

City Council Building
Chattanooga, Tennessee
June 3, 2008
6:00 p.m.

Chairman Bennett called the meeting of the Chattanooga Council to order with Councilmen Benson, Berz, Gaines, Page, Pierce, Rico and Robinson present; Councilman Franklin was absent. City Attorney Randall Nelson, Management Analyst Randy Burns and Council Clerk Carol O'Neal, were also present.

PLEDGE OF ALLEGIANCE/INVOCATION

Following the Pledge of Allegiance, Councilwoman Berz gave invocation.

MINUTE APPROVAL

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

AMEND CITY CODE

On motion of Councilwoman Robinson, seconded by Councilwoman Gaines,
**AN ORDINANCE TO AMEND CHATTANOOGA CITY CODE, PART II,
CHAPTER 12, BY AMENDING SECTION 12-21, RELATIVE TO CITY COURT**
passed second and final reading and was signed in open meeting.

APPROPRIATION

On motion of Councilwoman Gaines, seconded by Councilman Rico,
**AN ORDINANCE APPROPRIATING FOUR THOUSAND DOLLARS
(\$4,000.00) FROM THE GENERAL FUND TO THE CHATTANOOGA-
HAMILTON COUNTY BICENTENNIAL LIBRARY AS A MATCH OF
HAMILTON COUNTY FUNDS RECEIVED**
passed second and final reading and was signed in open meeting.

AMEND CITY CODE

On motion of Councilman Rico, seconded by Councilwoman Robinson,
**AN ORDINANCE TO AMEND CHATTANOOGA CITY CODE, PART II,
CHAPTER 7, ANIMALS AND FOWL, SECTION 7-2, 7-82(b), AND 7-82(c)
TO ADDRESS "MENACING" DOGS**
passed second and final reading and was signed in open meeting.

INTERIM BUDGET

On motion of Councilman Rico, seconded by Councilwoman Gaines,
**AN ORDINANCE PROVIDING FOR AN INTERIM BUDGET AND
APPROPRIATING FUNDS FOR THE USUAL AND ORDINARY EXPENSES OF
THE CITY GOVERNMENT FOR THE MONTHS OF JULY, AUGUST, AND
SEPTEMBER 2008, PENDING THE ADOPTION OF THE 2008-2009 ANNUAL
BUDGET**
passed first reading.

TRANSFER OF CREDITS

On motion of Councilwoman Robinson, seconded by Councilman Pierce,
**A RESOLUTION AUTHORIZING THE TRANSFER OF CREDITS FROM ONE
ACCOUNT TO ANOTHER ACCOUNT WITHIN THE VARIOUS
DEPARTMENTS, AGENCIES, AND DIVISIONS OF THE GOVERNMENT**
was adopted.

PERSONAL SERVICES CONTRACT

Councilman Benson stated this matter was discussed in Legal and Legislative Committee and approval is recommended.

On motion of Councilman Page, seconded by Councilman Pierce,
**A RESOLUTION AUTHORIZING THE OFFICE OF MULTICULTURAL AFFAIRS
TO CONTRACT THE PERSONAL SERVICES OF CASANDRA CROSBY FOR
THE PERIOD OF MAY 19, 2008 THROUGH JULY 19, 2008 IN AN AMOUNT
NOT TO EXCEED EIGHT THOUSAND EIGHT HUNDRED NINETY-NINE
DOLLARS (\$8,899.00), FOR A TOTAL AMOUNT PAID TO MS. CROSBY
THIS FISCAL YEAR OF FOURTEEN THOUSAND NINE HUNDRED FIFTY-
THREE DOLLARS (\$14,953.00), WHICH WILL RESULT IN EXCEEDING THE
TEN THOUSAND DOLLAR (\$10,000.00) LIMIT FOR THIS FISCAL YEAR**
was adopted.

PAYMENT AUTHORIZATION

Councilman Robinson and Rico made the motion and second to adopt this Resolution.

Councilman Benson stated that it is his belief this Council strongly supports good public art as it is needed in the community to have viability and quality of life. He stated that he has a different point of view of the \$27,685.00 expenditure right now at the present time; that it requires a lot more consideration than just trying to fill a desirable commitment we made in 2003. He stated right now the greater issue is in timing of when we can provide financial support as it is not getting done when we can get it done by providing financial support for what should be classified as desirables. He stated this piece of art is a "desirable"; that we are faced with many essential services being slashed by weekly growing inflationary gasoline charges. He stated essential services such as CARTA, garbage collection and fire and police protection are among essential services that must continue with gas that is supposed to go up \$6 - \$8 dollars; that compared to this time last year it has gone up \$2.10. He stated if we minimize damages done to the city by this outrageous economy we are in and damages to be done to citizens by spending money that should possibly be put in abeyance for essential services we would be making a mistake.

