

**LEGAL AND LEGISLATIVE COMMITTEE**  
**December 5, 2006**  
**3:00 P.M.**

Councilman Benson, Chairman, called the meeting of the Legal and Legislative Committee to order with Councilmen Page, Rico, Gaines, Rutherford, and Robinson present. City Attorney Randall Nelson, Attorney Mike McMahan, Attorney Crystal Freiberg, Management Analyst Randy Burns, and Shirley Crownover, Assistant Clerk to the Council, were also present.

Others present included Richard Hutsell, Steve Hargis, Ann Gray, Lee Norris, Greg Haynes, Dan Johnson, Daisy Madison, Beverly Johnson, and Dallas Rucker. Mayor Littlefield joined the meeting later.

**DEMOLITION BY NEGLECT ORDINANCE**

Chairman Benson went over the items on his agenda, noting that “Tennessee Open Meetings/Open Records Law” was a topic that Councilman Franklin wanted discussed and that he was not present today and this item would be held. He then turned the meeting over to Jeff Boehm of Cornerstones.

**Mr. Boehm** thanked the committee for giving him this opportunity to speak. He stated that as the committee would recall, a Demolition by Neglect Ordinance had been drafted and brought to the Council and there was some confusion as to what was necessary; that the City already had an Ordinance that allowed demolition if the property posed a problem to neighborhoods. He stated that they went back and looked at the Ordinance again. He explained that the purpose of their Ordinance was the “threshold” of getting the building and making repairs early. He stated that the Historic Zoning Commission and Cornerstone had taken another look at this and that Sabrina had done a wonderful job in listing the benefits of this Demolition by Neglect Ordinance and giving the City a very important missing link. He stated that they had met with the City Attorney, and this would apply to only Historic Districts and houses deemed to be landmark buildings, and this had been reworked. He stated that what we had today was the finished product and something he felt was worthy of consideration.

Chairman Benson wanted to know who sits in judgment and if there was any funding for demolition. Mr. Boehm responded that it would be the Historic Zoning Commission and “no” there was no funding; that if a repair was made, it would be the City’s call and something that the City thought worthy of salvaging; that the City had the option to decide.

Attorney Mike McMahan explained that demolition is handled through the Better Housing Dept. procedures.

Councilwoman Rutherford asked if liens could be placed against the property and was told “yes”.

Chairman Benson asked if the Neighborhood Services Department would address this. Attorney McMahan explained that it would be managed by the Historic Zoning Commission and the decision made if it were bad enough to be demolished. Chairman Benson asked Beverly Johnson if she would like to speak.

Ms. Johnson stated that she was supportive of the intent; however she had not had any interaction with Cornerstones and there were some issues that gave her concern. She noted that repairs and demolition were what Neighborhood Services did; however most of their work was on residences—that if they moved into demolition of larger structures it would take larger funds and if they were going to be responsible for this, they would need some further appropriation. Secondly, when talking about liens, we have to pay upfront costs, and it may be soon or some ways down the road before these costs are recouped. Thirdly, she was unclear about the relationship between the Historic Zoning Commission and Neighborhood Services and who would make decisions and who would be the enforcing authority.

Chairman Benson agreed that this was not clear in the Ordinance and also wanted to know who makes the decisions.

Councilwoman Rutherford pointed out that the Historic Zoning Commission does not have inspectors.

Mr. Boehm noted that if the Council passes this Ordinance that obviously they would not want to put \$100,000 into a building but might consider \$3,000 in order to save it.

Councilwoman Robinson stated that she would like to have a specific example and wanted to know if we had had this Ordinance in place, what would have happened to the Levin Building.

Mr. Boehm explained that if we had had this three years ago, this building would not have lost its roof and the floor would not have collapsed; that if we had had this three years ago we could have expended a small amount to repair the roof, which would have made the building more desirable to a developer; that we were having to play catch-up; that if a building threatened the safety of the neighborhood, we would try to save some of the fabric of historic neighborhoods.

Councilwoman Robinson wanted to know “who would pull the trigger?” Mr. Boehm responded that Building Inspection was on the front end and then it would be taken to the Historic Zoning Commission, and they would conduct a hearing—that if a historic building could be saved, they would instruct to have it done.

