

**CITY COUNCIL BUILDING
CHATTANOOGA, TENNESSEE
October 23, 2007
6:00 P.M.**

Chairman Page called the meeting of the Chattanooga City Council to order with Councilmen Benson, Franklin, Gaines, Pierce, Rico and Robinson present. Councilwoman Bennett was absent due to prior commitment. City Attorney Randall Nelson; Management Analyst Randy Burns; and Shirley Crownover, Assistant Clerk to the Council, were also present.

**PLEDGE OF ALLEGIANCE/
INVOCATION**

Following the Pledge of Allegiance led by Councilwoman Gaines, the invocation was given by Councilman Rico.

MINUTE APPROVAL

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

**AMEND CITY CODE
PARK PERMIT FEES**

On motion of Councilman Franklin, seconded by Councilwoman Gaines,
**AN ORDINANCE TO AMEND CHATTANOOGA CITY CODE,
PART II, CHAPTER 26, SECTIONS 26-13 AND 26-14,
ESTABLISHING PERMIT FEES FOR USAGE OF VARIOUS
CHATTANOOGA PARKS AND RECREATION FACILITIES,
AND BY DELETING SECTIONS 26-59, 26-60, AND 26-71
THROUGH 26-90 IN THEIR ENTIRETY**
passed second and final reading and was signed in open meeting.

**AMEND CITY CODE
EVENT FEES**

On motion of Councilman Franklin, seconded by Councilman Pierce,
**AN ORDINANCE TO AMEND CHATTANOOGA CITY CODE,
PART II, CHAPTER 26, SECTIONS 26-22, 26-33, 26-24, 26-
25, AND 26-134, AND BY ADDING NEW SECTIONS 26-26,
26-27, 26-28, 26-29, 26-30, 26-31, 26-32, 26-33, AND 26-34.
ESTABLISHING THE EVENT FEES FOR USAGE OF VARIOUS
CHATTANOOGA PARKS AND RECREATION FACILITIES**
passed second and final reading and was signed in open meeting.

COVISTA FRANCHISE

Attorney Nelson noted that this had been advertised and questioned if there was anyone present in the interest of this. No one was present. It was noted that this had also been reviewed in committee.

On motion of Councilman Rico, seconded by Councilman Franklin,
**AN ORDINANCE GRANTING UNTO COVISTA
COMMUNICATIONS A FRANCHISE FOR A LARGER AREA
THAN PROVIDED IN ORDINANCE NO. 11859 TO INSTALL
AND MAINTAIN FIBER OPTIC CABLES IN RIGHTS-OF-WAY IN
THE CITY OF CHATTANOOGA AS DESCRIBED HEREIN TO
PROVIDE TELECOMMUNICATION SERVICES, SUBJECT TO
CERTAIN CONDITIONS**
passed first reading.

APPROPRIATION

On motion of Councilman Franklin, seconded by Councilman Pierce,
**AN ORDINANCE APPROPRIATING FROM THE GENERAL
FUND TO THE CHATTANOOGA WOMEN'S LEADERSHIP
INSTITUTE, A NON PROFIT ORGANIZATION, THE AMOUNT
OF ONE THOUSAND THREE HUNDRED DOLLARS
(\$1,300.00) AS A SPONSORSHIP FOR THE THIRD ANNUAL
LEADERSHIP ADDRESS TO THE COMMUNITY DINNER,
NOVEMBER 6, 2007**
passed first reading.

APPROPRIATION

On motion of Councilman Rico, seconded by Councilman Franklin,
AN ORDINANCE APPROPRIATING FROM THE GENERAL FUND TO THE CHATTANOOGA REGIONAL HISTORY MUSEUM, A NON PROFIT ORGANIZATION, THE AMOUNT OF ONE THOUSAND DOLLARS (\$1,000.00) AS A SPONSORSHIP FOR THE HISTORY MAKERS' LUNCHEON TO BE HELD ON NOVEMBER 14, 2007
passed first reading.

CLOSE AND ABANDON

MR-2007-076 (Kenneth Hicks)

On motion of Councilman Rico, seconded by Councilman Franklin,
AN ORDINANCE CLOSING AND ABANDONING A PORTION OF A SANITARY SEWER EASEMENT LOCATED AT 4815 ELDRIDGE ROAD, MORE PARTICULARLY DESCRIBED HEREIN AND AS SHOWN ON THE MAP ATTACHED HERETO AND MADE A PART HEREOF BY REFERENCE, SUBJECT TO CERTAIN CONDITIONS
passed first reading.

CLOSE AND ABANDON

MR-2007-144 (Cliff Butler)

Adm. Leach explained that this came with a recommendation from Planning and Public Works Staff for denial—that it would landlock a piece of property.

On motion of Councilwoman Robinson, seconded by Councilman Benson,
AN ORDINANCE CLOSING AND ABANDONING A PORTION OF THE 3800 BLOCK OF CHURCH STREET, MORE PARTICULARLY DESCRIBED HEREIN AND AS SHOWN ON THE MAP ATTACHED HERETO AND MADE A PART HEREOF BY REFERENCE
was denied.

