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LEGAL AND LEGISLATIVE COMMITTEE

August 18, 1998
4:00 P.M.

The meeting of the Legal and Legislative Committee was called to order by Councilman Pierce, Chairman, with Councilpersons Rutherford, Eaves, and Crockett being present. Councilmen Swafford, Hurley, Taylor, Lively, and Hakeem joined the meeting later. City Attorneys Randall Nelson, Mike McMahan, and Phil Noblett; Management Analyst Randy Burns; and Shirley Crownover, Assistant Clerk to the Council, were also present.

Others present included Adm. Boney, Daisy Madison, and Brian Smart.

ZONING REGULATIONS IN REGARDS TO A FRATERNITY HOUSE

Attorney Noblett was present to go over an Ordinance and Resolution in regards to a request from Brian Smart to move a fraternity house in Fort Wood, which presently has a one-year requirement to comply. He explained we needed some sort of Resolution beyond that one year time-frame and stated he had prepared an Ordinance and Resolution. He explained the Ordinance would authorize the City Council to pass by Resolution a time-period extension. He explained that this was a one-time request and would stipulate that the structure has to be completely destroyed to extend the time-period which would be April of 2000.

Chairman Pierce verified that the time runs out in 1999, and they want a one-year extension, and we have to pass an Ordinance first in order to be able to consider a Resolution.

Attorney Noblett noted that their time does not run out until 1999, and we have plenty of time, and this Ordinance will just empower the City to do this. Attorney Nelson added that the Ordinance would have to be referred to the Planning Commission. On motion of Councilwoman

Rutherford, seconded by Councilman Swafford, this action will be recommended to the full Council.

CHARTER AMENDMENTS FOR NOVEMBER BALLOT

Chairman Pierce stated that one of the purposes of this meeting was to go over Charter changes for November that are on the Agenda tonight for 2nd and 3rd readings. He called on Attorney Nelson.

Attorney Nelson stated that we had ten Ordinances on the agenda tonight and proceeded to go over these Ordinances, beginning with Ordinances 5 (d) which would provide for five (5) year vesting in the General Pension Plan.

Councilman Eaves stated that he had a problem with this one and saw a problem in the future from a monetary standpoint; that he had given some thought to this and questioned the number of employees who had left the City between the timeframe of five and ten years, stating that he thought it was quite a few. He stated he was not sure it was in our best interest to do this; that we could wait until the Federal Government says we have to do it; that as an individual, he did not see this as the time to do this.

Councilwoman Hurley asked who proposed this amendment. Adm. Boney responded that Administration proposed this in order to be in line with 90% of other Pension Plans; that the City is financially prepared for this.

Councilman Crockett noted that he had asked the percentage of Pension Plans operating this way and had been told that 90% do; that everyone he was aware of did.

Mr. Burns noted that private pension plans, by law, have to.

Councilman Crockett added that most governmental pension plans are going this way, and this seems to be the time to do this; that as it is, appointed positions have no real vested privileges and could serve two terms and still not be vested--that they could serve the City eight years at that level and be out of here without a vested position; that we could not be competitive across the nation with anyone.

Councilwoman Hurley stated she was inclined to support the amendment before us; that we would become more competitive with private industry; that we were prepared financially to cover this; and we would be consistent with other major employers in Chattanooga.

Chairman Pierce stated he understood it was mandatory for private funds but questioned what were the figures of public funds. Adm. Boney responded that the Tennessee Consolidated System has five-year

vesting and all of the State employees have five-year vesting, as well as Hamilton County with all of the teachers; that almost all of the governments in Tennessee have five-year vesting.

Councilman Eaves asked in the last five years that we have been here, how many employees have left between five and ten years and the amount of money the City would have paid out at the five-year level. He questioned how much money this would have cost us if we had had five-year vesting. He stated he needed to know the amount of money.

Adm. Boney responded in actual money from the City, zero--that a person has to be 62 years old before they can draw their pension; that the money sits in the City account until a person is 62 years old and during that time it will earn funds to cover this; that if the actual cost of five years is at issue, it is about \$240,000, and this is in the base line budget.

Councilwoman Hurley asked if the fund would earn that back, and Adm. Boney responded "absolutely"; that our Actuary recommended this, and it would not be an increased burden on the City.

