

City Council Building
Chattanooga, Tennessee
July 8, 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 Shockley; Councilwoman Robinson was absent due to personal commitment. 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, invocation was given by Councilman Page.

MINUTE APPROVAL

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

NOTE OF THANKS

Chairman Bennett expressed thanks to Shawn from WTCI for filming highlights of the Council shown on Sunday at 12:30. She stated this is another way of staying in touch with the community for anyone who is interested in seeing what happens at City Council meetings.

CLOSE AND ABANDON

MR-2008-036: Betts Engineering Associates, Inc.

On motion of Councilman Rico, seconded by Councilwoman Berz,

**AN ORDINANCE CLOSING AND ABANDONING A PORTION OF THE
700 BLOCK OF RIVER GORGE DRIVE, MORE PARTICULARLY DESCRIBED
HEREIN AND AS SHOWN ON THE MAP AND DRAWING ATTACHED
HERETO AND MADE A PART HEREOF BY REFERENCE, SUBJECT TO
CERTAIN CONDITIONS**

passed second and final reading and was signed in open meeting.

CLOSE AND ABANDON

Councilman Rico stated Resolutions (a) – (c) were discussed in Public Works Committee and approval is recommended.

MR-2008-081: Thomas Long

On motion of Councilman Rico, seconded by Councilman Page,
AN ORDINANCE CLOSING AND ABANDONING AN UNOPENED PORTION OF OLD CLEVELAND PIKE LOCATED WITHIN A TRACT OF LAND AT 7810 OLD CLEVELAND PIKE, MORE PARTICULARLY DESCRIBED HEREIN AND AS SHOWN ON THE MAP AND DRAWING ATTACHED HERETO AND MADE A PART HEREOF BY REFERENCE, SUBJECT TO CERTAIN CONDITIONS

passed first reading.

CLOSE AND ABANDON

MR-2008-095: Ann Barnes

On motion of Councilman Rico, seconded by Councilman Pierce,
AN ORDINANCE CLOSING AND ABANDONING PORTIONS OF TWO (2) UNOPENED ALLEYS LOCATED WEST OF AND PARALLEL TO THE 100 BLOCK OF NORTH CREST 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.

LIFT CONDITIONS

2008-111: Dale M. Smith

Greg Haynes, Director of Development Services with the Regional Planning Agency (RPA), stated there were five conditions originally which addressed maintaining the easement for utilities and the applicant wants to lift those. He stated the recommendation from Planning is to approve lifting conditions subject to approval by the city engineer and public utilities. He stated two letters were received from two utilities indicating it is okay with them in lifting the conditions.

Councilman Pierce asked if there are any other utilities located in the alley.

LIFT CONDITIONS (Continued)

Councilman Pierce asked if we normally close alleys if there are no utilities existing in the alley.

City Attorney Nelson responded "no"; unless the utilities do not need it any more or they have provided an alternate routing of the utility.

Mr. Haynes related the background history involving this case which began in 1986 when the alley's right-of-way was abandoned with conditions; that conditions involved the retention of an easement for utilities and sewers for Chattanooga Gas (condition 2), Electric Power Board (conditions 3) the Water Company (condition 3) and retention of the sewer easement (condition 4) and the fifth condition was reservation of the easement for any and all existing utilities. He stated in 2007 there was a case to abandon the sewer easement, so this year the applicant wants to lift all conditions on the abandonment.

Councilman Pierce asked if the city made application to abandon the sewer easement or the applicant; that there is still an exiting sewer in the alley.

Mr. Haynes stated public works officials might want to answer that; that the case in 2007 abandoned the easement and condition four that was originally there is moot.

Councilman Page expressed that he was a little confused and believed this Council, when alleys are abandoned, has no jurisdiction of abandoning any easements that are a part of that deed that would include AT&T, EPB and the Gas Company. He stated when the alleys are abandoned they are abandoned for the city's perspective with no authorization or jurisdiction to speak for any other entity. He stated that he needs clarification.

City Attorney Nelson stated that it is his thought what has happened is when the Tennessee Legislature, in its infinite wisdom many years ago when it gave franchises to the various companies, it was said they would have an easement in our streets. He stated in a lot of the cases they did what they wanted to do to encourage the investment of utilities to come in and service the city, so, when we abandon our streets it leaves those utilities still there since the Legislature has granted an easement. He stated that he frankly doubts if the Council could waive the easement of these third parties.

Councilman Page stated that was his understanding that we could not.

LIFT CONDITIONS (Continued)

Adm. Leach stated if there is a question about the city's sewer line we would not abandon it if we had any interest; that it may be gone or may be rerouted around the property. He stated the matter would have been reviewed from the public works side as stipulated in condition five and of the five we took our sewer out and left the four utilities. He stated in order to get it changed the ordinances needs to be changed to abandon or lift the conditions, which is how public works has always looked at it.

