

**City Council Building
Chattanooga, Tennessee
October 5, 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 Michael McMahan, Management Analyst Randy Burns and Council Clerk Carol O'Neal were also present.

PLEDGE OF ALLEGIANCE/INVOCATION

Following the Pledge of Allegiance, Councilwoman Scott gave invocation.

MINUTE APPROVAL

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

INTERVENE IN PENDING RATE INCREASE BY TAWC

City Attorney McMahan stated one of the issues brought forward in committee meeting was the willingness of the water company to negotiate. He stated Tim Spires just met with Mr. Watson and has related to him what he would like for him to relate to the Council

Tim Spires, President of the Chattanooga Manufacturers Association (CMA), stated this afternoon he and the CMA chairman met with the water company to talk about this. He stated they had the meeting scheduled for a couple weeks after they had first announced; that yesterday, the Chattanooga Manufacturers Association filed a petition with the Tennessee Regulatory Authority (TRA) to intervene in this matter as they have been doing over the last many, many rate increases by the Tennessee American Water Company (TAWC). He stated this afternoon they sat down just to talk with them about that and they were very open to answer any questions they had, but the questions that they asked relating to why the increase is there are the same things they have been telling them, the City Council and through the press; that they (TAWC) feel very strongly that this rate increase is necessary and plan on moving forward with this as it is now.

INTERVENE IN PENDING RATE INCREASE BY TAWC
(Continued)

Mr. Spires stated they (TAWC) recognized that we (CMA) are planning on intervening in this and the process will move forward through the normal procedures that go before the Tennessee Regulatory Authority if they are granted intervention in this. He requested the Council strongly consider joining with them in this rate increase intervention as they have in the past; that it is in the best interest of our citizens and our businesses and if this is looked at in terms of what this will do, the 28 percent increase, if passed forward as it is, is going to continue on forever and is not a one-time thing. He stated that will be something that will have a very big impact on the cost for the city, our businesses, industrial users and all residents.

Councilman McGary publicly stated there has been a lot of conversation around this issue and he, personally, has been concerned about having dialogue prior to entering into a lawsuit which he has been told via the City Attorney as well as the Chief of Staff that at this point from their professional perspective that is impossible; that if there is to be any negotiation prior to actually having this decided in court we would have to enter into the lawsuit in order to make that happen. He stated as to the actual money it would take to fight this lawsuit, the City Attorney has informed us the maximum dollar amount or somewhere near the maximum is \$300,000; however, he also indicated it is the administration's attempt, as well as his own, at every single step along the way to seek to save taxpayer dollars as much as possible. He stated if this can be settled out of court the taxpayer's cost would be considerably less than the \$300,000 figure; that with those thoughts in mind it is his thought given the short time period before us to enter into the lawsuit, short of any other information that comes out tonight that would possibly delay this, he would be comfortable voting with entering into the intervention with the aforementioned considerations in mind.

Councilman Benson stated that he has a little concern about how is the best way to protect our citizens and get out of this very bad situation with the least amount of cost. He stated he would join in support of the resolution but would like to see if we can get this thing settled, resolved or mediated where we do not spend more money over there and then end up with something with a settlement like we got the last time when we intervened and got it down to five percent. He stated if we can get this down to five percent and not spend the \$300,000 for legal assistance we would come out of it better than we would just throwing the money away quickly and giving up in trying to get them to raise the rates for the bare necessities which is what we had to do as a City Council.

INTERVENE IN PENDING RATE INCREASE BY TAWC
(Continued)

Councilman Benson stated we had a lot of desirables, a lot of wishes, and things we always wanted to do, but we told the Mayor and staff we would only provide the necessary things we had to do. He stated he talked with them today and named some things that are desirable such as fire plugs and a lot of things; that it is his belief that is not fiscally possible right now for our citizens under this economic strain to bear this. He stated he would like to see if we could amend it and quickly go to the water company and say instead of going up 28 percent, he would like to settle this for five percent or whatever would buy their necessities at this time.

