these seats when the relevant provisions Mr. Wysong complained of did or did not have anything done to them. He expressed sorrow that Mr. Wysong did not get the desired outcome and understands their frustration to have partaken in that exercise of civic engagement which they did and have it all come to what they view as naught would be exceedingly frustrating. He asked that he please understand that it is not the individuals on this Council by the majority certainly who had anything to do with the state of affairs; that if Mr. Wysong recalls, his (Murphy's) impassioned plea last week was that we need to bring clarity to this situation so that his constituents know what it takes to remove him should they care to do so. He stated he is a little frustrated Mr. Wysong chose the Council as the object of his frustration; that he (Murphy) did nothing to frustrate their aims, goals and means and is sorry it happened for them. He asked that he please understand the Council not should be the object of their upset.

Mr. Wysong responded "well taken" and asked if the City Council could make a recall provision in the *Charter* that is understandable and would affect the desires of the citizens if they so choose to alter their government. He stated that is what he asks we undertake in the Legal and Legislative Committee and make a recommendation to the rest of the Council; that they would feel they moved ahead and achieved something in this loss they had in court today.

Councilman Murphy stated given the judicial ruling and the Council's commitment to revisit the *Charter* chapter and verse that would in part be one of the goals for it to be crystal clear so that everybody understands that if you pull up our *Charter* on the website and see the rules for recall they mean what they say they mean.

Councilman McGary commented on a line Mr. Wysong mentioned and Councilman Murphy's indication all of this had come to naught; that he wanted to comment in that regard and has said before and will say again whether or not he agrees with the recall effort he has said publicly he did not sign the recall nor was part of Recall Ron, Tea Party or Chattanooga's Organized for Action. He stated even though he did not support the recall effort or sign, he still appreciates, understands and values the role of democracy in this city.

CHARLIE WYSONG (Continued)

Councilman McGary stated when individuals band together and say this is what they desire to do in order to make a statement to our government is to be commended even if he disagrees; that when it is said all this has come to naught he does not believe it has all come to naught. He stated there has been a great realization as to what can happen when citizens band together and work together for a common effort; that there has certainly been a message sent to everyone on this Council, including himself, that if we do something and say something that is out of line with what the citizens desire or want we, too, can be recalled. He stated from that standpoint even though the desired outcome might not have been achieved there certainly has been some indirect benefit to what has happened. He expressed hope that their hope in democracy does not fail; that their hope toward citizen participation does not fail even though they did not have the desired outcome; that great strides have been made in the community toward recognizing what true democracy is.

LARRY GROHN

Larry Grohn of 7032 Igou Gap Road stated he reviewed 300-400 petition sheets and there were three basic reasons why signatures were declared invalid and were pretty much equally spread. He stated some folks signed that lived in other cities within the county, some signed and were registered voters but did not put down the correct address that they were registered at, then others were just not registered voters and that has its own set of problems. He stated the Judge ruled today and the city should be suing on this; that the Council has been told the *City Charter* was not enacted in 2002 and the Judge ruled that only the sections that were on the ballot and amended were enacted in 2002, therefore the entire *City Charter* that was not amended in 2002 is inconsistent with *Tennessee Code* and therefore is an invalid *City Charter*. He stated it is very interesting that the Chairman of City Council in both 1990 when the *Charter* came into power and in 2002 when it was thought it was enacted is Mayor Ron Littlefield! He stated his question is how is the Council going to proceed with the knowledge there is a *City Charter* that is invalid under State law and how are they going to secure the rights of the citizens of Chattanooga under an invalid *City Charter*.

MARK WEST

Mark West stated that he lives in the county outside the city but owns property in the city. He expressed agreement with the comments that have been made and does not feel this has come to an unsuccessful conclusion; that in fact he does not feel it has come to a conclusion at all. He stated to be honest it is his thought the folks who have been left wanting and frustrated are not people in this room tonight, are not the people that have been the targets of the powerful and elite in this city, but 15,000 people who live in ordinary houses all across this city who stepped up and many were concerned about whether their names would even be made public because they were in fear of intimidation or reprisal. He stated he has notes and cards from various people who made that very point that they were afraid of retribution and for that reason they did not and would not sign. He stated that is a concerning point in and of itself that there is a group of constituency that believe that about their government and they have not tried to “fan” that particular perspective. He stated his concern would be that because a judge reached a certain conclusion and invalidated on technicalities 10,000 – 15,000 signatures does not in any way shape or form invalidate the opinion of those people; that in fact it only fuels the fire for those people because they feel their voice was not heard. He asked the Council if for some reason they were given instructions and failed to cross a “+” and dot an “i” yet followed the instructions to the letter of the law what would be their response when told “sorry you did not cross the ‘+’ or dot the ‘i’ properly”!