Councilman Benson stated desirable services should be bought when we have money to buy it and does not know if we have the money to continue to spend for desirables. He stated he does not mean for this to be anything negative toward good art investments down in the future in the Parks and Recreation Department, yet it is his thought this expenditure should be looked at in light of what is going to be costly to keep the essential services in this city if gasoline keeps going the way it is going. He stated that it is his thought this expenditure should either be defeated or deferred indefinitely until we can assess our priorities and delineate the necessities from desirables as we can take a chance on it at this time. He stated he would support a motion to defeat or defer this matter until the staff or Mayor can come in and say we have enough money to run all the services if gas goes up \$6 - \$8 dollars. He stated if we do not have enough as projected with increased inflationary costs we had better set aside a "cushion" and this could be part of that "cushion" other than for desirable services. He stated he cannot support this.

Councilman Pierce stated that he concurs with Councilman Benson's comments and noted that he did not have an opportunity to attend last week's committee meeting and as he came in today he was handed a brochure; that he looked at it and did not know what he was looking at; that it was just a picture of the "Rail Wave".

PAYMENT AUTHORIZATION (Continued)

Councilman Pierce stated that he does not know the significance behind this piece of art but if this is what is felt we really need to pay \$27,685.00 for then he needs to go in the art business! He stated that he can not see any significance of what we are getting for \$27,685.00 unless Adm. Zehnder is willing to explain what he (Pierce) is looking at! He stated that he can not support it at this point and it is his thought that the Council should realize if we are not in a recession we are on the way to one. He stated we have to look at the way we spend money as they are not our dollars, they are the taxpayers' dollars and they are looking for us to be good stewards of the money we spend in this city, which has been his position from "day one". He stated he can not support this.

Councilwoman Robinson stated the public art program that we as a city established five years ago involved over 500 people who came on several occasions to the Trade Center and met and endorsed the concept. She stated a plan for funding was put in place and the Council adopted it by ordinance to make allocations for pieces brought forth by the Public Art Committee which has broad support throughout the community. She stated some of the great examples involve The Passage and the medallions created by Cherokee Indians installed by the Riverfront and the beautiful First Street art display which beautifies our walkway from the Aquarium to Bluff View – that these are two notable installations of public art that are especially beautiful. She stated that she spoke to the Mayor today and asked if there was something she did not know about the state of our city; that he assured her that the city is "sound" and the monies are allocated and approved and he stands behind the program as he has previously and does today.

Councilwoman Robinson stated that she would never vote for anything that would end up costing citizens a loss of services and based on what she knows and what the Mayor told her today she is very comfortable in supporting this and encouraged all to support the public art program as a little part of what we are doing to make Chattanooga better and keeping other cities of our size going across the United States. She stated that we get high marks for what we have done in downtown and (she) wants to keep us on that track.

Councilman Rico stated that he is not an art critic; that the Committee has studied it and he will take it for what it is worth as they are the art critics and he is not. He stated that he can vote for this because in the three years he has been on the Council he has not done any traveling and does not take the \$200 per month he is entitled to for expenses and figures that he has saved the city more than \$17,000 (since he has been here) that can be used as his part for good art.

PAYMENT AUTHORIZATION (Continued)

Councilwoman Gaines stated that she would have to say probably the same thing as Councilman Rico as she has not spent anything as of yet and is not "knocking" anyone; that for the Council members who do travel she appreciates that as she has not been able to in the last year and thinks it is wonderful. She referenced the history of Chattanooga and the rebirth of downtown noting that she has an appreciation for art but will not support this item today. She stated she has supported art efforts since she has been on the Council however her major concern at this point is the lack of funds she sees coming into her district; that \$27,685.00 would actually cover very well some of the recreational buildings her district has had for so many years that are simply getting a "paint piece".

Councilwoman Berz stated that she wondered if we are not operating under a misconception; that she understood these were targeted dollars and would be used for art and no place else. She asked if we decided not to fund this it does not mean the funds can be used any place else and wanted to know if she were correct.

Acknowledgement was given that she was not correct.

Councilman Benson stated that the money has been allocated.

Adm. Madison stated that Councilwoman Robinson explained the process and from that process this Council approved the allocation of \$100,000 per year based upon one percent of the funding toward ground infrastructure, not above ground. She stated in fact, the one percent has not been funded and the amount has been limited to \$100,000 per year; that for the past three years we have set aside \$100,000 a year in a restricted account to be used for public art in the Public Art Program. She stated unless this Council "under-earmarks" or "de-obligates", the money can not be used for other purposes.

Councilman Page stated that his comments cover two things-- budgeting and funding. He stated as he understands it and as Mrs. Madison has indicated this is something we have done for a few years by allocating \$100,000 for the public art program and administering that money has been left as recommended or committed. He stated that he does not know who is on the Committee but knows it involves a broad base of people who think and make decisions about what would be good art objects for our city to display.

PAYMENT AUTHORIZATION (Continued)

Councilman Page stated he likes the decision-making process very much and noted there are people in his district who are for it and some who are opposed; that there are many varied opinions in regard to this piece of sculpture. He stated Michelangelo could make a piece and still have the same discussion. He stated whether this Council likes the piece or not he would rather listen to the Committee because the Committee was put together, educated and knows what is best for our city. He stated he is not particularly fond of the piece but will vote for it because the Committee picked it and they support it.

