

**CITY COUNCIL BUILDING  
CHATTANOOGA, TENNESSEE  
JANUARY 24, 2012**

Chairman Ladd called the meeting of the Chattanooga City Council to order with Councilmen Benson, Berz, Gilbert, McGary, Murphy, Rico, Robinson, and Scott present. City Attorney Michael McMahan; Management Analyst Randy Burns; and Shirley Crownover, Assistant Clerk to the Council, were also present.

**PLEDGE OF ALLEGIANCE/  
INVOCATION**

The Pledge of Allegiance was led by Councilman Gilbert, followed by invocation given by Christopher Kyles.

**CHRISTOPHER KYLES**

Councilman Gilbert introduced Christopher Kyles to the Council and Audience. He stated that Mr. KyleS was a very young man who spoke so well and was very, very intelligent. He noted that there was so much negativity concerning young people now that he wanted to show something positive—that there were a lot of kids like this young man and that he was going to speak about one of his heroes.

**Christopher** shared with the Council some of his thoughts and feelings concerning Coretta Scott King, the widow of Martin Luther King. He stated that she was a hero to all who wanted justice, noting that her husband, Martin Luther King, died in April of 1968—that that was the day that he was assassinated. After his death, Mrs. King had to take care of their children and teach them values; that she was a very just woman who organized marches, parties, and fundraisers to help better our country and the future for justice and freedom; that she stood for all people, both Black and White, Muslim and Jewish, and had always been a hero to him. He stated that Coretta Scott King would always be remembered in the hearts of all as standing for justice and freedom and equality for the entire world. He noted that she died in January of 2006 and many attended her funeral, including past presidents such as Jimmy Carter; that she stood for civil rights for all people and would long be remembered.

Councilman Gilbert stated that a lot of people were doing a lot of things; that this young man was only 12 years old and an inspiration to kids; that he wanted to show the positive things that are happening in neighborhoods because we see so much negativity and things such as this can do more for the City and the United States as a whole.

CHRISTOPHER KYLES (CONT'D)

Chairman Ladd thanked Christopher, stating that he was a very brave young man and that he had done a great job; that it was a fantastic job, and she wished the meeting could just end right here.

AMEND CITY CHARTER/  
INTERNAL AUDITOR

**Councilman Murphy moved that this matter be tabled. This was seconded by Councilman Benson.** Councilman Murphy explained that he had issues with this and that Councilman Benson had discovered that some of the provisions were not as he thought, and they both believed that this needed more work: that Councilman Benson had less of a problem than he did.

Councilman Benson explained that he did not realize or either had mis-read that the salary would be set by the Audit Committee, using established market data; that he thought the salary would be recommended by the Audit Committee with the approval of the Council and the Mayor; that the way it is written, there would be no limit as to what this person could be paid, and he did not know what recourse the Council would have; that there were some other things that he needed to read more about, too; that he thought Councilman Murphy had other comments to make.

Councilwoman Scott stated that this Ordinance was before us months ago; that there had been weeks and weeks where Councilmembers had an opportunity to say what they wanted to say about this. She asked Councilman Benson if the Audit Committee had contacted him about feedback? He responded "yes", and he gave his feedback, but he thought the portion concerning salary was to be recommended by the Audit Committee and approved by the Council and Mayor, questioning if non-elected officials had this right. Councilwoman Scott questioned if he thought using established market data was an inappropriate way to make a decision on salary? Councilman Benson responded that "market driven" was sometimes extreme.

Councilman McGary agreed that this matter had been discussed for months, yet Councilmen Murphy and Benson still had questions, questioning if there were areas that needed some fine-tuning; that he would be in favor of deferring this but was not in favor of tabling it.

**INTERNAL AUDITOR (CONT'D)**

Councilman Murphy noted that it could be brought back up at the next meeting; that there could be a one week deferral; that if it is tabled and not brought back up, it dies.

Councilman Gilbert stated that Councilwoman Scott was correct; that the Council had been asked to read this and ask questions. He asked Attorney McMahan if we passed this, could it be amended later? Attorney McMahan explained that if this passed by the voters, to have it amended there would have to be a separate referendum; that upon its passage the Council Clerk had to send it to the Election Commission to be included in the August election.

Councilman Murphy contended that there was a tremendous amount of information in this Ordinance that was wrong; that he would agree that Audits are important and that the government should be audited—but auditing was not the most important thing; that this Charter amendment would exalt the Auditor above all else, and there is no accountability; that this Auditor could not be fired unless there is a super majority of an Audit Committee consisting of five accountants. He stated that these accountants were good people but were not our average citizen and were not elected and were not accountable to anyone. He stated that this Ordinance was deeply flawed and included a budget without limit; that the Auditor could expand his staff, and the City would have to pick up the bill; that they could spend as much money as they saw fit; that the Audit Committee could set this person's salary no matter how high, and the Council could not deny it, which was unlike our budget for the Legal department; that if there was a conflict between the office of the Internal Auditor and any city manager, the city manager would have to appear before a committee when summoned—that if there was a question about maintaining a dump, and there was an honest disagreement about operation, the Director of Public Works would have to appear before the Audit Committee. Councilman Murphy continued, relating to the role of the Internal Auditor as it pertained to files during an investigation; that he would be able to look over the shoulders of the Police Dept.; that they would be able to look at essentially everything except health records; that we now have a City Pharmacy and a City Clinic and Ms. Kelley could possibly have to go to Court with the Auditor concerning employees' files; that when Attorney McMahan was in the middle of a lawsuit, he might have to go to court to protect against the Auditor. He stated that this could go on and on; that the Fire Department could be involved as well when there are arson investigations. He noted that also this would constitute duplicate services; that Administration and the Council would still have the responsibility of an Auditor. He ended by saying that this is so “messed” up and is a waste of money and should be tabled and “go away”.

