

**City Council Building
Chattanooga, Tennessee
April 26, 2011
6:00 p.m.**

Chairman Ladd called the meeting of the Chattanooga Council to order with Councilmen Benson, Berz, Gilbert, McGary, Murphy, Rico, 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 McGary gave invocation.

MINUTE APPROVAL

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

AMEND CITY CODE

Councilmen Scott and Robinson made the motion and second to approve this ordinance on second and final reading.

Chairman Ladd stated this matter was discussed at length in Committee and asked if anyone were present wanting to address this issue.

Michael Eastman of 800 Tremont Street stated he has been involved with the local music community for some time and feel this matter is addressed more to the music community than a life safety issue as sprinklers do not go off until it reaches a point where the existing Code addresses that situation. He stated if we have egress and no pyrotechnics the common sense things can occur; that this will impose a burden on several business owners and feel it is a moot point for him to comment. He stated this is the first Council meeting he has attended and wanted to express his opinion.

AMEND CITY CODE (Continued)

Councilman McGary stated in regard to businesses that are currently operating what can we expect going forward; that it is his understanding based upon the Code as currently adopted by the City that businesses are currently required to put in sprinklers. Fire Marshall Whitmire responded "that is correct".

Councilman McGary asked the Fire Marshall to address the issue from both angles if it were to pass what could businesses expect in regard to this particular issue.

Fire Marshall Whitmire stated it is his hope he would be able to work with businesses as they will have to have the sprinklers put in by the end of 2013. He stated that he spoke with the ex-Fire Marshall in Knoxville and asked how they handled it and was told there were some situations that occurred where they were making progress but at that time, maybe due to some construction issues, they gave an extension. He stated he plans to work with them and has heard some were able to get sprinkler contractors to give quotes; that he will get a list and distribute them, not that he is promoting any of them; however, he is willing to work with them any way he can.

Councilman Murphy stated he does not get to speak to issues when he is chairing a committee; that it seems perhaps one of the biggest problems with this being a tremendous economic burden is the fact that unlike in Knoxville where they own their own water company we do not and the charges to be made to these businesses are exorbitant. He stated any savings on property insurance that might be achieved would seem to him to be getting "swallowed up hook, line and sinker" by Tennessee-American Water Company! He stated the explanation so far as he has heard as to why the exorbitant rates exist for what is essentially a pipe that probably never gets used was that the Tennessee Regulatory Authority says we can. He stated he is very disappointed that no one brought this issue up during the rate case as this issue was in the fore and was a big deal and the delay of this ordinance gave those affected plenty of time to speak up at the TRA rate case. He stated if Tennessee-American repeats its history and comes back in another 18 months seeking another large rate increase, it is his hope this subset of issues of overcharging for that service is an issue that is dealt with in any future rate case. He stated regardless of how this vote goes, it is his thought one of the big problems is not the financial viability of our business climate or our businesses that are in this field versus those in Knoxville, it is that we have a privately owned for profit water company that "milks" all of us, residential and commercial alike, and they will continue to do so apparently.

AMEND CITY CODE (Continued)

Councilman Benson stated it is his thought this is a very bad time to mandate this under the name of safety because there is not enough evidence that this is going to make that much difference in relationship to what extra fire doors might do or other safety conditions that our Fire Marshall if he would use his judgment could mandate. He stated this is an unfunded mandate and a lot of our mandates are unfunded, but it does not mean we should put this off on our small businessmen who are generally the ones it will hurt, the middle class businessman. He stated he knows they have two years but if he owned one of the buildings and knew in two years he had to put in this large investment he would want to get out before he had to do it but would have to lower his price accordingly because of the liability. He stated if we are going to mandate things for safety there are so many other things we can do; that we can make seat belts go in all the pickup trucks and older cars around town and we can mandate a curfew for everyone to stay in after dark as more people get killed after dark than any other time. He stated there are a lot of safety measures we might take that would be more effective in saving lives than our history shows that we have lost in any of these type fires for lack of a sprinkler. He stated it is his thought this is the result of the sprinkler industry and they are lobbying; that he does not think during these economic times our people, the citizens of Chattanooga, whom we are supposed to represent, should have to face this. He stated it is not just only the people but the economic interest of many jobs and taxes that are going to be lost if these places have to close down. He stated he would rather it be on a case-by-case situation as some places might need sprinklers and thinks the Fire Marshall should decide that, but does not think it should be a mandate for everyone.

