

**CITY COUNCIL BUILDING  
CHATTANOOGA, TENNESSEE  
January 22, 2008**

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

**PLEDGE OF ALLEGIANCE/  
INVOCATION**

Following the Pledge of Allegiance, Councilwoman Robinson gave invocation.

**MINUTE APPROVAL**

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

**CLOSE & ABANDON**

**20007-173 A.D. Engineering Services, Inc.**

On motion of Councilman Rico, seconded by Councilwoman Gaines,  
**AN ORDINANCE CLOSING AND ABANDONING TWENTY-FIVE FEET (25') OF SANITARY SEWER EASEMENT ON A TRACT OF LAND LOCATED AT 2613 BELLE ARBOR AVENUE, MORE PARTICULARLY DESCRIBED HEREIN AND AS SHOWN ON THE MAP AND DRAWING ATTACHED HERETO AND MADE A PART HEREOF BY REFERENCE**  
passed second and final reading and was signed in open meeting.

**AMEND CITY CODE  
LANDFILLING REQS.**

On motion of Councilman Rico, seconded by Councilwoman Robinson,  
**AN ORDINANCE TO AMEND CHATTANOOGA CITY CODE,  
PART II, CHAPTER 31 SECTION 31-325, LANDFILLING  
REQUIREMENTS IN CERTAIN RESIDENTIAL AREAS**  
was deferred for two weeks.

**CONTRACT**

On motion of Councilman Franklin, seconded by Councilwoman Gaines,  
**A RESOLUTION AUTHORIZING THE ADMINISTRATOR OF  
THE DEPARTMENT OF PARKS AND RECREATION TO ENTER  
INTO A PERSONAL SERVICES CONTRACT WITH RACHEL  
HILDEBRANDT TO MANAGE THE CITY'S PUBLIC ART  
PROGRAM FOR A TERM OF TWELVE (12) MONTHS IN AN  
AMOUNT NOT TO EXCEED FORTY THOUSAND DOLLARS  
(\$40,000.00), WHICH CONTRACT AMOUNT IS TO BE  
SHARED EQUALLY BY THE CITY, THE LYNDHURST  
FOUNDATION, AND THE BENWOOD FOUNDATION**  
was adopted.

**OVERTIME**

Overtime for the week ending January 18, 2008 totaled \$62,168.38.

**PERSONNEL**

The following personnel matters were reported for the following departments:

**CHATTANOOGA FIRE DEPARTMENT:**

- ❖ **ROBERT T. DIXON**—Promotion to Battalion Chief, Pay Grade 5/7, \$59,088.00, effective 1/18/08.

**PERSONNEL (CONT'D)**

**CHATTANOOGA POLICE DEPARTMENT:**

- ❖ **LINDA HENDERSON**—Resignation of School Patrol Officer, effective 1/11/08.
- ❖ **TODD MOORE**—Resignation of Police Officer, effective 1/17/08.
- ❖ **BRIAN LOCKHART**—Suspension, 7 days without pay, of Police Officer, effective 1/20/08—1/26/08.

**CHATTANOOGA HUMAN SERVICES DEPARTMENT:**

- ❖ **VANESSA GREGORY**—Resignation of Teacher Assistant, effective 1/25/08.

**PURCHASES**

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

**TOTER, INC. (Best Bid meeting specs.)**  
**Requisition R0103533/B0004602**

Blanket Contract for Waste Containers

\$120,940.00

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

**HUDSON MATERIALS CO. (Only Bidder)**  
**Requisition R0103516/B0004601**

Blanket Contract for Emulsion and emulsified Products

\$30,000.00

**PURCHASES (CONT'D)**

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

**M-B COMPANIES, INC. (Change Order 1):**  
**Requisition R0104316/P0027885**

Thermoplastic Trailer

\$53,678.00 Original Contract  
\$ 747.00 Change Order Increase  
\$54,425.00 New Contract Total

**EMERGENCY PURCHASE**

The emergency purchase to repair a milling machine for use in a paving project by Roadtec, Inc. in the amount of \$12,210.2, was signed in open meeting.

**PURCHASE**

On motion of Councilman Franklin, seconded by Councilwoman Robinson, the following purchase was approved for use by the Personnel Department:

**HORIZON HEALTH (Best Proposal meeting specs.)**  
**Requisition R0104216**

Requirements Contract for an Employee Assistance Program

\$1.10 Per Employee Per Month

**PURCHASE**

On motion of Councilwoman Robinson, seconded by Councilman Rico, the following purchase was approved for use by the Regional Planning Agency:

**AQUATERRA ENGINEERING (Expertise and Reputation)**  
**Requisition R0104960**

Phase I Brownfields Site Assessments

\$22,000.00

**LIQUOR LICENSE**

A Liquor License for **Open Spigot Liquor, LLC at 4901B Bonny Oaks Drive** was duly signed by five Councilmembers. It was noted that this is in Councilman Franklin's district and comes with his approval.

