

**City Council Building
Chattanooga, Tennessee
June 14, 2011
6:00 p.m.**

Chairman Ladd called the meeting of the Chattanooga Council to order with Councilmen Benson, Berz, Gilbert, McGary, Murphy, Rico and Scott present; Councilwoman Robinson was absent due to personal commitment. City Attorney Mike McMahan, Management Analyst Randy Burns and Council Clerk Carol O'Neal were also present.

PLEDGE OF ALLEGIANCE/INVOCATION

Following the Pledge of Allegiance, Councilman Rico gave the invocation for the evening.

MINUTE APPROVAL

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

REPORT FOR PLAN OF SERVICES FOR AREA 1B

City Attorney McMahan stated on the Council agenda tonight we list a report of the Plan of Services for Area 1B which is the Cummings Highway area recently annexed to the city. He stated he noticed a moment ago that the advertisement in the newspaper called for it to be heard on June 21 so we will delay the special presentation. He asked if anyone was present wanting to speak in respect to Area 1B; no one was present to speak to the matter. The matter will be forwarded to next week for special presentation.

CLOSE AND ABANDON

MR-2009-015: AC Properties:

On motion of Councilman McGary, seconded by Councilman Murphy,
AN ORDINANCE CLOSING AND ABANDONING A PORTION OF AN UNOPENED ALLEY BEGINNING AT ITS INTERSECTION WITH THE 200 BLOCK OF WEST 19TH STREET, MORE PARTICULARLY DESCRIBED HEREIN, SUBJECT TO CERTAIN CONDITIONS

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

CLOSE AND ABANDON

MR-2010-138: Chattanooga Housing Authority

On motion of Councilman Murphy, seconded by Councilman Gilbert,
AN ORDINANCE CLOSING AND ABANDONING A RIGHT-OF-WAY AT THE OPEN 1900 BLOCK OF BURTON STREET, MORE PARTICULARLY DESCRIBED HEREIN, SUBJECT TO CERTAIN CONDITIONS

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

CLOSE AND ABANDON

MR-2011-005: Duckett Properties

On motion of Councilman Rico, seconded by Councilman Murphy,
AN ORDINANCE CLOSING AND ABANDONING TWO UNOPENED ALLEYS: (1) BETWEEN THE 1600 BLOCK OF ROSSVILLE AVENUE AND THE 300 BLOCK OF EAST 18TH STREET; AND (2) BETWEEN THE FIRST ALLEY AND THE 1700 BLOCK OF KERR STREET, MORE PARTICULARLY DESCRIBED HEREIN, SUBJECT TO CERTAIN CONDITIONS

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

AMEND CITY CODE

Rick Lee, an Architect at 1713 Hour Glass Point in Hixson, stated that he did not realize the matter was going to be deferred, but wanted to take this opportunity to express his support for the action to help expand the C-7 zone throughout certain areas of the City.

AMEND CITY CODE (Continued)

Mr. Lee stated he is part of a test case approved by zoning yesterday and will require favorable action by the Council in order to see it happen; that for the North Market and areas surrounding C-7 it is critically important to the development to see C-7 have the opportunity to expand where it is needed. He stated it is something he has fought for well over five years and has met with the C-7 committee as much as anyone and wanted a chance to express his support. He stated he will be present for the first reading.

On motion of Councilman Murphy, seconded by Councilman Rico,

**AN ORDINANCE TO AMEND CHATTANOOGA CITY CODE, PART II,
CHAPTER 38, ZONING ORDINANCE, SECTION 38-287, DESIGN
GUIDELINES WITHIN THE C-7 NORTH SHORT COMMERCIAL/MIXED USE
ZONE**

Was deferred two weeks (June 28, 2011).

REZONING

2011-043: Englewood Enterprises, LLC/ Leroy Hurst & Bickerstaff PL/JDK Real Estate, LLC

The applicant was present; opposition was in attendance.

Councilmen Gilbert and Rico made the initial motion to deny the request.

Mike Price of MAP Engineers distributed drawings and stated he is asking for a deferral for several reasons; that the last time he was before the Council there were items they were going to bring up before the County Commission which also requires their approval. He stated he was told last Friday by Chairman Henry that he would allow these to be heard on an upcoming agenda and be voted upon within the next 30 days; that those are items that are crucial and important as this particular project moves forward if it is going to gain approval. He stated that he would like for that process to be heard at the County Commission. Secondly, he stated the Council has before them three versions of the plan: the first on the cover sheet was the first plan submitted, the second could be an amended version if the Council could agree to reduce the footprint of the M-1 zone, but the third footprint is really the option they want to go with which pulls all of the M-1 zone up against the manufacturing zoned area so this is not in any way a spot zone, not in any way going to be seen from the Enterprise Park Drive and inside the park.

REZONING (Continued)

Mr. Price stated he had a chance as it relates to this project to meet with some of the community leaders; that he talked with them briefly and talked about having a community meeting and would like to have the opportunity to do that. He stated he found there is a lot of disinformation that has been put out there as it relates to the proposed facility; that the "word on the street" is this is an ethanol manufacturing facility and it is not. He stated it is a trans-loading facility that comes in by rail, gets put into a pump, gets sent by pipeline to the facilities and takes 6000+ trucks a year off the roads. He stated he does not know how the rumor got started but that is why some of the opposition is opposed to it and he would be, too; that they are not an ethanol manufacturing facility, just unloading it. He stated he would like the opportunity to go to the community and speak with them and like the opportunity to be heard at the County Commission and if those two groups come back and say "yes" this is something they can support, at that point he would like to present it to this body for final approval. He stated there has also been some discussion as it relates to Norfolk Southern having a competing facility; that he is not certain they can build it from what he has seen out in the field. He stated if they can he understands the "game is off" and they probably cannot do this facility and will withdraw it; that it does not hurt anything to simply ask this be deferred six weeks and let it be brought back up once the other actions have taken place. He stated if any of those fail along the way there is no reason it would be heard in six weeks because he would have withdrawn it by that point, anyway.

Councilman Benson stated he might eventually vote against it but would rather go ahead and get more information about it; that he sees nothing wrong delaying four-to-six weeks until there has been time to meet with the people out there and refine this. He asked if Mr. Price is telling him they would not be doing anything different out there that what the warehouse is doing.