Councilman Rico stated government has no business interfering in the private sector and into something like this; that it is not just "cut and dried". He stated it is not just a safety issue as nobody has died; that it is only one incident that broke every *Fire Code* imaginable and that is what we are basing it on. He stated government is into private business anyway and we need to stay out of it when we do not need to be in there!

Councilwoman Scott stated Codes are really about regulation from government and one of the things she got out of the information that the Council received from Mr. Tidwell was the chart that showed over time the decline in fires and that did not happen all by itself; that the reason why there has been a decline in fire is because people have been looking at this and Codes have been implemented to decrease the risk and damage as a result of what we have seen.

AMEND CITY CODE (Continued)

Councilwoman Scott stated we are not fire experts; that the fire experts we have heard from today and before, the people that are arguing against this are not fire experts. She stated this is an issue of safety, safety, safety! She stated the information the Council received indicated there were over 8,000 fires and of that looking into bars and nightclubs was 960 which is 12% and that is enough to make a decision on. She stated she does not want to have not one injured person on her conscience after having seen a Code that has been adopted that cannot help but decrease risks. She stated we ought to adopt this and should have adopted this a few weeks ago.

Councilman Gilbert expressed agreement with Councilman Benson and noted this reminded him of the State as to how they regulate us when it comes to air pollution regarding quality of air and we have to go through emissions; that we have dump and transfer trucks that do not have to go and asked why not – noting it is a safety issue. He stated if the safety issue regarding Rhode Island is looked at, they were not even inspected that much by Fire Marshalls from the information he received from qualified people; that if they were they would not have had as bad a time as far as the fire. He again agreed with Councilman Benson if we had more exit doors, more lighting and more training for the people that actually have the facility, that would help more so than a sprinkler system because most of the people who died in the fire were trying to get out the exit door. He gave the example of there not being a fire but someone shooting, noting people would get trampled over due to few exit doors again noting it is a safety issue. He stated more training of the people in the facility, more exit doors and the know how to guide people out is safer than a sprinkler system; that it is his hope this will be denied. He stated as the lawyer stated there are other establishments that sell alcohol, have food and basically almost the same things as a nightclub by our definition, noting he does not agree with the definition; that sales should be based more on food than liquor. He stated we need to look at the whole thing if it is going to be a safety issue; that it should include restaurants and not just nightclubs.

Councilman McGary stated having heard the arguments by his colleagues he expressed sympathy to the issues raised, however he mentioned three points that are ones he cannot escape due to the sheer nature of their logic. In making the first point, he stated if the chief concern by this body is the fact sprinklers are cost prohibitive, it would seem this body would do something to address that issue via tax cuts, small interest loans, some sort of financial help if our concern is this is cost prohibitive; that it seems we would help out in that endeavor.

AMEND CITY CODE (Continued)

Councilman McGary stated the desire to extend the time from two-or-three years is an effort in that vein, but it is his thought there is some serious wrestling with the fact "yes" this does cost but in reference to Councilwoman Robinson's comments there is a cost for doing business and it is admirable for this body to seek to offset some of the costs as much as possible. Secondly, he stated in regard to fairness he is at a bit of a loss that he hears the argument that it is not fair to pick on nightclubs when other businesses are excluded therefore let us not enforce it on night clubs. He stated you do not rectify the fairness issue by doing away with the issue that is right in front of you; that if the concern is other businesses are being omitted, fix the one that is in front of you and then work on the others; that you do not dismiss the one in front, i.e. the issue "it is not fair" -- that is backward and not being forward.

Finally, Councilman McGary stated the issue of liability is one that we have come back to again and again; that the City Attorney in his answers today goes back to the comment previously made whether or not we think it is fair, whether we think it is cost prohibitive, this body is responsible if there is a fire and could be brought before us in a lawsuit; that it is not something we can squirm away as it is something we honestly need to wrestle with. He stated he is in favor of doing what is difficult though not pleasant for those reasons.

Chairman Ladd stated she knows there are a lot of people present representing both sides of the issue, noting once this is approved or denied that the audience remain quiet. She stated if there is a need for them to leave to do so quietly.