Mr. West stated he is not angry but would have to figure out the right response; that they are not looking for reprisal in any shape or form; that they want to continue to be responsible, cordial peaceful people in this community. He stated they will not degrade and drop down to the level of name calling and assault on personal character as that is not what this is about; that this has always been and will continue to be about policies. He stated they trust that the Council will view them not as a team trying to remove them from office; that it is their hope they will have more than just a three minute involvement from time-to-time and hoped the only way they think they can get any kind of attention is not through raising 15,000 signatures as they do not desire to do that; that they did not necessarily enjoy doing that night after night after night. He stated it is something they felt they had to do and feel was not in vain; that they will continue to move forward because they feel the will of the people has not been heard and 15,000 people believe that, as well, and solicited their direction and input as to how to move forward. He stated that they solicit the Council's input and responsiveness to them in the future as they try to work in a common goal for the good and betterment of this city.

LANA SUTTON

Lana Sutton of 7203 Sylvia Trail stated 10,000 people's voices/petitions were not heard today and were basically "slammed" noting their only avenue for recalling a Mayor was "psyche, got 'cha"! She stated people are not specifically mad at the City Council, they are mad at the "machine"; that it is a continuous "'got 'cha' machine" where they cannot get public records and try to do exactly what the Election Commission told them to the letter. She stated they told them they did not have to have the dates by the names and still got shut out; that it is confusion by design they are told one thing and get another and cannot get through. She stated her e-mails still have not gotten to the Council because the City Attorney's office said she was flagged as an Ethiopian spammer; that she has been cleared as a cyberspace pirate and asked if the City Council can now get their letters and was told they would look into it and for her to keep trying! She stated she thought it was hilarious and so did the State Comptroller. She stated all this verbiage about "enacted and amended" is all a distinction without a difference and asked if our *City Charter* is valid or not, whether some provisions are valid or not or are they going to be cherry picked next time they come with 15,000 signatures because they are and plan to bring 15,000 signatures if they cannot get the Council to agree with the original plan which is that they needed 9,000. She stated she feels sorry for the citizens who signed them freely and excitedly; that the people who worked so very hard and spent their nights and days getting signatures, people who are proud of their country and patriotic were shut out and have been treated like non-citizens. She stated there are 10,000 citizens that deserve to be treated like citizens.

SHARON PEAKER

Sharon Peaker of Hixson, Tennessee stated that she wanted to comment on what Councilman Murphy said noting that she does not see it as representatives before and representatives now. She stated it is one government and it is a continuum and it is not like, for example, Bush made mistakes and Obama paying the price. She stated this is one government and this is one City Council whether two or four years ago or not; that when office is taken she would expect Council members would read the *City Charter*, read the documents they need to read and take responsibility for that whether or not they were here when it was written, enacted, amended, glued, pasted or cut! She stated the Council should take responsibility and know what *Charter* they are pledging to when they take office as one City Council from the beginning to the end. She stated this is one government under God and we have been taken for a ride! She stated this has to stop in this city!

TOBIA TOMLIN

Tobia Tomlin of 605 Miriam Street stated that he wants the Council to hear them, to hear the people in the city and find out; that he wants them to hold meetings in their neighborhoods; that there are people who feel they are not heard, their streets and neighborhoods are neglected. He stated he would like for the Council members to reach out and hear the people and hold meetings and find out what needs to be fixed; that there is obviously something that is broken in this city. He stated there are all kinds of things that need to be repaired and would like for each Council member to have meetings and hold counsel with the people to find out exactly what they need and want and find out why they are so upset and what is not being fulfilled that they would feel they need to recall their Mayor and put down their signatures to recall the Chairman of the City Council and Councilman Jack Benson. He stated Council members need to find out who is not happy and reconcile that; that there are youth against violence and marches that are going on; that there are a lot of citizens who think there is not enough being done. He asked the Council to pledge to be more dedicated to hear the citizens and hold more meetings and do something about this problem so we will not have this civil unrest and citizens who feel they are not represented or ignored, abandoned and neglected and solve this problem!