Mr. Price stated he is not familiar with their particular use; that all he can tell is if they are approved they will bring by rail a carload which would then be hooked up to a pump, hooked up to a pipeline and distributed from there.

Councilman Benson stated that is why he is for the four week deferral and wants him to explain to everybody better what is being proposed.

Chairman Ladd asked Councilman Benson is he is making a motion. Councilman Benson stated he was just saying why he could not vote to deny.

REZONING (Continued)

Councilwoman Berz inquired as to how it would be distributed. Mr. Price stated it would be distributed by pipeline to the four field distribution centers in the area.

Councilwoman Berz stated when Mr. Price talked about meeting with the county is that relative to the covenant that was made with the people. Mr. Price stated that is part of it; that he has Allison Bickerstaff present who has read the covenants and what they have found is they cannot find anything as it relates to covenants that we are violating by this proposed use.

Councilwoman Berz stated she spoke to Mr. Price about that and was trying to bring that out; that apparently 30-40 years ago there was a covenant with the neighborhood and the only reason she is bringing it out is the passive park as it exists now is in her district; that most of the people affected are not in her district as they are in Councilman Gilbert's district. She stated there was a covenant made with the people that in that park there would be nothing more ever than the UPS and what is there now.

Mr. Price stated he has talked with some of the former Council people for the county at the time this took place. He stated he talked with Bill Bennett who does not have any particular recollection as it relates to this; that anyone is welcome to call him. He stated he spoke with Becky Browder who has a different take which is why he would like to take it back to the community and explain it; that they are here and can speak what their opinions are. He stated taking it back to the people and presenting it to them is a necessary step to get feedback and verify that the community does not have a problem or if they have problems how they can be addressed, and if they cannot address them then they can state where their position is.

Councilwoman Berz stated Norfolk Southern was made aware by their clients that there was some incorrect information put out. Mr. Price responded "in the news paper, yes".

Councilwoman Berz stated it is not a matter of a competing facility, it is a matter that there is no other facility of its kind and yet Norfolk Southern, who was here last week thinking it was going to be heard at that time, said they do not have a "horse in this race" and just want honest information to be out there.

REZONING (Continued)

Mr. Price stated the statement he made was it would be unique to this area and the reason it would be unique is that presently all of the ethanol distributed throughout the community now is done by tanker truck. He stated this would be unique because they would be doing it by pipeline and why he made the statement he did in the newspaper however they did not carry the rest of the statement through.

Councilwoman Berz asked how that differs by what Norfolk Southern is going to already have ready by the first of the year. Mr. Price stated they would have to do it by truck, as well, because they would have to cross under the CSX railway in order to do that and CSX has already indicated they would not be willing to grant them a pipeline easement and would have to be distributing it by truck.

Councilwoman Berz stated they do not believe that and they are really on schedule and we are dealing with hearsay. Mr. Price stated that is a lot he has been having to deal with, as well, and would like to have the time to get with the community, get back with the Council, get back with the County Commission and hopefully "put the truth on the table" and let the "chips fall where they may".

Councilman Murphy stated those petroleum facilities by Mr. Price's understanding get their ethanol via tanker truck. Mr. Price responded "they do".

Councilman Murphy stated if this land use were allowed there would no longer necessarily be the need for the tanker trucks to those petroleum facilities should they buy their ethanol from the source that is being piped in. Mr. Price stated they could have that option, "yes".

Councilman Murphy stated presumably if he does not have to have the added transportation cost his (Price) client will probably be able to win that economic battle. He stated he is inclined to give them more time because if he lived in the neighborhood and saw that many tanker trucks he would like to see fewer of them; that it is a land use decision and there are pros and cons both ways.

Councilman Gilbert stated he would like to hear from the opposition and the people directly behind it who are present tonight.

REZONING (Continued)

Morty Lloyd of 7109 Lake Shore Drive stated he is pastor of Chattanooga Church and 18 years ago they made a substantial investment in the Bonny Oaks community. He stated currently they own over one million dollars worth of real estate; that all the buildings they own are historic buildings; that the chapel that they occupy was built in 1939 and is part of the Bonny Oaks community. He stated they subsequently bought the historic Dent House built in 1854, purchased another county building right behind the Dent House and have been committed for the last 18 years to the historical integrity of that community. He stated he would encourage all on the Council to vote against this; that he does not think manufacturing has any place in the community as they have a rich history in that area and have made a substantial investment and as a church would dearly hate to see that change. He stated they would hate to see the look of the community change because once it changes it will never be the same. He again encouraged the Council to vote against this.

At this point Councilman Gilbert asked persons against the matter to stand; approximately ten persons stood at this time. He then asked for those in support to stand and no one stood.

Councilman Murphy stated it was indicated manufacturing has no place in the community and there already are heavy manufacturing uses existent, asking if he were correct.

Mr. Lloyd stated he is not aware of direct manufacturing; that there are a number of warehouses and different ones in the area but not direct manufacturing that he is aware of in terms of industrial manufacturing.

Councilman Murphy stated there is the manufacturing zoning of those petroleum farms, the tanks. Mr. Lloyd stated the storage tanks have always been there as part of the community, probably as long as Bonny Oaks has been there.

Councilmen Murphy stated that is a manufacturing zone and use and gets large transfer truck traffic in the area because of the facilities. Mr. Lloyd stated the tractor trailers are on Jersey Pike and they do not see the tractor trailers coming through the Bonny Oaks industrial area; that specifically what he is talking about is the historic area where the county has a part as they are in that geographic area.

REZONING (Continued)

Councilman Murphy stated he knows where Mr. Lloyd's Church is; that his question is Mr. Price says there is no manufacturing going to happen as the facility is a transfer facility, essentially a liquid loading dock without tanker trucks pulling up. He stated by Mr. Lloyd's explication that is not manufacturing, either; that it may be a manufacturing zone but it is not manufacturing, just transferring a product. He asked Mr. Lloyd to help him understand what would be so corrosive to the community fabric about the transfer of fluid into a pipeline.