Councilman Page stated Councilmen Benson, Pierce and Gaines made good points however if there is a funding problem and we are using this as an object to "bat around with" it is his thought it is the wrong object; that there are other much larger items in the budget and huge amounts of money we could capture if, in fact, this Council thinks it is in the best interest. He stated this is the wrong place and time to pursue that argument as funds have been earmarked; that that is not a popular position for us to take as this is a valid piece of sculpture. He stated he is speaking in support of it and does not think it is a particularly popular position to take but he really wants to reserve our funding future as there are a lot of bigger "fish in the ocean" than this little piece of art. He stated that he supports the motion to approve.

Adm. Zehnder stated that Rachel Hildebrandt, Director of the Public Art Program, is present and can answer questions Council members have. He stated he has had the opportunity of working with the Public Art Committee for the past year-and-a-half and prior to that with Allied Arts who was intimately involved with the administration of it, and then Parks and Recreation "stepped in" when Allied Arts decided to discontinue. He stated that he is very impressed with the professionalism of this group of people that represents a cross-section of the population with many different backgrounds and diversity; that it is a very good heart warming group to see actually work and operate. He stated one thing he wanted to bring attention to is what the Committee has done for the last five years in bringing international acclaim to Chattanooga; that a group of 50 people from throughout the United States will spend four days here, October 10-13 and it is anticipated they will spend between \$200,000 - \$300,000 in our community. He stated we are on the map internationally as far as public art in this community is concerned which represents a tremendous amount of economic stimulation; that developers bring more jobs, money and cash flowing in our community. He stated that he firmly supports this project and this particular piece of artwork.

PAYMENT AUTHORIZATION (Continued)

Adm. Zehnder stated they are in the process of relocating leased art which has to go through a tremendous amount of exposure and if the private community says they like it they will buy it or possibly located it on their property which is something they want to happen. He stated all-in-all the public art program is good and timing is a particular issue, but an important issue is that the public art process does what they have been appointed to do and that is to render a recommendation on our public art program.

Councilman Benson stated that he does not know if that question has been raised.

At this point Councilman Rico called for the question.

Chairman Bennett stated Councilman Pierce raised it.

Councilman Benson stated that he wanted to hear an answer.

Councilman Pierce noted that he had made up his mind.

Councilman Benson stated allocations do not have to be spent year-in-and year-out and the money goes back into the department. He stated another thing is that \$278,685 is no small amount; that it takes \$54,000 to run the CARTA shuttle and it could possibly close down and there is discussion about stopping the shuttles on Market or Broad Street. He asked Dan Johnson if he is correct that discussions have begun.

Dan Johnson responded "everything is on the 'table'".

At this point Councilman Rico again called for the question.

On motion of Councilwoman Robinson, seconded by Councilman Rico,
A RESOLUTION AUTHORIZING PAYMENT IN THE AMOUNT OF TWENTY-SEVEN THOUSAND SIX HUNDRED EIGHTY-FIVE DOLLARS (\$27,685.00) TO CHRISTOPHER FENNEL FOR HIS "RAIL WAVE" SCULPTURE AS PART OF THE CHATTANOOGA PUBLIC ART PLAN
was adopted; **Councilmen Gaines, Pierce and Benson voted "no"**.

PAYMENT

On motion of Councilman Rico, seconded by Councilwoman Robinson,
A RESOLUTION APPROVING PAYMENT TO SOUTHEAST COMPANY, INC. IN AN AMOUNT NOT TO EXCEED EIGHT THOUSAND NINE HUNDRED EIGHT AND 73/100 DOLLARS (\$8,908.73) FOR INVOICES FOR MISCELLANEOUS REPAIRS AT VARIOUS PARKS AND RECREATION FACILITIES
was adopted.

CONTRACT

On motion of Councilwoman Robinson, seconded by Councilman Rico,
A RESOLUTION AUTHORIZING THE ADMINISTRATOR OF THE DEPARTMENT OF PARKS AND RECREATION TO EXECUTE A CONTRACT WITH SHROP CONSTRUCTION COMPANY, INC. TO CONSTRUCT A HANDICAP RAMP AT FRANCIS B. WYATT RECREATION CENTER IN AN AMOUNT NOT TO EXCEED EIGHTEEN THOUSAND FOUR HUNDRED NINETY-ONE DOLLARS (\$18,491.00)
was adopted.

ACCEPT CONTRIBUTIONS

On motion of Councilman Benson, seconded by Councilman Rico,
A RESOLUTION AUTHORIZING THE CHATTANOOGA POLICE DEPARTMENT TO ACCEPT CONTRIBUTIONS FROM BUSINESSES FOR CORPORATE TABLE TICKETS AND/OR ADVERTISING IN A SOUVENIR BOOKLET FOR THE POLICEMAN'S BALL
was adopted.

ACCEPT PAYMENT

On motion of Councilwoman Gaines, seconded by Councilwoman Robinson,
A RESOLUTION AUTHORIZING THE DEPARTMENT OF PUBLIC WORKS TO ACCEPT A PAYMENT FROM ONS PARTNERSHIP IN THE AMOUNT OF NINE THOUSAND SIX HUNDRED SEVENTY-NINE AND 82/100 DOLLARS (\$9,679.82) AS REIMBURSEMENT TO THE CITY FOR LABOR PERFORMED BY THE CITY'S CONTRACTOR, NABCO ELECTRIC COMPANY, TO INSTALL A TRAFFIC SIGNAL AT THE ENTRANCE OF GREENLIFE GROCERIES ON MANUFACTURERS ROAD
was adopted.