On motion of Councilwoman Scott, seconded by Councilwoman Robinson,
AN ORDINANCE TO AMEND PART II, CHATTANOOGA CITY CODE, CHAPTER 17, ARTICLE I, SECTION 17-1, RELATIVE TO THE ADOPTION OF THE INTERNATIONAL FIRE CODE, 2006 EDITION, INCLUDING ALL REFERENCED STANDARDS AND PUBLICATIONS SPECIFIED THEREIN, AND THE 2006 NATIONAL FIRE PROTECTION ASSOCIATION (NFPA) 101 LIFE SAFETY CODE IN ITS ENTIRETY FOR CERTAIN SPECIFIED OCCUPANCIES, INCLUDING EXISTING BUILDINGS, AS DEFINED BY THE 2006 NFPA 101 LIFE SAFETY CODE, AS THE OFFICIAL FIRE CODE OF THE CITY OF CHATTANOOGA, AND TO AMEND SECTION 17-2, AS TO APPENDICES, AND 17-3 AS AMENDMENTS TO THE CODE

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

GILBERT	NO
BERZ	YES

AMEND CITY CODE (Continued)

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

AMEND CITY CODE

Rev. John Barber of 6611 East Brainerd Road stated the issue of storm water quality has been before the Board before and understands the Council had a meeting today discussing this particularly document; that the Council heard from Bill Raines and Roger Tudor about a group that had worked with the City Attorney and City Engineer's office to improve and revise this agreement as first proposed. He stated he had an opportunity to be part of many of the meetings and hated to have to miss today's meeting due to his own personal responsibilities. He expressed concern about the agreement and admitted his bias comes from a church background or non-profit groups responding and participating in this process; that the fact that concerns him most as he understands it, once a business or non-profit enters into this agreement it is perpetually in perpetuity. He stated there is never an opportunity for them to say "okay we forfeit our credits and we take this commitment to fulfill this obligation back". He stated there is never an opportunity for "divorce"; that it seems it is an undue burden to ask folks to voluntarily enter into an agreement and then they not have the opportunity to back out even if that property is transferred the owners who take on this property are obligated by this agreement, as well. He stated he would liken it to the deadline for federal income tax; that if itemized deductions are made then perpetually that person and every other person who had a part of the estate going forward would be obligated to itemize their taxes from here on out.

AMEND CITY CODE (Continued)

Rev. Barber stated this issue has been raised with the City Engineer and City Attorney and some of the answers given goes back to the State's obligation that is being imposed upon us. He stated he does not have the ability to verify whether or not that is true; that his concern is once the agreement is signed the person can never back out of this again. He stated the experts he has tried to talk with to determine whether his Church needs to sign this document, some have said "yes" and some "no". He stated what this does is it disincentivizes our efforts to participate as good citizens in storm water quality.

Councilman Benson stated that it is his thought Mr. Barber is wrong on that and was not present when Gen. Raines mentioned this; that Rev. Barber was a part of the Blue Ribbon Committee which endorsed this.

Rev. Barber stated that he knows Gen. Raines endorsed this and he (Barber) was part of the Blue Ribbon Committee; that he talked to Gen. Raines after his meeting and even the meeting we had last time with Bill Payne and Valerie Malueg and they talked about in some sense the point of dissent was that was one of the issues that they were concerned about. He stated while they were sending the document on, it was an improvement; that this was a fact in the document they were concerned about. He stated if he is wrong he hopes he is!

Councilman Benson stated he hopes he is wrong, as well.

At this point Councilman Rico called for the question.

Councilman Benson stated he would like to find out whether Rev. Barber is wrong. Councilwoman Woman Berz stated that it was her thought that was corrected.

Councilman Benson asked Admin. Leach if this is wrong; that he does not know how to vote, now. He stated he was going to vote for this, but if this is in perpetuity and they can never get out of it . . .

Admin. Leach stated that was his understanding and the last thing he heard that was the issue the non-profits had; that he did not hear that today; that it is his understanding it is still in there. He stated he could call Mr. Payne and find out and would do that while the Council holds their vote.

Chairman Ladd stated it is her thought the Council needs to move on.

AMEND CITY CODE (Continued)

Councilwoman Berz stated it was her understanding, as well, because Councilwoman Scott even asked questions about that whether the city would be stuck with keeping the property if they decided they wanted to opt out.

