

City Council Building
Chattanooga, Tennessee
November 2, 2004
6:00 p.m.

Chairman Benson called the meeting of the Chattanooga Council to order with Councilmen Franklin, Hakeem, Littlefield, Lively, Page, Pierce, Robinson and Taylor present. City Attorney Randall Nelson, Management Analyst Randy Burns and Council Clerk Carol O'Neal, CMC, were also present.

PLEDGE OF ALLEGIANCE/INVOCATION

Following the Pledge of Allegiance, Chief Freeman Cooper gave invocation.

CLOSE AND ABANDON

MR-2004-173: Jerry & Treva Ritchie and Jimmy Wayne Dickey

On motion of Councilman Franklin, seconded by Councilman Taylor,
**AN ORDINANCE CLOSING AND ABANDONING AN UNOPENED ALLEY
LOCATED BETWEEN THE 4200 BLOCK OF WALNUT STREET AND THE 4100
BLOCK OF PINE STREET, MORE PARTICULARLY DESCRIBED HEREIN AND
AS SHOWN ON THE MAP ATTACHED HERETO AND MADE A PART
HEREOF BY REFERENCE, SUBJECT TO CERTAIN CONDITIONS**

passed second reading. On motion of Councilman Franklin, seconded by Councilwoman Robinson, the Ordinance passed third and final reading and was signed in open meeting.

CLOSE AND ABANDON

MR-2004-174: Jimmy Wayne Dickey

On motion of Councilman Franklin, seconded by Councilwoman Robinson,
**AN ORDINANCE CLOSING AND ABANDONING MILL STREET AND
GARDEN STREET WITHIN THE PROPERTY BOUNDARIES AT 4106 PINE
STREET, MORE PARTICULARLY DESCRIBED HEREIN AND AS SHOWN ON
THE MAP ATTACHED HERETO AND MADE A PART HEREOF BY
REFERENCE, SUBJECT TO CERTAIN CONDITIONS**

passed second reading. On motion of Councilwoman Robinson, seconded by Councilman Littlefield, the Ordinance passed third and final reading and was signed in open meeting.

CLOSE AND ABANDON

MR-2004-178: Carol C. Moss

On motion of Councilman Lively, seconded by Councilman Taylor,
**AN ORDINANCE CLOSING AND ABANDONING AN UNOPENED ALLEY
BEGINNING ON THE WEST LINE OF THE 4200 BLOCK OF WALNUT
STREET, MORE PARTICULARLY DESCRIBED HEREIN AND AS SHOWN ON
THE MAP ATTACHED HERETO AND MADE A PART HEREOF BY
REFERENCE, SUBJECT TO CERTAIN CONDITIONS**

passed second reading. On motion of Councilman Franklin, seconded by Councilman Taylor, the Ordinance passed third and final reading and was signed in open meeting.

AMEND CITY CODE

On motion of Councilman Page, seconded by Councilman Pierce,
**AN ORDINANCE TO AMEND CHATTANOOGA CITY CODE, PART II,
CHAPTER 2, ARTICLE II, RELATIVE TO PERSONNEL POLICIES**

passed second reading. On motion of Councilman Littlefield, seconded by Councilman Franklin, the Ordinance passed third and final reading and was signed in open meeting.

TEMPORARY USE: CORY C. ALLISON

On motion of Councilman Littlefield, seconded by Councilman Franklin,
**A RESOLUTION AUTHORIZING CORY C. ALLISON TO USE TEMPORARILY
THE CITY'S RIGHT-OF-WAY LOCATED AT 401 NORTH MARKET STREET TO
INSTALL A SIGN, AS SHOWN ON THE DRAWINGS ATTACHED HERETO
AND MADE A PART HEREOF BY REFERENCE, SUBJECT TO CERTAIN
CONDITIONS**

passed second reading. On motion of Councilman Littlefield, seconded by Councilman Franklin, the Ordinance passed third and final reading and was signed in open meeting.

CHANGE ORDER

On motion of Councilman Littlefield, seconded by Councilman Franklin,
A RESOLUTION AUTHORIZING THE EXECUTION OF CHANGE ORDER NO. 1, RELATIVE TO THE M.L. KING BOULEVARD/BAILEY AVENUE AND MCCALLIE AVENUE TWO-WAY CONVERSION, CONTRACT NO. E-02-003, WITH TALLEY CONSTRUCTION COMPANY, INC., WHICH CHANGE ORDER DECREASES THE CONTRACT AMOUNT BY ONE HUNDRED THIRTY THOUSAND NINETY-FIVE AND 50/100 DOLLARS (\$130,095.50), FOR A REVISED CONTRACT AMOUNT NOT TO EXCEED ONE MILLION TWO HUNDRED SIXTEEN THOUSAND THREE HUNDRED TWENTY-SIX AND 10/100 DOLLARS (\$1,216,326.10)

was adopted.