OVERTIME

Overtime for the week ending May 30, 2008 totaled \$15,096.06.

PERSONNEL

The following personnel matters were reported for the various departments:

PUBLIC WORKS DEPARTMENT:

- ◆ **CALVIN L. TORY** – Hire, Crew Worker 3, City Wide Services, Range 7, \$24,306.00 annually, effective May 27, 2008.
- ◆ **RICHARD T. WILLIAMS** – Rehire, Equipment Operator 2, City Wide Services, Range 7, \$24,208.00 annually, effective May 23, 2008.
- ◆ **KEVIN S. TONEY** – Termination, Crew Worker 1, City Wide Services, Range 3, \$20,650.00 annually, effective May 27, 2008.
- ◆ **DAVID F. DELANEY** – Family Medical Leave, Equipment Operator 3, City Wide Services, effective May 28 – August 20, 2008.
- ◆ **JERRY JONES** – Suspension (2 days without pay), Crew Supervisor, Sr., Waste, effective May 22-23, 2008.
- ◆ **ERIC L. LEFEW** – Hire, Equipment Operator 4, Waste, Range 10, \$28,137.00 annually, effective May 23, 2008.

CHATTANOOGA POLICE DEPARTMENT:

- ◆ **BRIAN BLUMBERG** – Return to duty (has been on FMLA since April 2008), Police Officer, effective May 12, 2008.
- ◆ **MARCIE KEITH-MOORE** – Hire, Police Service Technician, Range 5, \$30,582.00 annually, effective June 6, 2008.
- ◆ **CHRISTOPHER SHANE LAWSON** – Return to Duty (From Military Leave), Police Officer, effective April 6, 2008.

PERSONNEL (Continued)

CHATTANOOGA HUMAN SERVICES DEPARTMENT:

- ◆ **TENA MCCLURKIN** – Suspension (28 days without pay), Intake Specialist, Head Start, effective May 30, 2008.

- ◆ **JOANNE WATKINS** – Suspension (28 days without pay), LIHEAP Coordinator, effective May 30, 2008.

FINANCE DEPARTMENT/TREASURER’S OFFICE:

- ◆ **MELANIE EVERETT** – Family Medical Leave, Property Tax Clerk, effective June 9 – July 18, 2008.

PURCHASE

On motion of Councilwoman Gaines, seconded by Councilwoman Robinson, the following purchase was approved for use by the Chattanooga Human Services Department:

HATCH, INC. (lower and better bid)
R0108767

Early Childhood Computer Learning Centers

\$22,207.70

PURCHASES

The following purchases were approved for use by the Parks and Recreation Department:

On motion of Councilman Rico, seconded by Councilwoman Gaines, the following purchase was approved:

CHATTANOOGA PROFESSIONAL PAINTERS (Payment authorization)
R0110218-R0110218

PURCHASES (Continued)

Painting Services (*Ratification of purchase of painting services; the Parks and Recreation Department is working to prepare specifications for a blanket contract for painting services. In the absence of a painting services contract, Council approval is requested to make payment.*)

\$6,637.00

On motion of Councilwoman Gaines, seconded by Councilwoman Robinson, the following purchase was approved:

BOBCAT OF CHATTANOOGA (Best bid)
R0108317/B0005143

Skid Steer Loader (*Although a lower bid was submitted by Chattanooga Tractor, the Parks and Recreation Department maintains an inventory valued at over \$30,000.00 of interchangeable Bobcat attachments. Chattanooga Tractor submitted a bid for New Holland Equipment and the attachments currently owned by the City of Chattanooga are not interchangeable with the lower bid.*)

\$28,280.45

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

SMITH TURF & IRRIGATION (Alt.) (Best bid)
R0108265/B0005122

Triplex Mowers (*The lowest bid submitted by Smith Turf and Irrigation is not recommended for award since it did not meet the specifications.*)

\$49,051.88

On motion of Councilwoman Robinson, seconded by Councilwoman Gaines, the following purchase was approved:

RAM JACK SOLUTION (Lower and better bid)
R0108680/B0005157

Repairs at Greenway Farm

\$16,400.00

SUMMER YOUTH PROGRAM/HOURS OF OPERATION

Councilman Pierce stated that he has a question about the summer youth program and asked if there are project center managers.

Adm. Zehnder asked for clarification as to whether Councilman Pierce is inquiring about the summer youth employment program.

Councilman Pierce stated his question is in reference to the program administered by parks and recreation where positions are contracted-out.

Adm. Zehnder acknowledged that he was not exactly sure what phase of the program Councilman Pierce is talking about and noted that the summer program involves people the department employs during summer to work; that they are not under contract and are temporary workers.

Councilman Pierce asked why they are needed.

Adm. Zehnder stated there are fifteen recreation centers with summer day camp programs; that they have as many as 75 children in one program. He stated in order to pass the minimum supervision ratios additional staff is needed to help with the number of kids in the program to supplement the department's full time personnel with "temps" during the summer.

