

City Council Building
Chattanooga, Tennessee
March 29, 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, Councilman Gilbert gave the invocation for the evening.

MINUTE APPROVAL

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

SPECIAL PRESENTATION: PROCLAMATION – “FAIR HOUSING MONTH”

Mayor Littlefield stated every year prior to “Fair Housing Month” he issues a proclamation; that Chattanooga has a proud history in dealing with the issue of fair housing and it is his privilege to bring this proclamation. At this point he read the Proclamation in its entirety which has been spread upon the minutes:

Whereas: April 11, 2011 marks the 43rd anniversary of the passage of the U.S. Fair Housing Law, Title VIII of the Civil Rights Act of 1968, which declares a national policy of fair housing throughout the United States and makes any discrimination in the sale, lease or rental of housing, or making housing otherwise unavailable, because of race, color, religion, sex, disability, national origin or familial status illegal.

SPECIAL PRESENTATION: PROCLAMATION – “FAIR HOUSING MONTH” (Continued)

Whereas: The City of Chattanooga and its Office of Multicultural Affairs, working with other local housing organizations, associations, businesses and concerned individuals, is committed to promoting the U.S. Fair Housing Law throughout our communities, as we strive to educate the public about the right to equal housing opportunities, and collaborate efforts with other organizations in assuring citizens of their right to fair housing.

Whereas: Equal housing opportunity is a condition of life in our City of Chattanooga, Hamilton County that can and should be achieved.

Now Therefore,

I, Ron Littlefield, Mayor of the City of Chattanooga, do hereby proclaim the
month of April, 2011 as

Fair Housing Month

And Furthermore, be it resolved the City of Chattanooga commence a month-long commemoration of the U.S. Fair Housing Law in Chattanooga, Tennessee and urge all

Citizens to wholeheartedly recognize this celebration throughout the year.

In Witness Whereof, I have hereunto set my hand and caused the

Seal of the City of Chattanooga to be affixed this the

1st day of April, 2011

Ron Littlefield, Mayor

Beverly Cosley, Director of the Office of Multicultural Affairs, expressed thanks on behalf of many, many community organization who are strong advocates of fair housing. At this point she introduced Chattanooga Housing Authority Board Chairman, Eddie Holmes, a recent Jefferson Award nominee; Carol Johnson, Director of Resident Services with the Chattanooga Housing Authority; Mary Simons, Executive Director and Robert Harrison, Director of Planning of the Chattanooga Regional Homeless Coalition; and Robert Nodes, Governmental and Public Affairs Director of the Chattanooga Association of Realtors.

SPECIAL PRESENTATION: PROCLAMATION – “FAIR HOUSING MONTH” (Continued)

Mrs. Cosley stated these are representatives of the many great organizations they partner with and will continue to do so as they try to have equal housing opportunities for all in Chattanooga.

Councilwoman Robinson added that Mrs. Cosley should remind everyone of the luncheon that will be held on Friday; that she plans to be there with some of the representatives from the NEMA Outreach Minister, Father Peter Kanyi and others who have been invited.

Mrs. Cosley stated 125 have responded and there will be educational workshops prior to the luncheon which will deal with different problems people might have in knowing their rights as home owners and renters. She stated there will be presentations from the Tennessee Housing Commission and the Tennessee Commission on Human Rights, adding that Chattanooga Neighborhood Enterprise will do a presentation about foreclosure. She stated the workshops are free to the public and the luncheon begins at 11:30 at the Choo Choo. She asked that Council members respond as soon as possible to her office on tomorrow morning to reserve a spot.

AMEND CITY CODE

Councilmen Benson and Ladd made the motion and second to substitute the amendments to this ordinance.

Councilman McGary stated he does not support this legislation for two reasons; that it is his believe if we are honest with ourselves, this piece of legislation is a reaction in regard to a shooting at Cooling Park. He stated we have essentially said it takes shootings for us to pass legislation concerning Coolidge Park and unfortunately in regard to the question of Ross' Landing or Renaissance Park, the question has become why not pass such legislation for these parks and the response has been the same -- unless there are shootings in Ross' Landing or Renaissance Park legislation will not be passed. He stated he feels this is fool hearty and shortsighted; that if we know there is a problem concerning shootings, in his opinion, it is unfortunate we have to wait for another shooting to take place in another part of town before we pass legislation.

AMEND CITY CODE (Continued)

Councilman McGary stated ultimately his concern lies elsewhere that whatever is good enough for Coolidge Park is good enough for everyone; that it would make more sense to him if we know the issue is with the curfew and truancy issues for us to fix the a faulty legislation that exists before we create new legislation. He stated you do not plug a hole in a faulty sink by buying a new sink -- you fix the faulty plug in the sink! He stated for us to consider new legislation on top of legislation that must be fixed is also fool hearty and for these two reasons he does not support this legislation.

Councilman Gilbert stated he cannot vote for this today because in his area there have been several shootings and there was no conference; that it took two incidents to happen in one area and all of a sudden we need to do something; but there are people who have been killed in other areas and it's like "it is one of those things". He stated there are issues with this as there are others we need to look at in reference to other parks and neighborhoods. He stated Councilman Benson stated earlier that the Mayor is looking into a holding place which is great, however, this has been going on for years and all of a sudden we have to do something and there is an issue with that. He stated it is a good start but should have been done a long time ago because lives could have been saved. He stated there are innocent kids getting shot, relating an incident a month ago that had nothing to do with the situation but there was no press conference held. He stated we are making an effort but we need to make more of an effort in putting more "bite" into the situation, more truancy should be followed, the curfew should be enforced and go from that point. He stated we need the stakeholders to come together because the issue is not just in the city it is nationwide. He stated locally we need the state, representatives, judges and the district attorney involved to come to the table to come up with a solution that will have more "bite" to it. He stated parents need to be responsible and expressed agreement with that; that they could do community service as they do at schools and can do it for this. He stated he cannot vote for this tonight.

Councilwoman Scott stated that she needs clarification; that the ordinance we voted on last week is different from the ordinance we talked about earlier in committee. She stated she wants to determine if Councilman Benson's motion was to pass the ordinance from last week on second reading or was he intending to move to substitute (the amendments).

AMEND CITY CODE (Continued)

Councilman Benson stated he was really moving to the revised edition of it; that it has not been revised to the extent that this is not considered the second reading and asked the City Attorney if he were correct. City Attorney McMahan responded "correct".

Councilwoman Scott asked if his motion is a motion to substitute. City Attorney McMahan stated that is the procedure we have followed. Councilman Benson clarified that his motion is to substitute.

The vote on Councilmen Benson and Ladd's motion to substitute carried with Councilmen Gilbert and McGary voting "no".

Councilman Benson stated he believes this is more than a reaction and is taking some necessary action as a preface to some further action. He stated as Chairman of the Safety Committee he has been meeting with the two Mayors, the District Attorney, several Assistant District Attorneys, as well as the Chairman of the County Commission's Safety Committee. He stated they are looking at the whole picture here and going to have some things to bring to the Council in the coming weeks as far as prevention of gangs and how we can rehabilitate the existing gangs in action; that they think this is really necessary right now because Coolidge Park is the "heartbeat of all parks" and it stands on its own strengths and weaknesses just like every other park and every other need in every other park. He stated this is needed at Coolidge right now and the Council person representing that district would join him in agreeing to that. He stated more than this is needed but we do not have him to put it all in; that we have to look at the total curfew problem not only as it relates to gangs but attendance in schools, truancy and other things that are happening with young on our streets. He stated he is really optimistic about what will be accomplished and does not know if the Mayor could speak to it right now and give whatever information he can.

Mayor Littlefield stated there is nothing secretive or mysterious about this, but this community has been responding to the gang situation for quite some time; that we have not been seeking headlines but effective actions that we could take that would address the issue. He stated there are different elements to dealing with the gang situation and, yes, we do have gangs in Chattanooga which has been denied; that he is surprised to hear some people say the city denies it. He stated not only for many years have we denied we have gangs, but we know for more than 20 years cities like Chattanooga have been dealing with gangs and many of the things the Council undertakes are prevention and intervention.

AMEND CITY CODE (Continued)

Mayor Littlefield stated those are not the dramatic headline grabbing things and we do have a number of organizations and agencies in the city working on that right now. He stated the thing that does grab the headlines is when we have an occasion like Coolidge Park and suppression comes in to play. He stated one thing we talked about in this community is the need to improve our curfews, our handling of young people who are picked up as the result of curfews and truancy issues; that it does not address the whole gang problem but it does address the young people who might be inclined to get into gangs and gets young people out of an unsafe environment into a safe environment. The thing that had been lacking is a place to take them and (he) does not know how many times police say if they have to pick them up they will be babysitting them all night unless there is some place to take them because they are not criminals; that if they are guilty of a crime they go to juvenile detention. He stated if they are guilty of being out on the street when they should not be it is a status offense and needs to go to some other place and need a holding place.