CONTRACT: WDB CONTRACTING, LLC

Councilman Franklin reported that Resolutions (c) – (e) were discussed in today’s Parks and Recreation Committee and approval is recommended. He clarified that Resolution (e), a Public Works matter, was “tagged” onto today’s meeting.

On motion of Councilman Franklin, seconded by Councilwoman Robinson,
A RESOLUTION AUTHORIZING THE ADMINISTRATOR OF THE DEPARTMENT OF PARKS, RECREATION, ARTS & CULTURE TO EXECUTE A CONTRACT WITH WDB CONTRACTING, LLC FOR THE INSTALLATION OF AUTOMATIC ENTRANCE DOORS AT THE TYNER/EAST BRAINERD RECREATION CENTER IN AN AMOUNT NOT TO EXCEED TWENTY-THREE THOUSAND FIVE HUNDRED EIGHTY-SEVEN DOLLARS (\$23,587.00)

was adopted.

CHANGE ORDER

On motion of Councilman Franklin, seconded by Councilwoman Robinson,
A RESOLUTION AUTHORIZING THE EXECUTION OF CHANGE ORDER NO. 1, RELATIVE TO INSTALLATION OF AN HVAC SYSTEM AT THE JOHN A. PATTEN RECREATION CENTER’S AUDITORIUM, WITH JDC INDUSTRIAL MECHANICAL SYSTEMS, INC., WHICH CHANGE ORDER INCREASES THE CONTRACT AMOUNT BY ONE THOUSAND FIVE HUNDRED FORTY-FOUR AND 40/100 DOLLARS (\$1,544.40), FOR A REVISED CONTRACT PRICE OF FIFTY-THREE THOUSAND SEVEN HUNDRED FORTY-TWO AND 88/100 DOLLARS (\$53,742.88)

was adopted.

CONVEY CITY'S INTEREST IN LOT

On motion of Councilman Franklin, seconded by Councilman Littlefield,
A RESOLUTION AUTHORIZING THE MAYOR OF THE CITY OF CHATTANOOGA TO EXECUTE ALL DOCUMENTS NECESSARY TO CONVEY THE CITY'S INTEREST IN AND TO LOT 10, ENTERPRISE SOUTH INDUSTRIAL PARK, TAX MAP NO. 130-001.01, AS SHOWN ON THE MAP ATTACHED HERETO AND MADE A PART HEREOF BY REFERENCE, JOINTLY OWNED BY THE CITY OF CHATTANOOGA AND HAMILTON COUNTY, TO THE STATE OF TENNESSEE FOR THE CONSTRUCTION OF A NEW TENNESSEE DEPARTMENT OF TRANSPORTATION REGION II HEADQUARTERS FACILITY
was adopted.

OVERTIME

Overtime for the week ending October 29, 2004 totaled \$89,600.35.

PERSONNEL

The following personnel matters were reported for the various departments:

PUBLIC WORKS DEPARTMENT:

- **TERRY D. CARTER** – Suspension (4 days without pay), Equipment Operator, Sr., Citywide Services, effective October 27 – November 2, 2004.
- **BENJAMIN T. COX** – Promotion, Equipment Operator, Sr., Citywide Services, Pay Grade 8/Step 1, \$22,818.00 annually, effective October 27, 2004.
- **BOBBY C. THOMPSON** – Hire (permanent, full time), Crew Worker, Citywide Services, Pay Grade 3/Step 1, \$18,643.00 annually, effective October 25, 2004.
- **JERRY M. COPENY** – Hire, Concrete Worker, Citywide Services, Pay Grade 6/Step 1, \$20,429.00 annually, effective October 20, 2004.
- **ROY J. BARNETTE** – Promotion, Plant Maintenance Lubricator, Waste Resources, Pay Grade 6/Step 10, \$30,185.00 annually, effective November 3, 2004.

PERSONNEL (Continued)

- **RONALD C. BURT** – Hire, Equipment Operator, Sr., Waste Resources, Pay Grade 8/Step 1, \$22,818.00 annually, effective October 27, 2004.

CHATTANOOGA FIRE DEPARTMENT:

- **CHAD YATES** – Resignation, Senior Firefighter, effective October 28, 2004.
- **CLEOPHUS HOWELL** – Military Leave (for 545 days), Senior Firefighter, effective October 23, 2004.