**COMMITTEES**

Councilwoman Bennett announced that there would be a **District 3 TML Meeting in Collegedale on Friday, January 25<sup>th</sup> at 9:00 a.m.**

Councilman Benson stated that the **Legal and Legislative Committee** would meet at **3:00 p.m. on Tuesday, January 29<sup>th</sup>**. Topics of discussion will be the Office of Multicultural Affairs; Transportation Ordinance; City Code Update; and proposed legislation as it pertains to the Election Commission's authority for verification and compliance of residents' requirements for running for public office.

Councilman Feely noted that the **Education, Arts & Culture Committee met today** and discussed capital improvement projects for the Tivoli and Memorial Auditorium.

Councilman Franklin reminded Councilmembers of the **Parks and Recreation Committee meeting scheduled for Tuesday, January 29<sup>th</sup> immediately following the Legal and Legislative Committee meeting.**

**COMMITTEES (CONT'D)**

Councilwoman Robinson stated that the **Health, Human Services and Housing Opportunities Committee** met earlier today to continue the discussion regarding the Final Report from the Blueprint Homeless Committee. This committee will meet again on **Tuesday, February 5<sup>th</sup> immediately following the Legal and Legislative Committee** to receive additional information. Also to be discussed will be an extension of a Neighborhood Services contract and an extension of the contract with Chattanooga State regarding Neighborhood Initiatives.

**CATHERINE GARVEY**

**Ms. Garvey** stated that she was a concerned citizen and read from a prepared statement, which is made a part of the minute material. She stated that she was not here because of a class she was taking or a project that is required but was here because she wanted to see change; that last week another citizen informed the Council about Ordinance 12039, which requires a \$25 permit for groups of 15 or more to gather in public parks. She maintained that the rights of citizens are being violated under the Constitution—that both the 4<sup>th</sup> and 1<sup>st</sup> amendments were being violated—the first dealing with the peoples' right to peacefully assemble. She stated that a month ago she wanted to celebrate a very special day with family and friends from out of town; that this was a very unique day that she would never have again, and they had to gather somewhere else. She explained that Mr. Zehnder told them that this Ordinance was not meant to prohibit, but to be a courtesy to citizens, but she still maintained that this Ordinance is not a freedom, as the 1<sup>st</sup> Amendment states and is restricting. She also mentioned that when a Parks and Recreation officer evaluates a group, this means that a single person's judgment is placed on whether a permit should be required or not and can result in discrimination against certain groups—that this is illegal and unconstitutional and called "selective enforcement". She went on to say that this Ordinance infringes on the Equal Protection clause of the 14<sup>th</sup> Amendment because this Ordinance discriminates against many people, and the poor cannot afford this permit—that the \$25 fee is roughly four days worth of grocery money; that \$25 is a large part of a middle class income. She asked that the City Council recognize the unconstitutionality of this ordinance and amend it so all can use the parks that they have paid for or either abolish the ordinance and create a new one that is equal to all people.

**CATHERINE GARVEY**  
**(CONT'D)**

Because of time constraints, Chairman Page had to ask Ms. Garvey to sum up her comments. He stated that he hoped she got an "A" in her class and that the Council would ask the City Attorney to review this Ordinance in regards to the constitutional issues that had been raised. He also thanked Adm. Zehnder for talking to this group.

**SAMUEL F. HUDSON**

**Samuel Hudson, Attorney**, appeared before the Council in regards to **Police Sergeant Adrian Gibb**. He stated that Sgt. Gibb had 19 years of honorable service in the Police Dept. and that he was present tonight to request an opportunity for Sgt. Gibb to present his case to a committee of the City Council for a return of his personal days (70) that he was required to use during his suspension. He went on to say that Mr. Gibb was placed on leave without pay on August 3, 2007, and remained in this status until October 13, 2007, when a Grand Jury returned a No Bill on his misdemeanor charge. He stated that in order to live, Sgt. Gibb had to "cash" in his personal days. Attorney Hudson maintained that Sgt. Gibb had the right to a hearing to request that these personal days be awarded back to him, as they would have continued to accrue if he had not had to cash them in. He maintained that this case should be discussed on its merits, and he was requesting a hearing before a committee of the City Council.

City Attorney Randall Nelson read from **City Code Section 2-185** © *"Employees who are charged with a felony may be either dismissed or suspended until such employee is either found guilty or the charges are dismissed; any such employee placed on suspension shall be placed on personal leave during the time of such suspension until such personal leave is exhausted and shall then be placed on leave without pay; if the felony charge is dismissed for whatever reason, a suspended employee shall be returned to duty with back pay, provided that no payment for back pay shall be made for any delay in the criminal prosecution caused or requested by the employee or the employee's attorney, and provided further that if it appears that there is sufficient evidence to show that the employee is not a fit or suitable employee, then he or she shall be dismissed without back pay. Any employee returned to duty after a suspension shall be eligible for payment of back pay only for that time he or she had been placed on leave without pay."*

Attorney Nelson stated that is exactly what the Police Chief did.