Councilman Pierce asked if some of the people on contract are being paid upwards of \$15 per hour.

Adm. Zehnder stated some instructors require a higher fee to conduct an hour-or-two session. He stated the art program has a special program where the person is paid a good hourly rate but they do not work many hours within a week; that they may work three-to-four hours per week.

Councilman Pierce stated that he and Adm. Zehnder could talk more later.

Councilwoman Gaines stated that she has received several calls about daily hours of the swimming pool and asked if the hours have changed.

Adm. Zehnder stated that he was not sure what the hours are and would get that information for her.

Councilwoman Gaines stated that someone on Mr. Zehnder's staff could e-mail the information to her; that it should be something very informal to include only the hours. She stated there have been several call-ins on "talk radio" complaining about the hours.

SUMMER YOUTH PROGRAM/HOURS OF OPERATION
(Continued)

Adm. Zehnder stated he would be happy to share the brochure with Councilwoman Gaines.

PURCHASE

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

SUN VALLEY LIGHTING (Best complete bid)
R0103743/B0005188

Pedestrian Light Poles & Fixtures (Yoder Brickey Sales, Chattanooga Lighting Sales and Winona Lighting, Inc. offered lower bids; however, their bids were incomplete and considered to be non-responsive and ineligible for the award.)

\$52,368.00

EXPRESSION OF THANKS

Lee Norris stated he wanted to report to Council the public works department received \$6,800 in donations in support "Public Works Week" activities and noted that they had over 200 high school and college aged students at the career fair at Chattanooga State. He stated that he and others in the department enjoyed having those who made it to the First Tennessee Pavilion; that the kickoff was well attended as over 8,000 came through that day. He stated the event was very successful and they had good public relations events.

Councilwoman Gaines thanked Messrs. Norris and Leach, noting that she attended the public works feast and it was a wonderful event!

PURCHASE

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

FLASHER & BARRICADE SERVICE (Only bid received)
R0109277/B0005181

PURCHASE (Continued)

Barricade Service *(Since the need for barricade service is often immediate and on an emergency basis with no prior notice, it is compulsory the service provider is a local company. Two of the last three times this requirement was advertised, Flasher and A-1 were the only two companies to bid; this time, A-1 elected not to bid because of their unsuccessful efforts to win the solicitation in the past.)*

REFUND

On motion of Councilwoman Robinson, seconded by Councilman Rico, the Administrator of Finance was authorized to issue the following refund DUE TO State Board exemption of church building and 8.48 acres as of April 15, 2005:

GEORGIA CUMBERLAND ASSOCIATION OF SEVENTH DAY ADVENTISTS - \$1,473.08

KEVIN TONEY REQUEST FOR HEARING

City Attorney Nelson stated last week Kevin Toney asked for a hearing before this body and it was deferred until this week to check to see if indeed he had signed a "last chance agreement" within the department of public works. He held up a copy of Mr. Toney's signed agreement waiving any rights to appeals should he be found in violation of department policies. He asked that the Clerk of Council make the document part of the record. (A copy of the document is spread upon the minutes as an attachment to minutes of this date.)

Councilman Pierce inquired as to whether signing a last chance agreement is legal.

City Attorney Nelson responded in his opinion it is; that a person can waive on a situation the rights you want and can surely waive a contract right.

Councilman Pierce stated if he left it was either be fired or sign this.

City Attorney Nelson stated he (Toney) is not giving up any right at that time. He stated if he was fired at that time he could have come and had a hearing before the Council. This says in lieu of that he was willing to sign this agreement and given one more chance; that if he performs, fine, otherwise he waived his right to an appeal.

KEVIN TONEY REQUEST FOR HEARING (Continued)

Councilman Pierce stated he does not support that; that he knows the Council talked about this in the past and it is just like going into court and they offer a two year program or five years in prison; that a person would take probation and sign that right away! He stated that the department should quit playing games by having persons sign a piece of paper to use to further their case. He stated if a person appears for a hearing they have to prepare a case before the Council for that person; that he thinks in some way they should try to get rid of that last chance agreement if possible.

Councilman Benson stated that a case is being appealed in Chancery Court because ex parte information was given to the Council and we did not divulge it in written form prior to the hearing. He stated he has never seen rules like that and thinks the City Attorney should sit down and detail the rules of how much we can know about an individual prior to a hearing and do we disclose that. He asked that the City Attorney summarize what conditions of service are required.

City Attorney Nelson stated that we do have a set of rules to govern proceedings of appeals to the Council and does not think the Council's rules cover that particular facet. He stated he is aware of a case before the Tennessee Supreme Court a number of years ago where a former fire and police commissioner reprimanded an officer and then cast the deciding vote in a 3-2 decision. He stated he does not know if using information from the outside is a violation of due process.

Councilman Benson stated that he read a summary judgment and it said the police department had special rules about ex parte and asked if we have special rules for this.

City Attorney Nelson stated that he did not think so; that before placing a lot of interest he would be on the side of the Brief from the Chancellor and would rely on the Chancellor.

Councilman Benson asked if we heard about any actions that would contribute to a person's termination should we recuse ourselves.