CHATTANOOGA POLICE DEPARTMENT:

- **KEVIN COBB** – Suspension (3 days without pay), Police Officer, effective October 25-27, 2004.
- **JAMES HOSTETTER** – Suspension (28 days without pay), Police Officer, effective October 29 – November 25, 2004.
- **BRIAN PICKRELL** – Termination, Police Cadet, effective October 29, 2004.

PARKS, RECREATION, ARTS AND CULTURE DEPARTMENT:

- **ELAINE ADAMS** – Resignation, Therapeutic Specialist, effective October 28, 2004.
- **PHYLLIS WARD** – Hire, Executive Assistant, Pay Grade 13/Step 1, \$28,791.00 annually, effective October 28, 2004.

PURCHASE

On motion of Councilman Hakeem, seconded by Councilwoman Robinson, the following purchase was approved for use by the Public Works Department:

DPC ENTERPRISES (Lower bid)
R0077205/B0001877

Liquid Chlorine Requirements Contract (not to exceed \$220,000 annually)

\$409.60/Ton

HEARING: JOSHUA MASSENGALE

City Attorney Nelson stated that a request for a hearing has been received from Joshua Massengale regarding his termination from the Chattanooga Police Department.

A hearing for Mr. Massengale was scheduled for Monday, November 29 beginning at 10 a.m. with Councilmen Benson, Pierce and Robinson serving as the panel hearing the request.

HEARING: DAVID CHANDLER

City Attorney Nelson reported that the attorney representing David Chandler has a conflict with the November 15 hearing date and has asked that the hearing be rescheduled for Monday, December 6 beginning at 9 a.m., rather than 1 p.m.

The hearing for David Chandler was rescheduled for Monday, December 6 beginning at 9 a.m. with Councilmen Benson, Hakeem and Pierce; Councilman Franklin will serve as alternate, if needed.

MANCHESTER PARK NEIGHBORHOOD ASSOCIATION

Councilwoman Robinson announced that the Manchester Park Neighborhood Association is scheduled to meet on Thursday, November 4 at 6:30 p.m. to elect officers and that the regular meeting would begin at 7 p.m. She stated the meeting would be held at the Manchester Church of Christ.

COMMITTEES

Councilman Littlefield stated the **Legal and Legislative Committee would meet on Tuesday, November 9 at 3 p.m.** as regularly scheduled.

Councilman Hakeem reminded Council members of the meeting of the **Public Works Committee on Tuesday, November 9 at 4 p.m.** He stated that the personnel issue that was initially scheduled to come before the Public Works Committee would be discussed at the Legal and Legislative Committee meeting at 3 p.m.

RONALD JACOWAY

Ronald Jacoway addressed the Council stating that he had been present previously regarding a complaint about his son and brutality of the police department. He expressed appreciation to the Council for listening to his complaint and the speedy process that has come about. He stated that he was present tonight because his integrity had been challenged in that his past history involves having served nine-and-a-half years in the penitentiary; that when he returned to Chattanooga after serving time, he registered to vote and did vote and is trying to do all the positive things for himself and his family so as not to reflect on his past. He stated a police officer came to him and told him that his child's past reflects the things that happened to him. He stated his son's past cannot reflect anything but what happened that night of the incident.

Mr. Jacoway stated the officer offended him because he has a very compassionate heart toward people. He stated his ways have changed and has a complete love for children, period, reiterating that he loves people. He stated he has no racial discrimination toward anyone and to say a person is evil is not for him to judge. He stated that he is looking for the truth of what happened to his son when he was handcuffed on the ground with two officers kicking him while he was down and a dog biting him, which is the whole issue. He stated he is concerned about this and when speaking of something abusive and out of order, this was out of order; that if his son had died he would have been madder than he is now. He stated there is talk about other neighborhoods where children are slammed down on the ground by police who put their knees in their chests and children assaulted in a manner where police put on a glove and insert their hand in their (children) rectum. He stated that is not supposed to happen in this city and is not how it is supposed to be. He stated what he is present for is to ask that certain things be done right and in a respectful manner.

Councilman Hakeem stated in regard to the concern Mr. Jacoway raised in reference to the officer was it part of the internal affairs investigation or separate from the investigation.

Mr. Jacoway stated that he could not say; that the officer came to his home and asked if he went before the City Council and wanted something to be done about the situation; that he officer needed to talk to him and his son. He stated that he responded "okay" and she (officer) told him there would be no action until a complaint was filed. He informed the officer that his attorney informed him not to file a report until all was on record. He stated that he told of the part he saw and as the conversation went on she (officer) started talking about his past. He stated his past has nothing to do with what happened that night and that is his concern.