PERRIN LANCE

Perrin Lance of 802 Poplar Springs Road, Ringgold, Georgia asked for permission to speak noting that he knows this has caused contention before however he has matters to address concerning the citizens of Chattanooga. Chairman Rico stated with all due respect if Mr. Lance does not live in Chattanooga the Council should hear from citizens who live here. Mr. Lance asked if there is something in the *Charter* that would dictate that he could not speak, to which Councilman Rico responded "probably so", yet he allowed Mr. Lance to speak for the three minute time period.

Mr. Lance stated that he is concerned there might be an invalidated City *Charter* in Chattanooga and a *Charter* crisis; that he heard Councilmen Murphy and Scott and City Attorney McMahan suggest there be a *Charter* review. He suggested that the *Charter* review occur very immediately; that there should be some kind of binding agreement that there be a *Charter* review as quickly as possible; that with the review as opposed to a small amount of Council people being involved that the entire Council be involved and there be open City Council meetings in each of the nine districts.

PERRIN LANCE (Continued)

Councilman Benson stated as far as he knows we have open district meetings in every district. He invited Mr. Lance to attend the District 4 meetings that are held the first Thursday in December at Concord Baptist Church and meetings sometimes the first Thursday in June at Erlanger Hospital. He stated that he does try to get input as far as the roads and streets and referenced the person who spoke from Igou Gap. He stated Igou needs repairing but it takes money and will meet with the person who spoke from Igou Gap Road after the meeting. He stated he does not know of any Council person who does not have district meetings and wanted Mr. Lance to know that since he is not from Chattanooga.

Mr. Lance stated that is not what he is disputing; that a lot of people do not know these meetings are held and suggested there be a massive educational outreach to make people know about their government.

REV. ANTHONY CHATMAN

Rev. Anthony Chatman stated he has the ears of the citizens and parishioners of the city noting his concern about the whole system and not individuals because it is not about individuals. He stated it really never has been about individuals but about the system, the institution. He stated when citizens have very little recourse to go up against a big system or big machine such as the one we have in this city, county, state and this country it makes it very difficult for them to get justice. He stated a lot of people stop voting because they feel as though they cannot get anything done because what they say does not make a difference because they do not have the Council's ears; that the few people who do have the Council's ears are usually the ones who are building or have big issues. He stated the Council does not hear those with mumbling complaints and talk about the city that want to do something so their hands just "go up in the air" such as 3.18 of the *Charter* that was amended and not acted upon. He stated if we go with the State, go State across the board and get rid of all the cherry picking; if we are going to go with the city, go with the *City Charter*, but do not say we are going to the State for one portion and the city for another. He stated citizens do not have the power, money or resources the Council has; that the citizens did not have the money to enjoin in legal counsel at the hearing today; that there was the opinion from 2008 that they could have fallen back on.

VALIDITY OF CHARTER

Councilwoman Scott stated there have been several references made about the *Charter* and its validity; she asked the City Attorney to comment on that issue.

City Attorney McMahan stated there was no issue in the lawsuit today about whether or not the City *Charter* was valid or invalid; that the only relation to the lawsuit was whether Section 3.18 basically had been superseded by the State Law 2-5-151 and he has no doubt in his own mind that the *Charter* as it now exists is in full force and effect with the exception of Section 3.18 being overridden by State law and there have been a lot of State laws enacted since 2002. He stated the City *Charter* cannot be inconsistent with the State law in general applicability; that the Legislature from time-to-time will pass laws which will have the effect of overriding the City's *Charter*.

Councilwoman Scott inquired as to how long it would take for the City Attorney's office to just compare State law with our *Charter* to determine which ones are invalid and asked if that is a year long process.

