

Municipal Building
Chattanooga, Tennessee
November 3, 1998

The Meeting of the Chattanooga City Council was called to order by Chairman Crockett, with Councilmen Hakeem, Hurley, Lively, Pierce, Rutherford, Shockley, and Taylor present. Councilman Eaves was absent due to illness. City Attorney Randall Nelson, Management Analyst Randy Burns, and Assistant Council Clerk Shirley Crowover were also present.

INVOCATION

City Attorney Nelson gave the invocation for the evening.

MINUTE APPROVAL

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

PRESENTATION: REBECCA KOONTZ
"IN YOUR FACE" ART PROJECT

Chairman Crockett recognized Ms. Koontz, expressing the delight of the Council to have her present, mentioning the art work that was recently displayed in City Hall.

Ms. Koontz invited everyone to an exhibit at the **Creative Discovery Museum on Thursday, November 12th at 5:30 P.M.** She encouraged everyone to come out and support our children who have worked so hard on this project. She mentioned a new teacher that we now have working with the artist, noting that we have 120 children and each child has made two tiles. She mentioned the part that Allied Arts had played in this, as well as a Chattanooga State video. She encouraged the Council to please come down and see what the children have done, stating that she thought they would be impressed.

RECOGNITION OF BOY SCOUT TROOPS

Chairman Crockett recognized Scout Troops 137 and 221 who were in the audience tonight along with their Scout Masters Mike Payne and Jan Wheeler. The boys were working on their Citizenship Merit Badge and each Scout introduced himself.

AMEND CITY CODE
SLUM & BLIGHT CLEARANCE

On motion of Councilwoman Hurley, seconded by Councilwoman Rutherford, AN ORDINANCE TO AMEND PART II, CHATTANOOGA CITY CODE, BY ADDING NEW SECTIONS 21-101 TO 21-127 TO PROVIDE FOR SLUM AND BLIGHT CLEARANCE FOR DEVELOPMENT AND/OR REDEVELOPMENT OF SUCH PROPERTIES passed second reading. On motion of Councilwoman Rutherford, seconded by Councilman Pierce, the ordinance passed third and final reading and was signed in open meeting.

AMEND ZONING ORDINANCE
TIME EXTENSION

On motion of Councilman Pierce, seconded by Councilman Hakeem, AN ORDINANCE TO AMEND ORDINANCE NO. 6958, AS AMENDED, KNOWN AS THE ZONING ORDINANCE, SO AS TO AMEND ARTICLE VII, SECTION 103, TO CREATE A PROCESS FOR THE EXTENSION OF TIME FOR RESTORATION OF NONCONFORMING USES DESTROYED BY FIRE, EXPLOSION, OR OTHER CASUALTY, SUBJECT TO CERTAIN CONDITIONS passed first reading.

AMEND ZONING ORDINANCE
NEW LANDSCAPE LANGUAGE

On motion of Councilwoman Hurley, seconded by Councilman Hakeem, AN ORDINANCE TO AMEND ORDINANCE NO. 6958, AS AMENDED, KNOWN AS THE ZONING ORDINANCE, TO INCORPORATE NEW LANGUAGE RELATIVE TO CERTAIN SUBSECTIONS WITHIN ARTICLE IV OF THE LANDSCAPE PROVISIONS AS ADOPTED IN ORDINANCE NO. 10692 passed first reading.

AMEND ZONING ORDINANCE
CREATE PERMIT PROCESS IN C-1

Councilman Lively asked that Attorney Nelson read the amendments outlined in this Ordinance. Attorney Nelson explained that this was the original version as amended and read Section 1 (F) of the Ordinance, paying particular attention to (2) which states that all units placed on such lots shall be for display only.

AMEND ZONING ORDINANCE (CONT'D.)

On motion of Councilwoman Hurley, seconded by Councilwoman Rutherford, AN ORDINANCE TO AMEND ORDINANCE NO. 6958, AS AMENDED, KNOWN AS THE ZONING ORDINANCE, SO AS TO AMEND ARTICLE V, SECTION 504, TO CREATE A SPECIAL PERMIT PROCESS FOR THE DISPLAY AND SALE OF MANUFACTURED HOMES WITHIN C-1 HIGHWAY COMMERCIAL ZONE, SUBJECT TO CERTAIN CONDITIONS AND TO AMEND ARTICLE VIII, SECTION 107, TO ADD A NEW SUBSECTION 23 passed first reading.