RONALD JACOWAY (Continued)

Councilman Hakeem stated that he does not know the proper procedure; that Mr. Jacoway should wait for the Internal Affairs Department's review or get briefings on it, which is what needs to take place. He stated he needs to hear some type of investigative resolution to this event. He stated with regard to the individual he was speaking of, he would like to know if this was part of the investigation team or something separate, altogether. He stated it is not something he needs to know tonight but expects some type of information and a timeline of what is being done.

Chief Cooper was present and indicated that he knew the incident is or has been investigated but was not in a position to tell the current status of that. He stated he is not certain if this incident is part of the Internal Affairs investigation or separate. He stated he is not clear on whom "she" is that he is referring to but could find out and let the Council know at the next meeting.

Chairman Benson asked if the Council could know the status before next Tuesday or have some information.

Councilman Page stated that he would like to know the status and have a final report from Internal Affairs, something the Council can accept, assuming it is not going to court.

City Attorney Nelson stated that it depends upon what the report says. He stated if there is misconduct on the part of the officer there may be a disciplinary proceeding that would take place and some members of the Council might be called upon to pass judgment as to the discipline, so he would be hesitant about getting into the facts of the case.

Councilman Page stated that he would like for the results to be shared with the Council.

Chairman Benson asked that the information go to the City Attorney for him to make a decision as to whether it would compromise the Council; that the Council should let him (City Attorney) make the decision whether it would prejudice them in the event of an appeal.

Councilman Franklin stated that he would like to know the manner by which the officer was investigating included in the report and the appearance of excessive force; that it is his thought that is what is surrounding the whole issue both from the standpoint of the actual event and how it was followed up in the investigation; that he wants to hear both sides.

RONALD JACOWAY (Continued)

Councilman Franklin stated if Mr. Jacoway was convicted of a felony his record has nothing to do with what the officer was there to respond to. He stated excessive force is still going on as he has been a victim of it and something has to be done about it. He asked Chief Cooper to do all he can to follow up and let the Council members know.

Councilman Pierce expressed agreement with Councilman Franklin's comments and stated that he would like to see a full report on excessive force.

Chief Cooper stated there is no problem in reporting the outcome of the investigation regarding this incident. He stated handing over a report if there is any type of disciplinary action has a process it has to go through and the process may include this panel (Council members) and he would not want to harm that in any way by handing the report over.

Chairman Benson stated that the request is that the report be given to the City Attorney for him to handle and define whether the Council should "enter in" or "stay out". Chief Cooper responded "no problem".

Councilman Pierce asked what difference there would be in looking at that report and when there is a personnel hearing panel members are given a full report prior to the hearing.

City Attorney Nelson responded that the full report given to Council members prior to a personnel hearing is done with the consent of the officer's attorney or representative where there would be an opportunity to cross examine any witness peculiar to the report. He stated if the report is handed to the Council with no chance for cross examination or means for an officer to refute anything, then it operates against the officer's interest if it comes to a later hearing as information would already be set in mind by the issued report.

Councilman Pierce asked if the Council could not get the report because we have to have a personnel hearing to receive it.

City Attorney Nelson responded "not necessarily"; that the officer might be found not guilty of anything and if the officer is not disciplined the Council is entitled to the full report when it is all over. He stated if it looks like it is not over, then there is a problem.

Councilman Pierce stated if it is all over what is the point of the Council looking at the report.

RONALD JACOWAY (Continued)

City Attorney Nelson there might be a question the Council wants answered at that point. Councilman Pierce exclaimed "is that all, just to answer a question".

City Attorney Nelson stated that what he is talking about is the quasi-judicial function the Council has; that the Council has oversight of responsibility to the administration. He stated this is an administrative matter which may be called to the attention of the Mayor, who has the ultimate responsibility for administration under our *Charter*.

Chairman Benson thanked Mr. Jacoway for his presence and indicated that the Council would try to proceed with answers.

Mr. Jacoway expressed appreciation to the Council and stated that his main concern is that he loves children and surely loves his son. He stated when something is wrong, it is wrong and he cannot put it any other way.

Chairman Benson cautioned Mr. Jacoway that he should not rush to judgment.

Mr. Jacoway stated that he is glad he can come to this body to express his opinion and is not present for any other opinion,

ADJOURNMENT

On motion of Councilman Franklin, seconded by Councilman Lively, Chairman Benson adjourned the meeting of the Chattanooga Council until Tuesday, November 9, 2004 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)**