

BUDGET, FINANCE AND PERSONNEL COMMITTEE

May 12, 2009

2:00 P.M.

Councilwoman Berz, Chairwoman, called the meeting of the Budget, Finance and Personnel Committee to order with Councilmen McGary, Benson, Murphy, Scott, Ladd, and Robinson present. Councilmen Rico and Gilbert joined the meeting later. City Attorney Michael McMahan and Shirley Crownover, Assistant Clerk to the Council, were also present.

Others present included Daisy Madison, Vickie Haley, Dan Johnson, Susan Dubose and Richard Beeland.

COUNCIL AUDITOR POSITION

Chairwoman Berz called the meeting to order, noting that this was the third meeting we had had lately relative to the Council Auditor. She referred to the way things were left last week, stating that some Councilmembers had asked for a copy of the Council Budget. She asked Ms. Crownover if this was available. It was noted that the request was made of Council Clerk O'Neal. Councilman Benson indicated that he had copies of the Budget, questioning if they needed to be reviewed at this point. As the Budget is of public record, Chairwoman Berz expressed a need to have them made available at this time. She noted that the question had arisen as to whether we would have to extend our Budget in relation to the Auditor position and none of the Councilmembers were familiar with it. Councilman Benson indicated that he was familiar with the Council Budget, as was Councilman Rico and Councilwoman Robinson. Chairwoman Berz stated that there were Councilmembers who wanted this. Councilman Benson made copies of the Budget available.

Chairwoman Berz asked Ms. Madison if she had the information that was requested of Dennis Dycus? Ms. Madison responded that she had spoken to him, but he had not had time to put anything in writing.

The third point brought up by Chairwoman Berz was that Dan Johnson had a Plan that he wished the Council to consider. This Plan is made a part of this minute material. Chairwoman Berz noted that another train of thought was that if we appoint a committee of experts to come up with what this Auditor position should look like, we should not micro-manage them; that it would be up to the Council to approve and massage what the committee comes up with after the fact. She asked Mr. Johnson to speak concerning his Plan.

Mr. Johnson stated that this was the third meeting on this subject; however the issue has been going on for well over a year; that we were re-hashing the same things over and over again; that he had come up with a Plan for the Council to look at; that this Plan comes from the Association of Local Auditors; that what we have here is a two-page Plan, and the third sheet is what the change to the Charter could look like next year. He explained that the Charter change is similar to what was put together by Randy Nelson about a year ago. He proceeded to read portions of his Plan, which is made a part of this minute material.

Councilwoman Robinson questioned the fifth “*WHEREAS*” that reads “*in the interest of efficiency and to promote objective reporting, it is anticipated that the City Charter will be amended to provide for a single independent Office of Internal Audit*” She asked how this matched up with the Mayor’s Auditor?

Mr. Johnson referred to Page 2 (4) “*Upon and after amendment of the City Charter to form an independent Office of Internal Audit, the audit committee shall consult with the City Auditor regarding technical issues and the work of external auditors*”.

Councilman McGary asked about (D) in the Charter Amendment that reads “*The Chief Audit Executive shall have the title City Auditor*”. He wanted to know who would appoint this person. Mr. Johnson responded, the Audit Committee.

Attorney McMahan referred to **Section 3.111** that reads “*The City Auditor may be removed from office upon recommendation of the Audit Committee and the affirmation vote of two-thirds of the entire membership of the City Council and the concurrence of the Mayor.*”

Mr. Johnson noted that it is referred to as “Independent Auditor” throughout. He then proceeded to go over No. (1) on Page One that deals with the make-up of the five people on the committee “*The Audit Committee shall consist of five voting members; one member appointed by the Council, one member appointed by the Mayor and three at-large members. The three at-large members shall be residents of the City of Chattanooga with expertise in auditing and shall be either a Certified Public Accountant, Certified Internal Auditor, or Certified Information Systems Auditor. The three at-large members shall be appointed one each by the local chapter of the Tennessee Society of Certified Public Accountants, the Institute of Internal Auditors, and the Association of Government Accountants.*”

Chairwoman Berz noted that the Council may already be in compliance, and we have no assurance that the people would elect to vote for this Charter Change. She asked Attorney McMahan if the Council would be in compliance with the current Charter?

Chairman Benson noted that we would not be free of the Mayor if this Charter amendment was enacted; that we would not be totally free.

Chairwoman Berz referred to **Section 3.111** where it reads “*affirmation vote of two-thirds of the City Council and the concurrence of the Mayor*”.

Attorney McMahan noted that this is virtually the same as to how the City Attorney is addressed.

Chairwoman Berz asked if with two separate entities now, with concurrence of the Mayor, if this gets us in compliance with what exists?