Mayor Littlefield stated with the actions of recent days and in talking with Juvenile Judge Bailey and her staff and others we have concluded we have a place that is near ideal which is the old now vacant precinct offices built as part of the South Chattanooga Recreation Center on 40th Street which is close to the fire hall next to the school offices, next to the post office and across from Forest Hills Cemetery. He stated it is an ideal place to take children at any hour because the recreation center is there and we are quickly resurrecting that location; that it is in good shape and does not need much cleaning and just needs phones reconnected and facilities put in to take care of kids and we are doing that right now. He stated passing the ordinance is just the first step; that going back and looking at the curfew ordinance as it applies city wide is another step. He stated he is confident as they continue to work with the District Attorney's office, Juvenile Court, the Y, the Partnership for Families and Children's Services and other agencies we will be coming back with other actions, some having to do with ordinance adjustments and some having to do with policies and procedures of the city. He stated this is an important first step and given the fact we are going to a season when there is going to be large gatherings at Coolidge Park almost every weekend we think we need to send a message to the parents, not so much to the young people, to be responsible for their children, take care of them and do not just dump them out and expect them to take care of themselves. He stated as the summer proceeds hopefully there will be become less and less of a need for this type of action.

AMEND CITY CODE (Continued)

Councilman Murphy stated he has been working on the issue of crime since elected and proud to say of the three police sectors that patrol his district one had a massive reduction in the homicide rate, had double digit drops in other violent crimes and the other two police sectors remain static in homicide and had double digit drops in violent crime. He stated if he had his druthers, would there be a press conference every time there is a shooting in his district, maybe; that he does not know if press conferences solve problems. He stated he supposes it hurts our feelings for some to see if it happens there it gets all this attention and gets people moving and that is hurtful to him in some respect, but being a realist and practical person, if this is the "kick in the tush" to get us to address things like curfew is good, but the curfew law is a lot more complicated than this provision. He stated if it took this to get us to address truancy he is not going to question why it is happening as he is happy that it is happening. He thanked the Mayor and stated he was pleased to spend most of his day with him, the Police Chief and Parks and Recreation officials, Juvenile Judge Bailey and other nonprofit organizations that are dedicated in finding real solutions for juvenile issues in our community. He stated he has been working hard on the Promise Neighborhood Zone for the Hardy Elementary Zone in Councilman McGary's district which serves his district, as well.

Councilman Murphy stated this is not a magic bullet as we can change curfew ordinances and have a safe place to take kids that are out and should not be unsupervised and at risk from predators and others; that we can do all that and it is not going to turn everything on a dime, anyway, but it is difficult work and we are getting to work on it and for that he is happy. He stated this is a small thing that the Chief of Police and Parks and Recreation administrators have set as a tool they would like to have and they are far more professional in their fields than he. He stated because we do not have the curfew modifications ready to go tonight and do not have the facility open today he does not see any reason to not start this work or continue the hard work we are doing. He stated the original draft last week simply said no unaccompanied minors, the current one basically says from 6 p.m. to 6 a.m. so if kids want to come play Frisbee at 3:00 p.m. at Coolidge Park and they are 16 years old they can do that; that it is narrowly tailored and a tool the Chief of Police and Parks and Recreation officials have asked for. He stated it does not take the place for the other hard work we are doing and will continue to do, but does not see any reason to say "no" just because we are not accomplishing everything we want to accomplish here tonight and will do that over the weeks and months to come.

AMEND CITY CODE (Continued)

At this point a young woman in the audience raised her hand to speak and Chairman Rico informed her that this is not a public hearing and suggested if she needs questions answered to wait until after the meeting.

Councilwoman Scott stated she needs clarification that we have a part on the agenda for non-agenda items and we have people wait, but we do not allow the public to speak generally without some prior arrangements in our committee meetings, but if the public cannot speak at the time the agenda is occurring, when can they comment on an agenda item.

Chairman Rico stated we have a lot of people that probably would like to talk; that this is not a public hearing, it is a Council meeting and we will go and do our business and afterwards hear anyone who wants to be heard.

Councilman McGary stated via a conversation with the City Attorney if we as a Council wish to hear someone speak we can make a motion for that person to do so. At this point he **made the motion for the young lady to speak; Councilman Gilbert seconded the motion; the motion carried.**

Councilman Benson asked for a time limit on the speaker. The response was three minutes.

Heather Sivley was present representing the younger community of Chattanooga and stated she is a 23 year old adult and the age restriction code does not apply to her but not so long ago they would have. She stated her teenage involvement with youth in government programs taught her the value of civic engagement and now as a student of nonprofit management at UTC and having grown up in Chattanooga, she intends to spend her adult life in service to its people. She thanked Council members for their involvement in making Chattanooga and the Riverfront what it is today but to also tell them the youth of Chattanooga values that just as much as the adults. She stated that she feels if we pass a blanket age restriction we unfairly deny reasonable responsible young people access to the things that make our city beautiful and discourages them from engaging with their community on the simplest level. She expressed appreciation for the recognition of the complexity of this issue, the efforts to work with youth advocacy programs and the efforts in the revision of the movement to reduce the restrictions placed on the young people.

AMEND CITY CODE (Continued)

Ms. Sivley stated that she feels there are many, many, many responsible young people who are in no violation whatsoever and we should recognize placing a blanket restriction on age is discriminatory and does not hold accountable the people who are doing the criminal actions. She stated the complexity goes further than just passing this today or just addressing the curfew and asked where people who are in violation of the curfew are to be sent and argued if we cannot send them to the parks, then where can we send them. She stated if we are closing the door to the park for the students and younger people now that we should absolutely have a structured alternative environment for them to go to before we close the doors, otherwise we are just relocating the violence to the streets of our neighborhoods. She thanked the Council for allowing her to speak.

On motion of Councilman Benson, seconded by Councilwoman Ladd,
**AN ORDINANCE TO AMEND CHATTANOOGA CITY CODE, PART II,
CHAPTER 26, BY ADDING SECTION 26-18, REQUIRING ADULT
SUPERVISION OF MINORS IN COOLIDGE PARK**

Passed second and final reading and was signed in open meeting; **on roll call vote:**

SCOTT	YES
ROBINSON	YES
LADD	YES
BENSON	YES
GILBERT	NO
BERZ	YES
MCGARY	NO
MURPHY	YES
RICO	YES

FRANCHISE

City Attorney McMahan stated this franchise gives Memorial Hospital authority to put the pipes for their central heating system in city streets and the franchise is for a period of four years. He stated by law we are required to hold a public hearing as it has been advertised in the newspaper. He asked if there is anyone in the audience desiring to speak to this franchise before the Council votes; being none, the hearing was duly closed.

On motion of Councilman Murphy, seconded by Councilwoman Robinson,
AN ORDINANCE GRANTING UNTO MEMORIAL HEALTH CARE SYSTEM A FRANCHISE TO INSTALL AND MAINTAIN PIPING IN A PORTION OF THE 2400 BLOCK OF CITICO AVENUE NEAR ITS INTERSECTION WITH THE 800 BLOCK OF NORTH CHAMBERLAIN AVENUE IN THE CITY OF CHATTANOOGA (CASE NO. MR-2011-018), AS SHOWN ON THE MAP ATTACHED HERETO AND MADE A PART HEREOF BY REFERENCE, RELATIVE TO MEMORIAL HEALTH CARE SYSTEM'S PROPOSED CENTRAL UTILITIES PLANT, SUBJECT TO CERTAIN CONDITIONS

Passed first reading; Councilwoman Scott abstained.

SPECIAL EXCEPTIONS PERMIT

MOCHA, LLC c/o Sharon Kelley, Jermaine Harper

Councilwoman Berz made the motion to move Resolution (g) forward on the agenda; Councilwoman Robinson seconded the motion; the motion carried.

The applicant was present; considerable opposition was in attendance.

Kelly Martin, Senior Planner with the Regional Planning Agency (RPA) stated the ordinance approved by the Council in January requires new special exceptions permits to locate within 750 feet of a residential area, which can be reduced at the discretion of the City Council. He stated in the case before the Council tonight the applicant met the criteria for a nightclub according to the Land Development Office. At this point he described the generalized process and noted this request met six of the seven criteria for being a nightclub. He stated the recommendations come from the Fire and Police Departments, Public Works' Land Development and Traffic Engineering offices and the RPA; that the RPA incorporates the recommendations for a formal presentation in coordination with the City Attorney's office for placement on the agenda.

SPECIAL EXCEPTIONS PERMIT (Continued)

Mr. Martin stated the Council has several options and can accept all conditions recommended by Staff and approve, can modify the conditions and approve, can add additional conditions and approve, can remove conditions and approve or can deny the permit. He stated this particular site located at 3116 Brainerd Road has C-2 zoning and has residential R-1 zoning across the street and noted the section of the Zoning Ordinance relating to the regulation of a nightclub requires measurements be made from a door regularly used for ingress and egress which is the door facing Brainerd Road, noting all measurements were taken. He stated there is 153 feet across Brainerd Road to the residential parcel at the north end and 235 feet to Rosemont, an R-1 zone. He stated the entrance is on Brainerd Road, parking is slated for the rear of the building and on the parcel adjacent to the building under the same ownership.