City Attorney McMahan read through the document and stated unless it has been changed since it was originally presented to us; that paragraph ten reads *“the agreement and covenant contained herein shall apply to and bind the owner, the owner’s heirs, executors, the successors and assigns and shall bind all present and subsequent owners of the successor’s property served by the facility”*. He stated his recollection of the discussion this afternoon was what would happen if somebody “dropped the ball”, one or the owners or subsequent owners did not do it and there was some discussion about the city taking emergency action to correct what needed to be corrected and then seeking legal redress against the owners or subsequent owners pursuant to this clause of the agreement.

Mr. Leach stated that is the way he understood the discussion.

Councilman Murphy stated it would seem there would be a way to construct this similar to the favorable property tax treatment that agricultural forest land gets when a zoning is changed to a more intensive use, then they go back and pay the differential on the property tax for three prior years or something like that. He stated he understands not wanting it to be where people can “willy nilly”, but It would seem there would be a way to say if you go out you do not just go out one year and then just pay a fee; that they go out and the credit for the prior “how many years” is revoked and due. He stated he would think there would be a way to work this out, but that is his thought!

Chairman Ladd stated that this matter has been discussed at length with the Blue Ribbon Committee and our legal team; that if there is any more “wobble room” in there we would have discovered it and been on it. She stated she would like to move forward with the vote if that is the consensus of the council.

At this point Councilman Rico called for the question again.

On motion of Councilman Rico, seconded by Councilman McGary,
**AN ORDINANCE TO AMEND CHATTANOOGA CITY CODE, PART II,
CHAPTER 31, ARTICLE VIII, DIVISION 7, FEES, SECTION 31-356(d)
RELATIVE TO INSPECTION AND MAINTENANCE AGREEMENTS**

Passed first reading; **on roll call vote:**

AMEND CITY CODE (Continued)

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

PAYMENT AUTHORIZATION

On motion of Councilman McGary, seconded by Councilwoman Robinson,
A RESOLUTION AUTHORIZING PAYMENT OF FIFTY THOUSAND DOLLARS (\$50,000.00) TO DOGWOOD MANOR FOR WORKING CAPITAL TO MEET SHORT-TERM NEEDS THROUGH SEPTEMBER, 2011, AS A RESULT OF EXTRAORDINARY MAINTENANCE EXPENSES

Was adopted.

LEASE AGREEMENT

On motion of Councilman Rico, seconded by Councilman Murphy,
A RESOLUTION AUTHORIZING THE ADMINISTRATOR OF THE DEPARTMENT OF PARKS AND RECREATION TO ENTER INTO A LEASE AGREEMENT FOR THE CITY TO LEASE FROM INVISTA A CERTAIN PARCEL OF LAND CONTAINING APPROXIMATELY 5.03 ACRES, SITUATED AT 4501 NORTH ACCESS ROAD TO BE USED FOR PUBLIC RECREATION

Was adopted.

AGREEMENT

On motion of Councilman Gilbert, seconded by Councilman Murphy,

A RESOLUTION AUTHORIZING THE ADMINISTRATOR OF THE DEPARTMENT OF PUBLIC WORKS TO ENTER INTO AN AGREEMENT WITH SAMUEL DANIEL, RELATIVE TO CONTRACT NO. R-09-001, SOUTH CHICKAMAUGA CREEK GREENWAY PROJECT, FOR A TEMPORARY RIGHT-OF-WAY, FOR A TOTAL AMOUNT NOT TO EXCEED FOUR THOUSAND FIVE HUNDRED DOLLARS (\$4,500.00)

Was adopted.

TEMPORARY USE

On motion of Councilwoman Scott, seconded by councilman Murphy,

A RESOLUTION AUTHORIZING LEE ANN CHESTNUTT TO USE TEMPORARILY THE RIGHTS-OF-WAY LOCATED AT 516 BECK AVENUE FOR THE INSTALLATION OF WOODEN STAIRS OVER DETERIORATING CONCRETE, ALONG A PORTION OF THE BECK AVENUE RIGHT-OF-WAY, AND THE CONSTRUCTION OF A PARKING PAD, ALONG A PORTION OF MOON HOLLOW LANE, AS SHOWN ON THE DRAWING ATTACHED HERETO AND MADE A PART HEREOF BY REFERENCE, SUBJECT TO CERTAIN CONDITIONS

Was adopted.