Councilwoman Rutherford wanted to know if this applied to any historic building, even if it were not in a historic neighborhood. Attorney McMahan responded that a State body designates historic buildings. Councilwoman Rutherford wanted to know if the building had to be on some kind of register. Attorney McMahan responded in the affirmative or in a Historic Zone. Councilwoman Robinson added that it would be a local historic landmark.

Mr. Boehm mentioned the local process, noting that only one house had gone through this process, which was a house on Missionary Ridge that was designed by Frank Lloyd Wright.

Attorney McMahn stated that he did not consider what we had today to be the finished product; that he had been involved in the process, and we also need to work with Ms. Johnson and others on this.

Councilman Page stated that was what he was going to suggest—that Cornerstones needed to sit down with Ms. Johnson, Dan Johnson, and Daisy Madison on this.

Chairman Benson wanted to know if Cornerstones “would be pulling the trigger?” Attorney McMahan responded that it would be the Historic Zoning Commission. Chairman Benson wanted to know if they were an agency that would be legal to “pull the trigger?”

Councilman Rico had some questions concerning property rights and if something like this would “hold water”. He reiterated people have property rights.

Mr. Boehm responded that State Law authorizes us to repair, and this concept is the same as demolition of dangerous structures.

Councilwoman Gaines wanted to know what the “Eleven Building” was? Councilwoman Robinson responded that it was the Levin Building on West Main St. Mr. Boehm added that it was in one of the three historic districts. Councilwoman Gaines noted that most of the historic districts are low-income areas—that there are dilapidated structures and most were owned by people like the Davis’ who had died out; that she questioned placing liens on poor people and taking their structures. Mr. Boehm explained to her that they did not want to see structures come down and people losing their investments. Councilwoman Gaines mentioned the plight of the Davis’, noting that had their house been in another location—that she was speaking of the building—that it was a dilapidated building because of a lack of money and in the case of the Davis’, they were able to keep it. Mr. Boehm explained that they were just trying to have some vehicle to bring attention to historic structures that would whet the appetite of developers and allow the structures to be saved. Councilwoman Gaines stated that if you placed a lien on property, it would be difficult to sell it to a developer and questioned if the developer would have to pay Cornerstones.

**Eric Cummings** stated that he was on the Development Task Force and noted that one of the issues with the Davis family was that the value was lost on a dilapidated structure; that if measures had been taken earlier, it would have been more valuable to the family; that a lien is very little.

Councilwoman Gaines stated that she understood this and was just using the Davis’ as an example; that she was talking about dilapidated older homes in low-income districts; that once the elderly leave the community they also leave their homes and the kids can’t always keep them up. Mr. Cummings maintained that this was still a preventative measure to keep the values higher. Councilwoman Gaines stated that she was open to look at this.

Chairman Benson mentioned the structure at 5<sup>th</sup> and Glenwood Drive, where a governor had once lived, a Congressman and also the Sears family; that the owners could or could not be able to afford to fix it up, and they would need a place to live; that the City does not have to do it, and it could take mitigation.

Councilwoman Rutherford stated that she just understood that this was an option to keep a structure from falling down; that if we do preventative measures, the property would be worth more without a lien—that this was preventative maintenance.

Councilwoman Gaines stated that it seemed if this program had been in place that the Davis’ would have gotten \$50,000 for their property rather than \$10,000.

Councilman Page questioned if there were any authority where people could secure financing if they did not have the funds if their structure was determined to be in a historic zone. He wanted to know if there was any financial help. Mr. Boehm responded that right now there is none, but it was the next step for them—to come up with a revolving fund to be used.

Attorney Nelson noted that one other factor was the effects of the deteriorated property on adjoining properties.

Councilwoman Rutherford stated that this needed to be sent back, and they needed to work with Neighborhood Services. Attorney McMahan stated that he would be in favor of this concept. **On motion of Councilman Rico, seconded by Councilwoman Gaines, this Ordinance will be sent back for further study with Neighborhood Services.**

Mr. Boehm thanked everyone, stating that he loved these questions because it helped them with their deliberations.

#### **TENNESSEE CODE OF ETHICS/CONFLICT OF INTEREST LAW**

Chairman Benson noted that we were studying the Tennessee Code of Ethics and State legislation. He noted that it was full of “mays” and did not have many “shalls” or “shoulds”. He stated that our Ordinance is tougher.