**SAMUEL HUDSON (CONT'D)**

Attorney Nelson went on to say that the Ordinance provides that the Chief can put someone on leave without pay.

Attorney Hudson still maintained that Sgt. Gibb was placed on leave without pay and required to cash in his personal days. He referred to **Section 2-174** that reads *“Department heads and supervisors have authority to approve personal, court, meeting and military leave with pay in conformance with the regulations hereinabove set forth. All other leaves of absence, for whatever purposes, whether with pay or without pay, must be authorized by the mayor, except as otherwise expressly provided”*.

Attorney Hudson stated that this was what had happened and that he was prepared to argue the merits of the case tonight.

Councilman Benson stated that he thought that anybody could charge anyone with anything, and as he understood it, the department head has the right to put him on suspension. He went on to say that he thought there was also a mandate to return the salary for the time “docked” if the person is found innocent.

Attorney Nelson explained that in this case the employee was placed on leave with pay, until his personal time ran out, and he would remain in that status and since the case was dismissed, there was no payment for leave without pay; that in this matter, the Police Chief had the right to determine when an employee uses his vacation time.

Councilman Benson verified that it would have been leave without pay if the employee had not had vacation time to use.

Chairman Page asked Attorney Hudson to put his request in writing to the Council. Attorney Hudson responded that he had already done this two times.

Attorney Nelson stated that he had heard one new thing—that they were alleging that Sgt. Gibb was placed on leave without pay to begin with; that when using personal leave, it is leave with pay.



SAMUEL HUDSON(CONT'D)

Chairman Page stated that the Council would take this under advisement and would have an answer next week as to whether the case could be heard; that our attorney needs to review this again.

Attorney Hudson maintained that there needed to be a hearing because of substantial issues where there was a disagreement.

Attorney Nelson responded that he did not know if they had a disagreement or not; that he would have to check with the Police Chief to see if Sgt. Gibb was placed on leave without pay.

Councilman Franklin stated that Attorney Nelson and the Police Chief needed to get together on this.

Chairman Page asked Chief Cooper, who was present, if he had this information with him at this time?

Chief Cooper came forward and stated that as per City Code, Sgt. Gibb was placed on personal leave and that he lost no pay, reiterating that he was placed on personal leave and lost no pay.

Attorney Nelson maintained that whether he was placed on leave without pay or cashed in his personal leave that it was the same in the end.

Attorney Hudson responded that it was **not** the same—that he could not get his personal time back.

Attorney Nelson noted that Chief Cooper had no recourse but to suspend him.

Attorney Hudson explained that Sgt. Gibb was suspended while this was ongoing; that on October 12, 2007, the Grand Jury returned a No Bill on his misdemeanor charge; that Sgt. Gibb was acquitted but because of this, he had been placed in the position of losing his personal leave time; that if he had not been suspended, his personal leave time would have accrued but because of the suspension, he had to cash in his time and now he could not get it back.

Attorney Nelson still maintained that Sgt. Gibb was suspended with pay.

**SAMUEL HUDSON (CONT'D)**

Attorney Hudson maintained that Sgt. Gibb was suspended without pay, and he was requesting his money; that he did get paid but now it was time to give him back his personal leave; that had Sgt. Gibb been working during this period, he would have gotten paid and would have also built up his personal days; that since he was suspended, he had to use his personal days—that his days would have accumulated.

Attorney Nelson still maintained that it was the choice of the Chief of Police when an employee takes his personal days.

Attorney Hudson still maintained that Sgt. Gibb was entitled to back pay, with Attorney Nelson directing his attention to the last section of the Code, still maintaining that the net result was the same—that the employee was not entitled to personal leave when he was getting paid during the whole period. Attorney Hudson argued that had he not been suspended, personal days would not have been used, and this resulted in a monetary value.

Chief Cooper stated that there was no reflection on Sgt. Gibb but that he was just following the City Code; that he placed him on personal leave days and even if the charge was dismissed, the employee was only eligible for time lost and no time was lost; that the personal days would not be paid back, even if the charge was dismissed; that there was nothing substantial to be discussed.

Chairman Page stated that this had been discussed enough; that before the Council could make a decision concerning a hearing they had to hear what the City Attorney has to say; that according to the City Attorney and the Chief of Police, they had complied with the City Code; that Attorney Hudson's only recourse was civil action.

**COUNCILMAN PIERCE**

Councilman Pierce questioned whether a document he had presented to the Council regarding Commercial Development in the Martin Luther King Community had been registered. This document is made part of the minute material. He stated that many residents in his district were concerned about plans by the current City administration to build a large homeless campus on East 11<sup>th</sup> street because of the preponderance of social services for its geographical size. Dr. Barbara Medley, Director of Community Outreach Partnership Center provided the information.

**ADJOURNMENT**

Chairman Page adjourned the meeting of the Chattanooga City Council until Tuesday, January 29, 2008 at 6:00 p.m.

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**CHAIRMAN**

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**CLERK OF COUNCIL**