Mr. Lloyd stated his understanding of what an ethanol facility, whether manufacturing or transfer looks like, is that it looks like an industrial manufacturing facility. He stated he does not think it is in keeping with what is currently in place there on Preservation Drive; that it is not in keeping with what is up and down Bonny Oaks. He stated it is going to take on a very different appearance from what we currently have there.

Councilmen Murphy asked if it is the aesthetics he is concerned about. Mr. Lloyd responded "yes": that it is going to change the overall appearance of what is in the community.

Councilman Murphy stated we have an air quality problem in Chattanooga, a bad one; that we have gotten a "green light" from the EPA which is great, but we have a growing population in this community. He stated we are going to have a significantly larger number of people in this community in ten years that are not here now; that when he hears someone say we have an opportunity to take 6000 tractor trailer loads off our roads to take them out of the highway traffic which is already not going to be adequate. He stated that is a quality of life issue that is a big deal and part of him wonders whether there is not a way looking through what Mr. Price has on the third schematic; that he does not know whether there is a way to shield this so that the community would not know it is there, and if there was maybe that is worth talking about.

Mr. Lloyd stated in terms of a gasoline station, assuming the tractor trailers are going from the facility to the gasoline station.

Councilman Murphy stated what Mr. Price is talking about is ethanol tractor trailers pulling up to the petroleum storage locations so that the ethanol can be administered to the otherwise pure gasoline to get to the point where when a person goes to the pump it says "contains 10 percent ethanol" and then from those facilities it is tanker trucked out to the gas station.

REZONING (Continued)

Councilman Murphy stated what he is talking about is the inflow; that the ethanol loads that go into the facilities would not need to go in anymore; that they would have outflow of delivery trucks from the facilities going onward to gas stations. He asked Mr. Price if he were wrong. Mr. Price responded "correct".

Councilman Murphy stated if that is where we are he would move to defer for six weeks and let them talk about it; that if they come back and Mr. Price says there is no way we can hide this from this community and it will forever change this community he has his vote, but he does not know if that is where we are, yet.

Mr. Lloyd stated the concept of getting the tractor trailers off the road is a fabulous idea and (he) is in favor with that. He stated he just does not think it is the right community and encouraged them to find another community for this facility because he does not think it is a right fit for what the neighbors in that community are trying to do.

Councilman Murphy stated he does not want to say any community wants a use like this but pointed out the only logical location to pipe ethanol to those existent tank storage facilities is not from the other side of Missionary Ridge in East Chattanooga. Mr. Lloyd responded "absolutely".

Councilman Murphy stated he is with them if he can make it so that the community feels comfortable that it would be inconspicuous and could be hidden and may never know it is there unless they go to the gate; that he does not know that we are there, yet, and it is a discussion worth having. He **made the motion to defer six weeks; Councilwoman Scott seconded the motion.**

Councilwoman Scott stated Councilman Murphy's points are well taken and the thing that troubles her most is that it does not sound like there has been a full presentation and discussion in the community and because this has so many sides to it she encouraged the discussion and then a conclusion as opposed to just immediately saying "no".

Councilwoman Berz asked Mr. Haynes for clarification that the facility is now presently in North Chattanooga and are talking about moving over to this new location. Greg Haynes stated he would take Councilwoman Berz's word for that. Mr. Price responded "yes".

REZONING (Continued)

Councilwoman Berz stated this is a facility that already exists in North Chattanooga in Councilwoman Robinson's district and she was the one who made the motion to deny and for whatever reason is not here. She stated the second thing is Councilman Murphy's points are all well taken, however, there is going to be that facility that is Norfolk Southern, one that will be built right at the tank farm; that there will be one of those facilities there. She stated she is not saying which way the community should go but let's go on correct information. She stated the third thing is the RPA Staff and Planning had reasons asking that we deny and she has not heard those.

Greg Haynes stated the RPA staff looked at this as a very basic land use level and felt this was not a consistent use with the other uses that had started their businesses in that park with the same agreement; that they are trying to respect the adjacent property owners that way. He stated on top of that, without knowing all the details of the private property agreements, the access agreements and issues, they were just aware there were some conflicts of that nature which added another level confusing the issue and they felt that was another reason not to add a zoning change to the mix. He stated all very good points have been brought out tonight; that the air quality issue is a great issue and the ideas and issues expressed at this point in the process just speaks to the process itself. He stated as far as the beginning of the process when Staff looks at it, those were their thoughts and reasons for recommendation. He stated the Planning Commission agreed, as well; that the Planning Commission level is when Planning has the benefit of hearing opposition and from the people speaking who own those properties which also added to their reason for the recommendation to deny.

Councilman Benson stated the design has changed a lot since it went before the Planning Commission and is still probably evolving as they have asked for four more weeks. He stated he has rushed to judgment before with partial information and regretted it; that he does not want to get caught making a judgment on this until he sees what they will change out there; that he is looking at Leyland Cyprus trees on the drawings distributed and a buffer.

Mr. Price stated the Council members have a small scale version; that the third version is the one they would like to go with as it has a ten foot high earthen berm and after hearing from the Planning Commission he put his "thinking cap" on and came up with a new design.

REZONING (Continued)

Councilman Benson stated the Planning Commission did not have that version then and now have four more weeks to get a better version, probably. He stated his problem has been in the past sometimes we have denied something we do not exactly want but if it is well designed with a great building and nice façade, aesthetically good and we turn it down and then we leave it zoned as it is. He stated someone then comes in with no conditions, no buffers or anything; that he has seen communities live to regret it. He stated he wants to see what Mr. Price has to offer in four weeks and might vote against it then, but if he had to vote tonight he would vote against it but he would prefer voting to give four more weeks as he might come back with something really nice and Mr. Lloyd and all the others might want it when it comes back with all the conditions.

Mr. Price stated with all due respect, with everything he has heard he is still not convinced Norfolk Southern can do what may have been reported to some of the Council members. He stated he would like the opportunity to see if that can happen; that again, if they can he will end up pulling this "off the table" and it will not matter. He stated if they cannot do it and we are denied then we are still back to 6000+ trucks on the road every year; that waiting does not hurt anybody but gives us the opportunity to present the information to the community, get a full and disclosed plan in front of everyone and then make the decision from there.