City Attorney Nelson stated Mr. Haynes has indicated that he has two letters from utility companies stating they did not have a problem with the conditions being lifted, so we could go ahead with those however he expressed hesitation as to any other utilities not heard from.

Councilman Pierce stated from his understanding of alleys, basically, they are granted to the city and we do not grant alleys to utilities; that as a result of the alley, utility companies are able to locate in the alley. He stated he is saying until they have cleaned out their utilities the city is still liable or responsible and it is still his thought the city has the alley. He stated if we want to abandon the alley we need to ask the utility companies to remove all their equipment from the alley.

City Attorney Nelson stated before when we abandoned this alley they still had the right to go in and service their utility lines. He stated we do not need that alley, apparently, as a right-of-way, which alleys normally are.

Councilman Benson stated the alley was abandoned in 1986 and asked how we can be consistent with our voting on abandoning alleys if this was like the Tier III alley the Council closed in Highland Park.

Adm. Leach clarified that the alley in Highland Park was Tier I.

Mr. Haynes noted that this particular alley was unopened and unused.

Councilman Benson stated that this alley is being recommended to lift conditions and on the other public works did not.

Adm. Leach asked if the Council is familiar with the Tiers of alley, noting that Tier I means the alley is open and active and Tier III means it is unused.

Councilman Benson stated the Tier I in Highland Park was abandoned, anyway.

Adm. Leach responded "correct".

LIFT CONDITIONS (Continued)

Councilman Benson clarified that this request is a Tier III and unused.

Mr. Haynes stated there are no utilities there; that letters were received from EPB (condition 2) and the Gas Company (condition 1) indicating that they have no problem. He stated a letter has not been received from the Water Company however the applicant indicates he has received one which takes care of the three conditions; that the fifth one is all-inclusive for all utilities. He stated as far as we can tell no one has interest in keeping the conditions that refer to the utility easements. He stated the conditions state "approve subject to City Engineer and public utilities"; that we still have oversight.

Councilman Page stated that he wanted to make sure we are doing the right thing legally and within our authority. He stated in going back to the Highland Park matter we did not have any easements with regard to that and now we are talking about a situation that he is not sure what the legal ramifications are.

City Attorney Nelson stated that the only utility that has not replied that was named is the Water Company and the applicant says he has a letter from them. He suggested that the matter be approved on first reading and then wait until next week to get the letter from the Water Company, in which case the matter would be resolved. He stated the last exception in condition five was general for utilities and he supposed they could come in and claim they had an easement and the Council might want to make sure.

Mr. Haynes stated that the letter from AT&T stated they preferred that it not be closed or some other means be made for them to have use of that; that one letter was received against lifting the conditions due to questions that goes back to Councilman Page's question. He stated if we have put conditions on an alley they have the authority to come back and lift it, wanting to know if that is the right assumption.

City Attorney Nelson responded that is "pretty much true, lifting of conditions may be efficacious".

Dale Smith, applicant, stated that he owns the whole block and there are no utilities down the middle and there is nothing there; that the sewer pipes were abandoned. He stated he is trying to make it where he can build on the property and he needs the alley; that everything in the alley has been done away with. He stated there have never been any utilities in the alley and it does not serve any purpose and does not serve anybody.

LIFT CONDITIONS (Continued)

Councilwoman Berz stated from what the City Attorney was saying the city can not waive conditions that the state gives.

City Attorney Nelson responded "yes".

Councilwoman Berz stated that the answer to Greg's question is we can put certain conditions on but can not lift conditions that were put there by somebody else in authority higher than we are; that we have the right but we are giving it up. She stated that it looks like the answer to the question is that this AT&T problem and Water Company -- and it may be AT&T -- without knowing is in the middle of the area and they just do not want to give up a right. She stated that she is not suggesting that the matter pass or not pass; that she is saying pass it on first reading with the understanding that by second reading we will have the missing letters and that would answer everyone's question.

City Attorney Nelson responded "right".

At this point Councilman Benson "called for the question".

After the vote was taken, Councilman Page stated that he wanted to make sure the applicant knows he has the responsibility of getting the letters to the Council by next week.

Councilman Pierce stated Mr. Smith has two weeks to get the information if he needs to.

Mr. Smith stated that the Water Company does not have any pipes and did not specifically say they would surrender that easement; that he has to do the best he can.

Chairman Bennett asked Mr. Smith to let Council members know.

Councilman Pierce again stated that Mr. Smith could come forth in two weeks with the information.

Mr. Smith stated that he would "shoot" for next week and would try to be present one way or another.