Mr. Johnson noted that this is just a proposed change. She asked if we were able to adopt this Charter Amendment next week, would we be in compliance. There was a question if we would be in full compliance with the City Charter. Mr. Johnson noted that this contains nothing as it relates to Randy Burn’s position as either Management Analyst or Auditor.

Attorney McMahan read **Section 5(f)** of Mr. Johnson’s Plan, “*Unless and until such time as the City Charter is amended to remove Section 8.15 Internal Auditor, provide guidance and direction to the Council’s Management Analyst, who has been appointed its auditor, in performing audits or procuring contracted audit services when the Council requests such services*”. He stated that this says Randy Burns is the Auditor, and we are asking him to do this.

Councilman Benson stated that we did not have to have a committee for this purpose.

Councilman Murphy pointed out that the proposed Charter Change is not on the table today; however the City Attorney, Chief of Police and Fire Chief have terms of office. He noted that in this Charter Change, no term of office was stated for the Auditor position. He reiterated that we were not here to talk about this today.

Councilwoman Berz stated that this proposed Charter Change is in anticipation of this—that people had worked long and hard on this, and we need to be clear as to what we are doing. She asked that Councilmembers look at this and say what they think.

Councilman Benson stated that the Charter change was two years off and questioned if we should address this here and now, with Chairwoman Berz stating that we were addressing this here and now. Mr. Johnson noted that maybe this should not have been included at this time if it were confusing, with Chairwoman Berz stating that we were discussing this here and now. Councilman Benson stated that this Charter change does not comply with “here and now”.

Councilman Murphy stated that (f) on the second page that has already been read does apply today—that he knew Randy Burns already has a fulltime job as Management Analyst (This section appoints him as Auditor).

Chairwoman Berz stated that they had went over this with Donna Kelley and there were two caveats—that we re-classify the job and that some additional training might be required with a slight pay difference. Susan DuBose was present and Chairwoman Berz asked her what additional training might be required and the timeframe. Ms. DuBose responded that Ms. Kelley did not tell her to look at this for today’s meeting; that the Management Analyst job has qualifications of an accounting type at the auditor level and is pretty consistent. Chairwoman Berz pointed out that it was left out of the job description that he should audit the Executive branch—that this was not in there now and that was what started this discussion.

Ms. Madison stated that based on Randy’s qualifications, he qualifies; that this position does not require that the person be a CPA; that Mr. Burns might need to “freshen up” some but that he meets professional requirements, but he had been out of the field of auditing for quite awhile.

Ms. DuBose stated that she did not think additional training would take much time and did not think there would be a pay issue.

Councilman McGary referred to the fifth “Whereas” that reads “*it is anticipated that the City Charter will be amended to provide for a single independent Office of Internal Audit*”. He wanted to know what would be the relationship between the Audit Committee and Randy as Management Analyst/Auditor. Mr. Johnson referred him to (5) on the next page.

Chairwoman Berz asked if we wanted to revise the Plan as developed by Mr. Johnson and Stan Sewell? She noted that one of the things that our minutes outline is that the Audit Committee would develop its own plan, prompting Mr. Johnson to say “then you don’t want an Independent Auditor”; that if it were the Council’s Plan, then it was not an Independent Auditor. Councilman McGary questioned if we could take this Plan as presented as a recommendation?

Mr. Johnson explained that a lot of input goes into the development of an Audit Plan—input from citizens, the Council and every source available; that all recommendations are prioritized according to Audit Risks; that we have to make sure that all departments are “hit”; that this is the basics of how a Plan is developed.

Ms. Madison asked to speak. She stated that she had had the opportunity to talk with Dennis Dycus, who is an authority on Auditors and is nationally recognized; that she had talked to him, and he emphasized that (1) There is legislation out there that provides that audit information will no longer be open records and (2) the Auditor should be independent of the Council and the Mayor, and this is the reason for an Audit Committee; that the Audit Committee should appoint the Auditor or make a recommendation and the Committee should review the annual Plan of the Auditor; that the Committee would not prepare the Plan, but the Plan of Audit would be based on professional criteria; that if this is not happening, the Mayor or Council is in the position to influence this; that there is always the option of Special Audits.

Councilman Benson responded that in 2001 when this Council suspected something, and it was reported to Administration and the professional people, nothing was done about it and now these professional people had changed and the person in question was never indicted. He stated that we were making this complex; that if the Council had had Randy Burns operating as an Auditor, and he had audited this particular department, the person in question could have been saved—that a small thing had been pointed out at Christmas time; however we (Council) did not have anyone acting as an auditor and no Audit Plan; that now we have a good Internal Auditor, and one who is doing a good job. He reiterated that the Council was not functioning properly—that we now have an Auditor in place and the Council can go to Randy Burns and tell him to audit the Mayor, or even Ms. Madison; that if he cannot do the job, he can tell us, and we might have to bring in another auditor; that we need to be separate and apart from the Mayor, and we can use Randy Burns as our Auditor.