Councilman Gilbert stated Mr. Price indicated they will move one company from one facility to this facility, correct. Mr. Price responded "yes, sir".

Councilman Gilbert asked if everything will be moved to this location. Mr. Price stated the idea is to close that facility down, "yes".

Councilman Gilbert asked what else is sold other than ethanol. Mr. Price stated they will just move the ethanol portion from that facility.

Councilman Gilbert stated they will cancel what they are doing currently. Mr. Price stated whatever else they may be doing will stay in effect; that the ethanol will be removed. He stated whatever other materials and equipment that may be coming or loaded at that point will still continue on North Market but the ethanol will be removed.

REZONING (Continued)

Councilman Gilbert stated it is hard for him to see a company actually break ground and not have checked to see if they can put the major part of their company to pipe this stuff in underneath the tracks. He stated he cannot see that and we do not need two of them there.

Mr. Price stated in his 20 years of working in the Chattanooga area if you want to get a land disturbance permit you must submit plans to the land disturbance/development office and that has not occurred. He stated a person must get approval from the fire department; that he met today out in the field with the representative from the fire department and that has not occurred. He stated he talked with the representative from CSX railway and they indicated they have not been contacted by Norfolk Southern and their legal department advised they would not give them an easement to put a pipeline line under their railway right-of-way. He stated all he can tell the Council is what he has been told; that it does not appear to him they have the ability to do so but it gives them six weeks, as well, to come back and figure out their issues and if they can he will "pull it off the table" and move on.

Councilman Gilbert asked if there is any other location that can be acquired for this company to go. Mr. Price stated he cannot find another viable location they could go; that there are other issues as it relates to developments, covenants and restrictions on other properties. He stated the only two options as he sees it is either the Norfolk Southern facility or his and does not see any other alternatives on the table.

Councilman Gilbert stated the one difference for the Norfolk Southern facility is that the tank is already there in the surrounding area but where Mr. Price is trying to put this is an historical area with years and years of history that is going to be taken away because there will be a manufacturing company there that will look totally different from the character of the area.

Mr. Price state what they are proposing with their latest plan is to put rail spurs 120 feet parallel to the existing tracks; that given what is in that area and the length of time those rail lines have been located in the area he does not find that would be any different than keeping with the way that it has been for a hundred years or more. He stated given all the work incurred in the industrial park and all the developments that have occurred, he does not think it will do anything to tear at the fabric of the community and the expectations as it relates to those individuals that live and work there.

REZONING (Continued)

Councilman Gilbert stated on the covenant the people actually involved with this said this would be fine. Mr. Price stated he wants the opportunity to talk with them.

Councilman Gilbert stated he has not talked with them, yet. Mr. Price stated he has talked with a few.

Councilman Gilbert stated of the ones Mr. Price has spoken with have they told him it is fine. Mr. Price stated he does not want to "put words in any one's mouth"; that Mr. Jennings is present and is one of the ones he talked to earlier and he can speak for himself if he wants.

Councilwoman Scott stated she is not aware of the original location and asked about the address. The address was given as 530 Manufacturer's Road located at the JIT Terminal.

Councilwoman Scott stated her second question is for clarification that this is in Councilwoman Robinson's district and she recommended deferral or denial, asking if this was on the agenda before and she recommended denial.

Councilwoman Berz stated that Councilwoman Robinson recommended denial and then it went to deferral. Councilman Benson stated she appeared before Planning and recommended approval.

Chairman Ladd stated Councilwoman Robinson is not here and we should not be speaking in her behalf.

Councilwoman Scott stated she is trying to clarify how we knew that since she was not here and under what circumstances had she (Scott) missed the meeting; that she did not think she did and all of a sudden everyone remembers this and she does not!

Councilman Rico stated if this is going to be deferred we should save all the questions for when we have answers; that it seems all the answers are not here that we are asking and there is no sense in "beating it to death" . He stated when it comes back if we defer it we can deal with this and have more answers.

Chairman Ladd expressed agreement noting there are Council members wanting to continue discussing this.

REZONING (Continued)

Councilman Rico called for the question.

Chairman Ladd asked if there are questions for Mr. Jennings (as referenced earlier by Mr. Price).

Councilman Rico again called for the question.

Chairman Ladd stated there appears not to be a question directed to Mr. Jennings.

Councilman McGary inquired as to the length of time for the deferment. Chairman Ladd responded "six weeks".

Councilwoman Berz stated Mr. Jennings was called up to ask whether he was for or against.

Chairman Ladd stated Councilman Gilbert polled the audience to ask them to stand if "for or against" and they did that; that unless there is a specific question for Mr. Jennings . . . She stated Councilman Gilbert asked who was in opposition and who was for it and we saw who stood up to those, respectively.

On motion of Councilman Murphy, seconded by Councilwoman Scott,
**AN ORDINANCE TO AMEND CHATTANOOGA CITY CODE, PART II,
CHAPTER 38, ZONING ORDINANCE, SO AS TO REZONE PROPERTY
LOCATED AT 6162 ENTERPRISE PARK DRIVE, MORE PARTICULARLY
DESCRIBED HEREIN, FROM M-2 LIGHT INDUSTRIAL ZONE TO M-1
MANUFACTURING ZONE**

Was deferred six weeks (July 26, 2011); on roll call vote:

BERZ	YES
RICO	YES
MCGARY	YES
MURPHY	YES
SCOTT	YES
BENSON	YES

REZONING (Continued)

GILBERT	YES
LADD	YES

LIFT CONDITION

2011-058: Fraternal Order of Firefighters

Pursuant to notice of public hearing, the request of the Fraternal Order of Firefighters to lift condition #4 imposed in Ordinance No. 12349 for property located at 4393 Benton Drive came on to be heard.

The applicant was present; there was no opposition.

On motion of Councilman Rico, seconded by Councilwoman Berz,

AN ORDINANCE TO AMEND CHATTANOOGA CITY CODE, PART II, CHAPTER 38, ZONING ORDINANCE, SO AS TO APPROVE AMENDING CONDITION #4 IMPOSED IN ORDINANCE NO. 12349 BY REMOVING EXISTING LANGUAGE AND REPLACING WITH NEW LANGUAGE ON PROPERTY LOCATED AT 4393 BENTON DRIVE, BEING MORE PARTICULARLY DESCRIBED HEREIN IN THE ATTACHED LANDSCAPE PLAN

Passed first reading.