City Attorney Nelson stated it is up to every individual's conscious, but as closely as some work within individual departments it would be practically impossible to get a non-partial committee if we exclude everything you know before going in.

Councilwoman Berz stated that she has just heard about the last chance rule and asked where it is initiated.

KEVIN TONEY REQUEST FOR HEARING (Continued)

City Attorney Nelson responded "in public works".

Councilwoman Berz asked if the rules are initiated in any other department and whether they are reviewed and approved by the legal department.

City Attorney Nelson responded "not necessarily".

Councilwoman Gaines stated that she remembers Councilman Feely introducing an amendment to an old law a week prior to his leaving that had to do with due process.

City Attorney Nelson clarified that it had to do with laborers not being entitled to a hearing.

Councilwoman Gaines stated when it was introduced there was a question because of public works' antiquated policies. She asked if the law has been "buried" since he left and how it applies to this.

City Attorney Nelson stated short of assuming Mr. Toney was a laborer . . . then realized in reading the document that Mr. Toney was a Crew Worker in Curbside Recycling. He continued by stating laborers, by changing that provision in the ordinance, were granted the right to a hearing; that it does not obviate them to waiving that right which is , in effect, what Mr. Toney did in this case.

WITHDRAWAL OF REZONING CASE 2007-215: SAM WILLIAMS

Councilman Page asked that the rezoning case for property located at 4928 Bradington Avenue (2007-215: Sam Williams) be withdrawn. He stated the applicant has requested withdrawal; that he has a letter that was submitted to the Clerk of Council.

Councilman Pierce asked if the Council is going to allow this to be withdrawn or go ahead and deny the ordinance; that the applicant would not be able to come back in nine months if it is denied. He stated he does not know what the applicant's plans are.

Councilman Page expressed disagreement with denial; that a new application is what the applicant is requesting and it should be evaluated on the merits of what he is going to do as opposed to this.

WITHDRAWAL OF REZONING CASE 2007-215: SAM WILLIAMS (Continued)

City Attorney Nelson stated that it is not a question of purpose; that the nine month rule is so that citizens who put themselves out for public hearing are not inconvenienced.

Councilman Page stated that this seems a reasonable request and he can not read the applicant's mind; that he would appreciate the Council's help.

Councilwoman Berz stated that she heard recently at the Planning Commission meeting that an applicant can withdraw before any action is taken.

Councilman Benson stated that rule is at Planning and not down here; that he does not see any fairness in this as the public does not know it is being withdrawn. He stated withdrawal takes away the waiting period rather than denying and there is one lawyer in town that specializes in not having the votes and sending it back and hollering "withdrawal".

Councilman Page stated there is no opposition to this request; that it is a "clean" community issue.

Councilman Page made the motion to withdraw rezoning case 2007-215: Sam Williams on property located at 4928 Bradington Avenue per request of the applicant; Councilwoman Gaines seconded the motion; the motion carried with Councilmen Pierce abstaining and Councilman Benson voting "no".

CONTINGENCY BUDGET

Councilman Page stated there has been discussion regarding the budget and suggested the need for an alternate budget or a budget that would be seen to reflect unusual circumstances with energy and fuel costs to be submitted with the regular budget. He stated a couple Council members have indicated fuel is going up \$8.00 - \$10.00 and requested administration put together a budget to be "party" to the regular budget the Council will receive shortly indicating there are ways we could meet that crisis.

On motion of Councilman Page, seconded by Councilman Benson, an official request was made of administration to prepare a contingency budget in concert with the regular budget that would address unusual circumstances with respect to projected inflated energy and fuel costs; the motion carried.

CONTINGENCY BUDGET (Continued)

Councilman Page also added that this is the second great year with regard to budget preparation with administration and the Council fully participating. He stated the Council has been given regular information and would see the budget coming forth shortly. He expressed appreciation to all involved.

STATE REPRESENTATIVE GERALD MCCORMICK

Councilman Page stated that the State Delegation chaired by Gerald McCormick has offered to come to the Council to give a briefing on what has happened/passed in the State Legislature. He stated that he would like to ask that 30 minutes be allowed in Committee for Rep. McCormick to update the Council so he would have uninterrupted time. The Clerk of Council was asked to communicate with Rep. McCormick regarding his availability and schedule the appropriate Council Committee.

DISTRICT 4 MEETING

Councilman Benson stated next Monday, June 9, at 7 p.m. there will be a controversial meeting in East Brainerd as far as Jenkins and Shallowford Roads are concerned as to whether there will be a traffic light or a roundabout; that 200-300 people are expected to come to listen, learn and come to a decision. He stated the Mayor, along with Mr. VanWinkle, will be present and all are invited to come and observe.

COMMITTEES

Councilman Rico reminded Council members of the **Public Works Committee meeting scheduled for Tuesday, June 10 at 3 p.m.**

Councilwoman Gaines scheduled a meeting of the **Safety Committee for Tuesday, June 10 immediately following the Economic Development Committee meeting.**

Councilwoman Berz scheduled a meeting of the **Budget and Personnel Committee for Tuesday, June 10 immediately following the Safety Committee meeting.**

KEVIN TONEY

Kevin Toney approached the lectern and Councilman Pierce expressed concern that Mr. Toney planned to speak in reference to the matter previously discussed tonight, noting that Mr. Toney had waived his right to appeal.