Councilman Rico stated that if this was a motion, he seconded it—that we were making something simple complicated; that we were not trying to micro-manage.

Ms. Madison stated that this was not what she was saying and asked if she could speak—that she was just relaying what Dennis Dycus had said; that the special investigation that Councilman Benson referred to would have been done had we had an Independent Auditor—that this was a decision that an independent Audit Committee would make and not the Mayor nor the Council.

Councilwoman Scott referred to **Item 6** “*Any efforts or attempts to subvert the audit process shall be reported to the Audit Committee*”. She mentioned the opportunity for the Auditor to be influenced, as well as people on the Committee. She also asked Ms. Madison to clarify what she said about audits not being public records?

Ms. Madison explained that legislation could be passed to make records of Internal Audit confidential. Councilwoman Scott wanted to know if this meant audits would not be public? Ms. Madison responded that the findings would be public but not the working papers. Mr. Johnson confirmed that the Audit Report would be published. Councilwoman Scott just wanted to make sure that the document would be made public.

Councilman Gilbert stated that he agreed with Councilman Benson; that we do need a committee because none of the Council has expertise—that in most organizations, the bosses don’t know the jobs; that Mr. Johnson knows and Ms. Madison knows, but we do need to have a committee; that we can go to Randy Burns, and if he has an issue with what is asked of him, he can go to someone else to help him out; that he will be here for two more years, and the Council needs to go ahead and do what we have to do and get on with this.

Mr. Johnson stated that is exactly the reason for the document he has prepared; that he was not trying to usurp anyone’s authority; that the way Randy Burns was hired, he is technically qualified and is okay if we put this committee into the mix.

Chairman Berz stated that Mr. Johnson did us a favor in coming up with a Plan that we could massage; that she agreed with Councilman Benson’s position that irrespective of how we got there, we were not in compliance but had discovered with Randy that we could comply and that we should not be involved with the Mayor in setting parameters of what the job should be—that the minutes are very comprehensive and stated that Randy could do the job, along with an independent committee approved by the Council, who will come up with suggestions for a job description and also an Audit Plan; that the Council will not micro-manage, and if we hire experts, we will allow them to do their job, and the Plan will be derived from experts and not Administration nor the Council; that we will appoint them and the scope of their work will include a job description. And qualifications; that they will be independent experts and will proceed with guidelines independent of the executive branch. She went on to say that we have to have some input, and the more she was hearing, nothing is obviated by this—that we will go forward with a committee according to Best Practices. She mentioned concerns that if some had read the newspaper you had folks saying the Mayor should not have his hands on this—that our Mayor had not done this; that Dan Johnson was to be commended for coming up with a Plan; that we had already spent three weeks on this and some time before the election; that it was time for us to let go of the reins and let experts look at this, and it could be this suggestion or a Government Accounting Organization suggestion; that we needed to take this step forward to allow folks we appoint; that we were not saying that this Plan might not be changed; that the previous Council had looked at this.

Councilman McGary asked if it were Chairwoman Berz' suggestion that we would appoint someone to serve on this committee, and they could take this document prepared by Mr. Johnson.

Chairwoman Berz responded that she was saying this is a fabulous Plan, and they could go with it; that the committee would come up with the answers, and we would not micro-manage the answers; that she would take Councilman Benson's and Councilman McGary's comments and move forward with the committee of experts and let them see this Plan and come back in short order with what is Best Practices.

Councilman Gilbert asked if we could vote on this. (It was noted that votes our not taken in committee).

Chairwoman Berz stated that she could get the consensus of the committee; that Councilman Benson had declared that these are committees of a whole; that there would be a Resolution to vote on; that her suggestion would be to get a consensus on a five-party committee according to these guidelines "*one member appointed by the Council, one member appointed by the Mayor and three at-large members to be appointed by local Chapters*".

Councilman McGary stated that he would second what Chairwoman Berz had said and asked for a brief discussion.

Councilman Benson stated that someone other than the Chairman needed to make the motion. In that case, Councilman Gilbert stated that he would make the motion of what Chairwoman Berz had said.

Councilman McGary stated that he had talked with both Stan Sewell and Randy Burns and that he did applaud Mr. Johnson on his Plan; that most feedback that he had received came back to this Plan; that it was his suggestion to adopt this Plan.