REZONING

2011-061: ABM Properties, LLC/Larry Armour-Chief Manager

Pursuant to notice of public hearing, the request of ABM Properties, LLC/Larry Armour-Chief Manger to rezone property located at 6131 Preservation Drive came on to be heard.

The applicant was present; there was no opposition.

On motion of Councilman Gilbert, seconded by Councilman Benson,

AN ORDINANCE TO AMEND CHATTANOOGA CITY CODE, PART II, CHAPTER 38, ZONING ORDINANCE, SO AS TO REZONE PROPERTY LOCATED AT 6131 PRESERVATOIN DRIVE, MORE PARTICULARLY DESCRIBED HEREIN, FROM O-1 OFFICE ZONE AND M-2 LIGHT INDUSTRIAL ZONE TO M-2 LIGHT INDUSTRIAL ZONE

Passed first reading.

AGREEMENT

On motion of Councilman Rico, seconded by Councilman Murphy,

A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO AND EXECUTE THE FIRST AMENDMENT TO THE AGREEMENT FOR PAYMENTS IN LIEU OF AD VALOREM TAXES WITH US REAL ESTATE LIMITED PARTNERSHIP RELATIVE TO THE AMAZON.COM.DEDC LLC EPB SUBSTATION

Was adopted.

TERMINATE TEMPORARY USE

Larry Crane of 3242 Waterfront Drive stated 806 Brownsferry Road is 10 acres of his which is a pasture behind his house. He stated in 1944 TVA chose to build the Hales Bar Dam which helped all the people in the Tennessee Valley and in return they had to flood a few people's property; that his property consists of 10 acres with three on the River, six on Brownsferry Road and this acre that is flooded is in the middle but it is still his property but TVA put a lifetime lease on it. He stated when he purchased the property from Mr. Orton they had already owned the property since 1943 and had been in the family for 65 years; that when he bought the property he contacted the six land owners on the property and when he contacted Mr. Kevin he and his mother had no problem with him using it; that Ms. Capley had no problem at the time. She stated once we started using it Ms. Capley wanted us to stop using it because she said we paid too much for it and was causing their taxes to go up too high. He stated he contacted his Attorney, John Anderson, who advised him to take every avenue he could to get a right-of-way into the property because it is landlocked when the flood comes. He stated the flood comes three-to-four times a year and he cannot get to the three acres on the River; that he went to TVA and applied for an application to build a road into the property across the acres TVA has the lifetime easement. He stated TVA and the Corps of Engineers would not let him put anything in the flood zone; that they would let him take stuff out so he took two feet out and put rock, gravel and concrete and built a drive across which still left him in the wintertime four-to-six times a year to be flooded and not able to get to the three acres on the River.

Mr. Crane stated he asked Mr. Anderson what to do and was told to come to the city as the city has an easement and the city could grant the temporary use of their easement when the water was flooded. He stated he got the temporary easement and used it one time in the spring and went to the River and got trees and brush off his and the others' dock; that the city has two sewer lines that are twenty four inches around that run through his pasture and to the pump station that is on his property.

TERMINATE TEMPORARY USE (Continued)

Mr. Crane stated last year the city had a bad episode of the pump station shutting down during a storm which dumped a lot of sewage on his property that had to be cleaned up; that they worked diligently with the city to get it cleaned up as he looks after the pump station and anybody that bothers the pump station in any way they run them off; that they ran two people off on yesterday. He stated the city has an easement to come across his property to get to the pump station to maintain it and they try to keep everything where the pumping is good for the sewer as all the sewage from the valley runs across his pasture, goes to the pump station and is then forced across the River to the sewage plant. He stated all the people complaining about him not wanting to use the city's easement to get in when it floods, he does not want to use it any other time because he has a road; that he only wants to use it when TVA floods the property that they will not let him put anything in and the city has the easement to get in, which is the only time he wants to use this. He stated all the people from the valley go through his property, even those complaining; that when they flush their commode their sewer goes through his property into the pump station that he helps maintain and works diligently with the city to make sure it flows accurately. He stated Ms. Canella at the sewage plant works well with him; that he keeps it mowed and everything done around it so the city can get to it easily.

Councilman Murphy addressed the city attorney and stated at his house EPB has a transmission line that crosses his property and his deed granted an easement to them to have that line cross a portion of his property and asked if it would be up to him or EPB to allow someone else to use that same path.

City Attorney McMahan stated generally speaking the land owner who holds the underlying fee is the one who would grant the easement; that further the burden of the easement, if he has an easement the owner has a certain right and is not allowed to add to the right that has been granted by the underlying property owners.

Councilman Murphy stated that may be in type and character and one thing is if it was an EPB fiber optic line that went originally over the power easement or an AT&T wire that would be quite a different thing if it were talking about the right to passage over his property in a vehicle or on foot. He stated EPB would not have the legal right to grant that, which is his bigger point; that the city gave Mr. Crane the right to something we did not have a right to give him.

TERMINATE TEMPORARY USE (Continued)

Mr. Crane stated his attorney advised him to exhaust every avenue he had because he is landlocked when it floods and by law a person cannot be landlocked; that he is exhausting every avenue he has and is landlocked 100 percent and will have to enter into a civil lawsuit and the city of Chattanooga to get out of this land lock.

Councilman Murphy expressed his understanding; that Mr. Crane is doing due diligence and doing everything he should do as his lawyer gave him great advice. He stated we do not have the legal authority to give him the privilege that we did; that it was a mistake.

Mr. Crane stated his lawyer submitted information to the City Attorney showing the laws; that the city had to do what the law had done in the past for people. He stated Mr. Anderson had the law right that the city could grant him the easement.