**INTERNAL AUDITOR (CONT'D):**

Councilwoman Berz stated that Councilman Murphy had made an eloquent argument, with a lot of feeling; however some of it was a bit overstated; that in fact we do have an Auditor position, that ethically the Auditor can be held hostage to politics; that what we did several years back, we decided that there needed to be an audit function, and we established the Audit Committee, and it had worked well. She noted that an Auditor can't take action and needed to be able, without interference, to bring to this body issues, over which we would have the ultimate responsibility; that at that time we had talked about including this function in the Charter; that Councilwoman Scott was correct—that the Audit Committee had spent a lot of time and effort, and she felt that this was the best route to go now; that we could have a scenario of “what if's”, and some of this was correct; that this just brings this before the Public, and the Public has the final say-so.

Councilwoman Robinson stated that she voted to approve this on first reading; but things she had heard tonight supported her feeling that the matter should be deferred or tabled for another week; that there were a couple of things that she was concerned about; that she had learned things tonight that she was not comfortable with and questioned the harm in waiting one week so that the Council can do due diligence.

Councilman Benson brought up Roberts' Rules of Order—that to table means it should be brought up at the ensuing meeting next week; that he did not want to nitpick this, but he could not relinquish the responsibility that the voters had given to him and turn this over to the Audit Committee, who would have complete autonomy of the salary; that this Audit Committee is not elected, and it would be hard to get rid of an Auditor; that if the Public had a problem with the salary, they would have no recourse.

Councilwoman Scott stated that first of all, this proposal that has been made is not unusual and was not breaking new ground—that in fact we are among the last to get politics out of the audit realm; that right now this position can be “hired and fired” by the Mayor; that the Mayor has an appointee in every department; that the Auditor's job is to follow the money for the taxpayers—that he documents and follows rules; that we have a situation where the person doing the looking is at the behest of the one who hired him and could fire him. She went on to say that a market-driven salary is acceptable; that without this, a political person could “zero” out the Audit budget; that the way it is written now, we could lose the Auditor, and a budget that is sufficient is needed; that a political person could decide to give them no money, and this position would

**INTERNAL AUDITOR (CONT'D):**

disappear. She stated that the Audit Committee consists of four CPA's and one certified auditor, and they have a long history; that they do the books for some of the most prestigious companies in the City; that if there is any suspicion that they are not appropriate, they are fired; that they have to go by rules and standards, and they cannot deviate; that they are not political appointees, and they have to be pristine; that she had no problem, knowing how tight CPA's are with money, of them making a decision about salary.

Councilwoman Scott continued, stating that the argument about relinquishing the responsibility given to the Council by the voters is interesting; that the reality is that if the voters decide this, they are in charge; that if the Council votes this Ordinance down, then the Public will not have the opportunity to vote on it. She stated that she trusted the Public to make a decision and trusted them enough to approve this Ordinance in order to get their decision; that this puts the voter in the power position, and they can determine this, and she thought they were smart enough to determine this.

At this point Attorney McMahan noted that this takes effect immediately, except for Section 1. As to the question, could this be amended, he answered "probably" before it goes to the Election Commission.

Councilman Gilbert stated that he understood what Councilwoman Scott was saying, and he agreed. He noted that he asked a question last week as to the Audit Committee deciding one way and the Council having a different opinion—that if this were to happen, the matter would be void. He stated that we had nine people on the Council, and we could increase our vote to say that the majority had to be seven and not five; that he thought we could put a clause in and say it has to be seven out of nine to override anything; that he thought this clause needed to be in the Ordinance.

At this time, a Roll Call vote was taken on whether to table this matter:

<b>COUNCILMAN MCGARY</b>	<b>"NO"</b>
<b>COUNCILMAN MURPHY</b>	<b>"YES"</b>
<b>COUNCILWOMAN SCOTT</b>	<b>"NO"</b>
<b>COUNCILWOMAN ROBINSON</b>	<b>"YES"</b>

INTERNAL AUDITOR (CONT'D):

COUNCILMAN BENSON	“YES”
COUNCILMAN GILBERT	“YES”
COUNCILWOMAN BERZ	“NO”
COUNCILMAN RICO	“NO”
CHAIRMAN LADD	“NO”

The motion failed to table for lack of five votes.