COUNCILMAN PIERCE

Before the Resolutions were read, Councilman Pierce announced that he had a couple of items to add to the agenda; **that he would make the motion to add a Resolution and Ordinance to the agenda tonight. This was seconded by Councilman Benson, and approved by the entire Council.**

IN-KIND CONTRIB. ACCEPT.

Councilman Franklin noted that this Resolution, as well as the next, were addressed in the Parks and Recreation Committee on behalf of the Department of Education, Arts & Culture and come with a recommendation for approval.

On motion of Councilman Franklin, seconded by Councilwoman Gaines,
A RESOLUTION AUTHORIZING ACCEPTANCE OF AN IN-KIND CONTRIBUTION FROM WATCHGUARD EQUIVALENT TO TWO THOUSAND DOLLARS (\$2,000.00) IN FIREWALL/SAFETY SOFTWARE PROTECTION FOR NEWLY INSTALLED COMPUTERS AT THE CITY'S RECREATION CENTERS TO THE DEPARTMENT OF EDUCATION, ARTS & CULTURE AS PART OF "CONNECTING THE DOTS WITH TECHNOLOGY"

was adopted.

**IN-KIND CONTRIB.
ACCEPTANCE**

On motion of Councilman Franklin, seconded by Councilman Benson,
A RESOLUTION AUTHORIZING ACCEPTANCE OF AN IN-KIND CONTRIBUTION FROM NEOWARE EQUIVALENT TO EIGHT THOUSAND TWO HUNDRED TWENTY DOLLARS (\$8,220.00) CONSISTING OF NINE (9) DESKTOP COMPUTERS AND ONE (1) LAPTOP COMPUTER TO THE DEPARTMENT OF EDUCATION, ARTS & CULTURE AS PART OF "CONNECTING THE DOTS WITH TECHNOLOGY"

was adopted.

HAM.COUNTY BRIDGE

Councilman Benson noted that this came before the Legal and Legislative Committee; that State Legislator Cobb attended the meeting—that he was speaking to all municipalities to “shore” up support for the Bridge.

On motion of Councilman Franklin, seconded by Councilwoman Gaines,

**A RESOLUTION SUPPORTING THE CONSTRUCTION OF A
BRIDGE SPANNING THE TENNESSEE RIVER IN NORTH
HAMILTON COUNTY**

was adopted.

COUNCILMAN PIERCE

Councilman Pierce continued with the Ordinance and Resolution that he wished added to tonight’s agenda that pertains to former Councilwoman Rutherford and Administration’s stand. He stated that he was unaware that we had another attorney to represent the Council but that he had shared this information with him, and he (Roger Dickson) was going to look this over and give an opinion on this.

Chairman Page stated that he did not have copies of the Ordinance and Resolution. Councilman Pierce provided him with copies.

Councilman Benson stated that he supported Councilman Pierce’s effort; however this Ordinance had not been in committee and he asked that the Clerk read the Ordinance in its entirety.

AMEND BUDGET ORD.

AN ORDINANCE, AMENDING ORDINANCE NO. 11994, ALSO KNOWN AS “THE FISCAL YEAR 2007-2008 BUDGET ORDINANCE” TO PROHIBIT THE EMPLOYMENT DURING FISCAL YEAR 2007-2008 OF ANY PERSON WHO HAS RESIGNED FROM AN OFFICE OF THE CITY OF CHATTANOOGA AFTER AN OUSTER SUIT HAS BEEN FILED AGAINST SUCH PERSON.

AMEND BUDGET ORD.
COUNCILMAN PIERCE
(CONT'D)

WHEREAS, Ordinance No. 11994, The Fiscal Year 2007-2008 Budget Ordinance was heretofore passed by the City Council and approved by the Mayor; and

WHEREAS, The Fiscal Year 2007-2008 Budget Ordinance provided for certain authorized employee positions and granted to the Mayor certain authority regarding employee positions; and

WHEREAS, it is not appropriate for any person to be employed by the City of Chattanooga, Tennessee, or to receive any remuneration from or through the City of Chattanooga, Tennessee, when such person has resigned from an office of the City of Chattanooga following filing of an ouster suit against such person by the City Attorney.

NOW, THEREFORE,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CHATTANOOGA, TENNESSEE:

Section 1. That no person who has resigned from an office of the City of Chattanooga during fiscal year 2007-2008 after an ouster suit has been filed against such person by the City Attorney (herein referred to as a "Disqualified Person") shall be eligible for employment by the City of Chattanooga in any capacity during fiscal year 2007-2008.

Section 2. That no funds appropriated under Ordinance No. 11994, The Fiscal Year 2007-2008 Budget Ordinance, or under any other Ordinance of the City of Chattanooga shall be used to employ in any capacity any Disqualified Person or to contract with any Disqualified Person for services.

Section 3. That notwithstanding any authority granted to the Mayor under Ordinance No. 11994, The Fiscal Year 2007-2008 Budget Ordinance, the Mayor is hereby prohibited from employing in any capacity any Disqualified Person during fiscal year 2007-2008.