Chris Capley of 3142 Waterfront Drive was present speaking on behalf of her mother-in-law who is the owner of the driveway which is the city's easement. She stated this was an easement on this driveway going into the property that was granted to the city of Chattanooga for the sole use of accessing and maintaining the pump station; that as Mr. Crane says he has a road on his own property to get up to the pump station which is on his property. She stated the key factor is that both of the driveways are in the flood plain and if one is flooded the other is flooded and as property owners for 50-70 years have gone by boat to get whatever they need on the River side of the property as there is no dwelling on the end of that property as it is a dock with an open air shed as well as some patio furniture. She stated there is no emergency need that would require anyone to use that easement for the purpose to get out there and clear trees; that it floods out there all the time and after the water goes done Mr. Crane can get there to clear them out. She respectfully asked the Council to pass this resolution rescinding the previous resolution.

Councilman McGary asked Greg Haynes of RPA if this is not the same case the Council was told was being used for boat access. Mr. Haynes responded that he has no idea about this case.

Councilman McGary stated that he thought someone from the RPA office indicated one of the resolutions was requesting one thing but actually it is another and it seems it was this one.

TERMINATE TEMPORARY USE (Continued)

Councilman McGary stated one of his colleagues might remember that the resolution was written so that the individual requesting some sort of access during high water when actually it was for boat access and asked if any of his colleagues remember that.

Councilwoman Scott stated what Councilman McGary is remembering is committee discussion when she explained when this came before Council and was presented to us in committee the implication was there was a structure on the property and what we were granting was an emergency access way in-and-out in the event of a flood which she thought was an issue of life and limb, sort of. She stated since that time she has been out to the property and has seen the access way which goes over private property; that, in fact, there are several dwellings on the way out and when she got out there she was looking for the house because she thought this is to help someone get to safety and what she saw was a boat dock and began to wonder why in a flood if there is a boat a boat dock can be accessed if they want to. She stated there is a road back there that Mr. Crane has put in and it is her thought the problem is the road accessing that is still not high enough to be able to access the back of the property.

Councilwoman Scott stated Mr. Crane indicated this was a property that was flooded by TVA which she thinks is accurate and asked if he is saying he owned this property back when it was flooded and then lost access to the property. Mr. Crane responded "no, that it was the property owner before him".

Councilwoman Scott then asked Mr. Crane when he purchased the property. Mr. Carne responded that he purchased the property three years ago.

Councilman Scott asked if it was withheld from him that this property was within the flood zone. Mr. Crane responded "no, it was not".

Councilwoman Scott clarified Mr. Crane knew it was in the flood zone. Mr. Crane responded they knew it was in the flood zone and that the present owner of the property had been using this easement of the city for 65 years to get in-and-out to the three acres just when it floods, that is the only time.

Councilwoman Scott asked if that is in Mr. Crane's deed. Mr. Crane if there was a deed showing he had access on the property... that he called the six property owners on this and one person does not own this easement; that six property owners own this road coming in.

TERMINATE TEMPORARY USE (Continued)

Mr. Crane stated he contacted four of them as well as and Ms. Canella with the city and everyone agreed he could use this to access when he has to because it has been open for 65 years to the previous land owner which can still be opened as a right-of-way because it has been open for 65 years.

Councilwoman Scott asked City Attorney McMahan when Council grants a temporary easement do we have the right to rescind it.

City Attorney McMahan stated that is one of the conditions we typically put in all our temporary uses and one of the conditions that was put in this temporary use that it could be revoked by the Council. He addressed one of Mr. Crane's points by stating it is true Mr. Anderson presented some law to him and it came to him on the day the matter was before the Council to vote on and he took a quick look at it. He stated there is some "color of law" that would support that position but he is not; that going back to Mr. Murphy's point he was also aware of the fact that you cannot generally burden an easement and could not satisfy himself one way or the other whether Mr. Crane had any legally enforceable interest here. He stated he will not say "yes" or "no" as he is sure Mr. Anderson can present a very good case to a court to have that determined at some point in time.

At this point Councilman Murphy called for the question.

On motion of Councilwoman Scott, seconded by Councilman Murphy,
**A RESOLUTION TO TERMINATE THE TEMPORARY USE AUTHORIZED BY
RESOLUTION NO. 26637 ENCAPTIONED "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 Councilwoman Scott, seconded by Councilman Rico,
**A RESOLUTION AUTHORIZING THE DIRECTOR OF GENERAL SERVICES
TO EXECUTE A LOAN AGREEMENT FROM THE ENVIRONMENTAL
PROTECTION AGENCY (EPA) BROWNFIELDS CLEANUP REVOLVING
LOAN FUND (THE "FUND") TO PROVIDE LOANS TO QUALIFIED
APPLICANTS PURSUANT TO FEDERAL REGULATIONS, SUBJECT TO
CERTAIN CONDITIONS**

Was adopted.

AGREEMENT

On motion of Councilman Rico, seconded by Councilwoman Scott,
A RESOLUTION AUTHORIZING THE ADMINISTRATOR OF THE DEPARTMENT OF PUBLIC WORKS TO ENTER INTO AN AGREEMENT WITH GRIGGS & MALONEY, INC. FOR ENGINEERING SERVICES FOR GROUNDWATER SAMPLING, MONITORING, AND REPORTING SERVICES AT THE SUMMIT LANDFILL, CITY LANDFILL ON BIRCHWOOD PIKE, AND THE FORMER J. H HOLDING COMPANY SITE FOR AN AMOUNT NOT TO EXCEED NINETY-ONE THOUSAND TWO HUNDRED NINETY-SEVEN AND 50/100 DOLLARS (\$91,297.50)

Was adopted.

SPECIAL EXCEPTIONS PERMIT

2011-071: Re/Max Properties North, LLC/Bank of America

The applicant was not present; there was no opposition.

On motion of Councilman Murphy, seconded by Councilman Rico,
A RESOLUTION APPROVING A SPECIAL EXCEPTIONS PERMIT TO ALLOW A DUPLEX IN AN R-1 RESIDENTIAL ZONE LOCATED AT 1503 TAYLOR STREET

Was denied.

OVERTIME

Overtime ending the week of June 9, 2011 totaled \$7,183.29.

PERSONNEL

The following personnel matters were reported for the various departments:

CHATTANOOGA POLICE DEPARTMENT:

- **JASON WOOD** – Return to duty from Military Leave, Police Officer, effective June 3, 2011.
- **CARLOS WOODRUFF** – Suspension (14 days without pay), Master Police Officer, effective June 8-21, 2011.