Mr. Kelly stated the recommendation from Staff is to approve with a reduced buffer distance from 750 feet to 150 feet with eleven conditions contained within the ordinance which include:

1. *Lighting of parking areas shall be provided; all lighting shall be directed down and away from adjacent residential areas.*
2. *Any shared parking arrangements must be documented by a written agreement signed by the property owner(s) and the permit holder.*
3. *Any sale or transfer of property used for the club site, or for shared parking shall require a review of the shared parking agreements by the City Traffic Engineer and the Chief Zoning official; the permit holder shall also provide a signed copy of a parking agreement made with any new owner(s) of the shared parking lot(s) to the Chief Zoning official.*
4. *A minimum of two (2) outdoor security officers licensed by the State of Tennessee shall be provided between the hours of 11:00 p.m. to 1:30 a.m. when the nightclub is open for business.*
5. *Outdoor security officers shall be easily and appropriately identified as security officers.*
6. *An operational fire suppression sprinkler system shall be required within six (6) months of opening.*
7. *All exterior doors must open outward.*
8. *The rear door shall be used as an emergency exit only; club patrons may not enter through this door.*
9. *An additional water closet shall be installed and operational within six (6) months of opening.*
10. *No outdoor gathering spaces shall be permitted.*
11. *No speakers shall be permitted outside of the club building*

SPECIAL EXCEPTIONS PERMIT (Continued)

Councilwoman Berz stated it has been said they can stay open until 3:00 a.m. even though they have agreed to close at 1:00 a.m.

Mr. Martin responded through their application they indicated they intend to close at 1:00 a.m.; that if that is a condition the Council would like to place in consideration is possible; that the box was checked on the application and assumes it could be on, both or all.

Councilman McGary asked if we are speaking of live or recorded music or both. Mr. Martin stated from what he understands there will be live music and could be amplified music that is recorded which is part of the application process.

Councilman Gilbert stated in dealing with the sprinkler system we have not passed the ordinance regarding the sprinkler system in clubs and asked why there are restrictions on this.

Fire Marshall Whitmire stated this is a multi-occupancy building and (he) met with a couple companies that would be answering Club Mocha with an occupancy load of over 200. He stated there is an accessibility issue when it comes to operations and there is a hydrant beside the Club within eight feet which would not be recommended to use in case of a major fire there. He stated in looking at the worst case scenario the company coming would go through Tunnel Boulevard to Rosemont to the top of the hill to catch the hydrant at Rosemont and come back down the hill. He stated if they have accessibility to Brainerd Road in a worst case scenario and the parking lot is not cleared they will have to stop there in that area and they cannot use any vertical suppression because of the power lines; that they would have to swing back in front of Brainerd Road and the other company coming in from the Highland Park area would have to opt stop in the area or do another route around the area in order not to go across charged lines. He stated the companies looked at it and gave different scenarios and felt the issue of accessibility is the reason the sprinkler system requirement.

Councilman Gilbert reminded Chief Whitmire that the ordinance has not been passed and other facilities near this are not required the same until another 16 months. He asked why we are doing six months versus looking at three years.

Fire Marshall Whitmire stated this is new business and we have not passed the ordinance, yet. He stated NFPA has jurisdiction and can require a sprinkler system.

SPECIAL EXCEPTIONS PERMIT (Continued)

Councilman Gilbert asked if we have done this in other facilities in the Chattanooga area that fit this category.

Fire Marshall Whitmire stated he has not looked at all of them; that some of the issues are addressed as they get to them; that this is something that was called to his attention, they looked at it and brought in additional companies and asked them how they would attack the fire and there was an issue with it.

Councilman Gilbert stated we have other permits that have been given and asked if this has been done for all of them.

Fire Marshall Whitmire responded "not through his office"; that they do pre-planning and the whole area over there is an issue as far as buildings there. He stated when asked about Club Mocha it was his opinion it would be like any other building based on the information as to why the sprinkler system is required.

Mr. Gilbert stated it is his opinion this is unfair to have a restriction like this within six months versus everyone else getting three years. Fire Marshall Whitmire responded "we don't know that, yet".

Councilman Gilbert clarified that he said "if"; that there should be the same privilege as the others if we pass it.

Fire Marshall Whitmire stated it has not been passed and is basing his opinion on what we are doing now.

Councilman Gilbert stated he understands that however it looks negative to him that we are trying to pass something that we have not passed as a whole but putting a restriction on them right now.

Fire Marshall Whitmire stated that he looks at it as being proactive. Councilman Gilbert stated we are not being proactive in everything else we do.

Jermaine Harper with Mocha LLC clarified that the name of the facility is not Club Mocha, it is just Mocha LLC. He thanked members of the RPA who have been very professional in helping to educate them about the new process. He also thanked members of the community who took the time to share their concerns about this new restaurant concept and the experience with a night club that did exist in their neighborhood a few years ago.

SPECIAL EXCEPTIONS PERMIT (Continued)

Mr. Harper stated Mocha is a new restaurant and lounge at 3116 Brainerd Road, the former Melanie's location; that they do not agree with the label of a nightclub as their business model requires them to pursue this special permit and would not like to debate whether or not being called a nightclub or restaurant. He stated based on the approved permits, Mocha will be able to accommodate a little over 200 guests and will provide live entertainment including a DJ at times. He stated in addition to the restaurant concept Mocha will also accommodate private events such as weddings, anniversaries, non-profit fundraisers and birthday parties. He stated the private events will complement and enhance the restaurant business model; that while patrons dine a mix of jazz, soul and blues will be offered, as well as other forms of music it is felt would make for an enjoyable dining experience. He stated the uniqueness of Mocha will be evident in their interior design as they have enhanced the place by adding additional furniture and art.

Mr. Harper asked "why did they choose Brainerd" and stated the better question is "why not Brainerd"; that in their opinion Brainerd Road is the "heart beat" that drives through Chattanooga, connects the suburbs to our urban downtown and is one of the most diverse neighborhoods in our city. He stated while we have seen public and private investment in North Chattanooga, Main Street and parts of M. L. King, we have not seen a significant amount of private investment in the Brainerd community and they want to be a part of that change. He stated they have talked to everyone that would listen; talked to fellow business owners on Brainerd Road and convened a meeting to talk with residents residing in the community. He stated they did not have a massive turnout however they did have solid representation from both business owners as well as presidents of neighborhood associations. He stated they heard the community for a number of years had to deal with no so positive issues; that they heard about loud booming systems, weekly police calls, guns, violence, utter disrespect or personal property, constant tension between former club dwellers and those that lived in the neighborhood. He stated they heard from the business owners who showed up on Monday mornings with broken glass in their parking lots and could not open for business for having to deal with the trash and debris. He stated they heard them loud and clear in talking about the former nightclubs that existed in their community, however they are not a nightclub -- they are a restaurant.

Mr. Harper stated they expressed total agreement with them that what they experienced was terrible and agreed loud music and noisy cars can disturb the quiet enjoyment that neighbors ought to be able to enjoy and have adopted a no loitering policy.

SPECIAL EXCEPTIONS PERMIT (Continued)

Mr. Harper stated they also agree business owners should not have to worry about broken bottles and debris and will employ a person responsible for cleaning up the parking lot on a nightly basis. He stated they agreed if they are going to open after 11:00 p.m. there should be adequate security and parking attendants outside to help with traffic and are committed to do that. He stated they have a surveillance camera inside the facility that will be made available if needed; that as it pertains to safety, they are committed to it not just because the neighborhood wants it but because it makes good business sense. He stated if they create a business model and customers do not feel safe they will not show up. In closing, he stated they do feel they cannot be judged by the actions of a former business that operated in the neighborhood, not even in the same facility; that they totally agree with the residents and their concerns that that club was a problem. He stated if they are asked to defend what happened as a result of the former nightclub they cannot because they totally agree with it; that, respectfully, that is not their model!

Councilman McGary stated in regard to the restaurant which would be the majority of the business, is there an open space for individuals to dance or is the furniture anchored in the floor. Mr. Harper stated there is furniture throughout the facility; that if people listening to the music may want to get up and dance, sure they can.

Councilman McGary asked how much of the actual property is dedicated to open space for individuals to dance. Mr. Harper responded "very limited"; that there is a space beyond the stage area that probably could accommodate twelve-or-thirteen people.

Councilman McGary asked in regard to live music what is the frequency, whether it is on weekends or daily. Mr. Harper responded "weekends only, primarily"; that they were hoping to put together a house band that could feature both "old school" and contemporary jazz. He stated they have been practicing at the facility and (he) made a couple phone calls to one or two of the residents who attended the meeting and invited them to call him on his cellular if they heard any noise and they commented they could not hear anything from the facility.

Councilman McGary stated when the facility is used for special events would there still be a commitment to sweeping the parking lot and promoting safety. Mr. Harper responded "absolutely"!

SPECIAL EXCEPTIONS PERMIT (Continued)

Councilwoman Berz asked if the majority of the receipts are going to be from food. Mr. Harper responded "yes".

Councilwoman Berz clarified that they are mainly a restaurant, to which Mr. Harper responded "correct".

Councilwoman Berz stated if a couple months from now if all the receipts were looked at the majority of them would be from food. Mr. Harper responded "we would hope so".