On motion of Councilman McGary, seconded by Councilman Rico,  
AN ORDINANCE TO AMEND THE CHARTER OF THE CITY OF CHATTANOOGA, AND ALL ACTS, ORDINANCES, AND OTHER CHARTER PROVISIONS AMENDATORY THEREOF, PURSUANT TO THE PROVISIONS OF ARTICLE XI, SECTION 9, OF THE CONSTITUTION OF THE STATE OF TENNESSEE (HOME RULE AMENDMENT) SO AS TO (1) ESTABLISH AN INDEPENDENT OFFICE OF INTERNAL AUDIT, AND AUDIT COMMITTEE, AND CITY AUDITOR; (2) PROVIDE FOR THE CITY AUDITOR'S QUALIFICATIONS, APPOINTMENT, AND REMOVAL; AND (3) PROVIDE FOR THE OFFICE'S DUTIES AND ACCESS TO RECORDS AND PROPERTY OF THE CITY

passed second and final reading and was signed in open meeting on roll call vote as follows:

COUNCILMAN MURPHY	“NO”
COUNCILWOMAN SCOTT	“YES”
COUNCILWOMAN ROBINSON	“NO”
COUNCILMAN BENSON	“NO”
COUNCILMAN GILBERT	“YES”
COUNCILWOMAN BERZ	“YES”
COUNCILMAN RICO	“YES”

INTERNAL AUDITOR (CONT'D):

COUNCILMAN MCGARY           “YES”  
CHAIRMAN LADD               “YES”

Councilman Murphy stated, we will let the voters decide, but we will have to explain to them that this City will have to pay; that this Ordinance is extremely flawed that we are putting before them; that he thought the taxpayers would reject this.

Councilwoman Scott asked about an explanation before the Public as to the value of having an independent auditor who is beholden to no one, and to find the “truth” is all he is asking for; that this should not be squelched and kept from the Public—that it is worth it because this Auditor has more than saved us from many bad things; that we need to do this for the people and let the people make the final decision.

AMEND CITY CODE/  
APPEAL HEARINGS

**Councilman Gilbert made the motion to amend this Ordinance to read 0% rather than 2%. This was seconded by Councilman McGary.**

Chairman Ladd confirmed that this would take it to 0%.

Councilman Murphy confirmed that it was changing the text to read “cumulative loss of gross income of less than 2% to 0%”. He explained that this would mean that employees would not to have any loss of income to appeal. He did not feel this should be done.

Councilman Gilbert maintained that it was the same policy as for the Fire and Police.

Attorney McMahan stated that as it is written it is gross income of less than 2% in a twelve month period; that the whole Ordinance would make no sense if we say 0%. **He stated that there could be a simple amendment such as any employee who is demoted or suspended shall have the right to appeal a disciplinary act.**

**APPEAL HEARINGS (CONT'D):**

Councilman Benson stated that he would strongly support any measure where we treat all employees the same. Attorney McMahan stated that with such an amendment, all employees could appeal.

Councilwoman Scott made mention of a list of grievances that goes over suspensions—that there were 224 of them, and she stated that she had asked Attorney McMahan what we were paying for an Administrative Law Judge for his portion—that it would be a certain number times \$1,000 per case; that if all these suspensions made an appeal, we could be looking at one quarter of a million dollars. She stated that with 0% there would be no low limits—that the employee could say I want to appeal this, and we would have to get an attorney to come in. She stated that this was not a good use of time and resources, and she disagreed with 0% wholeheartedly—that it was too open-ended, and she would expect that this would be abused; that we should not do this.

Councilman McGary stated that Councilman Murphy had made the statement that the origin of the appeal hearing is that employees are given the right as a choice. He asked if there was any proof that city employees are any less than Fire and Police to be retaliated against; that any city worker is open to retaliation. He stated that we should be equal—that a city worker is a city worker. He stated that Councilwoman Scott would be aware after serving on Personnel Hearings that there are three options—uphold the action, dismiss the action, or modify the action; that an Administrative Law Judge can uphold, dismiss, or modify; that his hope would be that this would not be abused but that we would have the opportunity to strengthen the original penalty and the penalty could be increased for the employee wasting our time; that he thought there would be measures within the Code to mitigate against this behavior; that details could be worked through.

Councilman Gilbert stated that he agreed with Councilman McGary; that he worked in the corporate world, and they did not have this type of problem; that all should have the opportunity for a grievance so that department heads do not play favorites and freely give a suspension to one employee and not another one.

Councilwoman Berz stated that she believed in equal treatment of employees but was also aware of the taxpayer's dollars; that the figures that had been given were not quite true in referring to an Administrative Law Judge or the Council hearing the cases on their own; that if we were going to spend one quarter of a million dollars, the Council could say at some level we will hear these cases on our own; that we needed to be careful about making statements



**APPEAL HEARINGS (CONT'D):**

about costs as to how many instances were appealed and at what cost; that we have not data. She noted that she had sat on panels and asked Attorney McMahan about how many we had per year? He responded about one a month. Councilwoman Berz noted that this was when the Council was hearing cases, and it is less now; that employees are not appealing everything, and we had to be very judicial in guarding their rights—that tossing out figures is a scare tactic.

Attorney McMahan noted that when the Council was hearing the cases, we paid an attorney about \$150 an hour, and it went up to \$250 an hour and sometimes the cases lasted from five to seven hours.