COUNCIL PIERCE ORD.
(CONT'D)

Section 4. That no employee or contractor of the City of Chattanooga shall authorize the employment or the engagement under any contract arrangement of any Disqualified Person during fiscal year 2007-2008.

Section 5. That if any provision of this Ordinance is determined by a court to be invalid, the remaining provisions shall be given full force and effect, it being the intent of the City Council hereby expressed that the remaining provisions of this Ordinance would have been adopted.

Section 6. That This Ordinance shall take effect immediately after its passage.

Chairman Page stated that he would like to ask the City Attorney's legal advice on this Ordinance that had been read, bearing in mind that we had Attorney Roger Dickson here to represent the Council on Councilwoman Rutherford's ouster suit.

Attorney Nelson began by saying that he did not prepare the Ordinance that had just been read and had never seen it before and had nothing to do with the Ordinance; that it was a conflict of interest for him and a conflict of interest between the Mayor and the City Council and that he would withdraw from any consideration of this.

Chairman Page asked Attorney Nelson if the Council was within its rights to have Roger Dickson to advise the Council on this Ordinance?

Attorney Nelson responded "yes"—that it is in the Charter provisions that the Mayor or City Council can have outside counsel.

Chairman Page explained that the City Council had hired Mr. Dickson previously and that he called him this afternoon and asked him to be present in case we needed his service. He stated that he would appreciate if Mr. Dickson would come up and sit with the Council, knowing that this had caught him off guard; that he would like Mr. Dickson's representation in a formal manner this afternoon.

COUNCILMAN PIERCE
(CONT'D)

Councilwoman Robinson stated that her question of Attorney Nelson was if an ouster suit had been filed against Councilwoman Rutherford? Attorney Nelson responded “yes”.

Councilman Rico questioned if we should not go through the Legal and Legislative Committee with this?

Councilman Pierce responded that he did this on his own; that no attorney was aware of this—that he just gave it to Attorney Dickson a few minutes ago; that in light of time constraints he had presented an Ordinance to be passed on first reading tonight; that it would have to be passed on second reading next week—that there just was not time to have this in committee because he was working against the clock; that he had had it put in that this Ordinance would become effective immediately upon passage, and we do have the power to do this; that it has to be on a timely basis because “there is no tomorrow”. He reiterated that no one was aware of this until ten minutes before the meeting; that it was a total secret, and he was prepared to answer any questions, stating that he appreciated the Attorney being present—that he was present and he would like to have his input.

Councilman Benson stated that out of fairness to Councilman Pierce, that Councilman Pierce had called him and told him he had something of urgency to bring forth, and he was wondering if this should come to Legal and Legislative Committee; however he knew that it would take a full committee meeting to discuss this issue and there were already items on the agenda; that Councilman Pierce did not bypass the committee route.

Councilman Rico questioned if it was legal for the Council to do this?

Attorney Dickson stated that he appreciated Councilman Pierce giving him the Ordinance and Resolution a few minutes ago for a legal opinion, noting that this was short notice, and he had had no opportunity to review this; that he understood Councilman Pierce’s concern about getting something in effect immediately to take action before Administration has time to do something that Council members do not think is appropriate. He went on to say that he was prepared to tell this Council that they did appropriately accept the resignation of Councilwoman Rutherford on at least two occasions and there is no issue;

COUNCILMAN PIERCE
(CONT'D)

that she in no way is a member of this Council and won't be a member as of November 3rd and is not qualified to be a member as of November 3rd; that he understands if she continues to be an employee of the City of Chattanooga as of November 3rd, at which time she will turn 62 years of age, and will have had ten years of service, that she will be qualified for insurance benefits.

Attorney Dickson went on to say that there were some things in the Ordinance that he agreed with; however he had some concerns about what might be perceived as "spot zoning"; that he saw nothing automatically that would not work, but he would need to go to the City Charter in order to be able to give an opinion. He went on to say that he understood the concern that if this Ordinance is passed and at some stage it is challenged as being ineffective, we would have to live with this; that the only downside would be that this would be an invalid Ordinance.

Councilman Rico questioned if the Council could legally undo something that has already been decided?

Attorney Dickson asked if Councilwoman Rutherford had already been employed by the City? Councilman Rico responded that Administration had made the decision and questioned if we could legally stop something that has already been done? Attorney Dickson responded that the Council could set a hurdle or disclaimer that Administration would not be able to jump over. He added that he did not know if this action tonight would work or not.

Councilman Pierce expressed that he was sorry that Attorney Dickson had come on board so late; that he was unaware that he would be present here tonight; that he would not press him at this point tonight for an opinion; that Attorney Dickson could be back next week for second reading, and if this Ordinance is not workable, he can advise the Council at that time.

Attorney Dickson responded that was something he could do; that next week he would be in a better position to give an opinion.

COUNCILMAN PIERCE
(CONT'D)

Councilman Franklin thanked Attorney Dickson and stated that he had a question for him; however he would wait until the Resolution is read that is in accordance with this Ordinance.

