

**City Council Building
Chattanooga, Tennessee
February 8, 2011
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, Chairman Rico gave the invocation for the evening.

MINUTE APPROVAL

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

**APPOINTMENT OF RON SWAFFORD AS
ADMINISTRATOR OF CHATTANOOGA HUMAN
SERVICES**

Mayor Littlefield stated Al Chapman announced his resignation some time back and it was accepted last week, noting this is his last night on the job. He stated that he went through a diligent search for a replacement because heading the Hyman Services Department is not something that just anyone can do; that he considered people from the State level with the transition going on there, but Al called him early one morning and said he had a tremendous idea of someone we are all familiar with who is familiar with the environment of work and someone who is not a stranger to the Council.

**APPOINTMENT OF RON SWAFFORD AS
ADMINISTRATOR OF CHATTANOOGA HUMAN
SERVICES (Continued)**

Mayor Littlefield stated by environment of work me means someone familiar with federal programs and grants and things of that nature; that the someone is Mr. Ron Swafford. He asked the Council to support his nomination of Ronald E. Swafford to be the next Administrator of Human Services for the City of Chattanooga.

On motion of Councilwoman Robinson, seconded by Councilwoman Berz, the appointment was duly approved.

AMEND CITY CODE

On motion of Councilman McGary, seconded by Councilman Murphy,
**AN ORDINANCE TO AMEND CHATTANOOGA CITY CODE, PART II,
CHAPTER 24, SECTION 24-505, RELATIVE TO PARKING METER ZONES
ON FOURTEENTH STREET EAST**

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

AMEND CITY CODE

On motion of Councilman Gilbert, seconded by Councilwoman Ladd,
**AN ORDINANCE TO AMEND CHATTANOOGA CITY CODE, PART II,
CHAPTER 24, ARTICLE XIV, SECTION 24-502, TO REVISE SPECIFIC SPEED
LIMITS ON BONNY OAKS DRIVE**

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

CORRECT LEGAL DESCRIPTION

MR-2010-116: Chattanooga Neighborhood Enterprise, Inc. By Jean Lamb

Councilwoman Scott indicated her intention to abstain on this request.

CORRECT LEGAL DESCRIPTION (Continued)

On motion of Councilman McGary, seconded by Councilman Murphy,
AN ORDINANCE TO AMEND ORDINANCE NO. 12453 (CASE NO. MR-2010-116), ENCAPTIONED, "AN ORDINANCE CLOSING AND ABANDONING A RIGHT-OF-WAY EASEMENT ALONG THE SOUTH SIDE OF 17TH STREET AND ADJACENT TO 1702 LONG STREET, MORE PARTICULARLY DESCRIBED HEREIN, SUBJECT TO CERTAIN CONDITIONS," TO CORRECT THE LEGAL DESCRIPTION

Passed second and final reading and was signed in open meeting;
Councilwoman Scott abstained.

AMEND CITY CODE

On motion of Councilman Murphy, seconded by Councilwoman Ladd,
AN ORDINANCE TO AMEND CHATTANOOGA CITY CODE, PART II, CHAPTER 18, ARTICLE VII, SECTION 18-124, RELATIVE TO THE PRICE OF LEAF COMPOST FOR NON-CITY RESIDENTS, CONTRACTORS, AND PERSONS-FOR-HIRE AND COUNTY RESIDENTS

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

REZONING

2010-109: Ken Pritchard

The applicant was present; there was no opposition.

Councilman Benson stated it is his belief there has been some correspondence in opposition to this; that this is not from his district as it is in Councilwoman Scott's.

Councilwoman Scott stated this is a piece of property that is next to a piece of property that has an apartment; that it is adjacent and across the road to a property that is also R-4. She stated the property in question is an R-1 and the application is for an R-3; that the property fronts on Pineville Road and also backs on Old Pineville Road down below. She stated there was some opposition from the neighbors on the road that lived on Old Pineville Road and there has been communication back-and-forth with the different entities, the contractor and the neighborhood.

REZONING (Continued)

Councilwoman Scott stated the neighborhood made several requests of the contractor, a very long list which included, among other things, cleaning the city ditch out, planting trees on an area that had come down and planting additional trees up the road from that. She stated the bottom line is there were a dozen or so things that were asked of the contractor to work with the neighborhood. She stated the other thing that was a concern was on this property that fronts on Old Pineville and Pineville Roads are some residential houses on the side that is down in the neighborhood where the people in the neighborhood live, and to preserve the street as an R-1 property what he has agreed to do is subdivide the property and just have the R-1 zone part be just the part that is adjacent to the R-3, so what he is asking for is R-3 on all of those leaving the R-1 that is contiguous with the street the neighborhood is on. She stated there is a plan for this; that one of the issues was storm water runoff and it is her understanding that there have or have not been any problems with storm runoff on this property or complaints.

The applicant responded "no"; that he has a letter from Keith Curtis that confirms that.

Councilwoman Scott stated her concern for the neighborhood was this is an extension of an apartment complex that is already there; that the piece of property does not have any qualities she would see for being an R-1 sitting between two apartment complexes and based on that because it is the use that is there, she **recommended approval of this; Councilman Gilbert seconded the motion.**

Councilman Benson stated he read all of this today and the community is pretty well satisfied it will not depreciate the value of their adjacent properties.