Councilwoman Berz stated that once a month is not a great number of appeals; that whether the decision is made dealing with real figures and weighing against the cost, it is the right thing to do; that she did not like the ideas that are tossed out.

Councilman Murphy stated that he wanted to be clear with the audience; that he had met with the Labor Union representatives that represent City employees, and it had been brought up; that treating all employees the same sounds great, but it does not happen—that the City Attorney does not have to pass the same tests as do firefighters; that we don't fire Public Works' employees over minor arrests that happen off duty like we do employees of Fire and Police—that we do treat employees differently—that Parks and Recreation employees have to have background checks if they work with children—that we don't treat all employees equally and never will—that it is a great sound bite.

Councilwoman Scott stated that when this particular issue was brought up, the policy came before the City Council, and the issue was raised; that the Personnel Dept. was going to make a proposal; that it is a fact that the Fire and Police Dept. has an Internal Panel on which all the Councilmembers have a representative; that they hear issues before a decision is made to suspend and revoke—that this is a layer that works well in Fire and Police. She went on to say that the same type of layer of examination could exist on the civilian side; that Personnel would have the ability to go back and question; that the layer of looking at this by a Panel was a suggestion that was to come to the Council, but it has not been explored; that this might could be reviewed before the issue goes to the Administrative Law Judge. She emphasized that the Council did not hear this, and she wanted them to know that we have not examined better options that are out there.

**APPEAL HEARINGS (CONT'D):**

Attorney McMahan again outlined his suggested amendment, **any employee who is demoted or suspended shall have the right to appeal a disciplinary act**, and a roll call vote was taken on amending this Ordinance:

COUNCILWOMAN SCOTT	“NO”
COUNCILWOMAN ROBINSON	“YES”
COUNCILMAN BENSON	“YES”
COUNCILMAN GILBERT	“YES”
COUNCILWOMAN BERZ	“ABSTAIN”
COUNCILMAN RICO	“NO”
COUNCILMAN MCGARY	“YES”
COUNCILMAN MURPHY	“NO”
CHAIRMAN LADD	“NO”

**The motion to amend failed for lack of five votes.**

On motion of Councilman Murphy, seconded by Councilman Rico,  
**AN ORDINANCE AMENDING CHATTANOOGA CITY CODE, PART  
II, CHAPTER 2, ARTICLE III, SECTION 176, RELATIVE TO  
PERSONNEL APPEAL HEARINGS**  
passed first reading on roll call vote as follows:

COUNCILWOMAN ROBINSON	“YES”
COUNCILMAN BENSON	“YES”
COUNCILMAN GILBERT	“NO”
COUNCILWOMAN BERZ	“ABSTAIN”
COUNCILMAN RICO	“YES”

APPEAL HEARINGS (CONT'D):

COUNCILMAN MCGARY	“NO”
COUNCILMAN MURPHY	“YES”
COUNCILWOMAN SCOTT	“NO”
CHAIRMAN LADD	“YES”

Councilman Benson stated that this is better than it was—that we had said 4% and now it is down to 2%.

INTERVENTION IN RECALL

**Councilwoman Berz moved to have this brought forward at this time as she had to leave for a neighborhood meeting and wanted this discussed before she left. This was seconded by Councilman Murphy with Councilman McGary voting “No”.**

Chairman Ladd indicated that several in the audience had requested that they be able to speak concerning this matter.

The first speaker was **Jim Folkner of 4701 Mountain Creek Rd.** He stated that he was not sure why the Judge asked to have the City intervene; that he did not ask them. He questioned if the City Attorney was to defend the City Charter or the Mayor? He stated that he also felt that an outside attorney should be counsel. He mentioned the controversy surrounding Excalibur, stating that this was representative of the City. He stated that the expending of this money was not in the best interest of the City and the taxpayers.

**Charlie Wysong of Robinson Drive** was the next speaker. He wanted to know what the position of the City would be? Councilman Murphy responded that the Council had talked about this in committee; that it looks like the Judge thinks we are necessary, and we won't be sued nor slow the process down; that if the City comes in as a party it can be heard on February 10<sup>th</sup>; that the City Attorney is taking the position of the Judge telling us what the law is. Mr. Wysong stated that his position was that he had never known an attorney to take a position other than arguing for their corporation; that in the hallway, the City Attorney had told him that the City Charter was amended but never enacted. He questioned what the City had to lose if the Charter was enforced or not; that if they were willing to accept the maximum damage, what was the argument? He stated that he thought there was a better use of money and in terms of money, questioned what it would cost the City. He wanted to know if the cost to the City had been established?.

**RECALL (CONT'D):**

Attorney McMahan responded that the City paid for the Court Reporter and the City Attorney's staff that was used—that there was no out-of-pocket cost but the Court Reporter.

Mr. Wysong stated that he hoped the City would argue for their own Charter.