On motion of Councilman Pierce, seconded by Councilman Benson,
**AN ORDINANCE, AMENDING ORDINANCE NO. 11994, ALSO
KNOWN AS "THE FISCAL YEAR 2007-2008 BUDGET
ORDINANCE" TO PROHIBIT THE EMPLOYMENT DURING
FISCAL YEAR 2007-2008 OF ANY PERSON WHO HAS
RESIGNED FROM AN OFFICE OF THE CITY OF
CHATTANOOGA AFTER AN OUSTER SUIT HAS BEEN FILED
AGAINST SUCH PERSON**
passed first reading.

CITY POLICY
DISQUALIFIED PERSONS

Ms. Crowover was asked to read this Resolution in its entirety.

**A RESOLUTION ESTABLISHING THE POLICY OF THE CITY
OF CHATTANOOGA CONCERNING AVAILABILITY OF
EMPLOYEE BENEFITS TO CERTAIN DISQUALIFIED PERSONS
AS DEFINED HEREIN**

WHEREAS, employee benefits are intended to be available for bona fide employees of the City of Chattanooga and retirees who qualify for such benefits in connection with their employment; and

WHEREAS, the City of Chattanooga has a self-insured health and hospitalization benefit program, the cost of which is only partly covered by employee and retiree contributions; and

WHEREAS, employee benefits, including, without limitation, employee health and hospitalization benefits, should not be available to persons who have resigned an office of the City of Chattanooga following filing of ouster proceedings against such person.

CITY POLICY (CONT'D)

— NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CHATTANOOGA, TENNESSEE, That for purposes of this Resolution, a Disqualified Person shall be a person who resigned from an office of the City of Chattanooga following the filing against such person of an ouster suit by the City Attorney.

BE IT FURTHER RESOLVED, That no Disqualified Person who was not eligible for post-retirement health and hospitalization benefits under City policies in effect as of the effective date of such Disqualified Person's resignation shall be permitted to receive health and hospitalization benefits from the City of Chattanooga, except as the Council's Attorney determines must be granted pursuant to federal laws or regulations providing for the continuation of health and hospitalization benefits following termination of employment.

BE IT FURTHER RESOLVED, That should the Council's Attorney determine that any federal law or regulation requires that health and hospitalization benefits be made available to a Disqualified Person, the Council's Attorney shall issue a written opinion to that effect and shall deliver a copy of his opinion to the Chairperson of the City Council immediately upon its issuance, and the Council's Attorney's opinion shall specify in detail the terms under which such health and hospitalization benefits must by federal law or regulation be made available to such Disqualified Person

Upon motion of Councilman Pierce, seconded by Councilman Franklin, this Resolution was adopted.

Councilman Franklin stated that is was unbeknown to everyone that Councilman Pierce would be bringing this action tonight; that in light of this, he had a legal question in reference to precedence—that it involved a personal incident in his profession. He went on to explain that a former city employee had become deceased; that he had been recommended for termination as a city employee; that in light of what the Mayor felt like he should do in reference to Councilwoman Rutherford, could he also come back and give a former employee, such as the one he was referring to, benefits and medical insurance that would enable a situation where his funeral expenses could be handled?

COUNCIL FRANKLIN
QUESTION (CONT'D)

Attorney Dickson responded that he thought Councilman Franklin was making the point that we might be going down “a slippery slope” and setting a precedent where the Council would be asked to deal with benefit issues that they had not been asked to deal with before; that the Council would be the ones that constituents would call—not him; that we were getting in an area making a determination about benefits with this Resolution and Ordinance where we were going to have to deal with this situation. He stated that he thought by definition that Councilman Franklin was dealing with it here—whether a disqualified or ousted employee would be entitled; that in the case of this “ouster”, the pool of applicants would be very limited; that the next person might call and see whether they could “weigh” in on this benefit—that he thought Councilman Franklin’s question was more political than legal.

Councilman Benson noted that the situation that Councilman Franklin was referring to involved neither an ouster nor resignation.

Attorney Dickson agreed that one would not come upon a situation like Councilwoman Rutherford’s very often.

Attorney Nelson stated that since he had recused himself, he would like the language in the Resolution to reflect “Council” Attorney and not “City” Attorney. **On motion of Councilwoman Robinson, seconded by Councilman Franklin, this language will be changed.**

Chairman Page added that he would be more comfortable in having the correct language. At this point, Attorney Nelson changed the wording from “City Attorney” to “Council Attorney”.

Councilman Pierce stated that he understood that Attorney Nelson could also not represent Administration—that they would have to obtain their own counsel. He also asked if Attorney Dickson would have access to any information that Attorney Nelson had gathered, referring to the open record law.

At this point Chairman Page asked that we pause for a moment so that Attorney Nelson could make the necessary changes.

COUNCILMAN PIERCE
DOCUMENTS

Chairman Page stated that in regards to the issue of the Ordinance and Resolution that had just been passed that Mr. Dickson will be the legal representative on both issues.

Councilwoman Gaines asked Attorney Dickson if it would be proper to say that all future questions should be addressed to him? Attorney Dickson responded that he would be available and that he would be at the City Council meeting next week.