Councilwoman Scott stated as far as she knows the leader of the neighborhood she had gotten mail from it is her understanding that they had worked out their differences. She stated late last night she got another e-mail saying that they thought of some more things and she asked specifically what are those things and did not get a list of that. She stated she thought if there was a list of reasonable things that would be useful to do she expected them to come if they wanted to pursue it.

Councilman Benson stated he thought so, too; that he expected opposition to show up; that since it is the first reading it will be considered again for second reading next week and supports passage tonight.

REZONING (Continued)

On motion of Councilwoman Scott, seconded by Councilman Gilbert,
AN ORDINANCE TO AMEND CHATTANOOGA CITY CODE, PART II, CHAPTER 38, ZONING ORDINANCE, SO AS TO REZONE ATRACT OF LAND LOCATED AT 1133 OLD PINEVILLE ROD, MORE PARTICULARLY DESCRIBED HEREIN, FROM R-1 RESIDENTIAL ZONE TO R-3 RESIDENTIAL ZONE

Passed first reading.

CLOSE AND ABANDON

MR-2010-140: Cagle Development

The applicant was present; there was no opposition.

On motion of Councilman Murphy, seconded by Councilman Benson,
AN ORDINANCE CLOSING AND ABANDONING AN UNNAMED ALLEY LOCATED BETWEEN THE 2100 BLOCK OF E. 3RD STREET AND THE 2100 BLOCK OF GARFIELD STREET, MORE PARTICULARLY DESCRIBED HEREIN, SUBJECT TO CERTAIN CONDTIONS

Passed first reading.

INTERLOCAL AGREEMENT

Councilman Murphy stated the final document is not ready.

On motion of Councilwoman Scott, seconded by Councilman McGary,
A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO AN AMENDMENT TO THE INTERLOCAL AGREEMENT BETWEEN THE CITY, HAMILTON COUNTY, THE INDUSTRIAL DEVELOPMENT BOARD, THE HEALTH, EDUCATION, AND HOUSING FACILITY BOARD, AND VOLKSWAGEN RELATIVE TO THE VOLKSWAGEN PROJECT

Was deferred one week.

ACCEPT FUNDS

On motion of Councilwoman Berz, seconded by Councilman Murphy,
A RESOLUTION AUTHORIZING THE ADMINISTRATOR OF THE DEPARTMENT OF PUBLIC WORKS TO ACCEPT FUNDS FROM RALPH WHITE ELECTRIC COMPANY, INC., ON BEHALF OF HAMILTON COUNTY BUSINESS DEVELOPMENT CENTER FOR FOUR (4) PEDESTRIAN LIGHTS RELATIVE TO PROJECT NO. E-11-002, CHEROKEE BOULEVARD STREETScape FOR A TOTAL AMOUNT NOT TO EXCEED TEN THOUSAND TWO HUNDRED SIXTEEN DOLLARS (\$10,216.00)

Was adopted.

AGREEMENT

On motion of Councilwoman Robinson, seconded by Councilman Benson,
A RESOLUTION AUTHORIZING THE ADMINISTRATOR OF THE DEPARTMENT OF PUBLIC WORKS TO ENTER INTO AN AGREEMENT WITH NORFOLK SOUTHERN CORPORATION, FOR A GRADE CROSSING IMPROVEMENT AT W. MAIN STREET, RELATIVE TO CONTRACT NO. E-10-011-201, WEST MAIN STREET STREETScape PROJECT, IN AN AMOUNT NOT TO EXCEED NINETY-ONE THOUSAND TWO HUNDRED SIXTY-FOUR DOLLARS (\$91,264.00)

Was adopted.

CONTRACT

On motion of Councilwoman Ladd, seconded by Councilman Benson,
A RESOLUTION AUTHORIZING THE DIRECTOR OF THE OFFICE OF SUSTAINABILITY OUTREACH COORDINATOR TO CONTRACT WITH HDR, INC., IN AN AMOUNT NOT TO EXCEED EIGHTY-EIGHT THOUSAND DOLLARS (\$88,000.00), TO REVIEW ENERGY AND UTILITY USE IN THE CITY OF CHATTANOOGA BUILDINGS; TO OUTLINE GOALS AND INITIATIVES FOR REDUCING ENERGY AND UTILITY USE WITHIN CHATTANOOGA OPERATIONS; TO PRODUCE AN ENERGY/UTILITY POLICY, PROCEDURE, AND UNIFORM FORMS FOR LOCAL CONTRACTORS TO COLLECT DATA TO BE USED IN COMPARATIVE ANALYSIS; TO DRAFT A CITY SUSTAINABILITY POLICY FOR PRELIMINARY ANALYSIS OF EXISTING BUILDING INVENTORY AND RECOMMENDATIONS; AND FOR ANALYSIS OF AN ALTERNATIVE ENERGY/WATER CONSERVATIONS PROJECT FOR FINANCING AND DELIVERY METHODS

Was deferred one week.

SPECIAL POLICEMAN (UNARMED)

On motion of Councilwoman Ladd, seconded by Councilman Gilbert,
A RESOLUTION AUTHORIZING THE APPOINTMENT OF ROBERT K. MORGAN AS SPECIAL POLICE OFFICER (UNARMED) FOR ANIMAL CARE TRUST D/B/A MCKAMEY ANIMAL CARE AND ADOPTION CENTER, INC., TO DO SPECIAL DUTY AS PRESCRIBED HEREIN, SUBJECT TO CERTAIN CONDITIONS

Was adopted.