PERSONNEL (Continued)

EDUCATION, ARTS AND CULTURE:

- **KEVIN NANCE** – Hire, Crew Worker 1, Range 2, \$22,050.00 annually, effective June 3, 2011.

CHATTANOOGA HUMAN SERVICES:

- **VALERIE ERSKINE** – Termination, Dietary Assistant, Head Start, effective May 19, 2011.
- **SHIRLEY MOON** – Termination, Teacher Assistant, Head Start, effective June 2, 2011.

PARKS AND RECREATION:

- **SCOTTIE MCCONNELL** – Hire, Recreation Specialist, Range 9, \$16,798.00 annually, effective June 3, 2011.

CHATTANOOGA FIRE DEPARTMENT:

- **JERRY LEE** – Suspension (1 day without pay), Fire Lieutenant, effective June 9, 2011.

FIRE/POLICE BASEBALL GAME

Chief Parker invited Council members to the baseball game between the Fire and Police departments scheduled for Wednesday at 3:00 p.m. at AT&T field.

LIQUOR LICENSE

Admin. Madison reported a request for change of ownership of a liquor license for Jax Liquor Store in Councilman McGary's district. She stated the change of ownership is to be made in the name of Steve Andrews who has requested it to be given to him exclusively due to the passing of his mother who was the owner. She distributed the document for signature by five Council members and noted the location of the store is listed at 216 Market Street.

REFUND

On motion of Councilman Rico, seconded by Councilman McGary, the Administrator of Finance was authorized to issue the following property tax refund:

PILGRIMS PRIDE CORP.

d/b/a SEABOARD FAMS OF CAHTTANOOGA, INC. \$9,871.76

PURCHASES

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

PUBLIC WORKS:

THURMAN BRYANT ELECTRIC SUPPLY CO. (Lower and better bid)
R42909/301082

Purchase of a 480V Bus Duct

\$38,100.00

SNF POLYDYNE INC. (Lowest and best bid)
R43008/301107

Blanket Contract for Wet Weather Polymer

\$20,000.00 – Annual approximation

ANALYTICAL SERVICES, INC. (Lowest and best bid)
R4287301079

Blanket Contract for Biosolids Laboratory Analysis Services

\$25,000.00 – Annual approximation

PURCHASES (Continued)

INNOVYZE (Sole source)

R44466

Purchase of Annual Support for Sewer Modeling License Agreement and Annual Maintenance per TCA 6-56-304.2

\$14,345.00

LABORATORY RESOURCES AND SOLUTIONS, INC. (Best bid)

R41855

Purchase of Water Analysis Testing Services

\$33,000.00 – Annual estimation

STOWERS MACHINERY CORP. (Only bid meeting specifications)

R42745/301055

Blanket Contract for Equipment Maintenance and Repair Services

\$300,000.00 – Annual estimation

QUALITY TRAFFIC SYSTEMS (Lower and better bid)

R43088

Purchase of Steel Strain Poles

\$14,096.00

HOMESTEAD LAWN AND TRACTOR (Best and lower bid)

R43405

Purchase of Three (3) Walk-Behind Mowers

\$12,876.00

PURCHASES (Continued)

GENERAL SERVICES:

UNISTAR-SPARCO COMPUTERS, INC. (Best complete bid meeting specifications)
R41171/301016

Blanket Contract for Citywide toner and Ink Cartridges

\$100,000.00 – Annual approximation

OSI BATTERIES (Best bid)
R42593/301089

Purchase of Tel Com Batteries

\$10,488.00

CHATTANOOGA HUMAN SERVICES:

MCGRAW-HILL COMPANIES (Sole source)
R43513

Purchase of DLM Early Childhood Express per TEC 6-56-304.2

\$58,000.00 – Approximately

CULINARY DEPOT (Only bid received)
R40330

Purchase of Dishwasher

\$13,272.51

JAKE MARSHALL SERVICE (Lower and better bid)
R42846

Repair Refrigerator and Freezer

\$11,129.00

PURCHASES (Continued)

PARKS AND RECREATION:

**SMITH TURF & IRRIGATION FOR BRAINERD GOLF COURSE (Lowest bid) AND
LADD'S FOR BROWN ACRES GOLF COURSE (Lowest bid)
R43385 AND R43386**

Purchase of One (1) Rough Mower for Brainerd Golf Course and One (1) Rough Mower for Brown Acres Golf Course

\$18,800.00

**HOMESTEAD LAWN AND TRACTOR (Lowest bid)
R44055**

Purchase of Two (2) Two-Wheel Drive Utility Vehicles

\$15,112.48

**SPECIALTY CAR COMPANY (Lowest bid)
R43143**

Purchase of Five (5) Gas Powered Golf Carts

\$13,145.00

CHATTANOOGA FIRE DEPARTMENT:

**EMS INNOVATION (Lowest and best bid)
R43338/301127**

Purchase of Medical Surge Cots

\$15,286.00

REPORTS FROM CITY ATTORNEY

City Attorney McMahan stated he submitted a report for the month of May and had a couple e-mails on that and indicated after looking at the report he noted that he would not send reports weekly unless there seems to be something of particular significance that needs to be brought to the Council's attention immediately. He stated unless the Council requests a change he would send monthly reports.

Councilwoman Berz asked if the Council received the report, to which City Attorney McMahan responded "it was in the weekly packet".

COMMITTEES

Councilwoman Scott announced the next meeting of **the Personnel, Performance and Audit Review Committee scheduled for Tuesday, June 21**. She stated an overview of ChattResults will be given per Councilman Murphy's request and also a review two issues relating to the Audit Committee. She stated during the last meeting there was a request by the Audit Committee to give some feedback to them on what actions we were taking as a result of their recommendations. She distributed information to the Council at this time and noted the information contains two packets: one on the landfill scale operation issue and stated she needs to make an update to the packet; that it was her understanding that the Council had passed the contract referring to this particular issue several years ago and in trying to put together the packet that covers the beginning of the contract and goes to where we are today because some of the issues involved in this particular situation span longer than our service on the Council. She stated some of the contracts go back a long way and she wanted to be able to show the information that included before the present Council was here and bring us up to do to see the data from the Audit Committee, see the information from the Internal Auditor and put that in perspective.