Councilwoman Berz asked if the restaurant will be open until 1:00 in the morning. Mr. Harper stated the hours of operation for the restaurant is from 11:00 a.m. – 2:00 p.m. for lunch, Monday through Thursday; that they will open back up at 4:00 p.m. Monday through Thursday until 11:00 p.m. He stated Friday and Saturday nights are the only two nights of the week they will be open until 1:00 a.m. and will be closed on Sundays.

Councilwoman Berz again asked if the majority of the receipts will be from food. Mr. Harper again responded "yes".

Sharon Kelley stated she and Mr. Harper would be the owners of Mocha; that she is 52 ½ years old and has been a resident of Chattanooga all her life; that she is a registered nurse and has been a business woman for the past 14 years with three businesses located in Chattanooga and employs 47 people at the present time. She stated that she has a facility known as Sharon's Adult Day Center in Cleveland, Tennessee that was the first minority adult day center in that area and has been open for two years. She stated she has received numerous awards for what she has done for the community and informed the residents at the community meeting when she sat on the Board at Highland Park she found herself doing the same thing she did today in going before the community and has taken care of over 1,000 senior citizens. She stated she has a facility that was an eyesore in Alton Park where she grew up and right now is taking care of 28 residents at that facility. She stated she is a very respectable person in the community and called the meeting of the community to hear their concerns and is completely committed to doing what she said she would do, confirming they would be open only Friday and Saturday until 1:00 a.m. and would like for that to be part of the conditions because she promised the community. She expressed hope the Council would hear them today and stated she understands the concerns regarding opening Mocha. She stated they want to have a nice place within our community and do not want to go to Atlanta all the time.

SPECIAL EXCEPTIONS PERMIT (Continued)

Ms. Kelley stated Mocha is a non-smoking facility and in regard to the Fire Marshall and the Lawyers upstairs, it will be a smoke free environment. She expressed hope everyone would be able to come and enjoy Mocha!

Gerald Mason stated he and his wife have had businesses in the Brainerd and Highland Park areas for over 35 years and had a business located behind Mocha called Strut Fashions for three years. He expressed agreement there were serious problems but never had a problem out of Melanie's; that all the problems were associated with the nightclub. He stated he had to pick up wine and whiskey bottle bottles and glass out of his yard every Monday morning before he could open his business and talked to some of the residents when he was a business owner there. He stated he knows Sharon and Jermaine and will vouch for them as they are professional people; that he helped Sharon get started in her adult care business and mentored Jermaine when he was a student at Howard. He stated they are of fine character and extended his professional reputation on the type of place they will have, noting he will be a patron there as he was when it was Melanie's. He stated we need a place in our community that is decent; that people will not be there until 1:00 a.m. noting he never stayed past twelve midnight when it was Melanie's. He stated the kind of people who will patronize will not be there until 1:00 and 3:00 a.m. in the morning. He expressed hope the Council would approve this special permit.

Councilman Benson asked if the special permit is approved and the applicant decided to sell to someone else would the permit be voided. Mr. Martin responded "yes"; that the permit goes with the owner of the business and the permit is not transferable.

Councilman Benson asked if it reverts back. Mr. Martin stated if there is someone else the Council would have to hear it again.

At this point Chairman Rico asked for a show of hands of people in favor of the restaurant; several raised their hands.

Sharon Cannon, Vice President of the Old Town Neighborhood Association, expressed thanks to the Council for allowing them to talk about the special exceptions permit.

SPECIAL EXCEPTIONS PERMIT (Continued)

Pam Emory, President of the Old Town Neighborhood Association, stated they are a small community of homeowners, renters and businesses that encompass a quiet historical business district, Mr. Happy's, the Comedy Catch, Gannon Art Center, Out of the Blue Restaurant and Dwelling are examples of wonderful neighbors that contribute and enrich their area. She stated it is their belief the vitality and future progress of this small part of the city will be through honorable and contributing business partners, however, a change of zoning will not enhance their neighborhoods. She stated they are present as one voice today to ask that the special permit created by the Regional Planning Agency not be approved and requested the Council uphold the nightclub ordinance that protects neighborhoods, businesses and their patrons. She stated the proposed location is not suitable for any business requiring a special permit and any revenue that invites over 100 people to drink alcohol until 1:00 a.m. within 150 feet of homes is not a good fit. She stated it behooves the Council to continue encouraging rich relationships between business owners and neighboring citizens by creating and upholding regulations and to back down from the progress the Council has made is a step in the wrong direction.

Councilman McGary asked if the substance of their concern is "100 people gathering and drinking alcohol" and if alcohol was not being sold and purely a restaurant open until 1:00 a.m. on Friday and Saturday would they be in agreement or for this business.

Ms. Emory stated they want it to stay at 11:00 p.m. as written and that would be the same requirements; that they are a neighborhood and that is where they would like for it to stay.

Councilman McGary stated their concern is the alcohol sold on premises and the opening until 1 a.m. Ms. Emory stated the change of time open from 11:00 p.m. – 1:00 a.m. is their concern, "yes".

Councilman Gilbert gave the scenario if this did not happen and Dr. Brooks wanted to rent this to youth with no alcohol and open until 2:00 a.m., can they do it. Mr. Martin stated in the C-2 zone as far as he is aware, "yes".

Councilman Gilbert expressed that he thought so; that when they leave out of the parking lot they can have all kinds of loud music. Mr. Martin stated the noise ordinance would be invoked at that time.

SPECIAL EXCEPTIONS PERMIT (Continued)

Councilman Gilbert stated by the time the police arrive they are already gone; that the point is this is a good group of people trying to get into this building. He stated the owner could rent it out to someone else and there is nothing we can do about it; that they can have loud music coming from boom boxes; that the restaurant has nothing to do with this as he is talking about young people leaving with their boom boxes playing real loud music. He asked the police officer present about loud music off Shallowford Road; that if someone chose to have young people at this location and in leaving at 2:00 a.m. they play loud music.

The police officer present stated there have been problems in the past on Brainerd Road with young people playing loud music when leaving; that it depends on the patronage of the club.

Councilman Gilbert stated in the past when young people gathered they played loud music. The officer stated young people tend to do that.

Councilman Gilbert stated based on RPA they cannot be stopped because if the building is rented to these people he can do that legally. Mr. Martin stated that would be a zoning issue and would fall under another purview.

Councilwoman Berz asked for clarification as the Council just had an issue regarding a lady who wanted to have an event venue and fell under the nightclub purview. She asked why anyone who has an event venue falls under the nightclub purview; that it is a usage purview; that Mr. Martin gave the wrong answer.

Brian Schultz, Senior Planner with the RPA, stated it is the alcohol sales; that they can currently stay open as long as they want to but cannot sell beer past 11:00 p.m. which is why they are seeking the permit to have the beer sales after 11:00 p.m. He stated right now they can currently open under the zoning ordinance, consume and sell beer until 10:59 p.m.; that it is the point after that.

Councilwoman Berz asked if it is totally tied to the alcohol, if they decided to not sell any alcohol at all then they could stay open until 3:00 a.m.

Mr. Shultz stated it also involves the occupancy and entertainment, as well as the beer sales; that there is a whole checklist of things that qualify as a nightclub and they are looking at changing the nightclub name.

SPECIAL EXCEPTIONS PERMIT (Continued)

Councilwoman Berz stated she is trying to clarify Councilman Gilbert's statement if the owner wanted to rent out to someone holding events then none of this would apply and the Council has just been told "yes"; that it is her thought that is incorrect. She stated there are seven issues that would "throw it in".

Richard Hutsell, Chief Zoning and Sign Inspector, stated one of the key triggers they have been dealing with in this issue is alcohol; that they have advised all the applicants that met this trigger since January when the new ordinance came into effect, we captioned it as the entertaining, occupancy and the alcohol. He stated if they did not have a beer license or not serving or consuming alcohol after 11:00 p.m. they can continue to stay open until 3:00 a.m., that is correct and there would be no conditions that would possibly apply on that particular business as recommended through the Staff recommendations to the Council on this club.

Councilwoman Berz stated if they quit serving alcohol at 11:00 p.m., they would not have to be here. Mr. Hutsell responded "that is correct in his opinion".

Cindy Huth of 101 South Crest Road spoke and stated she is a resident of the Ridge and President of the Missionary Ridge Neighborhood Association. She noted the Council received approximately 74 e-mails today from residents on the Ridge in opposition this special permit for Mocha. She stated a friend of hers described the location visually and said it is like the amphitheatre of the Ridge which is surrounded by the Ridge with residents all along Missionary Ridge and Old Town; that they wanted their voice "put out there" with effective communication through the e-mails and was afraid if all showed up tonight the Council would consider it a flash mob! She stated while the residents welcome the development and growth of the Old Town Brained area, they want the business to be conducive to the neighborhood's interest and the environment. She stated they are aware the owners believe their business model will cater to an older and responsible clientele and will not have an impact on the neighborhood and adjoining areas however there is no guarantee for them that the nightclub/restaurant is not going to become the "hot spot" of Chattanooga where everyone wants to be there. She stated the reality is regardless of the age of the clientele when the buffer zone is reduced from 750 feet to 150 feet from residential properties and extending the operating hours until 1:30 a.m. in the morning while serving alcohol and providing entertainment will create a disturbance in their neighborhood.