REZONING

#1998-163 (FREEMAN SMITH)

Mr. Ben Plain was present and asked to withdraw this request for C-2 Zoning. He explained that the property was already zoned C-1. Ms. Haney of the Planning Staff suggested that Mr. Plain hold his withdrawal until the third and final reading of the prior Ordinance and withdraw at that time to insure that this rezoning is not needed. As there was some confusion on the part of the Council, Ms. Haney explained that the Council was passing the prior Ordinance to accommodate this applicant's present zoning and use. Mr. Plain explained that with the passage of the prior Ordinance, he would not need this rezoning.

On motion of Councilwoman Hurley, seconded by Councilwoman Rutherford, AN ORDINANCE TO AMEND ORDINANCE NO. 6958, AS AMENDED, KNOWN AS THE ZONING ORDINANCE, SO AS TO REZONE A TRACT OF LAND LOCATED IN THE 6900 BLOCK OF HIGHWAY 153, MORE PARTICULARLY DESCRIBED HEREIN, FROM C-1 HIGHWAY COMMERCIAL ZONE TO C-2 CONVENIENCE COMMERCIAL ZONE **was deferred two weeks.**

CLOSURE AND ABANDONMENT

#1998-143 (HAMILTON COUNTY AND CITY OF CHATTANOOGA)

On motion of Councilman Lively, seconded by Councilwoman Hurley, AN ORDINANCE CLOSING AND ABANDONING PORTIONS OF 4TH STREET, ROANOKE STREET AND ALLEYS LOCATED SOUTHWEST OF EAST 3RD STREET, NORTHWEST OF WILLOW STREET, MORE PARTICULARLY DESCRIBED HEREIN AND AS SHOWN ON PLAT ATTACHED HERETO AND MADE A PART HEREOF BY REFERENCE, SUBJECT TO CERTAIN CONDITIONS passed first reading.

CLOSURE AND ABANDONMENT

#1998-147 (BRUCE GOODWIN, INC.)

On motion of Councilman Lively, seconded by Councilwoman Rutherford, AN ORDINANCE CLOSING AND ABANDONING AN ALLEY LOCATED SOUTHWEST FROM EAST 20TH STREET, BETWEEN WILLOW STREET AND KELLEY STREET, MORE PARTICULARLY DESCRIBED HEREIN AND AS SHOWN ON PLAT ATTACHED HERETO AND MADE A PART HEREOF BY REFERENCE, SUBJECT TO CERTAIN CONDITIONS passed first reading.

CONTRACT (MAYSE CONST. CO.)

Councilman Shockley stated that the following two resolutions come with a recommendation from the Public Works Committee.

On motion of Councilman Lively, seconded by Councilwoman Hurley, A RESOLUTION AUTHORIZING THE AWARD OF CONTRACT NO. SWM-3-98, DRAINAGE AND WATER QUALITY ABATEMENT, TO MAYSE CONSTRUCTION COMPANY FOR THEIR LOW BID IN THE AMOUNT OF FIVE HUNDRED TWENTY-SIX THOUSAND, THREE HUNDRED FIFTY-FIVE DOLLARS (\$526,355.00) was adopted.

EMINENT DOMAIN PROCEEDINGS

On motion of Councilwoman Rutherford, seconded by Councilwoman Hurley, A RESOLUTION AUTHORIZING THE OFFICE OF THE CITY ATTORNEY TO INSTITUTE EMINENT DOMAIN PROCEEDINGS AGAINST G.H. SWOPE BUILDING SUPPLY CORPORATION FOR SEWER EASEMENTS ON TRACT NOS. 13 AND 14, CONTRACT NO. 52E, SANITARY SEWER RELOCATION, I-75 WIDENING, EAST BRAINERD ROAD TO STATE ROUTE 153 was adopted.

PERSONNEL

The following personnel matters were reported for the Parks and Recreation Dept.:

CHARLES E. MOORE--Resignation of Tree Trimmer, effective 10/28/98

RAYMOND THOMPSON--Retirement of Laborer III, effective 10/31/98

CLYDE WAYNE ORR--Promotion from Golf Course Ranger to Pro Shop Clerk, Pay Grade 6/1, \$17,118.40 annually, effective 11/4/98

PURCHASES

On motion of Councilman Hakeem, seconded by Councilwoman Hurley, the following purchases were approved for use by the Parks and Recreation Dept.:

MANPOWER (Lower and better bid)
Requisition No. 0037483

Twelve (12) Months Contract for Temporary Employment

(See minute material for prices)

EASTMAN CONSTRUCTION CO. (Change Order #1 to Contract P0010149)

Original Contract Amount	\$55,450.00
Change Order #1	5,397.00
	<u>\$60,847.00</u>

PURCHASE

On motion of Councilwoman Rutherford, seconded by Councilman Hakeem, the following purchase was approved for the Department of Neighborhood Services:

TOWER CONSTRUCTION (Lowest bidder meeting specs.)
Requisition No. R2007688

ADA Accessibility Improvements at Warner Park

\$21,640.00

Mr. Jerry Mitchell encouraged the Council to attend the meeting scheduled for **2:30 P.M. on November 10th** to discuss the first draft of the Parks and Recreation Master Plan. He also encouraged them to attend the Art Exhibit that Ms. Koontz presented at the beginning of the meeting to be held at **5:30 P.M. on November 12th** at the Creative Discovery Museum.