Councilwoman Scott stated next week she will be asking for a consensus of opinion on what to do based on the questions contained within the sheets distributed. She stated what she needs to correct is when she was trying to get the information relating back to the contract for the landfill, when the minutes were pulled to look at that we could only find that the contract came before City Council and discussed in committee and deferred for one week when it came before the Council and we can find no data, no minutes, no vote that ever approved the contract.

COMMITTEES (Continued)

Councilwoman Scott stated the issue she has asked about in the document the Council members have is how we will proceed with regard to the contract which we think has expired, but in reality she does not think it was approved by Council because it never came back to Council. She stated if it did we have no minutes to indicate that ever occurred. She asked that Council members keep that in mind as they read the packet on the landfill scale operation. She stated if anyone from any department or any area has definitive information on how that was approved and did not get in the minutes we need to know about that; that it is her belief there actually is a contract, just not approved.

Councilwoman Scott stated the second issue is that of the conflict of interest issue that the Audit Committee had also asked opinions from the Council on what we wanted to do with that, whether to take action, request action or do nothing. She stated she did not want the Council to come in and get asked these questions without having a chance to look at the data and decide for themselves if they have any questions that need to come up at that time.

Councilman Rico stated the **Public Works Committee will meet on Tuesday, June 21.**

Councilman Murphy stated the **Legal and Legislative Committee will meet on Tuesday, June 21.**

Councilman Gilbert stated the **Parks and Recreation, Education Arts and Culture Committee would meet on Tuesday June 28** to hear a report from Friends of the Zoo.

Councilwoman Berz stated next week we will have very long **Budget and Finance Committee** meetings and hopefully be able to close out the operations budget. She stated the Committee **will meet on Tuesday from 10 a.m. – noon and from 1 p.m. – 3 p.m.** She stated they will be discussing public works, parks and recreation and agency matters, as well as specific questions that have to do with separate funds.

RULES OF PROCEDURE FOR ADDRESSING THE COUNCIL

At this time City Attorney McMahan read from the Council's Rules of Procedure with reference to persons wishing to address the Council on non-agenda matters.

MILTON JACKSON

Milton Jackson of 3806 Highland Avenue stated he and others in his community would like to have a new city ordinance to get the residents throughout Chattanooga to cut their grass and not let it grow any taller than five-to-six feet, as well as overgrowth along fence lines. He stated there are trees that are growing in people's yards that endanger other people's property; that he told the renter next door to him that his (renter's) tree is going to fall on his property. He stated the renter said he could not do anything about it and decided to come to the Council to see what help he can get because it is something new everyone should look at because normally a person knows what is going to happen and should prevent it as he has been taught to use preventative maintenance. He stated the other thing he wanted to mention was three weeks ago he was awakened to his daughter calling out to him about an odor she smelled; that he detected a terrible odor coming from the treatment plant, sewage gases. He stated he did not know what else to do, so he called the fire department who came and tested to see if it was in his home; that he told them the odor was outside which they could not detect. He stated he detected enough as it took his voice away and was thinking since then what the city can do, noting that money can be taken from the parking summit and the storm water money. He stated the problem can be eliminated at the Moccasin Bend Treatment Plan to resolve the problem.

Chairman Ladd asked if he has called 311 about the overgrowth to which Mr. Jackson responded that he has called them.

Chairman Ladd inquired as to Mr. Jackson's Council person and Mr. Jackson stated he hated to talk against his Councilman as he does not get a good response.

Chairman Ladd stated she would see if she could get the Council person to check with the code inspectors and on his last issue she suggested he talk with public works in reference to the odor he is experiencing.

Mr. Jackson stated he would like to work with them if they agree to work with him; that he came up with a solution of the problem because he has done similar work like this before for the Department of Energy.

Chairman Ladd asked that Mr. Jackson talk with Admin. Leach and give him his contact information.

MONTY BELL

Monty Bell of P. O. Box 66303 stated he was present not as a representative of the homeless community but because of the series of events that have been occurring since January as he has been stopped seven times in the last six months by city police; that he is not sure if it is because of the new annexing of residents in the area but as a homeless individual along with so many African American men who have been out here on the streets for eight-to-ten years the place they have to reside seem to be targeted by certain residents with cell phones as being suspicious persons in the neighborhood. He stated he is trying to figure out after eight years of being on the downtown streets how can he be a suspicious person on the streets as he has been the most vocal homeless person in the city and other cities and does not think he is a suspicious person. He stated this is the excuse the officers have been using to stop and detain him; that on yesterday he spent an hour or so with Mrs. Weaver at the police department discussing this because he is in the process of trying to do something to combat the tremendous onslaught of youth deadly violence. He stated on Friday he talked with a gentleman on Main Street in reference to using his facility to launch his radio program which is desperately needed; that there is no black media in television and in print as there is no information coming to his community at all. He stated with all the radio stations here we are limited in what goes on in our neighborhoods and it is unfair that there is no competition; that if people like him who are trying to get hold of what is happening is targeted by the police and none on the Council seem to do anything about the problems in his community, what must he do because he has tried desperately and diligently to be as professional as he can but this has come to a stopping point. He stated he has lost his entire life in this city trying to make a difference and referenced the marijuana charge he is constantly being charged with as there is so much "dope" on the street it is frightening; that a tremendous amount can be picked up at UTC, near Chantz Records on Vine Street, all of downtown – this place is filtered with drugs! He stated as a homeless person they pick these things up and do not necessarily throw them away all the time; that they are in a drug infested environment. He stated he has made several attempts to the City Attorney's office because Mrs. Weaver stated in order to get the public information he needs he would have to contact the City Attorney's office. He stated he needs the video camera from an officer's scout camera from Friday.

Chairman Ladd stated Mr. Bell's three minutes are up and asked that the City Attorney get with Mr. Bell regarding the information he is requesting and respond to that.

ADJOURNMENT

Chairman Ladd adjourned the meeting of the Chattanooga Council until Tuesday, June 21, 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)**