TEMPORARY USE

On motion of Councilman Murphy, seconded b Councilman McGary,

A RESOLUTION AUTHORIZING HIGHLAND PARK NEIGHBORHOOD ASSOCIATION TO USE TEMPORARILY THE RIGHT-OF-WAY THROUGHOUT THE NEIGHBORHOOD TO PLACE COMMUNITY MARKERS TO INDICATE THE ASSOCIATION'S BOUNDARIES, AS SHOWN IN THE DRAWINGS ATTACHED HERETO AND MADE A PART HEREOF BY REFERENCE, SUBJECT TO CERTAIN CONDITIONS

Was adopted.

TEMPORARY USE

On motion of Councilman Gilbert, seconded by Councilman McGary,
A RESOLUTION AUTHORIZING KING OAK NEIGHBORHOOD ASSOCIATION TO USE TEMPORARILY THE RIGHTS-OF-WAY LOCATED THROUGHOUT THE NEIGHBORHOOD TO PLACE COMMUNITY MARKERS TO INDICATE THE ASSOCIATION'S BOUNDARIES, AS SHOWN ON THE ATTACHED DRAWINGS AND MADE A PART HEREOF BY REFERENCE, SUBJECT TO CERTAIN CONDITIONS
Was adopted.

TEMPORARY USE

On motion of Councilwoman Berz, seconded by Councilman Gilbert,
A RESOLUTION AUTHORIZING BRAINERD PARK NORTH, N.A. TO USE TEMPORARILY THE RIGHTS-OF-WAY LOCATED THROUGHOUT THE NEIGHBORHOOD TO PLACE COMMUNITY MARKERS TO INDICATE THE BOUNDARIES, AS SHOWN ON THE ATTACHED DRAWINGS AND MADE A PART HEREOF BY REFERENCE, SUBJECT TO CERTAIN CONDITIONS
Was adopted.

EMINENT DOMAIN

On motion of Councilman Benson, seconded by Councilwoman Berz,
A RESOLUTION AUTHORIZING THE OFFICE OF THE CITY ATTORNEY TO INSTITUTE EMINENT DOMAIN PROCEEDINGS AGAINST RAJESH KUMAR CHAUDNARI, TPJS LLC, AND ANY OTHER KNOWN OR UNKNOWN PARTY WITH INTEREST IN THE PROPERTY LOCATED AT 7900 SHALLOWFORD ROAD
Was adopted.

WAIVER OF LANDFILL FEES

On motion of Councilwoman Scott, seconded by Councilman Murphy,
A RESOLUTION AUTHORIZING THE WAIVER OF THE LANDFILL FEES FOR THE CHATTANOOGA COMMUNITY KITCHEN, INC., A PUBLIC BENEFIT CORPORATION, FOR APRIL 30, 2011 ONLY FOR THE "COMCAST CARES DAY - CLEAN UP DAY" EVENT IN AN AMOUNT NOT TO EXCEED FIVE HUNDRED DOLLARS (\$500.00)
Was adopted; Chairman Ladd voted "no".

TEMPORARY ACCESS

MR-2010-151: Dan Thornton

On motion of Councilman Rico, seconded by Councilman McGary,

A RESOLUTION AUTHORIZING THE DIRECTOR OF GENERAL SERVICES TO ALLOW HAMILTON COUNTY TEMPORARY ACCESS TO FARMERS MARKET (TAX MAP NO. 145E-T-002) IN ORDER TO PERFORM GEOTECHNICAL AND OTHER RELATED TESTS AND INSPECTIONS, AND TO CONVEY THE SUBDIVIDED PARCEL TO HAMILTON COUNTY TO BUILD ITS NEW HEALTHCARE CLINIC ON THE SITE, DESCRIBED MORE PARTICULARLY BELOW

Was adopted.

OVERTIME

Overtime for the week ending April 21, 2011 totaled \$63,536.34.

PERSONNEL

The following personnel matters were reported for the various departments:

CHATTANOOGA POLICE DEPARTMENT:

- **BOBBY ADAMS** – Suspension (3 days without pay), Police Officer, effective May 10-12, 2011.
- **CHRISTOPHER BLACKWELL** – Suspension (3 days without pay), Police Officer, effective April 28-30, 2011.
- **AMANDA FORBES** – Suspension (3 days without pay), Police Officer 1, effective April 22-24, 2011.
- **JAMES SMITH** – Suspension (3 days without pay), Police Officer 1, effective April 25-28, 2011.
- **SHEILA JETTON** – Leave of Absence, Police Officer 1, effective April 16-May 15, 2011.
- **REBECCA ROYVAL** – Resignation, Police Officer 2, effective April 21, 2011.