LIFT CONDITIONS (Continued)

On motion of Councilman Rico, seconded by Councilman Page,
AN ORDINANCE TO AMEND ORDINANCE NO. 6958, AS AMENDED, KNOWN AS THE ZONING ORDINANCE, SO AS TO LIFT CONDITIONS 1, 2, 3, AND 5 IMPOSED IN ORDINANCE NO. 8902 (CASE NO. MR-1986-242) ON AN ALLEY CLOSED BY SAID ORDINANCE AND LOCATED WITHIN THE PROPERTY AT 4101 CALHOUN AVENUE, 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.

ACCEPT CONTRIBUTIONS

Councilman Benson stated that he is willing to make a motion to accept this matter if the Council has the amendment that was spoken of initially; that he still has not received a copy of it.

At this point Adm. Madison gave the corrected copy to Councilman Benson.

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.

AGREEMENT

On motion of Councilman Rico, seconded by Councilwoman Berz,
A RESOLUTION AUTHORIZING THE ADMINISTRATOR OF THE DEPARTMENT OF PARKS AND RECREATION TO ENTER INTO AN AGREEMENT WITH THE PARTNERSHIP FOR FAMILIES, CHILDREN AND ADULTS, INC. FOR USE OF THE EAST LAKE RECREATION SECONDARY BUILDING LOCATED AT 3701 DODDS AVENUE FOR THE PURPOSE OF OPERATING A COMMUNITY RESOURCE CENTER TARGETING HOUSING, EMPLOYMENT, EDUCATION, YOUTH DEVELOPMENT, AND PHYSICAL AND MENTAL HEALTH SUPPORT SYSTEMS AND OTHER BASIC HUMAN NEEDS
was adopted.

CITY POLICY

On motion of Councilman Page, seconded by Councilwoman Gaines,
A RESOLUTION ADOPTING THE "CITY OF CHATTANOOGA POLICY FOR FUNDRAISING, SOLICITATION, ACCEPTANCE AND DISTRIBUTION OF MONETARY CONTRIBUTIONS" ATTACHED HERETO AND MADE A PART HEREOF BY REFERENCE
was adopted.

OVERTIME

Chairman Bennett stated due to the changeover to the Oracle software, the overtime report will be a week behind, noting that next week's overtime report will reflect the amount for this week and the following week.

PERSONNEL

The following personnel matters were reported for the various departments:

PUBLIC WORKS DEPARTMENT:

- ◆ **BRANDON L. COX** – Suspension (2 work days without pay), Crew Worker, effective July 2-3, 2008.

CHATTANOOGA POLICE DEPARTMENT:

- ◆ **TROY VAN CANNON** – Return from Military Duty, Police Officer, effective June 18, 2008.
- ◆ **DONALD JAMISON** – Voluntary Demotion, Police Services Tech 2, Range 6, \$23,149.00 annually, effective July 2, 2008.
- ◆ **STEVEN CRUISE** – Resignation, Police Officer, effective July 7, 2008.

BOARD APPOINTMENTS

TREE COMMISSION BOARD:

On motion of Councilwoman Berz, seconded by Councilman Rico:

BOARD APPOINTMENTS (Continued)

- ◆ Appointment of ***PAUL BELK***, replacing Leroy Parks whose term had expired, for a three year term expiring July 1, 2011.

On motion of Councilman Rico, seconded by Councilwoman Gaines:

- ◆ Reappointment of ***ADELE GLASCOCK*** for a four year term expiring July 31, 2012.

On motion of Councilman Rico, seconded by Councilwoman Berz:

- ◆ Appointment of ***JONATHAN NESSLE***, replacing Christine Bock whose term had expired, for a term expiring July 1, 2011.

PURCHASE

On motion of Councilman Rico, seconded by Councilwoman Gaines, the following purchase was approved for use by the City Court Clerk's Office:

TYLER TECHNOLOGIES (Single source, Change Order #1)
R0109971/P0028164

Business Process Review and Training per TCA 6-56-304.2

\$23,408.00 – Approved by Council, 2/19/08
 6,199.00 – Change Order #1 Increase
\$29,607.00 – New Contract Total

EMINENT DOMAIN

City Attorney Nelson requested authorization from the Council to file eminent domain proceedings on property located on Apison Pike at the intersection with an unknown road. He stated they are looking for a permanent easement and it is his thought there are six construction easements and also a greenage easement. He stated the Recreation Department is unable to reach an agreement on fair market value on the property and are up against a time basis, thus the need to proceed with eminent domain to get construction going.

On motion of Councilman Rico, seconded by Councilwoman Berz, the City Attorney was duly authorized to file eminent domain proceedings.

COMMITTEE ADVERTISING

Chairman Bennett stated that the Council is going through a basic training with the Municipal Technical Advisory Service and one of the things they wanted to do is to make sure we are advertising meetings properly and to make sure committee meetings are posted with enough time for the community's input. She asked Council members to submit their committee agenda topics on Tuesday a week prior to their committee's meeting date so there would be adequate time to post those topics for public participation, which should be pretty easy to do. She stated Council members would also have an opportunity to mention what will be discussed in their meetings.