Councilman Benson asked that Attorney Dickson remain until the end of this session.

Councilwoman Gaines stated that she had a question relative to the separation of the Legislative body and Administration. She wanted to know if how the Mayor acted in taking care of the paperwork for Councilwoman Rutherford was right; that it was her understanding that this should be a legislative act.

Attorney Dickson responded that the Council could determine eligibility for membership; that the Council could deal with Ms. Rutherford as a councilmember; that her being an employee of Administration was a different issue.

Councilwoman Gaines questioned if we should not make October 1st as her effective date of resignation?

Attorney Dickson pointed out that on October 9th the motion was made and seconded to accept the resignation of Councilwoman Rutherford—that that would be date of her resignation; that on October 16th, the matter came up again and the Council affirmed her date of resignation as being October 1st; that at the very latest, the effective date was October 9th, and at the very earliest, October 1st.

**COUNCILMAN PIERCE
DOCUMENTS (CONT'D)**

Councilman Pierce stated that last week the Council was told by Administration that Councilwoman Rutherford had not turned in a letter of resignation.

Attorney Dickson responded that there is no requirement by the State of Tennessee that you have to have a written letter of resignation.

OVERTIME

Overtime for the week ending October 19, 2007, totaled \$3,717.81.

PERSONNEL

The following personnel matters were reported for the various departments:

PUBLIC WORKS DEPARTMENT:

- ❖ **RYAN WARE**—Hire as Plant Operator, Pay Grade 9/1, \$25,474.00 annually, effective 10/15/07.
- ❖ **WILLIAM P. WARE, JR.**—Return from FMLA of Equipment Operator, Sr., effective 10/08/07.
- ❖ **ANTONIO D. SANDS**—Two Days Suspension without pay for Heavy Equipment Operator, effective 10/22-23/07.
- ❖ **ROBERT D. SHIPLEY**—FMLA for Equipment Operator, Sr., effective 9/10/07—12/03/07.

PERSONNEL (CONT'D)

CHATTANOOGA POLICE DEPT.:

- ❖ **LAUREN M. BACHA, DANIEL S. CHOLOTA, ADAM R. COOLEY, PAMELA C. DAVIS, KEVEN D. FLANAGAN, GARY D. FRISBEE, ANDREW B. GADDIS, CHRISTOPHER R. GRAFE, SAMUEL R. LONG, ARTEMIO LOPEZ, WILLIAM E. MCMILLAN, JOSEPH W. NEIGHBORS, MICHAEL C. NEWTON, JONATHAN O. PARKER, GEORGE E. ROMERO, JOHN C. TOLSON, TAYLOR A. WALKER, AND JOSHUA L. WRIGHT**—Hire as Police Officers, Pay Grade 1/1, \$31,229.00 annually, effective 10/19/07.
- ❖ **MICHAEL R. HARRIS**—Reinstatement of Police Officer, Pay Grade 1/3, \$34,292.00 annually, effective 10/19/07.
- ❖ **DAVID J. MADDUX**—Resignation of Police Officer, effective 10/19/07.
- ❖ **KEVIN SCHROPSHIRE**—Resignation of Police Service Tech., Sr., effective 10/17/07.

FINANCE/TREASURER'S OFFICE:

- ❖ **NETIA REEL**—Return from FMLA of Tax Clerk, effective 10/01/07.

PURCHASE

On motion of Councilwoman Gaines, seconded by Councilman Franklin, the following purchase was approved for use by the Department of Parks and Recreation:

GAME TIME, INC. (Lowest and best bid)
Requisition R0102551/B0004514

Blanket Contract for Playground Chips

\$15.80 per cubic yard

PURCHASE

On motion of Councilman Rico, seconded by Councilman Franklin, the following purchase was approved for use by the Department of Public Works:

CMI EQUIPMENT & JOHN DEERE (Multiple Contracts)
Requisition R098391/B0004335

Mower Tractor

\$22,543.86 CMI Equipment

\$33,881.49 John Deere

At this point, Councilman Pierce mentioned that the newspaper had reported about council people missing meetings. He asked Adm. Leach if he needed to get his permission on whether he should come to Public Works committee meetings or not. Adm. Leach responded that Councilman Pierce could come to any meeting he wished or he was also free not to come.

PURCHASE

On motion of Councilwoman Gaines, seconded by Councilman Pierce, the following purchase was approved for use by the Department of Neighborhood Services and Community Development:

SPECIAL TOUCH LAWN CARE (Lowest and best bid)
Requisition R0102035

Lawn Mower Maintenance

\$200.00 per cut

At this point Adm. Beverly Johnson thanked Councilmembers who had attended the Neighborhood Codes Conference. She reported that the recent graduates were ready to serve. Chairman Page responded that he would be remiss if he did not say that a good job was done.