Councilman Eaves stated he would still like to know if a person leaves between five and ten years, how much he has paid into the Pension Fund and at what percentage; that he understood all the employee had paid in would stay in the Pension Fund. Adm. Boney responded that if a person leaves now with less than ten years that they get what they have paid in. Councilman Eaves continued stating that under our present arrangement, the City would keep that portion of money that the City has contributed, and he would like to know what that amount of money would be for employees that had left between 5-10 years; that he would like to know what this amount is, and he asked if anyone on the Pension Board could give him this information. Adm. Boney stated that he was on the Pension Board, but he did not have this information; that First Tennessee might have those statistics. Councilman Eaves questioned if our Actuary would not have these figures? Adm. Boney responded "no"; that it would either be Doug or Donna Kelley or First Tennessee.

Councilman Lively verified that under the present system, the employees that leave get the part that they have contributed, but under the five-year vesting, this money would stay in the fund. Adm. Boney explained that it is always the employee's option to either take the money he had paid in or leave it in until he is retirement age. He mentioned a situation where an employee that had worked for the City 19 years chose to take his money out. He stated that you could

not predict what a person will do.

Councilman Eaves still maintained that someone should have the figures he wanted. Adm. Boney stated that Franklin Davis was the Chairman of the Pension Board, and he could check with him, but he was hoping that Donna Kelley would have this data.

Chairman Pierce asked what the vesting time was for elected officials. Adm. Boney responded it was now ten years, and if this should pass, it would be five years. Councilwoman Hurley stated that if this were a problem that the Council could exclude themselves. Chairman Pierce stated this might be the perception of this amendment. Councilwoman Rutherford stated she did not think the voters cared one way or the other.

Councilman Crockett stated he did not think this affected the Council- that the real pertinent point was that 90% of private funds have this provision and all of the public funds that we can think of, and this is not something that is radical; that it has been suggested by our Actuary, and it is sound.

Councilman Eaves asked "if all of the lemmings head for the sea, will we will join them?"

Attorney Nelson continued with the amendments--Ordinance 5 (e) would change the term of the City Court Judge to coincide with the terms of other Judges in Hamilton County, Tennessee.

Ordinance 5 (f) was relative to dog licenses and enforcement by the Humane Educational Society of Chattanooga, Tennessee.

Ordinance 5 (g) amended the duties of the Finance Officer.

Ordinance 5 (h) related to the Fire and Police Depts. and repealing certain minimum salary provisions of various Fire Department officers and insert in lieu thereof certain updated sections.

Ordinance 5 (i) would repeal all references to detectives in the City Charter.

Ordinance 5 (j) would abolish the Charter appointment provisions for the positions of City Engineer, City Physician, and City Assessor and would delete certain antiquated provisions relating to the appointment of a City Attorney, Chief of Police, Chief of the Fire Department, Treasurer, and Auditor (Finance Officer). Chairman Pierce asked Attorney Nelson to give him the meaning of "antiquated". Attorney Nelson explained that this referred to mention of "Board of Commissioners" rather than "Council", which was antiquated.

Ordinance 5 (k) would provide that the Chairperson of the Council shall serve as Mayor during the temporary disability or inability of the Mayor to perform the functions of his office. Chairman Pierce asked if this was something that is normally done. Attorney Nelson responded that he had not looked at other governments; that when Mayor Roberts had to be absent, we had trouble getting someone to sign for him.

Chairman Pierce questioned if we could not authorize the Chairman of the Council to sign for the Mayor without giving him the full responsibility of the Mayor. Attorney Nelson explained that the Mayor could be absent for an extended period of time in the case of a heart attack or automobile accident and would not be able to perform his duties for several months. Chairman Pierce questioned if Attorney Nelson had no case in point. Attorney Nelson responded that he took most of this from the U.S. Constitution and the duties of the Vice President.

Ordinance 5 (l) provided for changes to the Firemen's and Policemen's Insurance and Pension Fund. Attorney Nelson explained that we would only be changing this by inserting one word; that they wanted the word "base" added to salary so it would not include overtime, benefits, etc.

Ordinance 5 (m) was relative to a Personnel Review Board to hear personnel appeals. Attorney Nelson explained that this would authorize the Council to designate a Board, or the Council could serve itself, or could designate a committee of members of the Council to serve. Councilman Crockett added that this would just allow the Council to determine how they would like to do it. Attorney Nelson stated that he had two other versions; one which would allow the Mayor to appoint members and the Council confirm his appointments. Chairman Pierce questioned how the Mayor could appoint someone to serve on a Board where they would be hearing appeals against Administration. Attorney Nelson stated this would take place when the Mayor took office--that he would nominate and the Council would confirm for hearings at future times. He explained the mechanism would just be in place.