SPECIAL EXCEPTIONS PERMIT (Continued)

Ms. Huth stated the families who live along the Ridge in the Old Brainerd area will suffer from the increased night traffic flow of people wandering into the neighborhood; that parking in the area has not been discussed at this point and will end up trying to park on the street and all around; that 200 people is a lot of people and the area does not have sufficient parking at this point. She stated there is the excessive noise and disruptions that can occur from a nightclub and she did not want to let any of the other opposition loose on the Council because horror stories would be told over and over of thumping music, trash and other issues. She stated there are many available locations in Chattanooga that nightclub permits could be granted that would not be intrusive in residential areas; that they welcome Mocha as a restaurant which is what they told them they would be initially and closing at 11:00 p.m. and now the special permit came forward which changes what they assumed their intent was. She respectfully requested that the Council decline the special permit and Mocha retain an 11:00 p.m. closing time as a restaurant.

Councilman McGary asked if there are any other businesses within a half mile periphery that is open until 3:00 a.m. Ms Huth responded "not that she is aware".

Councilman McGary noticed people nodding that Ms. Huth's comment might not be correct as the audience indicated the Comedy Catch is open. At this point he asked Michael Alfano of the Comedy Catch to come forward and inquired if he were the owner. Mr. Alfano responded "yes".

Councilman McGary inquired as to the operating hours. Mr. Alfano stated he can stay open until 3:00 a.m. but usually closes at 1:00 a.m. Councilman McGary asked if alcohol is sold and if it is sold after 11:00 p.m. Mr. Alfano responded "yes" to both questions.

Councilman McGary inquired is there is loud thumping music emptying his business. Mr. Alfano responded "no"; that the parking lot is clean when he leaves and the noise is at a minimum and feels the owners of Mocha will do the same.

Councilman McGary asked if he has heard any concerns about broken bottles in the parking lot. Mr. Alfano responded "no"; that the residents have not brought that to him noting that he cleans the lot himself before he leaves each night. Councilman McGary inquired as to the live comedy acts in his facility. Mr. Alfano responded "yes"; noting that he sometimes has music, as well.

SPECIAL EXCEPTIONS PERMIT (Continued)

Councilman McGary asked if there has been any concern from the neighborhood as to loud noise. Mr. Alfano responded "not that has been brought to his attention".

Councilman McGary asked the vicinity of the Comedy Catch in relation to the Mocha business. Mr. Alfano responded "200 yards".

Councilman McGary asked Mr. Alfano if he is in the same amplified area that has been described. Mr. Alfano responded "yes".

Councilman Benson stated it is his belief due diligence has not been done by the owners or developers; that he cannot see how they can afford to put the sprinkler system in if due diligence had been done; that they probably did not know a lot of this, but this particular spot has practically had a nuclear meltdown! He stated this has been worked on for years regarding the noise all the time; that there is "scar tissue", again wondering if due diligence would have "told" them to step into the nightclub category; that it seems they have the potential for a nice restaurant there. He stated they have community wide support for the restaurant and does not know if they can measure up to all the conditions without constant policing on the city's part. He stated the Comedy Catch has been there for years and does not guess there has ever been any problem at all; that they have a little confidence in the Comedy Catch. He stated this is a little bit of the unknown for the community and coming at a time when they have not healed up from the problems they have and this really concerns him; that the "button is being pushed" to get it to the nightclub status.

Mr. Martin reminded the Council the special exceptions permit is revocable. Councilman Gilbert stated that is what he wanted to hear.

Councilman Murphy stated when the special permit for this use was drafted there was discussion about a reduction of 750 feet when there were natural or manmade barriers between the proposed use and the residential area. He stated we specifically talked about rail yards, the River, restricted access highways and co-location with already loud uses; that 150 feet is 650 feet less and he does not see any natural or manmade buffer here and asked if there is something he is missing.

SPECIAL EXCEPTIONS PERMIT (Continued)

Mr. Martin stated the only one that would be considered is Brainerd Road which is four lanes but might not rise to the level of the test preferred, but that is the barrier between the Club and residential properties, at least from the front door as required.

Councilman Murphy stated but not from the rear. Mr. Martin stated the rear is 238 feet give-or-take, in that range, but does not include the parking lot.

Councilman Murphy stated 230 feet would be the shortest distance to date for one of these uses. Mr. Martin responded "as far as he knows out of the five, 'yes'".

Councilman Murphy stated 150 feet would be stunningly shorter than anything approved to date. Mr. Martin responded "correct".

Councilman Murphy stated he is not seeing the barrier rationale to justify such a wild departure.

Dr. Dan Myle from Baptist World Missionary Outreach Ministries noted his property is two inches from the club that will open; that they never had a conflict or clash with Deep Blue as their problems were with the two clubs in this very building. He stated they left the property open between the buildings as an act of kindness to get out on the Brainerd side and put up gates and the gates were run over with vehicles. He stated they are against drunkenness; that he has no problem with people drinking a drink or two but at 1:00 a.m. in the morning no one is on their second drink. He stated he has pastored many churches including multi-racial churches and a number of people can write letters relating his feelings on this issue and how he treats people from all walks of life. He stated there were 13 police reports from when the clubs were open in reference to their location; that six were complaints because they called the police because of property damage. He stated they had to close the gates down and when the gates were down they would drive over them; that their donors have told them they should not provide parking for nightclub people. He stated he found out about this club when a piece of heavy equipment was in his front door putting up a sign and no one invited him to the community meeting. He stated he has no problem with a café; that Jermaine and Sharon came to see him and he told them he would work with them and go the extra mile to allow them to be successful. He stated if they are open potentially until 3:00 a.m. and maybe until 1:00 a.m. serving alcohol with a band, it is a nightclub.

SPECIAL EXCEPTIONS PERMIT (Continued)

Dr. Myle stated their problem is not with the managers but there has been a continual problem with the neighbor ruining their property and then when they found out the club was coming in he asked some questions and they were nice enough to tell them they respect his property and he believes they will, but within two days there were four foot arrows painted on their parking lot guiding people across his parking lot. He stated he was told the arrows would come off and would put cones up to protect them, but over 500 churches give to his organization and none of them will be in favor of them allowing nightclub patrons to park on the lot. He stated it will be a problem for him, that it is not a problem in personality but in philosophy difference. He stated if anyone thinks it is anything else he can have people come in and speak for his character and what he has done in the community in reaching out to people of all walks of life. He stated that he received a letter today saying he was a racist by opposing this and noted that he loves black, white and Asian people! He stated the issue is not about anything other than we cannot provide parking for people who are drinking alcohol as it goes against everything his organization stands for. He stated he will support the café and allow them to cross the lot; that the same owners heading up the café are heading up the club, so if he is going to support the café it should say something about his feelings toward them – it is not the café until 11 p.m., it is the alcohol until early hours of the morning and the disregard for his property. He stated he does believe they are good people.

Councilman McGary asked if either Mr. Harper or Ms. Kelley individually or collectively approached him to ask use of his parking lot for parking. Dr. Myle stated “yes they have and they were very nice”.

Councilman McGary asked Mr. Harper if he approached this gentleman for use of his parking lot for his business.

Mr. Harper responded “absolutely not”; that they did not request to utilize his facility for the business however, they did want to hear his concerns because there appears to be a lot of history between this owner and the owner of the property that they are leasing from. He stated they absolutely did not ask to use his parking lot.

Chairman Rico asked for a show of hands against this request; several hands were raised. He then asked how many in attendance are residents of the immediate area; several hands were again raised.

SPECIAL EXCEPTIONS PERMIT (Continued)

Catherine Drake of 3004 Brownwood Drive stated the thing that concerns her is this borders on Seminole Drive and it was mentioned they could not go in the back door which means they will have to go down Seminole, drive around to Brainerd Road to go into the restaurant, or whatever it is, and there are no sidewalks. She stated she will be concerned about safety; that as far as the Comedy Catch it is on an alleyway but there is a red light there also which helps with the traffic situation.

Ms. Kelley addressed the communities of the Ridge and Old Town Brainerd Road and stated they were heard and they will comply to the measures when they met with them; that they are just asking for only Friday and Saturday until 1:00 a.m. and all the others days they will close at 11:00 p.m. She asked the Council to put that in writing for them to close at 1:00 a.m. and that way the residents will be at ease to know they are not going to be open until 3:00 a.m. She stated she has been a nurse in the community for 34 years, was employed at Parkridge for 23 years, is a very fine citizen and will prove herself to them.

In responding to Councilman Benson statement in reference to due diligence, Mr. Harper stated they did do due diligence and for the record the facility at 3116, formerly Melanie's at Brainerd, had a liquor license for a number of years with absolutely no restrictions on the license. He stated as it pertains to the gentleman and the arrows on his parking lot, in an effort to repaint the parking lines including the handicap spaces, we engaged a company to repaint all of the lines on the parking lot which included the white arrows that were already there and the contractor simply went on and painted the arrows. He stated there is an ongoing dispute between this gentleman and the current property owner as to where the line is between the two and has absolutely nothing to do with them; that they have told him they do not want to be pulled in the middle of what looks like some back-and-forth bickering between Dr. Myle and the owner.