**Mark West of 2315 Heavenly View** was the next speaker. He showed appreciation to the Council for allowing him to speak and apologized for his attire. He stated that it was interesting and concerning, at the very least, that the judge in this matter felt it important to research whether the City should be involved in the case, yet this same judge found it unnecessary to explore whether the citizens of Chattanooga and the 15,000 individuals who signed the recall petition should be involved. He asked if this did not trouble the Council? He stated that he would contend that the City Council members are accountable not only to defend and enforce the City Charter but are accountable also to the voters who elected them, and it concerned him that the City Council would consider engaging City Attorney Mike McMahan as their counsel—particularly when Mr. McMahan previously stood against the City Charter as evidenced by the statements he made and positions he took last spring during the Mayor's first lawsuit. He noted that Mr. McMahan had been quoted as saying that he was not able to serve two masters and under the City Charter, he is answerable to the Mayor and City Council. He stated that he believed that the basic principle still holds true and would support the notion that the City Attorney is conflicted in this matter. He questioned why the City Attorney was concerned about the authority and supremacy of our City Charter a year and a half ago and yet that assertion led to no urgency to determine if the Charter was in fact in force by that same attorney and even this Council until today. He stated that now that the will of the voters is on the verge of being affirmed through a scheduled election, it appears that the establishment elite, from the Judiciary, to the Council, and to the Mayor are willing to consider any action or strategy to snuff out the voice of the people. (At this point, Chairman Ladd asked that Mr. West wrap up his remarks, as his time was up). He quickly said that this was not only troubling but more importantly raises serious doubts about the intent, integrity and transparency of some involved in this entire matter. He stated that a "Yes" vote tonight may be contrary to the will of the people but ultimately it is contrary to the Council because he would assert that the rights we are requesting that the Council honor and protect are actually the Council's rights as well and someday they would again join the ranks of "We the people".

**RECALL (CONT'D):**

Councilman Gilbert stated that perception is a problem, stating that maybe we should hire an outside attorney, and for that reason, he would have to vote “No”.

Councilman Murphy noted that the Council discussed being an advocate for the Charter in committee. The reality is that the Judge needed the City to be in the case, and if we don't, it will delay resolving this matter; that he did not think that those who signed the Recall would want delay, and in the interest of no further delay was what the Council was voting on. He stated that he was not for delaying this.

Councilman Benson added that the Judge directed the City to get counsel to represent the City and to get an outside attorney would cause us to spend more of the taxpayers' money than using our own City Attorney; that the Judge directed us to expedite this case; that this would authorize the City Attorney to answer the Judge's request; for us to be contentious would be counterproductive, and we don't want to drag this out forever, and we are trying to speed up the situation.

Councilman McGary stated that the timeline is important; that the issue is “How do we enter this lawsuit?” He stated that Judge Hollingsworth has expressed his intent, and it is in our best interest—that our hands are tied; that he will tell us what our Charter means. He stated that the Council has sworn to uphold the State Constitution, and our position should be firm. He stated that he thought we were doing a grave disservice to Mike McMahan, who is conflicted and should hire outside counsel; that he believed our Charter is the Law unless superseded by State Law; that the Council is a true representative of the will of the people, and this is the honorable way.

Councilwoman Berz stated that we had discussed this a lot; that first, what is the cost to the taxpayers if the City Attorney represents the issue? The answer is “no cost” to the taxpayers other than a Court Reporter. She noted there would be great cost if we hired an outside counsel; that we need to bring closure to this; that we don't know whether or Charter is correct or not. She stated that she did not participate in voting for this Charter, and at this point, we are intervening neutrally; that the Judge is to tell us what it means; that she thought if we go in this time as intervention, we will get results and can stand firm; that this will bring a closure to this matter. She noted that the question had been asked as to why the citizens had not been asked to intervene. She asked those who had spoken if they thought they should also intervene?

**RECALL (CONT'D):**

Mr. Folkner responded that he thought it was irregular to ask people into a lawsuit and also to invite one side and not the other. Councilwoman Berz asked Mr. Folkner if they were considering asking to intervene? He responded that they were considering a lot of things. She stated that we needed to reach closure—that this could drag on forever.

Mr. Folkner questioned sending an attorney to court and not supporting the City Charter; that what Mr. Wyszog had said that Attorney McMahan said in the hallway was correct; that we have a valid City Charter that was passed by the Council, and the City Charter should be supported.

Councilwoman Berz stated that it was a given that we support the Charter as a practical matter; that if we go in supporting the City Charter and ask the Judge to tell us what is right—that we get closure either way.

Mr. Folkner responded that the Judge ruled against the Charter, and this was appealed; that if the Attorney was not going to give his point of view, why send him to court; that he should take a position. He went on to say that the Mayor never objected to what they were doing during the recall; that it was after it was approved by the Election Commission that he objected. He stated that the Attorney should go to court to take a position—not to just say “Hi”.

Councilwoman Scott stated that Mr. Folkner was correct; that it boggled her mind that our City Attorney, who is conflicted, would be sent to represent us when we are even conflicted; that it makes no sense; that the City Council approved this Charter and voted for this; that Mayor Littlefield was on the Council at that time, and he voted for it; that Attorney McMahan helped to write it, and this is the subject of controversy. She questioned why we would send him in and how he would present this—that obviously he would try; that that is the reason we should not intervene, and the reason we are on the hook—that if we don't intervene, the Mayor's Attorney will sue the City Council—that this is a terrible situation to be in, and this was mind boggling to her. She went on to say that the people who signed the Recall did not create this document, and we need to not be a part of this; that it needs to be someone independent who did not write this to state an opinion.