Ms. Freiberg of the City Attorney’s Office stated that they had drafted an Ordinance tracking MTAS and passed out an Ordinance (which is made a part of this minute material) to show basically what they had done.

Attorney Nelson explained that if we don’t adopt the State’s Code of Ethics, we will have to make an explanation as to why.

Ms. Freiberg agreed that we either have to tell them or send a copy of our Ordinance; that this Ordinance is framed upon keeping as is and that we need to pass something by July 7<sup>th</sup> of next year; that if we don’t keep what they have, we will have to re-do the ethics. She noted one difference was that in our Ordinance, we basically allow gifts up to \$50.00 and nothing above; that the State version says no gifts at all, which they contend is easier to enforce. She also noted that the new regulations apply to all employees and all boards. She noted that **Section 2-718** defines “**personal interest**”; that **Section 2-719** deals with “**Disclosure of personal interest by official with vote and Section 2-720** deals with “**Disclosure of personal interest in nonvoting matters**”. She pointed out that in **Section 2-720**, the last sentence reads “*In addition, the official or employee **may**, to the extent allowed by law, charter, ordinance, or policy, recuse himself from the exercise or discretion in the matter*”. She explained that the State explained that they did this on purpose.

Councilwoman Robinson questioned if there were a conflict—why would anyone want to vote on it? Attorney Nelson used as an example a situation where one of our Boards had a quorum problem, and the question arose as to whether they could pass something; that member disclosed an interest but still contributed towards the quorum. Councilwoman Robinson responded “fine” but still questioned the word “**may**”.

Chairman Benson stated that he could argue all day about this—that the State’s version is weaker than ours.

Ms. Freiberg stated that she did not think our version said they had to recuse themselves; however Chairman Benson disagreed, saying “yes” one would have to recuse themselves. Ms. Freiberg pointed out that one may not lobby if they would knowingly profit financially; that the State’s version is broader than just a financial interest; if we said “must” then one could not vote on something.

Councilman Rico noted that he had wondered if he should vote on an appropriation to a Board of which he was a member. Attorney Nelson stated that if he disclosed he was a member, then it would be all right. Chairman Benson pointed out that there would be no personal financial gain to Councilman Rico.

Councilwoman Robinson stated that if there were something before the Council that would benefit her in her profession, and she sat in and voted on it, that it would not be correct and that if she violated this, then she should be subject to censure.

Ms. Freiberg stated that she thought the Council was saying “keep our provisions”; that if we change the State provisions, we can do our own thing.

Councilwoman Robinson questioned if we had to yield to the higher guidelines and questioned if the State’s guidelines are weaker and we have stronger guidelines, if we could enforce it.

Ms. Freiberg responded that the State is just giving us their proposed Code, which they think is good; that it is the Council’s discretion to require someone to recuse themselves and not use the word “may”. She explained that we could put the two versions together.

Chairman Benson disagreed, stating that we don’t have to put the two together—that one version is ours and one is theirs. Ms. Freiberg explained that some of the issues are in conflict. Chairman Benson stated we need to see which one we will operate under. Attorney Nelson explained that we could repeal ours to the extent where they conflict.

Councilman Page suggested looking at what the Council has passed and what the State is proposing and the City Attorney bringing back to the Council where we are not in conflict and underline what we are changing.

Attorney Nelson explained that the changes would be in what we have adopted, and we would not be changing the State's; that our sanctions could apply, and the State's sanctions where they are more severe. Chairman Benson added, in other words, we could pick the best of both worlds.

Ms. Freiberg explained that the State's version was more expanded, using as an example the provisions in **Section 2-722** concerning "**Use of Information**". She went on to mention **Section 2-723** concerning "**Use of municipal time, facilities, etc**". She also mentioned that one of the big things was **Section 2-726 "Ethics Complaints"**, where the City Attorney's Office is designated as the ethics officer of the municipality. She explained that all complaints would have to go through their office.

Attorney Nelson mentioned an incident where the City Attorney of Franklin filed a protest with the State Board regarding a conflict of interest; that they ruled he represented the Council, Mayor and the City and ruled there was no conflict—that he represented the City and not individual members of the Council.