SPECIAL POLICEMAN (UNARMED)

On motion of Councilwoman Ladd, seconded by Councilwoman Scott,
A RESOLUTION AUTHORIZING THE APPOINTMENT OF CHARLES R. YOUNG AS SPECIAL POLICE OFFICER (UNARMED) FOR THE PUBLIC WORKS DEPARTMENT TO DO SPECIAL DUTY AS PRESCRIBED HEREIN, SUBJECT TO CERTAIN CONDITIONS

Was adopted.

SPECIAL EXCEPTIONS PERMIT

Michael Dean

Councilmen Berz and Murphy made the initial motion and second to approve this request.

Mike Price of MAP Engineers stated there are two conditions that are spelled out as it relates to this permit; that this is the Pin Strikes Bowling Alley and the hours of operation relates to serving alcohol occurring late in the evening on Friday and Saturday nights until 2:00 a.m. only. He stated the one condition that gives them a little bit of problem that they would like consideration from this body is there is a former loading dock area in the back that was converted and has an outdoor seating area and asked for the ability to have that used; that it is typically used in warm weather months. He stated because of the its orientation and the way it is located, the noise is directed toward 153 and requested that the hours of operation, as it relates to the outdoor seating area, be limited to stop at 11 p.m.; that they are not asking to have people there at 3:00 a.m. but at 11 p.m. on the hours and days when it is warm enough for people to be outside and eat and enjoy their time. He stated it is their thought that is a reasonable request and hopefully the Council will agree; that they use the outdoor seating area until 11 p.m.

SPECIAL EXCEPTIONS PERMIT (Continued)

Councilwoman Berz stated this is in her district and they looked long and hard at that and the problem is we would have to attach other sorts of conditions such as no music. She stated she rode around and looked at everything which looked to be in "ship shape"; that it is when they get to doing "stuff" outside is when the problem started; that they had gotten everything through approval and then there was this. She stated there is the possibility of noise carrying and that was the one concern because of the configuration of the land; that if it could come back and we could put as we have on other areas there is no music, no acoustical sound, nothing – that it is literally people just sitting out there would be a condition, and with the new law if that is abridged at all we can take it away. She stated that was the only concern she had because there is a direct noise line and there is a whole group of houses back there; that Mr. Price is right about 153 as some of the arguments were about highway noise. She stated highway noise is often thought of as "white noise" that is there; however, when there is loud guffawing and acoustical sounds and all of that it is annoying to people and that is what she is concerned about. She stated last week she rode around and thought this place is great and noted they were not asking for a deck! She stated we would have to return it back to the RPA to put an additional condition on if that is what they want.

Mr. Price stated they are not asking for outdoor acoustics, not asking to have bands play or anything such as that; that it is just to allow people to go out back and sit, eat and smoke.

Councilwoman Berz stated we could put the conditions on right now unless they want to think more about it. Mr. Price stated they are fine with that and had discussed it. Councilwoman Berz stated the minute that music starts . . .

Michael Dean stated there are no speakers or no Councilwoman Berz stated if it is just a place to smoke and eat outdoors she does not see a problem, however that additional condition would have to be placed on it. Mr. Price stated they would be fine with that and would agree with that.

Councilman Murphy stated one of the things he is a little confused about is how a bowling alley comes within the nightclub definition to begin with.

Bryan Schultz, Senior Planner with the Regional Planning Agency (RPA), stated RPA does not make that decision; that it is the Codes Enforcement office regarding the late night hours of operation and alcohol sales from 11 p.m. – 3 p.m. and the sports bar inside. He stated that is how the bowling alley was called a nightclub.

SPECIAL EXCEPTIONS PERMIT (Continued)

Councilman Murphy stated we specifically and separately defined sports bars also as not nightclubs.

Mr. Schultz stated the occupancy at the bowling alley is over 100 and serves alcohol from 11 p.m. – 3:00 p.m.; that there is a little bar inside of it.

Councilman Murphy stated he is still not clear as to how a bowling alley fits within the nightclub definition we just passed; that he does not think it is.

Chairman Rico asked if they have live entertainment. Mr. Schultz responded “yes”.

Mr. Dean stated if live entertainment is considered as music videos playing on the screens over the bowling center; that is the only live entertainment they have as they do not have any bands or music or anything like that.

Councilman Murphy asked if they have a DJ or bring in a band. The response was “no”.

Councilmen Murphy asked if they have festival seating. Mr. Dean stated it is a computerized music system that plays music over speakers inside the building; that there are no outside speakers, nothing like that. He stated when he wrote his e-mail to zoning that was his question; that as he read the *Code* when it was passed, he thought they would not be classified as a nightclub; that they do not have a dance club or seating like that.

Councilwoman Scott asked if they are planning on just having tables and no parking; if there would be people circling the building.

Mr. Dean stated there is parking that has been in place by the owner of the property; that it has been there since they got there and the area is used more as an entrance and exit for the Sportsman Warehouse next door because they also have loading dock facilities in that area with trucks coming in and out to drop off their products at night. He stated they are not publicizing parking back there; that 99.9 percent of the parking for the building is in the front of the building; that people do not park back there, “no”, because sometimes they are dropping things off at the American Freight and they get there in the middle of the night; that it is not generally used for that purpose.