Councilman McGary stated that he was an advocate for Mike McMahan; that suggesting that Mike should represent this Body is either insensitivity or ignorance—when we ignore the fact that he is conflicted and send him in anyway.

**RECALL (CONT'D):**

Councilman McGary continued, stating if we entered into this lawsuit, and it was the same result, we would be asking the wrong questions. He talked about the question of the Court of Public Opinion—that we go in with our hands open saying “tell us what it means”; that we are called to defend our City Charter and questioned “yet” why do we not defend the City Charter.

Councilwoman Berz said that she thought we had stated our position; that we have a record of standing in defense of the City Charter; that if the Judge wants us to be there, we have already stated all of this; that Attorney McMahan should go forward.

Attorney McMahan stated that he worked at the will of the Council in writing legislation; that five could direct him and five had indicated that they wanted him to go in and take this; that we were the proper party in this case; that we are conflicted and would be present in court to hear the decision of the Court and to be bound by that decision.

Chairman Ladd wanted to address a quote by Mr. West that she questioned—that this was a question that she had answered on television and was not the question that was before her today—that it was a totally different situation; that she had been asked what we should do if the Recall happened right then—that in that particular case, she felt we would have had to have outside counsel—that there would have been a conflict; that the question put before her today was whether we needed outside counsel and was totally different from when she answered on television; that this had been taken out of context in the discussion, and she wanted to be true to herself.

Councilman Benson indicated that he still wanted to talk, but the question had been called for.

On motion of Councilwoman Robinson, seconded by Councilman Rico,  
**A RESOLUTION AUTHORIZING THE CITY ATTORNEY TO INTERVENE IN THE CASE OF *LITTLEFIELD V. ELECTION COMMISSION* IN THE HAMILTON COUNTY CIRCUIT COURT TO OBTAIN A DECLARATORY JUDGMENT AS TO THE APPLICATION OF SECTION 3.18 OF THE CHARTER IN THE CONTEXT OF THE ENACTMENT OF TENNESSEE CODE ANNOTATED SECTION 2-5-151 TO DETERMINE THE NUMBER OF SIGNATURES REQUIRED TO RECALL THE MAYOR**

was adopted on Roll Call vote as follows:

**RECALL (CONT'D):**

COUNCILMAN BENSON	“YES”
COUNCILMAN GILBERT	“NO”
COUNCILWOMAN BERZ	“YES”
COUNCILMAN RICO	“YES”
COUNCILMAN MCGARY	“NO”
COUNCILMAN MURPHY	“YES”
COUNCILWOMAN SCOTT	“NO”
COUNCILWOMAN ROBINSON	“YES”
CHAIRMAN LADD	“YES”

(Councilwoman Berz left at this time).

**CONSULTANT POLICY**

On motion of Councilwoman Scott, seconded by Councilman Murphy,  
A RESOLUTION APPROVING THE ADOPTION OF THE TENNESSEE  
DEPARTMENT OF TRANSPORTATION LOCAL VERSION OF TDOT  
CONSULTANT SELECTION POLICY (FORM 1-2), RELATIVE TO THE  
CONSULTANT SELECTION POLICY FOR PROJECTS FUNDED IN  
WHOLE OR IN PART WITH FUNDS PROVIDED BY THE FEDERAL  
HIGHWAY ADMINISTRATION OR THE TENNESSEE DEPARTMENT  
OF TRANSPORTATION  
was adopted.



**MOU/FIRST RESPONDER**

On motion of Councilman Murphy, seconded by Councilman McGary,  
**A RESOLUTION AUTHORIZING THE CHIEF OF THE CHATTANOOGA FIRE DEPARTMENT TO EXECUTE A MEMORANDUM OF UNDERSTANDING WITH HAMILTON COUNTY FOR THE CHATTANOOGA FIRE DEPARTMENT TO PROVIDE FIRST RESPONDER SERVICES IN THE CITY LIMITS OF CHATTANOOGA**  
was adopted.

**DEBT MANAGEMENT POLICY  
ELECTRIC POWER BOARD**

On motion of Councilman Benson, seconded by Councilman Gilbert,  
**A RESOLUTION TO AMEND THE DEBT MANAGEMENT POLICY SO AS TO ADD AN ADDENDUM FOR THE ELECTRIC POWER BOARD**  
was adopted.

**U.S. POSTAL SERVICE**

On motion of Councilman McGary, seconded by Councilman Gilbert,  
**A RESOLUTION TO SUPPORT THE NON-CLOSURE OF LOCAL BRANCHES AND OFFICES OF THE UNITED STATES POSTAL SERVICE**  
was adopted with Councilwoman Scott voting "no".

**TAFT YOUTH CENTER**

On motion of Councilman Benson, seconded by Councilman Gilbert,  
**A RESOLUTION TO SUPPORT THE NON-CLOSURE OF THE STATE OF TENNESSEE TAFT YOUTH DEVELOPMENT CENTER**  
was adopted.

**OVERTIME**

Overtime for the week ending January 19, 2012, totaled \$4,300.54.