Councilwoman Gaines asked about **Section 2-721, "Acceptance of gratuities, etc"**. She stated that she had a question about the first paragraph "*An official or employee may not accept, directly or indirectly, any money, gift, gratuity, or other consideration or favor of any kind from anyone other than the municipality*". She wanted to know to what extent this could be, mentioning the "Coffee Law" and taking someone to breakfast or lunch. Chairman Benson stated that everything after the ":" explained this in this section. Councilwoman Gaines still maintained that it did not say what is allowed. Attorney Nelson tried to explain that the "purpose" controlled this—that if the purpose was to get a Councilperson to vote for or against something—then it would be wrong. Chairman Benson stated that you could still take money if it were for a good purpose and there was no attempt to influence. Councilwoman Gaines concluded that you just had to use your own judgment. Councilman Rico added that any lunch is to "butter you up"!

Attorney Nelson mentioned an incident where he and Gene Collins went to lunch with Bob Cooper; that after the lunch was finished, that he (Randy) picked up the tab, and Mr. Cooper said "I don't let any lawyer ever pick up my check"!

Councilwoman Gaines still maintained that there was a "thin" line, and this Ordinance did not say what to accept. Chairman Benson stated that it was always good to stay sensitive to such things.

**STATE REPORTS AND FILING DUE DATE(s)**

Attorney Nelson stated that Councilwoman Rutherford had asked that this be discussed; that she wanted a ruling for municipal public officials to file forms with the State; that such forms (Statement of Disclosure of Interests) should be filed no later than January 31, 2007; that these forms should be filled out and filed within 30 days after the election. Councilwoman Rutherford stated that she had never filled out one of these forms.

**COUNCIL'S RULES OF PROCEDURE: COMMITTEES**

Chairman Benson noted that Councilwoman Robinson had brought this matter up; that she had to leave but that this should be simple.

Attorney Nelson handed out a Resolution establishing new rules of procedures for the City Council of Chattanooga, Tennessee, stating that as one could see on page 6 a list of the standing committees. He stated that there were two things we could do to comply with Councilwoman Robinson's request; that under (h) we have Health, Education and Human Service Committee and now we have another one Education, Arts & Culture.

Councilwoman Rutherford noted that Parks and Recreation does not need to be with Arts and Culture.

Attorney Nelson suggested going back and cleaning it all up and drafting a Resolution to amend the current rules; that instead of having Health, Education and Human Service Committee that it be Health, Human Services, and Housing Opportunities Committee; that Budget and Finance/Personnel Committee would remain the same.

Councilwoman Rutherford asked why we would have Economic Development, Environment and Housing Committee and also Health, Human Services, and Housing Opportunities Committee—Why would we have “Housing” in both of these committees? Attorney Nelson noted that in (h) of the older Resolution we have Health, Education and Human Services, and it is changed to Health, Human Services, and Housing Opportunities. At this point, Attorney Nelson read a list of the committees in the newly drafted Resolution.

Councilman Page asked Attorney Nelson his thoughts on putting “Planning” with Economic Development? Attorney Nelson explained that Planning was a part of Economic Development, mentioning Enterprise South. Councilman Page concluded that it did not include everything in Planning. Attorney Nelson stated a harder question would be “Why include Environment with Economic Development.



**On motion of Councilwoman Rutherford, seconded by Councilwoman Gaines, the newly drafted Resolution will be on next week's agenda.**

Chairman Benson asked about Duties of the Chairperson and questioned if this also applied to Chairpersons of committees—if they should be able to ask questions and join in discussions. Attorney Nelson stated that if that were the case, Chairman Benson should not be talking now. He stated that this was given a lot of “looseness”; that the Chairman should not be allowed to advance their ideas and the way around this was to hand off the gavel to the Vice- Chairman.

Councilwoman Rutherford pointed out that we don't have a Vice-Chairman of committees.

In that case, Chairman Benson stated that you could hand the gavel to someone else and let them preside; that if Chairman Pierce got in on a debate in Council meetings, he should hand the gavel to the Vice-Chairman.

Councilman Page pointed out that on page 6 (2), speakers are limited to five minutes, and he thought it was three minutes. Attorney Nelson explained that it is five minutes in committee meetings.

The meeting adjourned at 4:00 p.m.