Councilwoman Scott asked to hear from Mr. Van Winkle and assumes this particular property has the adequate spaces for occupancy and wants to make sure.

John Van Winkle, Traffic Engineer, the requirements subject to any shared parking arrangement must be documented by a written agreement signed by the property owners and the permit holder; that any sale or transfer of property used for the site of a club or shared parking shall require a review of the shared parking agreements by the City Traffic Engineer and the Chief Zoning Official and if there are any problems with that, we can deny it.

SPECIAL EXCEPTIONS PERMIT (Continued)

Mr. Van Winkle stated the permit holder shall also provide a signed copy of a parking agreement made with any new owners of the shared parking lots to the Chief Zoning Official. He stated what has happened in the past and what he has heard second-hand is there have been shared agreements which overlapped and not sufficient parking; that he is not saying that is the case in this situation as they do have a parking lot and understands and recognizes that patrons that use the parking lot of other properties have to have an agreement to do that after hours when the businesses are closed so there is parking that is available. He stated the city requires that they have to meet the guidelines to provide adequate parking for their facility at the hours they need the parking which is in the evening hours.

(Chairman Rico excused himself from the dais and handed the gavel to Vice Chairman Ladd at this point.)

Councilwoman Scott stated she is trying to figure out if all those things regarding parking occurred and are they adequate with all the requirements with knowing there has to be arrangements. She wanted to know if there is adequate parking for this particular function.

Mr. Van Winkle stated they are aware of how many spaces they need to provide and we will require they provide us evidence that they have acquired those shared use parking agreements.

Councilwoman Scott stated we do not know if that has happened or not. Mr. Van Winkle stated he has not been involved with that, but that is the requirement we will hold them to.

Mr. Hutsell clarified that Ben Taylor sat in on the Staff Review; that the owner of the property also owns the property which was the former Deep Blue across the street which does have two additional parking lots. He stated it is his thought there is a written agreement that has been submitted and based on those results and what Mr. Taylor reviewed in Staff Review there is adequate parking as long as the shared parking agreement stays in place.

Councilwoman Scott asked if Mr. Hutsell is saying there is parking across Brainerd Road. Mr. Hutsell responded "across South Seminole".

SPECIAL EXCEPTIONS PERMIT (Continued)

Councilwoman Scott stated she heard concerns about noise and parking in the wrong place and asked Mr. Harper and Ms. Kelley what they can do to make sure this is minimized and what specific thing they can assure this is a minimized that would make this a win-win.

Mr. Harper responded that they recognize the parking was a challenge for the business, period, and not just to address community complaints. He stated they will have an employee in the parking lot directing people where available parking may be and have been in conversation with a private transportation company in looking at some ideas about satellite parking which is done in major cities where people are able to park off site at another location and take a shuttle. He stated this is something they looked at not only to address concerns for the neighborhood but also concerns for patrons who would like to come and have dinner.

Councilwoman Scott stated the noise issue would be that they will have someone out in the parking lot and control the behavior and therefore that would control the noise, asking if that is what she is hearing.

Mr. Harper stated quite frankly it is their belief with the type of entertainment in terms of genre music, as well as the age and level of maturity of their clients they are connecting to, they do not foresee a lot of those behavioral problems but will have staff there.

Councilman McGary stated as a resident of the neighborhood and former neighborhood association president he expressed understanding of things that affect neighborhoods and how individuals should come together to make sure their voices are heard. He stated he heard concerns about the quality or character of the neighborhood and finds it somewhat concerning both Melanie's and the Comedy Catch fit the description of this restaurant that is to be opened to the "T"; that he did not hear concerns about quality of life or character for this establishment. He stated it is his thought concerning the clientele there is a distinct difference to be made when referring to an establishment when the majority of its selling constitutes liquor sales; that there is a difference to be made between a restaurant when a majority of the purchases will be food versus liquor as there are two different clienteles in that regard. He stated to assume or blend together one clientele primarily interested in liquor and having a good time and another clientele interested in having a nice eating establishment and a glass of beer or wine to accompany is perhaps the wrong route to go.

SPECIAL EXCEPTIONS PERMIT (Continued)

Councilman McGary stated in due respect to Councilman Benson he took exception to the idea of the applicants not doing due diligence; that their presentation tonight in addition to their willingness to meet with the various neighborhoods has proven they are willing to make due diligence concerning this issue. He expressed his belief due diligence is behooving of trust and these applicants have proven they are willing to do what is necessary to earn the trust of their community. He stated it is worth saying and repeating this establishment cannot and should not be judged by the previous institutions or businesses that occupied this space before; that our job tonight is to consider the merits of this particularly applicant not who came before them. He stated they should be judged by their own merits and not those who came before them; that at any given point if these applicants do betray trust their permit can be revoked and he would be more than happy to do so if they prove they are not trustworthy. He stated from what he has heard tonight he has heard they are trustworthy and **made the motion to approve; Councilman Gilbert seconded the motion.**

Councilwoman Berz stated one of the concerns she heard people talk about was on street parking and asked if that will be up to the Chattanooga Police Department to enforce.

Mr. Harper stated they will look to direct patrons through signage as well as personnel where parking is for the restaurant; that they recognize there are other businesses that are located in that area.

Councilwoman Berz stated the on street parking was the concern and understands the parking lots; that the on street parking apparently has been annoying and the law says 750 feet from a residential area. She stated the law says there needs to be a 750 foot buffer and the purpose of the exception is to allow them to be closer than 750 feet to the neighborhood and in this case pretty close, 150 feet and 230 feet. She stated one of the things that was brought up is parking will be a combination of the lots and another lot Dr. Brooks has and she has heard several times on street parking was a concern. She asked who will enforce the on street parking; that there are a lot of conditions placed on this request and two people will be policing this property. She asked if it will fall to the police department to police the on street parking when neighbors get the phone calls.

Mr. Harper stated they can attempt to direct patrons where parking is for Mocha and does not know if they can get into enforcing laws on the streets of Chattanooga.

SPECIAL EXCEPTIONS PERMIT (Continued)

Councilwoman Berz stated that was one concern and the other concern is there were eleven conditions and she is hearing them say they will go along with the eleven conditions and prove themselves, even mentioning a twelfth one that they will close at 1:00 a.m. on Friday and Saturday.

Mr. Harper stated in reference to the conditions recommended by the Committee that is why he raised his hand; that they took exception to a couple of them as it pertains to the sprinkler system as they feel it is unfair and because they attended previous Council and Committee meetings that rule has not been adopted by the Council and were concerned why they were being asked to adhere to a rule that is not even really a rule, yet.

Councilwoman Berz stated it is a rule for a new establishment is what she heard the Fire Marshall say and any new establishment can be required to do that. She asked if there are other conditions that he has as a concern.

Mr. Harper stated they would like to have up to three years with the sprinkler as that is a tremendous hardship to place on a small business. He stated there was some mention of a water closet and called for clarification as he was told that is a restroom. He stated there are five restrooms in the 5,000 square foot facility and does not know of any other restaurant in Chattanooga with that many restrooms and does not know if there was a lack of clarity.

Mr. Hutsell stated it is not the number of restroom but the number of lavatories and commodes and based on the occupancy of 212 the occupancy type in the *Building Code* requires five and there were only four shown on the plans submitted.

Councilwoman Berz stated that she needs to know as she needs to represent her constituency and asked how many in attendance who are constituents of the area are against the permit; the majority of those in attendance raised their hands. She stated some that spoke against are not against it and the response was "it depends". She explained that the nightclub ordinance says certain things and in this case we are talking about the 750 feet matter and that puts it into a different category; that the Council would be granting an exception to that and saying they can be closer. She stated the RPA is also saying an exception would be granted and would be closer than the 750 feet and apparently these people got together with RPA and different departments and suggested it be granted with the conditions.

SPECIAL EXCEPTIONS PERMIT (Continued)

Councilwoman Berz then asked of those in the district how many are against the exception, not the place; again, the majority of those in attendance raised their hands.

Vice Chairman Ladd advised Councilwoman Berz that we should get away from questioning the audience and asked that she clarify one more time.

Councilwoman Berz asked how many present that live in the district favor granting the exception; a few raised their hands. Vice Chairman Ladd cautioned that we cannot have this back and forth and need to move on with the meeting.

Councilwoman Berz stated the exception is for after 11:00 p.m. and asked if anyone from the district is for granting this exception; still, a few raised their hands.

Councilman Gilbert stated he still has concerns about the sprinkler system, also; that if the conditions are not followed their permit will be taken from them. He stated every concern he has heard is if they do not follow the guidelines they cannot operate and has a problem with someone saying because of liquor; that there are others that sell liquor such as Red Lobster and Appleby's after 1:00 a.m. and there are many that stay open after these hours and guaranteed some in the audience have been to some of the facilities after hours. He stated that is the problem he is having with this situation that they are trying to have a nice facility and reminded everyone if Dr. Brooks decided he wanted to have young people between the ages of 18-25 with no alcohol at all could stay until 3:00 a.m. and as they leave their boom boxes will be loud. He stated the concern he is hearing is they do not want loud music and Mr. Harper has stated he actually got someone to listen and that person could not hear the jazz music that was being played. He stated this is an opportunity for someone who is as honorable as these two people to have something like this in the neighborhood everyone knows will be nice. He mentioned the Comedy Catch and Chili's in the area and noted these are good people who will honor what they say they will do.