PERSONNEL (Continued)

CHATTANOOGA FIRE DEPARTMENT:

- **JOEL NIX** – Promotion, Firefighter Senior, effective April 22, 2011.

HOTEL PERMITS

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

HAMILTON INN – 2717 Rossville Boulevard, Chattanooga, TN

HAMPTON INN – 2420 Williams Street, Chattanooga, TN

PURCHASES

On motion of Council, the following purchases were approved for use by the various departments:

CHATTANOOGA POLICE DEPARTMENT:

ZODIAC OF NORTH AMERICA, INC. (Lower and better bid)
R40579/300972

Purchase of a Police Response Boat

\$128,872.00

G T DISTRIBUTORS (Lowest and best bid)
R40606/300952

Blanket contract for Sig Sauer Handguns

\$23,000.00 – Annual estimation

PURCHASES (Continued)

GENERAL SERVICES:

FLEET ON/MAPCO FLEET ADVANTAGE (Lower and better bid) R41160/300966

Blanket Contract for Remove Fuel Purchases

\$10,000.00 – Annual estimation

AUDIT COMMITTEE

On motion of Councilwoman Berz, seconded by Councilman Rico, the appointment of **WILLIAM MILLER** to fill the vacancy on the Audit Committee was approved.

BOARD APPOINTMENTS/REAPPOINTMENTS

On motion of Councilman Rico, seconded by Councilman Murphy, the following Board appointments/re-appointments were approved:

GENERAL PENSION PLAN BOARD OF TRUSTEES:

- Appointment of **STEPHEN T. PERRY, CPA** for a four year term expiring May 3, 2015.

BOARD OF PLUMBING EXAMINERS:

- Re-Appointment of **MARK STOLPHMANN, MARION QUARLES,** and **DOUG DAILY** for two year terms expiring May 3, 2013.

CHATTANOOGA-HAMILTON COUNTY AIR POLLUTION CONTROL BOARD:

- Re-appointment of **THOMAS CARMICHAEL** for a four year term expiring May 3, 2015.

MEETING WITH AGENCIES

Mr. Johnson invited Council members to a meeting on Thursday with the various agency representatives to talk about the sales tax issue and how the city is approaching it. He stated the meeting is scheduled to take place in the Council Assembly Room and noted it would begin at 5:30 p.m. in the lobby and move into the Assembly Room at 6:00 p.m.

FORMER POLICE OFFICER MICHAEL HOBACK

City Attorney McMahan reported that former Police Officer Michael Hoback went to serve in the military and when he came back he was re-examined medically and one doctor said he was medically unfit to return to duty and another doctor said he was medically fit to return to duty. He stated the Police Chief, relying upon the unfit declaration, held him unfit to return to duty and the Council had a hearing and upheld that decision two-to-one. He stated it went to Chancery Court and because of the Vagrancy of Strange Provision of the POST rules of the State of Tennessee it was noted some of the rules have been declared unconstitutional resulting in the Chancellor ruling Mr. Hoback should return to duty as a police officer. He stated a suit was filed in Court alleging various violations including the violation of USERRA, which is one that gives rights to people returning from military duty; that the Chancellor's decision is presently pending appeal, but we propose to give an offer of judgment under the Federal Rules of Civil Procedure to return Mr. Hoback to duty as a police officer upon two conditions -- one: that he pass a fit for duty physical examination by a licensed, eminent physician such as at a medical school; and two he attend a lateral police academy to receive training he missed while he has been off duty to make sure he knows all the rules and regulations. He stated as a third provision under the Federal Court Rules the attorneys are entitled to attorneys' fees and that matter would be submitted to the Court for a determination of the appropriate manner of those fees. He stated the offer of judgment needs to be done by Friday due to the scheduling order from the Court.

On motion of Councilman Murphy, seconded by Councilman Rico, the City Attorney was duly authorized to submit the offer of judgment.

Councilwoman Scott stated one of the things that created somewhat of a complexity in this issue is the fact that our policy was following State law and that seemed to be in conflict with Federal law. City Attorney McMahan responded "correct".