Councilwoman Gaines stated she has served on several personnel hearings and expressed her concern with the last chance agreement. She stated that she thought when we removed the "antiquated piece" referencing due process she thought we "buried that hatchet". She stated that she thought the amendment would assist us with this. She asked the City Attorney to have his staff look at this and give a short synopsis/opinion; that it is quite frightening to her.

Councilwoman Berz stated the one question she has is by Mr. Toney falling under this category would this in any way jeopardize anything else.

City Attorney Nelson stated if he wants to appear whatever he ways can be used against him at a later time.

Councilwoman Berz stated irrespective of what the outcome is she does not want anyone in a "catch 22". She stated that he has signed something and assuming it is binding there would be no appeal; that the only place he would have to go is here and if he does not testify here nor appeal, then he has no recourse.

Councilman Pierce asked the Council if they are willing to give Mr. Toney a hearing.

Chairman Bennett stated since Councilwoman Gaines has made a request for the City Attorney to come back with more information, could the Council wait until we have an opinion on the last chance process. She asked Mr. Tony if he would just wait until we have a firm decision on this last chance policy.

Councilman Pierce stated he would like for the City Attorney to come back next week with that in mind.

Councilwoman Berz stated that she thinks we also have to listen and know public works was acting in good faith for a balanced process. She stated she would like an answer to this.

ED TIMMONS

Ed Timmons (SEIU), 6574 East Brainerd Road, spoke to the last chance agreement and why it came about. He stated Mr. Toney was suspended for five days without pay, and when he returned to work he was given the last chance agreement. He stated he (Toney) was told if he did not sign he would be terminated; that in his view it is more coercion than free will and was signing away his rights. If this last chance agreement was to alleviate Section A, Part III, it would be in compliance; that if he violates again he would be terminated which would be fair. He stated this last chance agreement "says" he was signing away his rights which speaks to the process and he (Timmons) is actually speaking to the process.

Chairman Bennett expressed thanks to Mr. Timmons for his comments and noted that this goes back to Councilwoman Berz' comments that we also need to hear from public works in this situation.

Councilwoman Berz stated it is a personnel matter and until we find out what the City Attorney says we can add it to the Budget and Personnel Committee's agenda; that the matter should come back to the Committee for the City Attorney's opinion. She stated time is of the essence and she wants to give this full consideration either in Committee or in Council meeting and then decide what we want to do once the City Attorney has given his report. From there we can decide what we want to do; that Mr. Toney or whomever wants to speak or not as to the outcome, but not until we hear from the attorney.

NATHANIEL CRAIGMILES

Nathaniel Craigmiles stated he is a well-known Pastor and community activist in the city and was present tonight with representatives of the Chattanooga Community Council, a registered 501(c)3 organization and multi-cultural group, of which he serves as Vice President. He stated he was present to speak in reference to the 45th Street gym and noted the crime and number of youth in the area. He stated he has fought many battles and has picked this "battle" to reopen the 45th Street gym that is now closed and a vital part of the community. He stated the gangs issue has been settled down and mentioned that he and others have met with them and encouraged them to call a truce, noting that they informed him that they want recognition, want to play ball and have an outlet. He noted there is no outlet for youth in the city and it is his understanding that recreation centers close at 7 p.m., which is kind of crazy to him; that with all the problems we are having the recreation centers should be open a little longer.

NATHANIEL CRAIGMILES (Continued)

Mr. Craigmiles stated that they want to reopen the 45th Street gym; that they are not asking for money as they want to reopen the gym so there would be programs for the children and an out, noting there is space available for a ball field, as well. He encouraged the Council to look into this; that a letter has been sent to Mayor Littlefield about this and they have not heard him. He stated if they do not hear from him soon everyone will see them at Riverbend!

Khalid Hashmi

Chairman Bennett tried to clarify whether this was Mr. Hashmi's third appearance before the Council in 30 days, referencing the Resolution adopted by the Council that a person could only address the Council twice in a thirty-day time period

Khalid Hashmi addressed the Council and referenced Roberts' Rules of order with regard to the time limitation for persons speaking to the Council and the application of the Rules when a person is interrupted. He referenced interruptions by the City Attorney and asked if he should be interrupted in an un-courteous way.

City Attorney Nelson explained to Mr. Hashmi that the Council has other rules that have been adopted as to who may address the Council and how often that take precedence over Roberts' Rules.

Mr. Hashmi stated that is not part of the city's *Charter* as he believes.

City Attorney Nelson stated Mr. Hashmi was incorrect; that when the U. S. District Court ruled in Brown Case it said the Council could adopt its own rules.

Mr. Hashmi asked if a Council person can interrupt a citizen before his three minute time is up or not, "yes" or "no".

City Attorney Nelson responded "yes".

Mr. Hashmi stated that his Chattanooga address is 202 (no street given) and asked if the three minute rule could be looked at to see how it benefits citizens. He stated he was present in reference to the 45th Street gym that was closed without Council consideration and is in good shape. He stated Mayor Littlefield promised they would receive first preference and referenced a meeting with ten citizens to view/tour the site.