SPECIAL EXCEPTIONS PERMIT (Continued)

Councilwoman Scott asked if they will have the ability to control people that come around such as minors that want to come up on the back part.

Mr. Dean stated what they have been doing currently regardless of the ordinance as far as serving alcohol, anyone that comes in the bar is ID'd on Friday and Saturday nights which are the nights with real concern. He stated they are ID'd when they come in the bar and are hand stamped "legal" or "under 21"; that at night they are closing that whole patio section off once it becomes dark to prohibit people from coming in through the back door.

Councilwoman Berz stated that is good; that once that patio area is opened then it does let people come in and out the back way. Mr. Dean responded "correct"; that while the patio would be open, they would have the ability to come in the building because they would have to have access.

Councilwoman Berz stated it is her thought the facility is fabulous and we are lucky to have it; that we trying to come up with a balance of neat facilities next to areas that might disturb the quiet enjoyment of the people. She stated she has no problem with there being an outdoor eating area as long as Bryan can come up with the right wording that protects people from noise.

Mr. Dean stated he has no issue with that; that he is glad to be a partner with everyone in the community; that if there is an issue that is brought to their attention they will address it right away to make sure it is taken care of as those are the people that will make their business grow and help them continue to grow.

Councilwoman Berz stated it is not so much how they are classified, that it is just a "red herring"; that her point is the noise in the area and as long as Bryan can address it she has no problem with it.

Councilman McGary made the motion to defer this item one week until we can properly define whether or not this is classified as a nightclub; **Councilman Murphy seconded the motion.**

Councilwoman Berz asked if an amendment would be accepted; that she is not so much interested in the nightclub; that it falls in the same area as the furniture store that Councilman McGary did not want things out on the street. She stated the issue is not what is going on inside, it is the noise that could be caused outside and that was the issue, not how it was classified.

SPECIAL EXCEPTIONS PERMIT (Continued)

Councilman McGary stated Councilwoman Berz's point is understood, however for the sake of the conversation before the Council the Resolution reads "nightclub" and if it is not a nightclub we need to properly classify it as what it is. He stated the motion still stands.

Mr. Price stated one point is while this has been going on the hours of operation and being able to have the ability to sell alcohol has been limited. He stated if it can be limited at least with the stipulation to allow them to move forward subject to whatever is determined with the night club classification and whatever is determined as it relates to the language for the outside use, if they could at least pass that it would allow them to indoors continue an operation that right now has been limited.

Chairman Rico asked if everyone would withdraw their motion and start over again!

Councilman Murphy stated if it is not actually a nightclub they should not be so restricted anyway. Mr. Price expressed agreement; that if it is passed tonight it allows them to move forward and have a week's operation. He stated right now they cannot because as Staff has presently determined it does fall under that classification. He stated if the Council passes it tonight, fine, they would be allowed to go ahead and have hours of operation that relate to the indoor use and move on. He stated if it is brought up next week and it is not it can be taken out and they can move on.

Mr. Schultz stated the key with the nightclub is it is all under one building, occupancy over 100 and serves alcohol between hours of 11 p.m. and 3 a.m.; that is how it is being classified as a nightclub.

Councilman Murphy stated so do sports bars which are now defined now as not nightclubs. Mr. Schultz stated the key is the occupancy of 100 and serving of alcohol. Councilman Murphy stated it is his thought Mr. Schultz is misreading the ordinance!

Councilman Benson stated he does not see anything wrong classifying it as a nightclub; that he does see something wrong with what was said that it allows them to get into business right away. He stated this is the first reading and it is going to take another reading and then two weeks after that. Chairman Rico corrected Councilman Benson by stating this is a Resolution, not an ordinance.

SPECIAL EXCEPTIONS PERMIT (Continued)

Mr. Dean stated he has been limited for almost eleven weeks and has followed everything they have been asked to follow, has done what they have been asked to do and has no problem with that. He stated it does have a pretty big effect on their weekend business.

Councilwoman Berz made the motion to go ahead and pass it as is, as a nightclub and there has been a second for that. She requested the right wording for the condition.

Mr. Price stated maybe the first condition can be passed and the second issue before Council next week.

Councilwoman Berz stated the man needs to go ahead and do business!

City Attorney Mike Mahan stated there is another request on the agenda with the following condition ***“no musical, video or amplified sound outside the building”***.

Councilwoman Berz stated that is exactly the condition she was talking about. She **made the motion to adopt the Resolution with the added condition; Councilman Benson seconded the motion.**

City Attorney McMahan amended the Resolution in open Council meeting.

On motion of Councilwoman Berz, seconded by Councilman Benson,
**A RESOLUTION APPROVING A SPECIAL EXCEPTIONS PERMIT FOR USE
OF A NIGHTCLUB LOCATED AT 6241 PERIMETER DRIVE, SUITE 109, AS
MORE PARTICULARLY DESCRIBED IN THE ATTACHED ANALYSIS AND
MAPS, SUBJECT TO CERTAIN CONDITIONS**

Was adopted with the added condition.

SPECIAL EXCEPTIONS PERMIT

Misty Dawn Powell

The applicant was present; opposition was in attendance.

Councilwoman Berz stated apparently the RPA sent out notices to neighbors and she has gotten a number of phone calls and e-mail, some of which has been forwarded about this operation who have requested deferral of this matter for one week so they can be present.