PURCHASES

On motion of Councilman Rico, seconded by Councilwoman Gaines, the following purchase was approved for use by the Chattanooga Police Department:

MOTOROLA, INC. (Single Source Purchase)
Requisition R0103401

53 Motorola Portable Radios and Accessories

\$250,144.60

On motion of Councilwoman Gaines, seconded by Councilman Rico, the following purchase was approved for use by the Chattanooga Police Department:

VISIONAIR (Single Source Purchase)
Requisition R0103559

Data Conversion for the Tiburon RMS System

\$41,127.00

PERSONNEL HEARING

At this point, Councilman Benson addressed Chief Williams, stating that he had visited a friend in the hospital, whose life had been saved; that one of the people involved in the life saving efforts had talked to him about the termination hearing that was to come up on Monday; that at the time he was discussing this, he did not realize that he was one of the ones who would be sitting on the panel for the hearing and that he had called Chief Williams about this. He stated that due to this incident, he would have to recuse himself from the hearing on Monday because he felt like he had heard too much—that the original panel, he thought, was Councilwoman Bennett, Councilman Rico, and himself; however after hearing the wife talk, he could not serve.

Councilwoman Robinson stated that she was one of the members of the original panel and would not be able to serve and that Councilwoman Bennett was sitting in for her.

PERSONNEL HEARING
(CONT'D)

Councilman Benson stated that someone would need to sit in for him. Chairman Page asked for a volunteer. Councilman Franklin agreed to sit in for Councilman Benson.

The hearing for **Shawn Cunningham will be held Monday, October 29th at 9:00 A.M.** The panel will consist of Councilmen Bennett, Franklin, and Rico.

BOARD APPOINTMENTS

On motion of Councilman Franklin, seconded by Councilwoman Gaines, the following Board Appointment was approved:

CHATTANOOGA METROPOLITAN AIRPORT AUTHORITY BOARD:

- ❖ Appointment of **MORTY LLOYD**, for a term expiring **July 1, 2010**.

On motion of Councilwoman Robinson, seconded by Councilman Rico, the following Board Appointment was approved:

- ❖ Reappointment of **WILLIAM B. KILBRIDE**, for a term expiring **July 1, 2010**.

Councilwoman Robinson added that this was a good citizen appointment for the City.

On motion of Councilwoman Gaines, seconded by Councilman Franklin, the following Board Appointment was approved:

- ❖ Reappointment of **A. E. GENE VEAZEY**, for a term expiring **July 1, 2010**.

At this point, Councilwoman Gaines inquired of Mr. Dan Johnson if Mr. Veazey was a relative of Norm Veazey, since this was somewhat of an unusual name. Mr. Johnson responded that he did not know.

BOARD APPOINTMENTS
(CONT'D)

On motion of Councilwoman Robinson, seconded by Councilman Franklin, the following Board Appointment was approved:

TAXI BOARD:

- ❖ Appointment of **Councilman Manuel Rico**, for a term expiring **October 16, 2009**.

COMMITTEES

Councilman Benson announced that the **Legal and Legislative Committee** would meet two weeks from now, **November 6th at 3:00 P.M.** to consider some of the items that we started today.

Councilman Rico reminded Councilmembers of the meeting of the **Public Works Committee on Tuesday, October 30th at 3:00 P.M.**

ANDY KING

Mr. Andy King of Red Bank approached the Council, stating that he would like to talk to the Attorney about the Voting Rights Ordinance. He wanted to know when it changed that a person who owns property in the City, but does not live in the City, could not vote. Attorney Nelson responded that this happened in 1990. Mr. King wanted to know who changed this and was told by Attorney Nelson that it was the Federal Court. Mr. King then asked how he could get this changed, as it was no laughing matter to him. Attorney Nelson explained that he would have to go through the Charter Amendment process.

FLOYD KILPATRICK

Before **Mr. Kilpatrick** spoke, Chairman Page questioned if he had already spoken his required times this month. It was determined that he could speak.

Mr. Kilpatrick first addressed the issue on reimbursement of former Councilwoman Rutherford's salary, stating that she was paid with tax payers' dollars, and the money was received by fraud and felt that this should be reviewed as a criminal act. He went on to say that Councilman Rico could not support this action because he felt that there were "hidden agendas". He stated that he would like to know what these "hidden agendas" are.

He stated that he had filed a petition with the Council tonight on behalf of the taxpayers, and he would like this to be a part of the official records. The Petition was as follows:

PETITION TO SEEK ATTORNEY GENERAL OPINION ON THE LEGALITY OF EXTENDING PUBLIC BENEFITS TO CITY EMPLOYEES WHO OBTAIN OFFICE BY FRAUD, DECEIT AND TRICKERY

Whereas: Based on the recent resignation of former City Council member Marti Rutherford following findings and opinion of the Office of the City Attorney that Marti Rutherford did not meet the legal requirements or residency to qualify for and hold the position of Chattanooga City Councilperson for District Six; and

Whereas: The City Attorney has concluded that Marti Rutherford intentionally and knowingly filed false information with respect to her nominating petition in violation of TCA 2-19-109, and

Whereas: The City Attorney has concluded that Marti Rutherford intentionally and knowingly registered to vote in a manner where or when such person is not entitled to register to vote in violation of TCA 2-19-107; and

FLOYD KILPATRICK(CONT'D)

Whereas: The City Attorney has concluded that Marti Rutherford committed official misconduct in office pursuant to TCA 8-47-101 by assuming the office of City Council when she was not qualified to do so and proceeded to swear an oath or affirmation that she possessed the qualification(s) and was free of any disqualifying prerequisites prior to assuming office; and

Whereas: The Honorable Mayor of the City of Chattanooga has announced that he intends to keep Marti Rutherford on payroll until she qualifies for certain listed benefits at public expense; and

Whereas: The City Attorney, an officer of the court, is in a position where he must advise, protect and defend both the Office of the Mayor and City Council on an issue posing an inherent conflict between the public trust on the one hand, and what appears to be a feel good decision on the other.