City Attorney McMahan responded "no"; that if it is worked in with pressing matters it would take a matter of months, not a year. He stated if the Council wants a report every two-to-three weeks on a Chapter of the *Charter* they will be able to provide that in Legal and Legislative Committee. He stated if we can stage it and take time to review it carefully we can do it a little bit at a time or we can go over it from Chapter 1 to Chapter 17 or whatever the last Chapter is now.

Councilwoman Scott requested that be done and possibly instead of going just from one to the end of the Chapters that we look at and prioritize those areas which could tend to be the most sensitive with regard to government; that there might be some the Council might think were more important to be prioritized early. She stated that would be a good thing to do.

City Attorney McMahan stated the single most important section is Section 2.1 with a whole bunch of subsections which define the corporate powers; that many of those are written in 1800 language because the *Charter* was enacted in 1869. He stated the first vestiges of the current *Charter* were enacted by the Legislature in 1896 so many of the provisions date back to that era and they are not modernistic in terms of their application.

Chairman Rico excused himself from the meeting at this point; the gavel was given to Vice Chairman Ladd to conduct the meeting.

VALIDITY OF CHARTER (Continued)

Councilman Murphy added that he does not disagree with anything Councilwoman Scott suggested as they are good suggestions and noted that the Council does not have the power to change provisions of the *Charter* as it is up to the voters to do that, but there is nothing that says on the website where we list the *Charter* where we find problematic conflicts that we could put some kind of red line alert there has been an opinion this may be in conflict with State law so that people can look it up themselves. He stated if that had been done in years past perhaps the problem that these folks ran into if they had gone to the website and looked at the *Charter* they would have been alerted they need to check State law somewhere else. He stated that is the only thing he could conceive of that might have helped them avoid the problems that they encountered and the frustration they are experiencing; that he is happy to take it up in committee and would submit the City Attorney's office is very, very busy right now and it is very important we take them in the order Councilwoman Scott identified. He stated we do not need to have errors made on pending litigation that could cost the citizens hundreds of thousands if not millions of dollars due to an honest mistake because lawyers were overworked, honestly. He stated we have very fine lawyers representing us, but even the best lawyers can make errors if they are overwhelmed; that it is his thought working it in the way that has been suggested with pending business is appropriate.

Councilman Benson stated this is not going to be a quick fix with this; that he and Councilwoman Robinson were around in 2002 and it was ridiculous what they encountered with the *Charter* as there were references to poll tax as well as the right of women not to vote! He stated as we go through we must be methodical and do a good job; that they did a lot in 2002 and there were some oversights but we must be careful as it has to go in a referendum to the voters in a General Election. He stated it is just not a matter of this Council passing it; that we have to put it on the ballot and let everybody vote and it has to be sold to the public. He stated the State came in afterwards and they were the ones that voided the problem people had here in the recall.

City Attorney McMahan stated the State law was effective July 1 of 1997; the State law was in effect in 2002 when the *Charter* was amended.

Councilman Benson stated it was an awesome task and it was a thick volume and we overlooked it and expressed sorrow and regret for that inconsistency. He stated today the Judge ruled and that was the point of asking the City Attorney to go to court to find out what was constitutionally acceptable. He stated now we know and let us move toward it and try to correct it and cautioned the Council not to expect this to be an overnight process.

VALIDITY OF CHARTER (Continued)

The gavel was returned to Chairman Rico at this point.

Councilwoman Berz stated one of the things that has been made loud and clear to her is we need a different kind of review of the *Charter*; that she is one of those who read the *Charter* from beginning to end as she takes her responsibilities very seriously. She stated where she would fall short in all honesty is where it would be in conflict with State law; that she likes to think in flow charts and would like the City Attorney's office to show the Council with editorial remarks and begin at the beginning to show where any of the sections would be in conflict with State law, where they are archaic, where they would no longer be constitutional. She stated the other areas once we get rid of those that no longer have an effect in reality subject to constitutional challenge is what she would like to sit down to talk about once it is a cleaned up law to see where we want to make changes. She stated that she knows the section referred to is a very important section as she spent a lot of time on that section because it seems for a number of years the Council had done nothing about establishing an audit committee; that there is a checks and balance in the *Charter* between the legislative and executive branches and when she came on board she realized that had not been enacted and we now have an audit committee that is working really well as part of the function of the Council is to audit the executive. She stated they came across a number of areas they are trying to fix in the checks and balance areas which are the source of things being talked about that have been brought to light very well. She stated what she would like to do first is what ought to be done away with because it is archaic or wrongly in conflict; that sometimes we can be in conflict and it is okay but would like to do that first and then see what is left. She stated that is just an exercise and not an opinion if the Constitution overrides something then it does and it should not be in there. She stated she would like to do it very methodically as the one thing that has brought to fore is the fact that she needs to take another look at the *Charter* that she thought she knew so well and obviously there are areas that are in conflict.