KHALID HASHMI (Continued)

Mr. Hashmi stated they informed him there is a 45% crime rate and 15% population; that HOPE VI requires 15-25% investment in the community and the 15-25 % investment has not been made. He stated if the investment had been made there would have been more educational and recreational facilities. He stated Mayor Littlefield agreed they would receive first preference on the building and a person was sent to tell them a lot of things. He stated they wrote a letter and would like to meet before the Council or a special committee to discuss the matter. He stated with the Council's oversight responsibility to please provide the possibility of a meeting to present their case; that children are getting drugged and killed. He stated they want to help and be a partner.

Councilwoman Gaines greeted persons before the Council and expressed concern for their concern, noting that she is familiar with several recreation centers but is not familiar with the 45th Street gym issue. She stated she is aware the recreation schedule has been changed and the additional dollars that are needed. She stated that she heard from their presentation that communication has been made with the Mayor that the Council is not familiar with. She stated she would contact Mayor Littlefield to follow-up on their conversation and where they stand today. She thanked them for coming.

MAHMOOD ABDULLAH

Mahmood Abdullah addressed the Council and stated that they had met with the Mayor and promised he would give them the building; not for their benefit but for the community. He stated last week Paul Page came out and found it would not take that much to remodel the building or fix the roof; that this is about their children. He stated this is about the community and our kids and asked if the Council cares; that if they do not stand up by whatever means they plan to "move" on those means; that it is time for a change. He stated that he has come in peace and will leave in peace.

Councilwoman Berz thanked them for coming and noted that she read the letter they wrote. She asked for clarification that there is a building in the area that has not been used for a long time that they want to "rehab" and use as a community center.

The response was "yes".

Councilwoman Berz then clarified that they are not asking for money from the city, but asking for what -- what did they talk to the Mayor about?

MAHMOOD ABDULLAH (Continued)

Mr. Craigmiles stated that they spoke to the Mayor about access to the building for use by the community. He stated they are not worried about the city's money as they have money to do this. He stated that he met with HUD officials and they are not worried about the money; that children are being killed . . .

Councilwoman Berz stated that she is trying to get to what it is the group is asking the Council to help with, asking for clarification if the Mayor is saying this is a good idea or not; that she wants to be sure what they are asking the Council to do. She stated they and the Council are not at odds with one another; that she has spoken with Mr. Zehnder as have other Council members about various problems; that they are not adversaries. She stated she is just trying to figure out how to make something work.

Mr. Hashmi stated that they met with the Mayor and it was a wonderful meeting. He referenced the persons in attendance at the meeting and the discussion was very healthy, educational and positive. He stated the Mayor stated they would have first preference and the Mayor then asked about the money and others in attendance stated that they would not put a price on human life. He stated later in the meeting another staff member brought up the money issue again...

Councilwoman Berz interjected at this time and asked whether the group has the money.

Mr. Hashmi stated they do not have to have the money but they have the money.

Councilwoman Berz asked if the group is looking to raise funds.

Mr. Hashmi stated there are HUD grants and so many other grants and money belonging to this community. He stated that he would most respectfully say that Councilwoman Berz knows more than he does.

Councilman Pierce stated that he was not being argumentative; that the property we are talking about has been there for over 50 years and has gone down; that there was very little activity and it made no sense for the city to continue operating it. He stated that money is a problem and he does not see enough kids in that area to do this. He stated that he would not support this facility being turned over to this organization.

ADJOURNMENT

Chairman Bennett adjourned the meeting of the Chattanooga Council until Tuesday, June 10, 2008 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)**

Attachment

LAST CHANCE AGREEMENT

On April 17, 2008, Mr. Kevin Toney was insubordinate to a supervisor while in public and in front of two other employees. This is the second time Mr. Toney has exhibited inappropriate behavior to a supervisor. He has been counseled numerous times by both his direct supervisor and by management. Mr. Toney does not recognize the negative impact his inappropriate behavior has on his fellow workers or this department nor does he recognize his responsibility to follow directions given by Supervision. Mr. Toney is being offered a Last Chance to improve his behavior. If Mr. Toney elects to decline this Last Chance offer, the Director, City Wide Services, will recommend his immediate dismissal.

This dismissal will be held in abeyance subject to the following:

- A. (1) Execution of this Last Chance Agreement; and
(2) Compliance with City Wide Services' policy.
(3) In the event Mr. Toney is determined to violate the provisions of this agreement, he voluntarily waives:
- a. the right to appeal
 - b. the right to file a grievance,
 - c. the right to file a civil action in court.
- B. This agreement will remain in effect for one calendar year from date of execution.
- C. If, after due process, Mr. Toney is judged to have failed to comply with any of his obligations under this Agreement, the Director, City Wide Services will, in accordance with established policy, recommend his immediate dismissal to the Administrator, Public Works.
- D. This Agreement sets forth the entire Agreement between the Director City Wide Services and Mr. Toney.

Date: 4-25-08

Kevin S. Toney
(Employee's signature)

Date: 4-25-08

James [Signature]
(Director, City Wide Services)