Councilman Murphy stated that the Charter, as he understood it, requires us to have an Auditor; however Randy is not performing this function; that it seems that we meet the Charter by having Randy as our Auditor but a committee is not specified; that we need to take the politics out of this; that Randy, unless he drops everything he is doing now, would have to contract the audit work out; that we would want Randy to sign off on the "leg work"—that this is fine and part of our duty, and we could form an Audit Committee and solve the Auditor issue as the same time as we appoint an Audit Committee.

Mr. Johnson stated that his document does this.

Councilman Murphy agreed—except Mr. Johnson's Audit Committee's make-up is different, and we have to figure out if these groups are what we want; that we need to bring this to a resolution.

Councilman McGary stated that we have Randy Burns as an Auditor and now we want an Audit Committee; that we have to decide how these five will be comprised; that they will be approved by the Council or go according to this document. He stated that all of the feedback he had gotten says that what Mr. Johnson is proposing is Best Practices, and he thought everything would come back to this. He stated that he would go along with this document because it is Best Practices, and he liked Mr. Johnson's committee make-up, and he thought our needs would be met.

Chairwoman Berz stated that we needed to get this away from a political flavor; that these people would come up with a Plan—that we were trying to micro-manage an outcome, and she was not comfortable with this.

Councilwoman Scott stated that she had no great problem with Mr. Johnson's plan but felt some "tweaking" could make it better; that if the Council nominates eight people, since Councilman Benson has said he will not nominate anyone (at this point Councilman Rico stated that it would be seven, because he was not going to nominate anyone either). Councilwoman Scott continued, stating that if we do not provide the framework, the Committee may flounder. She reiterated that she did not have a lot of problems with Mr. Johnson's plan but would like some "tweaking".

Chairwoman Berz asked Councilwoman Robinson if she had any comments, and she had none.

Councilwoman Ladd stated that her concern was the Mayor making an appointment; that Councilman Murphy had raised a good question—do we really know the three organizations that are mentioned; that they could be very professional and take a strong stand; that she liked the fact of three outside professional organizations in the field; that her only concern was the Mayor.

Chairwoman Berz suggested that we could take this Plan and strike out the fifth "Whereas" and language included that interfaces with the executive branch and also do something with the fact that the Mayor has an appointment.

Councilwoman Robinson suggested having a committee with three members appointed by these local societies and have two ex-officio non-voting members appointed by the Council and the Mayor—that these two members would just sit and have no power; that there would just be three members.

Chairwoman Berz stated that what she was hearing was to use this document and scratch out the 5th “Whereas” and any language interfacing with the executive branch and not have an appointee by the Mayor. Councilwoman Robinson added “nor the Council”. Chairwoman Berz stated that the committee would have to be approved by someone. Councilwoman Robinson stated that two members could be assigned but without voting powers.

Chairwoman Berz asked Councilwoman Scott about her concern with (6)? Councilwoman Scott responded that affidavits should be signed annually—that everybody would have to sign. Chairwoman Berz read (f) that states “*Unless and until such time as the City Charter is amended to remove Section 8.15. Internal Auditor, provide guidance and direction to the Council’s Management Analyst, who has been appointed its auditor, in performing audits or procuring contracted audit services when the Council requests such services*”. She noted that this was predicated on the Charter amendment and questioned if we wanted to take out the first two lines? Mr. Johnson stated that if you put “will” in front of it, it would fit.

Councilwoman Scott asked if there were no qualifications for the appointee by the Council? Mr. Johnson responded “not in this version”.

Councilwoman Robinson questioned what adding “will perform” was saying, stating that it puts us in the position of “singling out”.

Councilman Murphy stated that the right thing to do is that at some point, we have to acknowledge that a Mayor could get elected whom the people trusts, and he could turn out to be a crook and the Council has to have the power to override this; that a lot of time cities elect crooks and an audit has to be done, and it would need to be someone who does not work for the Mayor. Councilman Gilbert stated that he agreed with Councilman Murphy.

Chairwoman Berz stated that she was not getting a second. She asked if everyone was in agreement that we want a Council Auditor. The answer was “yes”, with Councilman Rico adding that we have to have one. Chairwoman Berz stated that the Charter says this and did everyone agree that Randy should take this position, and the answer was “yes”. Chairwoman Berz noted that everyone was in agreement and then asked “Do we want an Audit Committee”. The answer was “yes”. She asked if the Council wanted a committee appointed by the Council. The answer was “yes”. Councilwoman Robinson added not necessarily that each Councilperson appoint someone; that we could ask the professional organizations to submit a member. Chairwoman Berz noted that we were still saying that the Council would appoint the Audit Committee—that we can’t delegate this responsibility, and we would ask these people (organizations) to submit names. Chairman Berz stated then we have a Plan—Is this the consensus. She thanked everyone.

The meeting was adjourned at 3:05 p.m.