Councilwoman Scott stated she needs clarification that if a part of the *Charter* is in conflict with State law and therefore invalid, why would it need to go before the people in a referendum if the decision has already been made by it being invalid, what would be the purpose because if the people were in conflict with the State and the State is primary on that how does that work, why would it need to go.

VALIDITY OF CHARTER

Councilwoman Berz stated she was not talking about that part; that first of all we need to be fully informed what is in conflict because if it is in conflict it needs to go, the archaic language. She stated there are areas in the *Charter* we may decide need to be removed and put in policy; that it is very hard to change a *Charter* and very easy to change policy and that brings it more to the people. She stated that is what she was thinking about.

Councilwoman Scott stated her comment was not in contradiction to what Councilwoman Berz said; that it was the legality of having to put it on a ballot if it was automatically in violation of the State law.

City Attorney McMahan stated that is one of the unusual aspects of the law; that if the State statute is declared unconstitutional by the Court there would be an editor's note at the end of the Statute of Tennessee Code Annotated which would say for example "in court case Jones vs. Smith this section was unconstitutional" and until the Legislature decides to go in and repeal that section declared unconstitutional it will stay in the Code until it is done; that it is just the way the Code, Statutes and the way judges work.

Councilman Murphy stated quite honestly he knows the people do not want us deciding what has been overruled or what does or does not apply as that is their right to decide what is in their *Charter*; that he very much hears what is being said but we do not have the power to take anything out of the *Charter*, that power belongs to the people.

SHIRLEY DEAKINS

Shirley Deakins stated maybe Councilmen Benson or Robinson or City Attorney McMahan might know back when Mr. Kinsey was elected the first time he was sworn in it was her understanding, and she wants a point of clarification, that there was some kind of ordinance passed that allowed Mr. Kinsey to be a powerful Mayor with no static from the Council or else. She stated secondly when Mr. Corker came in it was her understanding the first ordinance that was passed said essentially Mr. Corker could take the money and do what he wanted to do. She stated she would like to have clarification on that because it has been bothering her as it came from a fairly reliable source.

SHIRLEY DEAKINS (Continued)

Councilman Benson stated he would like to talk to that source because he is not aware of it; that Mr. Corker never asked for that and never got it! He stated he might have gotten it de facto if we did not intercede on some things, but he never got the authority on that.

Ms. Deakins stated there was an article in the paper and it was along the time Mike Malone sued Scotty Probasco and she cut the article out. She stated years later she ran across the article and on the other side of the article it stated Mr. Corker could give the money to the planning commission.

Councilwoman Robinson stated we were not here when Mr. Kinsey was here but we were when Mr. Corker was and it is inconceivable to her that anything like that happened. Ms. Deakins stated she would love for someone to look at it and see.

ART RAHN

Art Rahn of 7203 Sylvia Trail stated he wanted to address the point of 3.18 as there seems to be two different "schools of thought" about what happened today and why the petition was overruled. He stated one says that State law trumps the City *Charter* and the Council has talked about going through everything to determine where the inconsistencies are so they can all come together as one unit. He stated it took all day today in Judge Hollingsworth's Court just to resolve the 3.18 issue and going through the entire *Charter* to see if it is congruent with State law is impossible as a whole room of attorneys will never agree on such a thing; that it takes individual court room action to decide each of these parts. He stated 3.18 rather than being inconsistent with State law was determined never to have been enacted in his understanding according to the Judge's findings today in this case and because of that he went to the fall back position that State law should rule or control the number of required signatures. He stated that he had hoped City Attorney McMahan would have clarified that issue but he seemed to be perpetrating this idea there was some kind of trumping of State law and asked if he agrees the City *Charter* as stated earlier was enacted in 2002.