COMMITTEES

Councilman Benson scheduled a meeting of the **Legal and Legislative Committee for Tuesday, July 15 beginning at 3 p.m.** He stated there will be several items on the agenda which include the wrecker ordinance, Human Services Board amendment, temporary use for Washington Hills United Methodist Church and a resolution regarding Council Committees. He stated if there are other items they need to be added now so the public will know there will be discussion at 3 p.m. next week.

Councilman Benson continued by stating that he talked with one or two Council members and the Chairman about the wrecker operation and there is one issue that stands out above all the other little tweaks that must be made about whether to provide exclusivity for rotator wreckers on the interstate in the city. He stated that the ordinance was approved five years ago and a moratorium was placed on it; that they wanted to clear out wrecks as quickly and safely as we could with rotators only for the heavy lifting of large transport trucks. He stated since then, Class C hydraulics have been improved and a lot of people are saying with the right equipment they can do the job as well as the one that was granted exclusivity. He stated that he is getting advice from the state authorities, TDOT and the Tennessee Highway Patrol, on the continuation of rotator exclusivity as to information as to what they think is the best. He stated that he talked with Jim Hall, former Director of the National Transportation Board for eight years, and with the Council's permission (he) would like to try to talk with him to see if he could give the Council some national data on what is the best and safest way to keep our interstates clear of wrecks. He stated he talked to persons on both sides of the issue and both have good rationale for their positions and they all seem to be in agreement this is the way to go to see what is working on the interstate highway and then make application here.

COMMITTEES (Continued)

Councilman Benson stated if the Council has any objection to his continuing to try to get with Jim Hall, who now has a consulting firm for transportation safety, to let him know. He stated if no one is in objection he will continue.

Several Council members nodded their heads in approval.

Councilwoman Berz stated that the **Budget, Finance and Personnel Committee is scheduled to meet next Tuesday immediately following Legal and Legislative** with two items – the very important last chance agreement relative to personnel and the second equally important update on the status of The Passage at the Aquarium.

AGENDA FOR TUESDAY, JULY 15, 2008

Councilman Pierce made the motion there not be any add-ons for next week and to accept the agenda for next week the way it stands tonight. Councilman Benson seconded the motion.

Councilwoman Berz stated that the Council had some discussion in committee regarding this issue and that sometimes there would be the matter of urgency that the Council would have to look at which usually has to do with emergency decision making or other things, usually in public works. She stated that she wanted to have a little talk with Steve (Leach) to give him a “heads up”.

Chairman Bennett stated an important item has been added to the Legal and Legislative agenda so the Council can further talk about how they would like to act on this information and how we can be true to our responsibility to advertise topics in committees.

Councilwoman Berz stated the Council is talking about a week ahead, now; that Mr. Leach would needs a “heads up” of why sometime that might not work and then discuss the issue fully next week. She stated everyone should be fully informed.

Adm. Leach stated last week they ran into a challenge on the repaving project; that the Chairman was not here and it was in her district. He stated the matter was discussed in committee the week before but was not placed on the agenda.

AGENDA FOR TUESDAY, JULY 15, 2008 (Continued)

Adm. Leach stated that it ended up on the agenda for action the next week; that they had to take care of the paving contract with the state to pave Frazier and Cherokee to move on our commitment to rebuild the intersection, which is really the reason they had to move so quickly. He stated the Council will find that the staff does not want to put items on at the last minute yet sometimes it can not be helped; that it will happen from staff but also from Council. He stated the Council will find a decision is needed to put an item on the agenda where there was no knowledge before or time to do something in an emergency. He stated that they need to have flexibility to do that.

Chairman Bennett stated that it is important to hear from administration if there are certain things to consider.

Adm. Leach expressed assurance that from a public works standpoint they would try not to do that.

Councilman Rico asked if the Mayor should be called to see if the Council needs to vote!!

Councilwoman Berz asked Councilman Pierce if he would accept a friendly amendment to his motion by adding "*except in matters where time is of the essence*".

Councilman Pierce responded that he has no problem with that; that what he was saying about next week's agenda was more or less a joke! He stated it is such a short agenda he wants to get in and out of the meeting; that there was no other meaning behind it!

Councilman Benson stated that he withdraws his motions since Councilman Pierce is being so frivolous!

Councilman Page stated that he thought it was a good motion! He stated that the Chair or two Council members can place something on the agenda and it is his thought at some point it has to stop. He stated when he was chairman it was difficult for him to say "no"; that the Council has concerns when something is put on and administration does not like it when it does not go on! He stated there is conflict but there is a stop gap.

ADJOURNMENT

Chairman Bennett adjourned the meeting of the Chattanooga Council until Tuesday, July 15, 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)**