Now Therefore: Pursuant to the Tennessee Open Meetings Act, codified at T.C.A. & 8-44-101, et. Seq., the Community Law Clinic formally requests that the Chattanooga City Council address the following issue(s) in the interest of the registered voters of the City of Chattanooga relevant to the operation of City government:

Whether the council should request an attorney general opinion on the legality of extending public benefits to city employees who obtain office by fraud, deceit and trickery

We assert that the need to address these issues are of sufficient importance that the Council should consider this request a priority and part of their legal obligation.

These matters are in the public interest and ripe for consideration by the Chattanooga City Council in its legislative and quasi-judicial capacity and not otherwise prohibited for consideration due to the Separation of Powers or any other legal or administrative considerations.

**Floyd Kilpatrick, Executive Officer
Community Law Clinic, Inc.
423-698-5433**

FLOYD KILPATRICK(CONT'D)

Chairman Page stated that first he would ask Attorney Nelson to respond to Mr. Kilpatrick's question concerning remuneration for Ms. Rutherford.

Attorney Nelson responded that he had looked at this a couple of weeks ago; that there were two cases that appeared before the Tennessee Supreme Court, and he proceeded to read from a case in 1944 of the **State vs. Scott County**. Payment to a county official was challenged, and Attorney Nelson read, "*The liability of a county for payment of a salary to one who has been given a *22 certificate of election and who has entered upon the duties of his office, although his right to the office is being contested, is not an open question. We have expressly held in McMillan v. Shipp, 180 Tenn. 290, 174 S.W.2d 469, in which many cases were cited and discussed, that the holder of the office under a certificate of election is entitled to the emoluments thereof pending the contest*".

Attorney Nelson then read from another case that involved the City of Chattanooga City Treasurer, Alvin Shipp vs. McMillan, in 1943. He noted that there was a mayoral runoff between E. D. Bass and T. H. McMillan and read the following, "*Following an election for Mayor of the City of Chattanooga, in which T. H. McMillan and E.D. Bass were respectively candidates for the office of Mayor, and in which Bass received a majority of the votes on the face of the returns and was awarded a certificate of election by the Election Commission, suit was brought in the Circuit Court by McMillan to contest the election. Pending final disposition of that case, the bill in this cause was filed by McMillan, as a citizen and taxpayer of Chattanooga*". Attorney Nelson went on to read, "*In a number of cases this Court has expressly held that the party receiving a majority of the votes cast in an election on the face of the returns, and to whom a certificate of election has been issued by the Election Commission, and who has been duly inducted into and is occupying the office, is entitled to perform the functions of the office pending the determination of a contest over the election*". "It is a general rule of law applied in almost all jurisdictions that an injunction will not be granted to prevent a party from exercising a public office pending proceedings to determine the right thereto. This rule is always applied as to incumbents of offices, and is applied as well where the petition is made by the attorney of the State, as where the application is made by a private citizen".

FLOYD KILPATRICK(CONT'D)

Attorney Nelson went on to read, "We have not heretofore in any reported opinion apparently dealt directly with the question of the right to draw the salary attached to the office pending the contest, but we think it necessarily follows that the incumbent whose duty it is to perform the functions of the office pending the contest is entitled to receive the compensation provided by law for such services. It would be contrary to public policy to hold that one who performs the duties of an office shall not receive the compensation that goes therewith".

Attorney Nelson affirmed that he thought this was fairly definitive.

Councilwoman Gaines questioned the years of these two court cases and was told 1943 and 1944.

Councilman Benson asked pending an outcome of a ruling of a defacto act versus de jure, would we be able to recoup the money paid Ms. Rutherford in any way? Attorney Nelson responded that it would be difficult to determine if we could go back for it later, mentioning another case in Memphis where two parties had to be paid.

Councilwoman Gaines stated that she was of the opinion with both Laws that were quoted (Supreme Court of Tennessee), that there were a set of questions early on with Ms. Rutherford asking for an opinion of the Attorney General, and this had never happened.

Attorney Nelson responded that the Attorney General has a rule that they do not answer questions for municipal bodies; that a municipal body would have to go through the State Legislator.

Mr. Kilpatrick expressed that Attorney Nelson had cited an initial case and wanted to know about a case referred to in the initial case.

At this point Chairman Page interjected that he thought we had had enough "legalese".