Councilwoman Berz expressed agreement with Councilman Benson and stated that she did not think we should rush headlong into a lawsuit if there is the possibility of working it out otherwise. She stated we have to be very respectful of taxpayer dollars; that if we look at the past several years, every time there has been a rate increase and Mr. McMahan has a list and asked that he read it.

City Attorney McMahan stated in the 2004 rate case decided in 2005 the water company requested a 5.96 percent increase and were granted a .91 percent increase. He stated in the 2006 rate increase case decided in 2007 the water company requested a 19.67 percent increase and was granted a 12.34 percent increase. He stated in the 2008 case they asked for a 21.7 percent increase and was granted a 4.37 percent increase; that over the years they are getting far less approved by the TRA than they think they have been asking for. He stated it seems this petition of 28 percent is in line with very much the last couple where they were in the 20 percent range and got much less than that.

Councilwoman Berz asked if the average has been around a 5.5 percent increase. City Attorney McMahan stated they got a big increase in the 2006 rate case.

Councilwoman Berz stated it is balanced by the two percent and then the four percent; that it is about a five-to-six percent average. She stated her point is that the rate increase is too much and asked if anyone were present from the water company to speak to anything with authority. It was noted no one was present from the water company. She stated if they have chosen not to be here and to speak with us that way then obviously that is their choice; however, she would very much not like to commit ourselves to all reasonable and necessary expenses which is more than \$300,000.

INTERVENE IN PENDING RATE INCREASE BY TAWC
(Continued)

City Attorney McMahan stated that they are planning \$350,000; that the last time with the participation of the CMA and the county it went up over \$400,000 because it went on appeal; that it was a six day hearing which was excruciating and expensive.

Councilwoman Berz stated that it is her hope that the water company would come forward; that she hates to vote one way or the other until she has a breakdown, not a 200 or 2,000 page breakdown (as that is not a breakdown) from the water company about what the rate increase really entails. She stated if we are paying dividends for their stockholders, she does not care to do that; however, if we are paying for the Citico plant and other things that benefit the city she would like to know that. She stated she would like not for us to go headlong into a lawsuit if we can obviate that and if the water company will be forthcoming with the breakdown, a very simplistic breakdown which obviously they know that created the 200 page volume, we can make an intelligent decision about which way to go.

City Attorney McMahan stated one thing he did not say earlier is the first thing they do in a case like this is set a scheduling order. He stated we can ask, and is sure it will be granted, to have a very serious settlement discussion with them where these matters could be "on the table" at the very outset of the case. He stated it is his belief if we ask for that and the CMA joined in that request -- noting he cannot speak for the hearing officer -- that his strong suspicion is it will be granted and we could have those discussions early "in the game".

Councilwoman Scott stated that would be a very good thing to do if there is any way of eliminating the expense of attorneys fees and getting a resolution that is both fair for rate payers and fair for the expenses that the water company has to pay to be able to exist and provide services; that we ought to work toward that and not toward continued litigation costs.

Councilman Gilbert expressed agreement that we do need to negotiate, but at the same time did the City Attorney not say something about the time frame of the lawsuit.

City Attorney McMahan stated under these statutes these cases have to be decided within six months and that means once they file it everything starts moving forward at a pretty good clip.

INTERVENE IN PENDING RATE INCREASE BY TAWC
(Continued)

City Attorney McMahan stated if we are going to intervene we have to intervene early as there are document productions and written requests which is the reason if we are going to have negotiations that are fruitful in an effort to save money they need to be early in the process and we can certainly ask for that.

Councilman McGary asked for clarification; that at the beginning he indicated it was his understanding no negotiations would be entered into apart from entering into a lawsuit and now he is hearing something slightly different and asked if he misheard.

City Attorney McMahan stated he did not mean to imply that; that as he said in committee meeting the matter is actually nothing that we could independently decide with the water company that would be binding because the Tennessee Regulatory Authority has to ultimately approve any settlement any parties would enter into and the Consumer Advocate Division would have to be satisfied that it was fair. He stated Chattanooga is one part of this water company's total service base; that they have "stuff" in Georgia, Lookout and Signal Mountain that is not part of our tariff; they are in a different tariff base. He stated they are still asking for an across-the-board rate increase for all the various and assorted entities.