SPECIAL EXCEPTIONS PERMIT (Continued)

Councilwoman Berz stated the other thing is apparently a website has been downloaded with all sorts of pictures; that the site talks about it being open from 1 a.m. – 3 a.m., just all sorts of “stuff”. She asked if opposition were present and the response was “yes”. She asked if the Brainerd Hills Neighborhood Association were present. The response was “no”.

Chairman Rico stated there is lady present in opposition to this request who drove all the way from Cleveland, Tennessee who cannot come back next week.

Councilwoman Berz stated there is sufficient opposition that wants to be heard and asked that this be deferred for one week. She stated the second thing is among the pictures of actions going on there was enough smoking of combustible substances of various types that the Fire Marshall has asked that they make an examination.

Nancy Bennett, 5707 Lee Highway, owner of Nancy’s Home Fashions, stated through the years this property used to be the Red Lobster and it has been one bar after another bar after another bar! She stated there have been people killed over there and noted two were killed on her property; that she has had damage to her property that nobody ever paid for except her and people park all over her lot and she ends up having to call people to tow things off. She stated she noticed that the information says the property would be entered at the side and all that is is a side door they have thrown up a little awning over. She stated it is loud, the neighbors have complained over-and-over because all the loud music comes up to 3 a.m. She stated at times it has taken police all over the county going there to control the problems they have had at some of the bars; that the way she views it she is a little retail business sitting in the middle of nowhere and it devalues her business and she may be asking for a reduction in taxes this year and a lot of it is because of that bar next door and the problems it creates! She stated if you do the same thing over and over and come up with the same result, why not change what is being done and not allow that.

Atty. Doug Cox was present representing the applicant, Sharky’s Inc. He reminded the Council this has gone before the Beer Board, has been inspected by the appropriate agency and has passed. He stated the reason they are present tonight is for the nightclub ordinance that is being imposed; that they sat through the moratorium and have done the things asked of them.

SPECIAL EXCEPTIONS PERMIT (Continued)

Atty. Cox stated they have conditions they would like to address on the resolution as the business before them. He stated the City Attorney knows this property cannot carry a reputation that is going to be imposed on these business holders here; that they are entitled to a clean slate when they come up here to run their business as they should and they are not to be condemned for the businesses that were there before them. He stated if there were problems before they should not be assigned to this applicant who already has his beer permit, his business license and has been doing business out there under the restrictions that they would like to see lifted so he can get his nightclub permit and do a full-fledged business as the prior applicant. He stated in reference to the website, the General Manager, Mr. Cummings, would be glad to address that.

Mr. Cummings stated the website was downloaded by an outside source that was a promoter they did a one-time event for and was not anyone who was actually employed or asked to design such a website, reiterating that the person downloaded it. He stated all they had for their website that was actually created by a person he (Cummings) hired is the front page and the person moved it to his own site and decided to download pictures he had; that this had nothing to do with his (Cummings') establishment as far as he knows.

Councilwoman Berz asked that this be deferred for one week so the neighbors could be present and then asked if there is someone wanting to speak.

Lora Rayburn, who runs the Intown Suites at 5730 Brainerd Road, spoke in opposition. She stated that the nightclub has not been there long but their history with the nightclub across the street has been very much the same as Nancy's. She stated in addition to the police constantly coming through her parking lot when people run out of that place they run into her parking lot; that there is only one entrance and exit and she winds up having this police chase through her parking lot at all hours of the night. She stated the noise that comes off the property "hits" the third floor of her business and literally rattles the windows and there is a neighborhood right behind them. She stated there are children at the hotel as it is not just an adult hotel; that it is an extended stay living facility and there are senior citizens, workers from the Volkswagen and people that want to sleep!

Councilman McGary stated he is trying to get a frame of reference as to what Ms. Rayburn indicated, whether it is this business and not a previous business. Ms. Rayburn stated there has been one event there.

SPECIAL EXCEPTIONS PERMIT (Continued)

Councilman McGary stated that is his question and asked what time frame are we talking about wanting to know how long has this problem been going on. Ms. Rayburn responded with this one she cannot say for sure; that it has been ongoing for years.

Councilman McGary asked Ms. Rayburn when she states "for years" is it this business . . . Ms. Rayburn responded "whenever that place opens up".

Councilman McGary stated in reference to this place before us now he asked Ms. Rayburn if she can identify any problems with this business. Ms Rayburn stated there was one event in December.

Mr. Cummings stated they had a gentleman who had some problems in the parking lot and they had to call the police and rescue to come out and have a look at it.

Councilman McGary stated there was an event in December and asked how long the doors have been open. Mr. Cummings responded since mid-October, the second week in October.

Councilwoman Scott asked if Mr. Cummings is able to control the noise and traffic and such around . . . Mr. Cummings stated he is not sure how much traffic he can control; that as far as the noise goes, "yes", very much so.

Mr. Cox stated one of the restrictions on this was to limit access into this parking lot from Lee Highway; that the others have been fenced out and the curb cuts are supposed to be taken care of; that patrons will only be able to come in-and-out through Lee Highway.

Councilwoman Scott asked if the website was Mr. Cummings' website and were the things that were . . . Mr. Cummings responded that was something done by an outside person.

Councilwoman Scott stated she understands it was done by an outside person and asked if there were things occurring in his . . . Mr. Cummings stated he never looked at it and could not tell her.