Councilman Swafford questioned if the procedure now is just for the Council to hear the appeals. Attorney Nelson responded the Council or a committee made up of Council members; that this amendment would let the Council provide for a Personnel Review Board on their own conditions. Councilman Swafford stated that he agreed with Chairman Pierce that the Mayor should not be appointing someone.

Councilman Crockett stated that rather than the Council trying to decide everything at this time, that this amendment would let this remain with the discretion of the Council but would give the Council a wider ranger of options; that the responsibility would remain with the

Council, and the amendment would allow the Council to approve alternative ways in the future--that it could be the Mayor or some other way; that the Council does not have this flexibility now.

Chairman Pierce questioned if this would be on a case-by-case basis.

Attorney Nelson read what would be deleted and the substitution which would read "The City Council is authorized to establish a separate independent committee, or to establish from among its own members a committee or committees to hear such appeals, or if no such committees are established, shall hear such appeals itself."

At this point Chairman Pierce came up with an order for all Council persons to speak, calling on Councilwoman Hurley first.

Councilwoman Hurley stated that it seemed to her that this amendment would be opening the field up and once it is passed, the Council could establish a method and how long this method would be in force--that the Council could determine how long and the method.

Councilman Lively stated that he disliked serving on Personnel Hearings as much as anyone, but if you talk to people on the Boards we have now, they have a terrible time getting people to attend meetings and having quorums; that if the Council appoints these people and authorizes a time for the Boards to meet, and the appointees don't attend, then it reflects back on Council members; that people volunteer to be on Boards, but they don't want to do anything.

Councilman Hakeem stated that he was concerned with this proposal; that as he saw it, it was the employee's last resort to have a hearing before those who had been elected; that he thought the people expected the Council to deal with this responsibility and not put it into the hands of someone else; that if it is taken out of the Council's hands, those serving on the Board would not have to respond back to the community; that we are dealing with the lives of people, and he questioned putting this responsibility in the hands of a body that does not report back to the community; that shuffling that responsibility to another body would be putting the concerns before a body that sees the issue from the perspective of the employer and not the employee.

Councilman Taylor questioned if a Board would be set up for just one case or for every case; whether if you put a Board together, it would be an ongoing Board. Attorney Nelson stated he thought it would be ongoing; that it could be established or disestablished. Councilman Taylor asked if there was a set number. Attorney Nelson responded that was discussed last week, and it was suggested leaving that number

to be decided later--that five or seven members had been suggested.

Councilman Swafford stated that Councilman Hakeem had said what he wanted said.

Councilwoman Rutherford stated that she echoed what Councilman Hakeem had said; that she simply agreed; that she did not particularly like to serve in this position, but as an elected official this was a responsibility; that an employee with a grievance had a right to face the Council as elected officials and not an appointee. She stated that the Council took this responsibility seriously.

Chairman Pierce stated that he, too, felt it was a responsibility bestowed on the Council; that he could not see using a Board; that he would like to see some changes, but he felt the Council was elected to this position, and it was part of their responsibility in the Charter; that if the Council feels they don't have time to serve, then they should move on. He also added that the Council's requests for hearings had dropped in the last two years. He mentioned dividing the Council into teams for these hearings.

Councilman Crockett stated that he did support this amendment; not that it was coming up with all the answers, but it would give the Council the ability to shape and answer and reshape; that he felt this would be best for employees--that this was an employee-driven amendment. He stated that the Council had been responsible in meeting their obligation and displacing politics; that we needed to try to separate politics from personnel, which was a bad situation for employees; that few bodies do this now; that amending this would give the Council the ability to think about this and to create combinations in the future, an ability which the Council does not have now.

Councilman Hakeem moved to not recommend this to the full Council. Chairman Pierce reminded Councilman Hakeem that this had already passed on first reading last week, and it could be voted up or down at tonight's meeting.

DISTRICT 5 APPOINTMENT

Attorney Nelson stated that the Council had to make a selection of someone to fill the vacancy on the Council in District 5. He read from the City Charter, "Any vacancy occurring on the Council shall be filled by a vote of a majority of all the remaining members of the Council. Any person elected to fill such a vacancy shall possess the same qualifications as a Council member elected by the people. Any person elected or appointed as a member of the Council shall serve

until his or her successor is elected and qualified; provided, however, that if any general statute requires an earlier election, then such general statute shall apply." Attorney Nelson explained that there is such a statute--TCA 6-53-107, which requires that any appointment to fill such a vacancy shall be an interim appointment valid only until the next primary or general election or referendum which is held in such city after the vacancy occurs. He explained that it speaks of filling the office in one election, and the next election is in November.