PERSONNEL

The following personnel item was reported for the Treasurer's Office:

LEILA FREEMAN--Hire as Tax Clerk, Pay Grade 6/1, \$18,574.00 annually, effective 11/6/98

BOARD APPOINTMENT

On motion of Councilman Hakeem, seconded by Councilwoman Hurley, the following Board appointment was approved:

CHATTANOOGA-HAMILTON COUNTY HOSPITAL AUTHORITY BOARD OF TRUSTEES

--Appointment of **DR. BESS INGRAM** for a four-year term ending November 1, 2002.

PARKS AND RECREATION MEETING

Councilwoman Rutherford again reminded Council members of the meeting scheduled at **2:30 P.M. on Nov. 10th** to discuss the first draft of the Master Plan for Parks and Recreation.

ELECTION OF DIST.5 COUNCILMAN

Councilman Pierce raised a question pertaining to the election of the Council person from District 5 that is being held tonight. He stated it had been called to his attention that this person would have to receive a majority of the votes at tonight's election. He stated that he looked at the Court Order and could not get a clear understanding; that City Attorney Nelson had given his opinion but to satisfy himself and others on the Council, he would like permission to consult with an attorney; that prior to this meeting Attorney Nelson had told him the only way this could be stopped would be through a Court Order.

Attorney Nelson stated that it would have to be a lawsuit by the loser of the election.

Councilman Pierce stated he could not understand why a lawsuit would have to be filed and to what extent.

Attorney Nelson responded that someone would have to contest; that State Law gives a person the right to file; that the Council could challenge this also; that it would have to be filed by the person who does not finish first.

ELECTION (CONT'D.)

Councilman Pierce asked if the person with the highest number of votes would be sworn in; that basically before the election he would like to see this clarified through another opinion; that if a lawsuit has to be filed then that might have to be done.

Attorney Nelson stated that the State Statute says this position shall be filled at the next general election.

Councilman Pierce moved that the Council get another opinion from an Attorney and pursue this further. This was seconded by Councilwoman Rutherford.

Chairman Crockett stated that the motion had been made to get an additional opinion. He asked if there was a fairly easy way to get another opinion. Attorney Nelson responded that we could get an opinion from the State Attorney General and Election Commission--that they could give an opinion.

Councilman Pierce noted that we were working with a time element. Chairman Crockett stated that we had 15 minutes now. He asked Councilman Pierce if we got this opinion after the fact if it would satisfy him. Councilman Pierce stated "not after the fact".

Attorney Nelson reminded the Council that he did seek the advice of the State Election Coordinator at the beginning of this process.

Chairman Crockett asked Attorney Nelson if he would get re-affirmation or clarification prior to next week's meeting from the Attorney General.

Councilman Pierce questioned if Attorney Nelson was unable to get the State Attorney General's opinion, could he still have permission to go through an attorney personally. He stated this needed to be done before next Tuesday.

Chairman Crockett stated that the Council would have to approve action to take further legal steps. He asked Attorney Nelson to report back to Councilman Pierce and to himself. Attorney Nelson stated he would make every effort to do this. Councilman Pierce stated that what bothered him "was every effort". Councilwoman Rutherford asked what would happen if we don't have an answer by next Tuesday. Attorney Nelson responded that he assumed the person would be sworn in.

ELECTION (CONT'D.)

Councilman Pierce questioned who is to say who has the right opinion if his opinion differs from Attorney Nelson's. He stated he would like to consult an attorney himself.

Chairman Crockett asked that Attorney Nelson report back to him the progress he is making on getting an opinion because any action an individual council person takes would be individual action.

Councilwoman Hurley asked if the next step should not be to authorize Councilman Pierce to ask an independent counsel's opinion; that we could have the Attorney General's opinion and some other attorney of Councilman Pierce's choosing.

Chairman Crockett stated that he thought we needed a clearer procedure of hiring an attorney than this; that we had not done this previously.

Councilman Hakeem stated that personally he had no problem with what Attorney Nelson had brought forward, and he appreciated the concerns of Councilman Pierce. He stated he also appreciated Chairman Crockett's concern of not having a procedure in place; however he stated he thought the Council could authorize Councilman Pierce to do this "in reason".