SPECIAL EXCEPTIONS PERMIT (Continued)

Atty. Arvin Reingold stated he was present on behalf of the property owner who has some rights who pays about \$3,000 a year to the city for taxes and it has been empty. He stated what past sins might have been committed there is onerous on the property owner; that the owner has a tenant there at this time that will be an honorable tenant. He stated he is interested in seeing the provisions are adhered to by his tenant as the city is.

On motion of Councilwoman Berz, seconded by Councilman Benson,
A RESOLUTION APPROVING A SPECIAL EXCEPTIONS PERMIT FOR USE OF A NIGHTCLUB LOCATED AT 5709 LEE HIGHWAY, AS MORE PARTICULARLY DESCRIBED IN THE ATTACHED ANALYSIS AND MAPS, SUBJECT TO CERTAIN CONDITIONS

Was deferred one week.

SPECIAL EXCEPTION SPERMIT

Joel Seiner

On motion of Councilwoman Robinson, seconded by Councilman Murphy,
A RESOLUTION APPROVING A SPECIAL EXCEPTIONS PERMIT FOR USE OF A NIGHTCLUB LOCATED AT 5425 HIGHWAY 153, SUITE 100B, AS MORE PARTICULARLY DESCRIBED IN THE ATTACHED ANALYSIS AND MAPS, SUBJECT TO CERTAIN CONDITIONS

Was adopted.

SECURE SERVICES

On motion of Councilwoman Ladd, seconded by Councilman Murphy,
A RESOLUTION AUTHORIZING THE CITY FINANCE OFFICER TO SECURE THE SERVICES OF PUBLIC FINANCIAL MANAGEMENT (PFM) TO ANALYZE BANKING SERVICES PROPOSALS AS ALLOWED UNDER SECTION 10 OF THE CITY'S EXISTING CONTRACT WITH PFM AT A FEE NOT TO EXCEED THIRTY-THREE THOUSAND DOLLARS (\$33,000.00), PLUS EXPENSES NOT TO EXCEED TWO THOUSAND DOLLARS (\$2,000.00)

Was adopted.

OVERTIME

Overtime for the week ending February 8, 2011 totaled \$8,420.58.

PERSONNEL

The following personnel matters were reported for the various departments:

PARKS AND RECREATION DEPARTMENT:

- **JEREMY HICKS** – Promotion, Building Maintenance Mechanic 1, Range 9, \$27,602.00 annually, effective January 28, 2011.
- **STUART HOLLEY** – Military Leave, Building Maintenance Mechanic 1, effective January 5, 2011 – February 5, 2012.

CHATTANOOGA POLICE DEPARTMENT:

- **MELINDA HARRIS** – Return from leave without pay, Crime Statistical Analyst, effective January 3, 2011.
- **CAMERON NICHOLS** – Resignation, Police Cadet, effective February 1, 2011.

CHATTANOOGA HUMAN SERVICES:

- **ALTON CHAPMAN** – Resignation, Administrator, effective February 4, 2011.
- **ELIZABETH SMITH** – Resignation, Teacher Assistant, effective January 14, 2011.

REFUND

On motion of Councilwoman Robinson, seconded by Councilwoman Ladd, the Administrator of Finance was authorized to issue the following refund of water quality fees and/or property taxes:

REGIONS BANK -- \$1,988.10

BOARD APPOINTMENTS

On motion of Councilwoman Robinson, seconded by Councilman Gilbert, the following Board appointments were approved:

HISTORIC ZONING BOARD:

- Appointment of **RYAN FISER** for a term expiring May 1, 2011.

STORM WATER BOARD:

- Appointment of **CHARLES M. HILL** for a term expiring September 30, 2012 (filling the industrial vacancy and completing the unexpired four year term of Girish Patel).

PURCHASES

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

PUBLIC WORKS DEPARTMENT:

APPLIED INDUSTRIAL TECHNOLOGIES (Best bid) **R36729/300772**

Purchase of a 200-HP Electric Motor

\$30,849.00

ANALYTICAL INDUSTRIAL RESEARCH LABORATORIES, INC. (Payment for services) **R39215**

Ratify the Purchase of Lab Testing (*With both Waste Resources and Water Quality Divisions using the same vendor, the \$10,000.00 limit was inadvertently exceeded.*)

\$2,280.00

PURCHASES (Continued)

GENERAL SERVICES:

BEST ONE TIRE OF CHATTANOOGA (Lowest and best bid)
R36867/300807

Blanket Contract for Tire Recapping

\$450,000.00 – Annual approximation

Councilwoman Scott inquired as to how long the testing will go on outside for the spectrometry, asking if it is over or are we going to use the machine the city purchased.

Admin. Leach responded Mr. Stewart's testimony today was they would train staff to use it and assumes it will be used soon if not now.

Councilwoman Scott stated that was a very expensive machine we purchased. Admin. Leach stated everything we have out there is expensive.

Councilwoman Scott stated it makes her want to use it as soon as possible rather than "farming it out". Admin. Leach expressed that he understood.

HEARING: MARK MESSER

City Attorney McMahan stated he had a number of items tonight with the first involving the hearing for Mark Messer, a former employee of the Internal Audit Department; that Attorney Benson is representing Mr. Messer and Atty. Bart Quinn will be representing administration with respect to the hearing. He stated the dates of April 11 or 18 and May 9 or 16 were submitted as possible dates to hear the request; that he suspects this will be an all day hearing and recommended it be set at 9 a.m.