Mr. Murphy stated that he has trust and faith they are good people and people of their word and noted that the problem he has is his constituents are uncertain about what the future will hold. He stated the other problem is the Council has never approved a permit that is closer than this is and functionally there is no natural or manmade barrier; that the distance can be reduced if there is some kind of help to modify the noise.

SPECIAL EXCEPTIONS PERMIT (Continued)

Councilman Murphy stated this a land use decision and he is being told there will be jazz which does not have a lot of base and does not carry and will not heard from a long ways away, but he cannot put a land use restriction on the type of music that will be played nor should he as it is not appropriate. He stated he does not know how the vote will come out as there has been a motion to approve, but his question would be would the applicant accept an additional condition there be no audible music after 11 p.m. from 150 feet away from within the club.

Mr. Harper stated that is tough to respond to because in agreeing to that they also open themselves up to an individual who might have an "ax to grind" and who may not feel comfortable with the outcome of this meeting and may decide on a regular basis they will just call the police because they hear music and the music could come from a car or another facility but it will be attached to them and it is tough to agree to. He stated as a community and city what has been done with housing and increasing the housing stock throughout the city of Chattanooga, including downtown, is there are restaurant and nightclub facilities at the bottom and residential apartments upstairs. He stated he is at a loss as to where we are headed when we pick and choose where we apply certain kinds of rules because someone commented "I am sure there are places within the city" that would love to have a jazz place and he guessed he would have to ask, where - in the rural community where there is no housing or where people do not live, where.

Councilman Murphy stated the ordinance does not apply for C-3 zoning which is the downtown footprint; that when people move downtown they are moving to the attraction of that nightlife. He stated he would not propose it would be based on a complaint as we have regulatory officers who check on bars all the time who would be the ones to say either it was the set I heard from the club 150 feet away or was not.

Councilwoman Scott stated one of the things that has not been stressed enough is we have talked about giving the permit and barely talked about revoking a permit and wanted to make sure those who have come, both the owners and those in the community, understand what it takes to revoke a permit if someone is not doing the proper things. At this point she read the guidelines for revocation as listed in the nightclub ordinance. She stated these are very specific conditions and this is an ordinance, the law that has been passed not long ago.

SPECIAL EXCEPTIONS PERMIT (Continued)

Councilwoman Scott stated she has not heard of anything that has been related to a group that got a permit and did not act because it has been such a short time; that it is her thought the majority of things that have happened pre-date these conditions and ordinance. She stated all of the different departments have worked diligently along with the police department who gets called constantly if there is a problem; that the individuals that are making application for this special permit will be held to an extremely high standard and all of the Council people know what that is; that if there are significant problems and they are notified and do not solve them and it is a major issue then that particular situation can be reviewed and this permit can be revoked by the Council. She asked City Attorney McMahan if she were correct. City Attorney McMahan responded "yes".

Councilwoman Scott stated she would like to have the Fire Marshall comment on the sprinkler situation.

Fire Marshall Whitmire stated he spoke earlier and gave the situation of operation issues; that right now they are operating under the ISC and NFPA which the Council has accepted. He stated in that it states new businesses with occupancy over 100 are required to have a sprinkler system and that is what is in the *Code* that has been accepted by this Council. He stated they did go out to see what type of suppression issues there are and is what he relayed to the Council earlier; that they are going by the *Code* that has been accepted by the Council.

Councilman McGary called for the question at this time.

Vice Chairman Ladd noted Councilman Benson's light was on and asked if he had anything new to add.

Councilman Benson stated the Council would have a precedent problem if we passed this because we said 750 feet; that if we give a 200 foot exception the Council should be ready to either do away with the nightclub ordinance to make exceptions. He stated if we vote to break this rule we will be saying we have to do it for others that come for a special exemptions permit. He stated neighborhoods would be hurt because of this; that it is a precedent we are establishing and we have never done this before.

Again, the question was called.

SPECIAL EXCEPTIONS PERMIT (Continued)

Councilwoman Robinson stated that she thought Mr. Harper and Ms. Kelley were wonderful business people and had done a great job and had a good planned product; that the thing that bothers her is the precedent this would set as it would open the "barn door" down here for everyone wanting to come in for the same exception. She stated if this does not work she hopes they can get situated in a place where there can be an open nightclub scene with the "old crowd" as we need that. She stated the thing that bothers her is this Council discussed for weeks and weeks by the hour the problem attendant to having nightclubs too close.

Vice Chairman Ladd stated the discussion has been very good and candid and asked everyone to remain professional regardless of the outcome as the Council still has business to conduct.

On motion of Councilman McGary, seconded by Councilman Gilbert,
**A RESOLUTION APPROVING A SPECIAL EXCEPTIONS PERMIT FOR USE
OF A NIGHTCLUB LOCATED AT 3116 BRAINERD ROAD, AS MORE
PARTICULARLY DESCRIBED IN THE ATTACHED ANALYSIS AND MAPS,
SUBJECT TO CERTAIN CONDITIONS AND RECOMMENDATION**

Was denied; on roll call vote:

ROBINSON	NO
BENSON	NO
GILBERT	YES
BERZ	NO
MCGARY	YES
MURPHY	NO
SCOTT	YES
RICO	NO
LADD	NO

AUTHORIZATION TO RETAIN LAW FIRM

Councilwoman Scott made the motion to deter this matter one week because Council members had not had a chance to read the 100 pages that were sent.

On motion of Councilwoman Scott, seconded by Councilman Rico,
A RESOLUTION AUTHORIZING THE CITY ATTORNEY’S OFFICE TO RETAIN THE LAW FIRM OF GEARHISER, PETERS, CAVETT, ELLIOTT & CANNON, PLLC FOR THE CASE OF *CITY OF CHATTANOOGA, TENNESSEE AND CHATTANOOGA DOWNTOWN REDEVELOPMENT CORPORATION v. HARGREAVES ASSOCIATES, INC. et. al.*

Was tabled one week; Councilman Murphy abstained.

TEMPORARY USE

On motion of Councilwoman Scott, seconded by Councilman Benson,
A RESOLUTION AUTHORIZING LARRY CRANE TO USE TEMPORARILY THE 806 BROWNS FERRY ROAD PUMP STATION PROPERTY FOR ACCESS ACROSS CITY EASEMENT DURING HIGH WATER, SUBJECT TO CERTAIN CONDITIONS

Was adopted.

AGREEMENT

On motion of Councilman Murphy, seconded by Councilman Rico,
A RESOLUTION AUTHORIZING THE ADMINISTRATOR OF THE DEPARTMENT OF PUBLIC WORKS TO ENTER INTO AN AGREEMENT WITH THOMPSON ENGINEERING, INC. FOR PROFESSIONAL SERVICES RELATIVE TO CONTRACT NO. E-10-014-101, CREST ROAD ENHANCEMENT AND EVALUATION PROJECT – PHASE 1, IN AN AMOUNT NOT TO EXCEED TWO HUNDRED FORTY-FIVE THOUSAND FIVE HUNDRED DOLLARS (\$245,500.00)

Was adopted.

AGREEMENT

On motion of Councilwoman Robinson, seconded by Councilwoman Berz,
A RESOLUTION AUTHORIZING THE EXECUTION OF CHANGE ORDER NO. 1 WITH LAMAR DUNN AND ASSOCIATES, INC., RELATIVE TO CONTRACT NO. E-07-001-101, RIVER STREET EXTENSION, FOR AN INCREASE OF FORTY-ONE THOUSAND SIX HUNDRED FIFTY-THREE DOLLARS (\$41,653.00), FOR A REVISED CONTRACT AMOUNT NOT TO EXCEED ONE HUDNRD FORTY-SIX THOUSAND NINE HUNDRED FIFTY-THREE DOLLARS (\$145,953.00)

Was adopted.

TEMPORARY USE

On motion of Councilman Murphy, seconded by Councilwoman Robinson,
A RESOLUTION AUTHORIZING HIGHLAND PARK COMMONS, INC., C/O CULLEN HOOKS, TO USE TEMPORARILY THE RIGHT-OF-WAY ALONG THE NORTHERN MOST PROPERTY LINES OF THE 2000 BLOCK OF UNION AVENUE TO REDESIGN THE SITE TO INCLUDE NEW STREETSCAPES, SIDEWALKS, SIXTEEN (16') FOOT TALL FENCE, LIGHT POLES, AND FOUNDATIONS, AS SHOWN IN THE DRAWINGS ATTACHED HERETO AND MADE A PART HEREOF BY REFERENCE, SUBJECT TO CERTAIN CONDITIONS

Was adopted.