FLOYD KILPATRICK(CONT'D)

Councilman Pierce stated that his position was that we appreciate citizens and their input, but you could “beat a horse to death”; that we had heard opinions from citizens and all councilmembers had had telephone calls and now we had acted in a manner that we felt was in the best interest of the citizens of this City. He stated that he, personally, did not need all of this outside advice; that we already have a City Attorney to advise us and have hired another attorney, and these are the people we want to listen to. He went on to tell Mr. Kilpatrick that he questioned this Community Law Clinic that he represented and wanted to know if this organization was incorporated?

Mr. Kilpatrick responded “yes”; that they had stamped approval and were registered to operate as a non-profit organization; that Councilman Pierce could check in Nashville.

Councilman Pierce indicated that he had already checked and found nothing; that as a representative of this “Community Law Clinic”, it was not for Mr. Kilpatrick to come here to try to get advice from the City Attorney, and asked him to please let us do this the best way we can; that Mr. Kilpatrick was talking about Marti Rutherford and reclaiming funds from her, and we might have to get him to pay something back—“that what goes round, comes round”; that if Mr. Kilpatrick was going to make his claims, he needed to be responsible and practice what he preached.

COUNCILMAN BENSON

Councilman Benson stated that we would try to bring something good out of this bad experience; that what distressed him in the memorandum from Mayor Littlefield was that we (City) have made exceptions quite often—that to him, this was the bigger problem; that this was being done with the authority of the Personnel Department and Administration—that if we are changing the policy, that we need to know how it affects everyone. He questioned if we were going to work something out for everyone as they got close to the age of 62? He stated that anything that was done, needed to be across the board, but he was afraid that this was not the way it was being worked out. He stated that we have to have regulations to follow and from what the Mayor said, we have not been following regulations.

COUNCILMAN BENSON
(CONT'D)

Councilman Benson went on to say that we needed to come back and examine our personnel practices and policies as it affects the income of people and also fringe benefits and need to be sure that all know what the regulations are, and there should not be any exceptions or grace period. He reiterated that he hoped this situation would bring us forward. He went on to say that the Mayor mentioned that private enterprise takes such action to protect an employee or official who has served for years—however Councilman Benson noted that these are businesses using their own money, and it is not the way we work.

MATT HODGES

Matt Hodges approached the podium, stating that he was in Councilwoman Bennett's district. He expressed his concern that the City is taking steps to destroy all that our community worked to build and that Chattanooga would revert to the Chattanooga of the 1980's. He stated that he was not against helping the homeless but was against a project that is not the best avenue for success. He asked that this be considered as we move closer to a vote on SETHRA's proposal and construction of a homeless complex. He went on to say that Chattanooga has a problem with panhandling and questioned if this created an image that will attract tourists, new citizens and new business. He stated that instead of having the homeless stay in numerous areas around Chattanooga, we are planning on confining them to one area, which he felt would create more crime. He felt that we already had the ability to help our current homeless population and questioned why we needed a complex for what already exists. He stated that Transitional Housing is a great option to solve the problem.

Mr. Hodges went on to say that the Mayor's Office has made the homeless issue the focus of Mr. Littlefield's term—that if we followed his lead and became the "City of Compassion", we would open the flood gates, and he thought our goal was to help our homeless and not add to the problem—that marketing a homeless complex makes no sense at all.

MATT HODGES (CONT'D)

Mr. Hodges continued, stating that our top concern right now is SETHRA's proposal, which he felt was the Mayor's backdoor approach to hide the homeless complex behind a less ominous project. He urged the Council to vote "no" on SETHRA, asking why we would want to put a hub for 9 counties worth of homeless in the middle of our city.

His next concern was how the farmer's market, if built, will be maintained? He questioned the cost of keeping it a clean area and how much of our police force will be required to handle issues that would arise in the area. He feared that near by redeveloped neighborhoods would be abandoned. He mentioned that this model had been a complete failure in most other cities.

Mr. Hodges, in closing, stated that he had heard that those fighting this issue were referred to as NIMBY (Not in my backyard people). He stated that he did not live in the MLK community; however he did enjoy downtown with his neighbors and did not feel that the Mayor truly has the best interests of our homeless at heart—using closing Miller Park, where the homeless were being served, as an example. He questioned how a homeless complex would improve downtown, stating that he thought the negatives greatly outweighed the goal of allowing the providers to communicate.

Chairman Page explained that the Council has not had anything on the agenda concerning this at this point in time; that there was nothing on our agenda, and he thanked Mr. Hodges for being here.

Mr. Hodges explained that the reason they kept coming back was because Mayor Littlefield keeps putting in the paper that something is going to happen in the next couple of months.

DONNA KELLEY

Donna Kelley, Personnel Director, approached the Council stating that she had been in this position approximately 30 years (she did not remember the exact date); that she would like to make Councilman Benson aware that she had an extraordinarily dedicated Staff who believed in fairness and uniformity for all employees; that Councilman Benson referring to the Personnel Department and Staff did reflect negatively on people who were seeking to administer their duties fairly, and she would not stand by and see something like this happen to them.

ADJOURNMENT

Chairman Page adjourned the meeting of the Chattanooga City Council until Tuesday, October 30th 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)**