Councilwoman Berz asked when the Council was going to get set up with the Administrative Law Judges.

City Attorney McMahan stated we cannot make it retrospective; that Councilman Murphy is going to set a meeting with the Legal and Legislative Committee on that.

HEARING: MARK MESSER (Continued)

Councilman Murphy asked if the Chief Judge was going to come visit with us; that he does not feel he needs that personally but does not know whether the rest of the Council does. Indication was given the Council does not.

City Attorney McMahan stated based upon Mr. Noblett's conversation with Judge Stovall, he could arrange for this as early as next week if the Council wants to move forward with the Tennessee Administrative Law Judges from the Department of the Secretary of State.

Councilman Murphy stated that is the direction we should go. City Attorney McMahan stated he would draft an ordinance to place on the agenda changing the procedure to utilize the Secretary of State Administrative Law Judges process.

Councilman Murphy stated we will still have to hear them the old way until that is in effect; that anybody who is terminated prior to that probably has the right to the Council panel.

City Attorney McMahan strongly recommended until the ordinance is adopted anyone discharged prior to that time be heard under the panel process currently used.

A hearing for Mr. Messer was scheduled for Monday, April 18 at 9 a.m. with Councilmen Ladd, Murphy and Scott; Councilwoman Ladd will serve as Chair. An alternate will be selected closer to the hearing date.

Councilman Benson stated he was told when he came on the Council that we could not change our appeals responsibility without the matter going to a vote of the people and asked if he were wrong in thinking so.

City Attorney McMahan responded that it went to a referendum last November and passed.

Councilman Benson asked how it was worded. City Attorney McMahan stated he did not have the exact wording, but noted it stated by ordinance a different appeals procedure could be established.

TEMPLETON REPORT

City Attorney McMahan stated that he had reported in open meeting last week that he would have a report to give to the Council on the Templeton matter, however, since last week he received a public records request wherein certain documents were requested and if they exist it is his thought he should review them prior to finalizing a report. He stated he is waiting for the documents, principally e-mails to be searched by IS and would try to bring that next week.

SETTLEMENT MEMORANDUM: MARY L. SMITH

City Attorney McMahan stated he has a settlement memorandum on Mary L. Smith vs. the City for a motor vehicle accident where the lady was rear ended by a city employee; that the lady was 82 years old with medicals bills totaling \$18,907. He stated a settlement has been reached for \$36,500 if the Council concurs.

On motion of Councilman Benson, seconded by Councilman Murphy, the City Attorney was duly authorized to settle the matter.

SETTLEMENT MEMORANDUM: MARVIN NICHOLSON

City Attorney McMahan stated he also has a settlement memorandum regarding Marvin Nicholson vs. the City and Chief Rowe. He stated Mr. Nicholson was arrested for a very serious crime and was immediately discharged by then Fire Chief Rowe. Mr. Nicholson filed suit in the United District Court Eastern District, stating he was denied procedural and substantive due process, procedural due process for not being given a proper "Laudermill hearing". He stated Mr. Nicholson sued for \$250,000 and he (McMahan) has negotiated subject to the Council's concurrence, a proposed settlement of \$40,000.00 which is basically one year's pay.

Councilman Benson stated that the City Attorney might want to add Mr. Nicholson was adjudicated innocent by the Courts.

City Attorney McMahan stated Mr. Nicholson was found not guilty. Councilman Benson stated that is an important thing!

On motion of Councilman McGary, seconded by Councilman Murphy the City Attorney was duly authorized to settle the matter.

**SPECIAL EXCEPTIONS PERMIT: MISTY DAWN
POWELL**

Councilman McGary stated that he would like to go back to an item the Council discussed earlier, Resolution (h) in regard to Misty Dawn Powell; that he wants to support his Council colleagues particularly when there are issues in their district; however, he wanted the record to state he personally finds it offensive that we print the agenda two weeks in advance so that people can know what is on the agenda and we postpone a vote because we are waiting for someone to be here who is not present. He stated if we have it printed in advance and we have the party here asking that we approve or consider their special exceptions permit, it is only fair to that party for showing up that we do not put it off for people who choose not to be here.

Councilwoman Berz responded that this request came from neighbors the same way zoning is deferred. She stated the RPA as required by law sent out a notice to all the businesses and residents within certain footage and that just got out; that the responses and the e-mails she received asking for time to gather their forces and be heard is no different from a zoning matter that we defer. She stated yesterday is when she got the request; that the people who showed up knew about it because they were told it was going to be deferred and they decided to show up anyway. She stated the bottom line is this is treated no differently from any other matter and when we say we will defer as we have on several occasions on this agenda, defer so people can be heard that is what we are doing with this, too. She stated she is sorry Councilman McGary is personally offended however we do need to follow due process and let people be heard. She stated these people just found out by accident and showed up and they asked to come back again next week; that it is her thought we have to give the public the right to speak up as we do normally in any zoning matter; that it is her thought this explanation was due.

Councilman McGary stated there must be a glitch here; that his concern is if the agenda is advertised and we take up a particular matter on the agenda he can understand if citizens do not receive adequate information in due time, however there is a glitch. He stated if we put something on the agenda and someone shows to ask us to consider a particular item, out of due respect to that individual or people who show it is hoped we can get this considered in such a way where the applicant would have gotten the notice it was going to be deferred or something to that effect.