GRANTS

On motion of Councilman McGary, seconded by Councilman Gilbert,
A RESOLUTION AUTHORIZING THE CHATTANOOGA-HAMILTON COUNTY REGIONAL PLANNING AGENCY TO ACCEPT GRANTS FROM THE LYNDHURST AND BENWOOD FOUNDATIONS IN THE TOTAL AMOUNT OF ONE HUNDRED TWENTY THOUSAND DOLLARS (\$120,000.00), AND AUTHORIZING THE USE OF SAID GRANT FUNDS, AND CITY FUNDS IN THE AMOUNT OF FORTY-EIGHT THOUSAND FIVE HUNDRED DOLLARS (\$48,500.00), FOR A TOTAL CONTRACT AMOUNT OF ONE HUNDRED SIXTY-EIGHT THOUSAND FIVE HUNDRED DOLLARS (\$168,500.00) TO ENTER INTO A PROFESSIONAL SERVICES AGREEMENT WITH JONES & JONES ARCHITECTS AND LANDSCAPE ARCHITECTS, LTD. TO DEVELOP A PLAN FOR THE MOCCASIN BEND AND STRINGER'S RIDGE AREAS

Was adopted.

RIGHT-OF-WAY NAME CHANGE

On motion of Councilman Rico, seconded by Councilman Murphy,
A RESOLUTION TO CHANGE THE RIGHT-OF-WAY NAME OF THE 1400 TO 1499 BLOCK OF MANCHESTER AVENUE TO THE 1400 TO 1499 BLOCK OF GLEN HAVEN PLACE DUE TO DUPLICATE STREET NAME

Was adopted.

OVERTIME

Overtime for the week ending March 24, 2011 totaled \$56,646.84.

PERSONNEL

The following personnel matters were reported for the various departments:

CHATTANOOGA HUMAN SERVICES DEPARTMENT:

- **CONSTANCE HAMPTON** – Termination, Head Start, Dietary Assistant, effective March 3, 2011.
- **PATTI LEWIS** – Termination, Family Services Assistant, Head Start, effective March 10, 2011.
- **WANDA SMITH** – Termination, Teacher, Head Start, effective November 23, 2010
- **DOTTIE M. YOUELLS** – Termination, Dietary Assistant, Head Start, effective February 16, 2011.

CHATTANOOGA POLICE DEPARTMENT:

- **SHAKIR GHAZI** – Return to Duty from Military Leave, Police Officer 1, effective December 23, 2010.
- **PAMELA TALLEY-HICKMAN** – Return to Duty from Medical Leave, Police Service Technician, effective March 21, 2011.
- **EDWARD A. BUCKMAN** – Military Leave, Police Cadet, effective March 21, 2011.
- **KANHAI A. PANDYA** – Resignation, Police Cadet, effective March 24, 2011.
- **CONNIE VALTIERRA** – Hire, Police Service Technician 1, Range 4, \$22,050.00 annually, effective March 25, 2011.

CHATTANOOGA FIRE DEPARTMENT:

- **DENNIE SMITH** – Retirement, Fire Lieutenant, effective March 26, 2011.
- **NORMAN WILLIAMS** – Retirement, Fire Captain, effective March 25, 2011.

PERSONNEL (Continued)

- **CHARLES ZEANAH** – Retirement, Fire Lieutenant, effective March 25, 2011.
- **BRADFORD RANSOM** – Military Leave, Firefighter, effective March 6 – November 25, 2011.

PARKS AND RECREATION DEPARTMENT:

- **PATRICE HAWKINS** – Promotion, Crew Worker 2, Range 4, \$23,373.00 annually, effective March 25, 2011.
- **JAMES B. MOULDER** – Promotion, Crew Worker 2, Range 4, \$24,327.76 annually, effective March 25, 2011.

HOTEL PERMITS

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

AMERICA BEST VALUE INN – 103 Patten Chapel, Chattanooga, TN

COMFORT INN & SUITES – 3117 Parker Lane, Chattanooga, TN

DAYS INN – TIFTONIA – 3801 Cummings Highway, Chattanooga, TN

HAMPTON INN – 3641 Cummings Highway, Chattanooga, TN

HILTON GARDEN INN – 311 Chestnut Street, Chattanooga, TN

RESIDENCE INN – 2340 Center Street, Chattanooga, TN

REFUNDS

On motion of Councilman McGary, seconded by Councilman Murphy, the Administrator of Finance was authorized to issue the following refunds of error and release changes made by the Tax Assessor's Office.

CORNERSTONE COMMUNITY BANK -- \$6,256.46

CORNERSTONE COMMUNITY BANK -- \$31.33

PURCHASES

On motion of Councilman Murphy, seconded by Councilman McGary, the following purchases were approved for use by the various departments:

PARKS AND RECREATION DEPARTMENT:

SEQUOYAH LAWN EQUIPMENT CO. LLC (Best bid)
R38979

Purchase of a Commercial Grade Zero Turn Mower

\$10,050.00

PUBLIC WORKS DEPARTMENT:

STOWERS MACHINERY CORP. (Lowest and best bid)
R40206

Purchase of a Remanufactured Caterpillar Engine

\$11,895.00

INFORMATION SERVICES:

CSS INTERNATIONAL INC. (Best proposal)
R36842

Blanket Contract to Purchase Maintenance Support Service

\$200,000.00 – Annual Estimation

ARTS, EDUCATION AND CULTURE DEPARTMENT:

CMS (Lowest and best bid)
R38488 AND R38117

Blanket Contract for Janitorial Services for North River Civic Center and Eastgate Senior Activity Center

\$10,000.00 – Annual Estimation

PURCHASES (Continued)

Councilman Benson inquired as to why Heritage House was not included in the contract for janitorial services and why it was submitted for other Centers. Mr. Johnson explained that he did not know why. Vice Chairman Ladd stated that it is her bet that this involves the timing of the contract.

DONATION OF SURPLUS ITEMS

The donation of numerous surplus items from Neighborhood Services that are no longer needed was duly reported. Items were donated to various neighborhood communities, the Missionary Ridge Fire Hall, East Lake Senior Citizens building, Cedar Hill Improvement League, Murray Hills Walking Track, M. L. King Neighborhood Association, and the Chattanooga Racqueteers. All donations were at no cost to the city.

HEARING: MICHAEL DOUGLAS

City Attorney McMahan stated the termination hearing for Michael Douglas was held on yesterday with Councilmen McGary, Scott and Ladd affirming dismissal.

COUNCIL MEMBER DEPOSITIONS

City Attorney McMahan stated that his Assistant e-mailed the deposition schedule for April 6 and 7 on Annexation Cases 6A, B and C which is the Highway 58 area. He stated all Council members have been noticed and does not think they would be able to get to everyone in those two days and would try to coordinate with their schedules for a later date. He stated two times have been set aside for Monday to brief the Council and if they are not available and noted he will be glad to meet individually, reminding them it involves the Highway 58 area that was previously discussed.

Councilwoman Scott stated that she asked some time ago about getting copies of testimony of minutes for the specific dates.

City Attorney McMahan stated they are gathering information so the Council can review it. Councilwoman Scott clarified that the review is scheduled for Monday. City Attorney McMahan responded "yes"; that he could meet with Council members individually if they are not available on Monday.

COUNCIL MEMBER DEPOSITIONS (Continued)

Councilwoman Scott stated that it seems like a very short time between the review and actual testimony; that for those of us who like to review and read and have to continue to do their regular job, she asked if it is possible to get the information by the weekend.

City Attorney McMahan stated he would get the information to Council by tomorrow.

FAIR HOUSING LUNCHEON

Councilwoman Robinson reminded everyone of the Fair Housing luncheon scheduled for Friday, April 1 at the Choo Choo beginning at 11:30 a.m.

COMMITTEES

Councilman Murphy stated the **Legal and Legislative Committee would meet on Tuesday, April 5**. He stated he expects to have the current curfew ordinance available for review prior to that and research is underway on what adjustments might need to be made.

Councilman Gilbert scheduled a meeting of the **Parks and Recreation Committee for Tuesday, April 5**.

Councilwoman Berz stated the **Budget, Finance and Personnel Committee would continue budget hearings on Thursday, March 31 from 6:00 – 8:00 p.m.** to continue hearing from non-profit agencies; **and on Thursday, April 7 from 6:00 – 8:00 p.m.** to continue various agency presentations. She stated in talking with Councilwoman Scott, several requests are coming forth from agencies requesting to be heard and all the slots on the schedule have been filled; that they are agencies that were formerly funded by the County. She asked Council members how they wanted to make this, whether they wanted to expand on the April 7 date or set another date.

Councilman Rico suggested that the hearings be scheduled during the day, to which Councilwoman Berz asked if the Council would like to go back to the 10 a.m. – noon time frame if there is some overage.

Councilman Benson stated that the Council always meets jointly with the County. Councilman Rico stated there will not be a joint meeting this year.

COMMITTEES (Continued)

Councilwoman Berz clarified that the preference is to meet from 10 a.m. – 12 noon and would let Council members know when a meeting is scheduled.

NEXT WEEK'S AGENDA: APRIL 5, 2011

Vice Chairman Ladd asked if there are questions regarding next week's agenda and stated the agenda for next week was discussed previously during the Agenda Session.

ADJOURNMENT

Vice Chairman Ladd adjourned the meeting of the Chattanooga Council until Tuesday, April 5, 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)**