**PERSONNEL**

The following personnel matters were reported for the various departments:

**CHATTANOOGA POLICE DEPT.:**

- ✓ **JULIE JOHNSON**—Family Medical Leave for Police Records Tech., Range 5, effective 1/7/12—2/7/12.
- ✓ **PAMELA PHILLIPS**—Hire as Police Records Tech., Range 5, \$24,500 annually, effective 1/13/12.
- ✓ **MATTHEW BIBLE**—Hire as Police Records Tech., Range 5, \$22,350 annually, effective 1/13/12.
- ✓ **STEVE WIERTEL**—Reinstatement of Police Officer, \$35,913 annually, effective 1/13/12.
  
- ✓ **MATTHEW BALINGER, CHARLES BLANKENSHIP, MATTHEW BOND, SAMUEL BOOKER, SCOTT BRINKMAN, STEPHEN BULKLEY, CHARLES DECKER, KELLY DOWNS, LARRY ELLIS, MICHAEL FLORES, ZACHARY FRANKS, CARL FRAZIER, PATRICK FUGITT, NATHANIEL GREENE, MANTAQUE HICKS, HARRY HORTON, KEITH HUNTER, REUBEN JUSTICE, JARROD JUSTICE, JENNIFER LOCKHART, REGINALD MCCULLOUGH, MICHAEL MOORE, ALAN OWSLEY, JUSTIN ROBERTS, RYAN VANDERPOOL, TRENT KILPATRICK, ERIC LANE, AND CHRISTOPHER LEWELLYN**—Hire as Police Cadets, PD 1, \$34,118.00 annually, effective 1/13/12.

**CHATTANOOGA FIRE DEPT.:**

- ✓ **HOWARD BAKER**—Promotion to Captain, FD4, \$49,725.90, effective 1/13/12.
- ✓ **AMANDA HORNER, LARRY KING, JENNY PARKER**—Promotion to Lieutenant, FD3, \$43,358.00 annually, effective 1/13/12.
- ✓ **STEVE JAMES**—Retirement of Lieutenant, effective 1/13/12.
  
- ✓ **RUBEN SHIELDS**—Retirement of Battalion Chief, effective 12/31/12.

**PERSONNEL (CONT'D):**

**INFORMATION SERVICES:**

- ✓ **LEANN TINKER**—Resignation of IT Buss Project Analyst, effective 1/27/12.

**HOTEL PERMITS**

On motion of Councilman McGary, seconded by Councilman Rico, the following Hotel Permits were approved:

<b>BEST WESTERN HERITAGE INN</b>	7641 Lee Highway, Chatt., TN
<b>GLENDALE COURTS</b>	930 Signal Mtn. Rd., Chatt., TN
<b>MOTEL 6 #700</b>	7707 Lee Highway, Chatt., TN

Chief Parker announced that on February 6<sup>th</sup> there will be an opening of the Fire Station in the Tiftonia area. He will provide more information later.

Chief Parker also announced that there would be a house fire drill on Friday morning for the cadets at 2618 Cowart Street. He explained that this was an old house that was a condemned structure.

**DEATH OF REES SKILLERN**

Chief Parker stated that he had just heard of the death of Rees Skillern, who is the son of County Commissioner Fred Skillern.

**REFUNDS & TAX PAYMENT**

On motion of Councilman Rico, seconded by Councilman Murphy, the Administrator of Finance was authorized to issue refunds for Water Quality Fees and/or Property Taxes Overpayment and payment of property taxes:

**HAMILTON COUNTY CLERK AND MASTER--\$9,295.42** due to money received from Bankruptcy Court.

**REFUNDS (CONT'D):**

**TOMMY & DIANE WHITE --\$2,210.87**

On motion of Councilman Rico, seconded by Councilman McGary, the Administrator of Finance was authorized to issue refunds of Water Quality Fees and/or Property Taxes Overpayment for:

**DANNY & DELETHA SMITH; DAVID & LINDA MARCUM; CHRIS & SHANNON SWANN; VANGUARD INVESTMENTS, INC.; REINALDO & ANDREA RAMIREZ; LEO & MARGARET PENDYGRAFT; CLAUDELL & OLLA FAYE TURNER; AND TAGNER & BRENDA BAILEY—For total refunds of \$12,766.21.**