City Attorney McMahan stated Section 3.18 has been in the City *Charter* for how many years he does not know; that it was last submitted in 1990 before it was amended in 2002, so it was on the books well before 1990. He stated there were recall petitions in the eighties filed against City Commission members when there was a Commission form of government; that it has been a part of our *Charter* for longer than 2002.

ART RAHN (Continued)

Mr. Rahn asked if it was enacted in 2002, enforced. City Attorney McMahan responded in 2002 the whole *Charter* from A-Z was submitted to the voters for approval. He stated the changes to the *Charter* in 2002 were gone through, as described earlier, to more clearly define the powers of the Mayor vis-à-vis the powers of the City Council, that is the administrative and legislative functions of government and also to eliminate references in the *Charter* to the Board of Education which no longer existed. He stated in his review of the *Charter* amendments in 2002 that is all they covered, those three topics.

Mr. Rahn stated the City Attorney's statement earlier was in 2002 the *Charter* was enacted per 3.18. City Attorney McMahan stated the whole *Charter* from A-Z was submitted to the voters in 2002 by referendum and it was approved by the voters.

Mr. Rahn stated the City Attorney did not answer the question as to whether it was enacted or not. City Attorney McMahan stated it is a matter of semantics.

Mr. Rahn stated Judge Hollingsworth ruled 3.18 was not properly enacted and that particular item that was part of Chattanooga's intended city government was not enforced and therefore he (Hollingsworth) had to go back on the State law which had different requirements. He stated had the recall group known about the other requirements before and had been properly communicated those requirements, the number of signatures would have met the other requirement which is 15,000 and have a very different outcome. He stated this confusion has cost that effort.

CARA STONEY

Cara Stoney of 4603 14th Avenue stated if everything was enacted would it not have been the City Attorney's duty to speak up to that fact today and she sees so many inconsistencies; that she is not a lawyer just a concerned citizen but the recall effort has clearly made recognition that we have a lot of problems and things are not meshing in our government. She stated the judge today did say that part of 3.18 could be enacted today, almost immediately. She asked if that is something that can actually be done tonight since it is part of the *Charter*.

CARA STONEY (Continued)

City Attorney McMahan responded that the Judge brought up two points; that the first point TCA 6-2-5-151 (j) provides that the city has the authority under the State law to make two changes: one change the city could do is determine a different number of voters that has to sign a petition, State law says 15 percent of the registered voters, the city could say, for example, it is ten percent of the registered voters. He stated the city would have the authority by *Charter* amendment to make that determination. He stated the other thing that the State law will allow the city to do today if the city were so inclined and if they put it in a *Charter* referendum is to say it would not be (and he forgets which one is 60 and which one is 75); that it could give 100 days to collect petition signatures because under the law now there is a very short time frame where the people who are seeking recall have to go get signatures. He stated the city could change the number of days, could change it from 60 to 100 or from 60 to 30; that those are the only two things the city can enact today to change the State law on recall.

Ms. Stoney said the judge said it could be done immediately. City Attorney McMahan stated the next referendum on the City *Charter* cannot be before August of 2010 because Article 11, Section 9 of the Tennessee Constitution on Home Rule says the Home Rule referenda items can only be heard at a General Election and that is the next two General Elections, August and November of 2012.

MICHAEL SCOLEA

Michael Scolea of 5221 Hixson Pike stated he had a lot of people coming in to sign a petition potentially but they were literally scared and gave him stories of Ron Littlefield having people followed home after work – they had all kinds of stories and were literally scared. He stated if the people are scared of the government there is tyranny and when the government is scared of the people there is liberty; that what they want is liberty as they do not want to be afraid of the Council, Mayor or anybody else because the government works for them (the people)! He stated the people are not to be afraid of government as government should be afraid of the people; that there is no sense in anyone feeling in fear for their job or security over signing a petition to recall an unconstitutional, corrupt Mayor of this city. He stated it is his thought there needs to be an investigation as to why so many people are afraid of Ron Littlefield.

ADJOURNMENT

Chairman Rico adjourned the meeting of the Chattanooga Council until Tuesday, September 14, 2010 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)**