FORMER POLICE OFFICER MICHAEL HOBACK
(Continued)

Councilwoman Scott stated because it has already been ruled as not legal with regard to the State law which is in conflict with Federal law, could we also send a letter to the "power" that is over that area complaining about this because it is our responsibility to get our laws in order at the city level and the failure of the State to take control and either repeal or amend that law is not good guidance for cities.

City Attorney McMahan stated Councilwoman Scott is absolutely right; that it is his understanding the State has been previously notified that they needed to change their regulations and did not do so. He stated now that we have a new administration there are probably new people on that Board and we can bring that issue up again.

AMEND ORDINANCE NO. 25902

Councilman McGary stated in light of the conversation earlier regarding the proposed address change for Bluff View, he **made the motion to ask the City Attorney to draft a rescission of Ordinance 25902; Councilman Murphy seconded the motion; the motion carried.**

City Attorney McMahan stated he would draft it and put it on next week's agenda.

COMMITTEES

Councilman Murphy stated the Legal and **Legislative Committee would meet on Tuesday, May 3** immediately following the Agenda Session to discuss pedicabs on the bridges and other ordinances and resolutions within the Committee's jurisdiction.

Councilman McGary stated he noted on next week's agenda there is a Resolution for a potential contract we will be asked to approve for Family Concessions for food and beverage concessionaire services for the Auditorium and Tivoli and asked if this is the alcohol and wine contract and whether it will come up in Legal and Legislative Committee or if he should call for a separate Education, Arts and Culture Committee meeting to have a presentation.

COMMITTEES (Continued)

Admin. Crutchfield stated she would be available during the agenda meeting.

Councilman McGary scheduled a Committee meeting to hear the matter on next week then realized the Committee no longer exists!

Chairman Ladd stated that it is now part of the Parks and Recreation Committee and she would get the Committee assignments out next week.

Councilwoman Berz asked for clarification and noted everyone looked at each other when Mr. Johnson talked about the agencies noting it was done in consultation with the Chair and with the Budget and Finance Committee. She stated it was thought many agencies were not given a "fair shake" in explaining to them the city's position, particularly the ones whose funds had been cut and were not part of the tax agreement; that as a courtesy to them it was thought it would be good to explain to them and answer their questions. She expressed thanks to administration for taking the lead on that.

Councilman Rico stated three members of the Council have a scheduling conflict for Thursday night on several things. Councilwoman Berz clarified that it was never contemplated the Council would be present; that she would be present to welcome them; that it was to let the Council know it was happening and if they want to be present they can yet they are not required. She stated it will be an education session about where we are; that it is a courtesy thing and the Council members are not expected to be present.

Councilman Benson stated the Council needs to get the curfew strengthened and updated; that summertime is coming and we need it updated and strengthened.

Councilman Murphy stated the attorneys did the research and the matter was discussed at the end of Committee and it was determined our curfew as it exists now is state of the art and was actually used as the model for the State version; additionally, the only suggestion that was made was that we could make an additional age category dealing with 17 year olds.

Councilman Benson stated he did a lot of research on that; that Philadelphia has a better one by far than we do and we have to do something about the truancy problem in this city and the delinquency that follows through with it.

Councilman Murphy stated the truancy and curfew issues are different policies.

COMMITTEES (Continued)

Councilman Benson stated it is in the curfew policy in Philadelphia and we have to have put something in there regarding curfew violation when truant from school.

City Attorney McMahan stated the State does have a curfew law and it basically provides that local government in cooperation and in agreement with the school board can begin to enforce the truancy laws. He stated at some time we need to get with the school board to develop policies and procedures for enforcing that; that the State law is already there and we can start enforcing it; that we need to work with the school board to get that done.

Councilman Benson stated not only that but the date of the night time activities of the kids in the city is too liberal compared to other cities noting that he handed the information to the City Attorney regarding this. He stated our curfew is 11 p.m. and for what age.

City Attorney McMahan stated for 16 and under it is 11:00 p.m. except on weekends. Councilman Benson stated it needs to be discussed in Legal and Legislative and if not it can be discussed in Safety Committee.

City Attorney McMahan stated whoever is in charge of Legal and Legislative will be glad to discuss this.

AGENDA: MAY 3, 2011

Chairman Ladd stated the agenda for next week was discussed earlier today during the Agenda Session.

ADJOURNMENT

Chairman Ladd adjourned the meeting of the Chattanooga Council until Tuesday, May 3, 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)