**PURCHASES**

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

**CHATTANOOGA FIRE DEPARTMENT:**

**SMITHS DETECTION (Single Source Purchase)**  
**Requisition R53187**

HazMat ID Upgrade

\$15,000.00

**HUMAN SERVICES DEPARTMENT:**

**CERTIFIED MAINTENANCE SERVICE (Lowest and Best Bid)**  
**Requisition R52378**

Blanket Contract for Floor Cleaning Services

\$13,500 annually approximately

**PURCHASES (CONT'D):**

**PUBLIC WORKS DEPARTMENT:**

**PIPING SUPPLY CO. (Best Bid meeting specs.)**  
**REQUISITION R52027**

Blanket Contract for various valves

\$50,000 annually, approximately

**CHATTANOOGA INDUSTRIAL SUPPLY (Best Bid meeting specs.)**  
**Requisition R52141**

Blanket Contract for Galvanized Steel Fittings

\$50,000 annually, approximately

**CULLIGAN WATER SYSTEMS (Best Bid meeting specs.)**  
**Requisition R52227**

Blanket Contract for Cooling Tower and Hot Water Systems Chemical Services

\$30,000 annually, approximately

**JEN-HILL CONSTRUCTION MATERIALS (Lowest Complete Bid meeting specs.)**  
**Requisition R52885**

Blanket Contract for Erosion Control Materials

\$29,000 annually, approximately

**ATTORNEY MCMAHAN**

Attorney McMahan reported that Phil Noblett had been in mediation discussions with the Court of Appeals in regards to six police officers. This is the case of Alonzo Hayward. Claims against the City were dismissed, but Attorney McMahan noted that this could be appealed. The settlement is in the amount of \$33,500, which will go to Mr. Hayward's three children. **On motion of Councilman Benson, seconded by Councilman McGary, this settlement was approved to be paid.** Councilman Murphy added that this is not because we feel that the officers did anything wrong.

**COMMITTEES**

Councilwoman Scott announced that the Beer Code Sub-Committee will meet on **Friday, January 27<sup>th</sup> from 10:00 a.m. to 12:00 noon.**

She also announced that the **Personnel, Performance and Audit Review Committee will meet on Tuesday, January 31<sup>st</sup> immediately following the Public Works Committee.**

Councilwoman Scott announced that on **Tuesday, January 31<sup>st</sup> at 2:00 P.M.** there will be an Informational Meeting concerning Excalibur and the Mesh Network. This will be held in the J.B. Collins Conference Room.

Councilwoman Robinson announced that there would be a **Housing and Neighborhood Services Committee meeting on Tuesday, January 31<sup>st</sup> immediately following the Personnel, Performance and Audit Review Committee.** At that time we will hear a presentation regarding Purpose Built Communities, which is mixed use in Atlanta for retail and green spaces. She stated that this was information only and that it was her understanding that former Mayor of Atlanta, Shirley Franklin, will be along with the group who are presenting. She stated that the public was invited.

Councilman Rico reminded everyone of the **Public Works Committee scheduled for Tuesday, January 31<sup>st</sup> to immediately follow the Agenda Session.**

Councilman Gilbert scheduled a meeting of the **Parks and Recreation Committee for Tuesday February 7<sup>th</sup>** for a discussion on fees.

**JEFF PERLACKY**

**Mr. Jeff Perlacky of West Hills Drive** addressed the Council. He stated that he came here in September concerning Cummings Cove. He thanked Attorney McMahan and Chief Dodd for removing the off-duty officers. He stated that he had been talking to Attorney McMahan, but there were still points to be addressed concerning his own easement on River Gorge Drive; that on his own easement he could drive any form of vehicle and that he needed to drive a dirt bike and four-wheeler and had been approached by Officer Rick Mincey, who said that this was not happening. He reiterated that this pertained to his own easement. He stated that he had still heard nothing, and he wanted to move forward on this.

**JEFF PERLACKY (CONT'D):**

Councilwoman Scott asked if what he was asking for was to be able to use a dirt bike and ATV on a City street? Mr. Perlacky responded that it was part of the settlement in Court, and the City signed off on this. She asked him if he had a copy of this? He responded that he could get it to her. Councilwoman Scott stated that she would like to ask for an opinion; that there was a tremendous amount of dirt on the road from bikes; that ATV's are not legal on our streets nor are dirt bikes; that she did not understand how Mr. Perlacky had the right to access a city street in any way he wanted if it were not a legal road use. She stated that she needed clarification, questioning if he had a bulldozer would he be able to run it on the city street? She stated that this did not make any sense to her. Mr. Perlacky responded that the Court had said he would not lose any existing rights. Councilwoman Scott responded "You don't have the right to have a tank on this road". She stated that he was "stretching it". Mr. Perlacky maintained that he was supposed to be able to access the road in the ways that he used to and that he needed a dirt bike and ATV.

Attorney McMahan asked that Mr. Perlacky provide a copy of the decision—that he would not be granted access over what are now public streets—that it says nothing about dirt bikes, four-wheelers, or bulldozers. He stated that it was his belief that Mr. Perlacky would have to utilize a vehicle that is authorized on a public road.

Councilwoman Scott stated that if he really wanted this settled, that Mr. Perlacky could file suit against the City of Chattanooga. Mr. Perlacky responded that he would do this.

**CHRIS BROOKS**

**Mr. Chris Brooks** addressed the Council. He thanked the Council and stated that tonight had been really interesting. He thanked Councilman McGary, Councilman Gilbert and Councilwoman Scott for their votes tonight, stating that he appreciated them. He stated that last year Attorney McMahan wrote a brief arguing against the City Charter; that his position on the City Charter was that it was voted on but was never actually enacted. He questioned the City Council allowing the City Attorney to proceed against the Recall; that he said he was neutral, but he wrote the brief against the Charter. He stated that the Judge did not technically ask for the City's intervention, but if not, the Mayor's attorney would have to sue the City. He again thanked the previously three mentioned for their votes.

**ADJOURNMENT**

Chairman Ladd adjourned the meeting of the Chattanooga City Council until Tuesday, January 31, 2012, 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)**