Councilman Benson stated as he re-read the Resolution the key word is "intervention"; that it does not say in the Resolution what kind of intervention and could vote for it; that we are asking the City Attorney to intervene and if he gets a reasonable settlement, then he does not have to proceed with a lot of litigation costs.

City Attorney McMahan responded "absolutely"; that intervention merely means the city is becoming a party to the proceeding.

Councilmen Murphy and Robinson "called for the question".

On motion of Councilman Murphy, seconded by Councilwoman Ladd,
A RESOLUTION AUTHORIZING INTERVENTION IN THE PENDING RATE INCREASE FILED BY TENNESSEE-AMERICAN WATER COMPANY BEFORE THE TENNESSEE REGULATORY AUTHORITY AND FURTHER AUTHORIZING THE CITY ATTORNEY TO INCUR ALL REASONABLE AND NECESSARY EXPENSES RELATING THERETO

Was adopted.

OVERTIME

Overtime for the week ending September 30, 2010 totaled \$5,665.28.

PERSONNEL

The following personnel matters were reported for the various departments:

PUBLIC WORKS:

- **MICHAEL L. DAVIS** – Suspension (7 days without pay), Equipment Operator 4, City Wide Services, effective September 28 – October 6, 2010.
- **JACK LOVE** -- Retirement, Combination Inspector, Land Development Office, effective October 29, 2010.
- **EARTHA M. JOHNSON** – Suspension (2 days without pay), Crew Worker 1, City Wide Services, effective October 4-5, 2010.

INFORMATION SYSTEMS:

- **JASON ROBBINS** – Resignation, Programmer 1, effective October 7, 2010.

PARKS AND RECREATION:

- **KIRK PARKER** – Termination, Zookeeper 2, effective September 30, 2010.
- **DEBORAH BOND** – Termination, Zookeeper 1, effective September 30, 2010.

CHATTANOOGA POLICE DEPARTMENT:

- **CYNTHIA W. CLARK** – Retirement, Police Service Technician, effective October 1, 2010.

PERSONNEL (Continued)

FINANCE DEPARTMENT:

- **CHRISTY CREEL** – Return from Family Medical Leave, Management and Budget Analyst, effective September 27, 2010.

PURCHASES

On motion of Councilwoman Berz, seconded by Councilwoman Robinson, the following purchases were reported for the various departments:

PUBLIC WORKS:

THE SHERMAN WILLIAMS COMPANY (Best bid)

33101/300593

Blanket Contract for Traffic Paint

\$25,000.00 – Annual approximation

CROWN TECHNOLOGY, LLC (Lowest and best bid)

33439/300624

Blanket Contract for Thermoplastic Pavement Marking Materials

\$10,000.00 – Annual approximation

HAMAN'S NEW DRIVERS (Best bid)

32178/300582

Blanket Contract for Driver Education Training

\$240,000.00 – Annual approximation

LITTLE CREEK NURSERY, SELECT TREES, INC., HEATHER FARMS NURSERY, STEWART'S NURSERY, HIDDEN VALLEY NURSERY, LLC (Best bids)

32420/300584

Blanket Contract for Purchase of Trees (Multiple Contracts)

\$20,000.00 – Annual approximation

PURCHASES (Continued)

POLICE DEPARTMENT:

MINE SAFETY APPLIANCES (Lowest and best bid)

33083/300607

Purchase of MSA Body Armor

\$29,253.60

LEADSONLINE (Single source)

32891

Annual Software Subscription and Support per TCA 6-56-304.2

\$13,788.00 annually

CHATTANOOGA FIRE DEPARTMENT:

FDM SOFTWARE, LTD. (Single source)

34322

Renewal Agreement for Software Maintenance and Support per TCA 6-56-304.2

\$42,223.80 annually

INFORMATION SERVICES:

HISCALL INC. (Single source)