Attorney Nelson stated there had been some confusion about qualifying deadlines, and he and the State Election Coordinator had reached an agreement that the election qualifying deadline will be 12:00 noon on September 19, 1998. In the interim, as Attorney Nelson had said earlier, the Charter provides that any vacancy "shall" be filled, and he felt the word "shall" was used in a mandatory way; there was nothing in the Charter that indicated a timeframe.

Chairman Pierce asked for a clarification of "shall"--if it was mandatory, and he also questioned the time element and what Attorney Nelson would consider a "reasonable" time. Attorney Nelson responded there was no frame of reference. Chairman Pierce noted we were only talking about 60 days to election; that he did not think this was an unreasonable time to leave this position open; that it could remain open until the election.

Councilman Hakeem stated that he respected Chairman Pierce's point-of-view; however he felt leaving any district open 60 days without representation would be a concern; that something might come up; that he would hope the Council would make an appointment by the first of September; that the Council needed to do it and get it done and not let it drag out.

Councilman Swafford stated he would like to make a brief comment; that he represented this District; that he would hope that any district that is vacated would have representation; that business would go on; that someone appointed in the interim should be someone who is not going to run for the position; that he was not in agreement with leaving it open for anytime at all; that there would be 8-10 Council meetings during that time; and he hoped the Council would do this expediently.

Councilwoman Rutherford stated she would like to leave it vacant; but if the Council does choose to fill it, it should be a caretaker and not someone who is going to run.

Councilman Crockett stated that the Council members take representing their districts seriously; that having a district unrepresented for two and one-half months would not be consistent with this seriousness; that the attorney says we "shall" fill it, and he felt we should move as quickly as possible with someone who was not going to seek the

position; that it should be a placeholder, and the Council should do it quickly.

Councilwoman Hurley stated she substantially agreed; that the Council should not get into the upcoming election; that we needed to do it now with someone not choosing to run; that the longer the Council waits, the more they will get involved in the next election; that it was important that the District be represented and soon.

Councilman Lively stated that it should be someone with no intention of running for the office.

Chairman Pierce stated he would support a "caretaker", but he did not know if we had any caretakers left; that the person should be one whom the people in the District would like to see as their caretaker; that we should let the people make their own decision; that we would have eight elected officials in office and District 5 would have eight caretakers on the Council.

Councilman Swafford stated he still represented District 5 and had been elected as representative of the people twice; that he would like to have a caretaker; that a caretaker would be available, and he thought he was in a position to say whether one was needed more than anyone else since this was his District.

Councilman Crockett noted that the Council appoints a number of people to Boards and most Boards have been changed to one representative per district; that we are not choosing a person as Councilman--that the people will choose that in the election; but the Council can appoint a person to represent that District.

Councilman Hakeem stated he kept hearing the term "caretaker". Councilman Lively stated that it was better than "undertaker".

Councilman Hakeem stated that he had a legal question--what if the Council chose a caretaker and then that individual said "the people encouraged me to run". He questioned what the legal ramifications would be. Councilwoman Hurley stated the person could run if they wanted to. Councilman Swafford stated the Council would just be taking the person's word that they would not run.

Councilman Crockett asked if anything was needed from the Council to get this Council position on the ballot for the election in November. Attorney Nelson responded that he had sent it to the Local Election Coordinator, and she is aware of this; that he would notify her of this position at the same time he let her know the number of Charter amendments that will appear on the Ballot. Councilman Crockett questioned if the Council needed to vote on the ballot tonight and if the Council would have to vote to have an election. Councilwoman Rutherford asked how the Public would find out about this. Attorney

Nelson stated the Election Commission would let them know.

Chairman Pierce questioned if the Council was going to make a concentrated effort to find a caretaker, should we not set another committee meeting to come up with the names.

Councilman Crockett questioned when all of the Council members would be in town, and if they had any plans to be absent.

Councilman Eaves asked if the Council was open for names today. Attorney Nelson responded "no"; because there is no vacancy now. Councilman Swafford stated his intention right now is to end his term at the end of regular business next Tuesday night (August 25th); that he would present a letter. Councilman Eaves asked if at the end of the meeting next week we have a letter from Councilman Swafford resigning from his position, could the Council vote on a caretaker at that time. Attorney Nelson indicated he felt there should be a discussion beforehand. Chairman Pierce stated that if Councilman Swafford turned in his letter at the end of the meeting, then the meeting would be over and there would be no time. Councilman Swafford indicated he would turn in his letter at the end of regular business and before the meeting was actually ready to end.

The meeting adjourned at 5:15 P.M.