Chairman Crockett stated he would offer this as a suggestion--that we had a motion and a second to obtain the State District Attorney and the State Election Coordinator's opinion as soon as Attorney Nelson can obtain this; that we could have a group effort composed of the Council Chairman, Vice-Chairman, Councilman Pierce, and Attorney Nelson, if we have not gotten an opinion back, to be authorized to get an independent attorney's opinion. Chairman Crockett emphasized that he thought we needed a process.

Councilwoman Hurley questioned if Chairman Crockett had included Councilman Pierce because he was Chairman of the Legal and Legislative Committee. Chairman Crockett agreed that that was his reasoning and not because Councilman Pierce was the one who had raised the issue. Councilwoman Hurley then stated that she thought he should be included because of the fact that he was the one with the issue; that she felt if one member of the Council had a serious enough concern that the procedure should be to move forward within certain limits.

ELECTION (CONT'D.)

Chairman Crockett stated that he would like to put this in committee to be worked out at length; that in this case it is good that the one who raised the issue is also the Chairman of the Legal and Legislative Committee, and we do not have to set a precedent; that this group of three could come up with getting a legal opinion; that hopefully the State Attorney General would be able to come up with an opinion quickly.

Councilman Hakeem asked Councilman Pierce if Chairman Crockett's suggestion was acceptable to him. Councilman Pierce responded that he had made the first motion and had also asked for permission to consult an attorney; that the Chairman had made a suggestion to the City Attorney that overruled him. Councilman Hakeem clarified that Councilman Pierce wanted to seek an attorney. Councilman Pierce stated he would like to be allowed to research this and bring a report back in three days; that getting to the State Attorney General may take six weeks; that we need to know something by next Tuesday.

Chairman Crockett stated that the three of them would have attorney-client privileges; that he still felt we needed some sort of procedure.

Councilwoman Hurley added that another reason that Councilman Pierce is the appropriate person is because he is the only member of the Council who was part of the original lawsuit that created this form of government, and he has a serious concern that the Charter and Tennessee State Law are not consistent with each other.

Chairman Crockett explained to those in the audience that this is an important part of the law--that this was the first time the Council has had to fill an empty Council seat and the first time this situation has occurred in this government that had only been in effect since 1990, and Councilman Pierce was instrumental in getting the government changed; that we appreciate Councilman Pierce's part in that and his great personal interest. He asked that a procedure be discussed in Councilman Pierce's Legal and Legislative Committee; that individual members of the Council obtaining legal counsel sets a less than orderly process.

Councilwoman Hurley still maintained that Councilman Pierce was asking for the Council's support. Chairman Crockett indicated that he felt we should try to get an opinion from the State Attorney General.

ELECTION (CONT'D.)

Councilman Hakeem stated that the motion he was going to make had no reflection on the abilities of our City Attorney, and he also felt that we needed a process and procedure to follow through on; however he moved that the Council authorize Councilman Pierce to go forward in selecting an attorney to seek an opinion. He added that he would like to see the hourly rates of the attorney and get the rates reviewed by the City Attorney; that he would like to give Councilman Pierce the permission to seek an opinion within normal legal rates. This was seconded by Councilwoman Hurley.

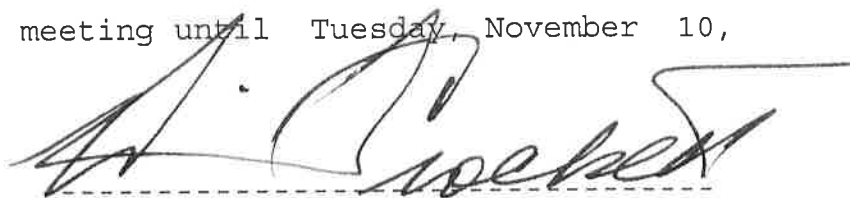
Councilman Pierce indicated that he had spoken to Attorney Nelson about this matter before the meeting and had asked him for a suggestion of an attorney; that he (Councilman Pierce) had thrown out a name; that he was not going to look for a "million dollar" attorney; that he would just like to talk to an attorney if he could get the permission.

Chairman Crockett questioned what "standing" the opinion we receive back will have. Attorney Nelson responded that it would have whatever "standing" this Council wishes to give it.

A vote was taken on the above motion, and it passed with Chairman Crockett voting "no". Chairman Crockett stated that next week, if all opinions come back in the affirmative, we will have a new Councilman and the first order of business will be to have a Judge present who will swear in this new Council person.

ADJOURNMENT

Chairman Crockett adjourned the meeting until Tuesday, November 10, 1998 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)