33668

Renewal Agreement for Software Maintenance and Support per TCA 6-56-304.2

\$22,570.00 – Three year term

INSIGHT PUBLIC SECTOR (Single source)

34276

Renewal Agreement for Software Maintenance and Support per TCA 6-56-304.2

\$13,524.67 annually

AWARD PRESENTATION

Chief Parker stated the ceremony for "Fire Prevention Week" was held earlier this week with several Council members present. He stated Councilman Benson mentioned Captain John Wilcox not getting an award; that he passed away last year and served with the fire department from 1957-1982 and they could not locate any family. He stated Councilman Benson noted Captain Wilcox was his first cousin and presented the plaque to him (Benson) in honoring Mr. Wilcox.

Councilman Benson stated this man's grandfather came over from Ireland and is his wife's grandfather, also. He stated he worked in Boston, got enough money to come south and one of the things he did was start the city fire department as there was not a city fire department. He expressed thanks to Chief Parker noting Johnny's family appreciates it!

LAWSUIT DECISIONS

City Attorney McMahan stated there were two lawsuits wherein decisions were rendered this week by the Courts in the case of Bryson vs. City of Chattanooga in the case involving police officers seeking to buy back pension payments and it was decided by the Court of Appeals against the fire fighters saying basically that they waited way too many years to try to make that claim because when we passed the ordinance they had until 1997 or something like that to make arrangements to buy back and they did not. The court said they were too late.

He stated the other case was the McKamey Animal Center and the Pet Care Company and the Chancellor acted as special city judge in that case because the city judge recused herself. He stated the charges of animal cruelty were all dismissed on the basis of double jeopardy.

COMMITTEES

Councilwoman Ladd scheduled a meeting of the **Public Works Committee for Tuesday, October 12 immediately following the agenda session.**

AGENDA: OCTOBER 12, 2010

Chairman Rico stated that the agenda for October 12, 2010 was discussed earlier during the agenda session.

RUSTY RYMER

Rusty Rymer, Secretary-Treasurer of the Chattanooga Firefighters Association, stated lives at 8603 Brook Place. He stated a couple weeks ago Council members received a package from President Eldridge noting on October 15 the Chattanooga Firefighters Association and the Cleveland Firefighters Association are going to have a Fire Ops 101 Class; that basically it is a "PR" event for politicians, Council people and the news media. He stated it is an all day, one day event beginning at 8 a.m. until 4 p.m.; that Council members will be issued fire gear and will go through four different scenarios during the day which involve fire suppression, vehicle extrication, urban search and rescue and victim retrieval and patient packaging. He stated Council members will be acting along with a firefighter and will not be doing anything over strenuous. He stated most of the Cleveland City Council members have agreed to participate, a couple from the news media have agreed, as well; that this event will give an opportunity for persons to see what firefighters do everyday – why proper staffing, why proper equipment and why training is very important. He stated this is an open invitation to make sure everyone is aware of the event and asked that they try to be there next Friday at the Fire Training Center on Amnicola.

Councilwoman Scott asked as to the estimated amount of weight that one should be able to pick up to participate.

Mr. Rymer responded they will not require anyone to pick up much of anything; that there will be four firefighters assigned to each person. He stated each participant will do four different stages with two in the morning, lunch, and two in the afternoon. He stated as far as how much will be lifted, if they can lift a fire ax they will be fine!

Councilwoman Berz stated someone told her about it and said they had to sign all kinds of waivers and inquired as to what they are.

Mr. Rymer stated the waivers are for the International Association of Firefighters, the Chattanooga and Cleveland Firefighters Associations, and the City of Chattanooga since the city's training grounds will be used. He stated the waiver says if a person falls and skins a knee the Firefighters Association or the city of Chattanooga will not be sued.

Councilman McGary stated if a person has prior commitments for the afternoon could they participate in the morning activities. Mr. Rymer responded that will be fine; that they know people have jobs.

ADJOURNMENT

Chairman Rico adjourned the meeting of the Chattanooga Council until Tuesday, October 12, 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)**