Councilwoman Berz stated he did earlier.

AMEND VEHICLES FOR HIRE ORDINANCE

Councilman Benson requested permission of the Council to put on the agenda next week an ordinance to amend the *Chattanooga City Code* relative to non-consensual towing. He stated the ordinance states the first 24 hours will be at no charge and that is putting tremendous responsibility on towing companies to protect a car for 24 hours to and from that lot. He stated while it is in the lot protecting it from any harm they are not getting a penny for the first 24 hours. He stated a regular rotation wrecker system says the first eight (8) hours would be free and would like for this amendment to state that the first 12 hours would be free and would give them time if a car is taken in at 8 p.m. at night and cannot get it out of storage because it closed; that the 12 hours should put it into operating hours and thinks that is fair to the wrecker industry. He stated he asks that it be placed on the agenda next week to give time to listen to the Beer and Wrecker Board to see what their feelings are on this and give us two weeks before it will be changed.

On motion of Councilman Benson, seconded b Councilman Gilbert the matter would be added to the agenda for discussion.

Councilwoman Scott stated we have done this; that we have “been there and done that”!

Chairman Rico stated the time is what has not gotten right.

Councilman Benson stated we probably put too many hours on it free of charge.

Councilwoman Scott stated it is her belief that \$250 is what a lot of these things are going to wind up being and the Wrecker Board members were there. She stated the wrecker owners were there and we spent . . .

Councilman Benson stated they put 24 hours on it.

Councilwoman Scott stated we passed . . . Councilman Benson stated we passed 24 but he never heard the Wrecker Board state 24. He stated let’s bring it back up and see if this unfair to either to do this.

Councilwoman Scott stated she could tell right now it is fair from her perspective!

Councilman Benson stated he will bring it back up anyway and vote against it if it is not right.

AMEND VEHICLES FOR HIRE ORDINANCE
(Continued)

Councilman Murphy stated since Councilman Benson has put something on the Legal and Legislative Committee agenda for next week, he asked if he (Benson) would chair the Committee next week. Councilman Benson agreed and suggested that someone from the Wrecker Board be represented, as well.

Councilman Murphy stated next week Geoffrey Canada from the Harlem Children's Zone will be in Chattanooga to speak on Tuesday at Hardy Elementary for a community meeting which is in Councilman McGary's District, however the students who attend are mostly in both their districts. He stated there has been a lot of work with the county to establish a Children's Promise Zone for Chattanooga starting at Hardy. He stated he loathes missing the afternoon meeting however he believes enough in the effort to attend the meeting at Hardy. He also announced at lunch time on Wednesday he will speaking on a panel discussion at the Bicentennial Library on *Whatever It Takes*, a book by Paul Tough that talks about what was done in Harlem. He expressed hope the Council would move quickly next week so all could go to UTC to hear Mr. Canada's address.

Councilman McGary stated he would not be present next Tuesday in light of Mr. Canada's visit and confirmed Councilwoman Scott is right in reference to the towing matter; that we have been here and dealt with this; that the analogy that was used was in the case or Riverbend – if someone was towed at 8 p.m. Thursday night, twelve hours later is 8 a.m. the next morning, they would be found and have to pay a fine for storage; that the 24 hour period was in consideration of something like Riverbend as he remembers. He stated if we undo it and make it 12 would certainly "rock the boat"; that the other consideration is we have district wreckers who are accountable to the Beer and Wrecker Board, and if they are not a district wrecker they are not accountable. He stated he knows for a fact there are certain individuals who want this changed because they know if it is not changed, they are not accountable. He stated he is very much concerned if we move this we are saying to our district wreckers who have a privilege because they are accountable, that to those that don't want to be part of this they can be part of the district if they choose and if they choose not to and does not want to be accountable, he does not see why they should have the same privileges. He stated in light of his not being present next week, he wanted to make his opinion known.

Councilwoman Robinson stated she may have to leave the evening meeting a little early next week because she plans to hear Geoffrey Canada, as well.

OFFICER HOBACK INQUIRY

Councilman McGary stated he read the article in the *Times-Free Press* that Officer Hoback has been ordered to return back to active duty and asked if there are any more details as to when he is expected to return.

City Attorney McMahan stated the matter is still being considered and there are 30 days to appeal. He stated Mr. Noblett is going to speak to all members of the Council concerning this matter and will probably bring it forward for the Council next week to make a decision about what to do with the case.

COMMITTEES

Councilwoman Berz stated the Budget, Finance and Personnel Committee had a terrific meeting this morning and noted she would be sending a schedule of all the meetings and times on tomorrow.

Councilwoman Ladd stated the **Public Works Committee will meet next Tuesday, February 15.**

Councilman Murphy stated the **Legal and Legislative Committee would meet next Tuesday, February 15** with Councilman Benson serving as chair.

Councilwoman Scott stated the **Economic Development Committee is scheduled to meet next Tuesday, February 15**, for a discussion on the PILOTs' performance.

NEXT WEEK'S AGENDA

Chairman Rico stated that the agenda for next week was discussed during today's Agenda Session.

ADJOURNMENT

Chairman Rico adjourned the meeting of the Chattanooga Council until Tuesday, February 15, 2011 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)**