

LEGAL, LEGISLATIVE AND SAFETY COMMITTEE

JULY 10, 2012

3:10 P.M.

In the absence of Chairman Murphy, Chairman Ladd called the meeting of the Legal, Legislative, and Safety Committee to order with Councilpersons, Robinson, Scott, Rico, Benson, Berz, and Gilbert present. City Attorney Michael McMahan and Shirley Crownover, Assistant Clerk to the Council, were also present.

Others present included Daisy Madison, Dan Johnson, Chief Parker, Richard Beeland, Tony Sammons, Johnny Feagans, Fire Marshall Whitmire, Missy Crutchfield, John Bridger, and Danny Thornton. Mayor Littlefield joined the meeting later.

Chairman Ladd stated that we would be discussing one Ordinance—the Ordinance to amend the Charter pursuant to the Home Rule Amendment so as to make applicable State Law provisions to recall popularly elected officials of the City of Chattanooga. This is Ordinance 6(b).

Attorney McMahan stated that as the Council knew, there had been an attempt to recall Mayor Littlefield last year with a percentage of the people who voted in the mayoral election—State Law says 15% of registered voters, which results in a wider range of people. According to State Law, the only part that the City can change is the number of signatures required for a Recall. The Attorney General rules 15% of the total populace and recall of a City Councilman is the same as for the Mayor; that some on the Council think that if they should be subject to a recall, the number should not be unreasonably low.

Councilwoman Berz confirmed that 15% of the people, in a district, would be the same as for the Mayor and other cities in Tennessee, where most don't even have a recall procedure for councilmen. She was in favor of 15% of the total populace.

Councilman Rico asked if it were 15% of registered voters or 15% of those who voted when a person was elected? Attorney McMahan responded that State Law goes by registered voters.

Councilwoman Scott noted that the number of registered voters is larger than the people who actually go out and vote; that we have a low turnout when the election is held after November; that she had looked around at different cities, and it is not standard to adopt State Law on this matter; that some cities even allow City Council members to vote to remove a person; that she thought it should be the percentage of people who voted in the last election. She stated that she would encourage the Council that if we are going to leave the election on the dates that we have now that we look at the number again, because there will not be a significant turnout. She went on to say that the State allows us to make this choice and that the City holds their election at a different time than other elections, thinking that it would be better to move the election to August and then November could be for a subsequent primary. She stated that she thought, that way, we would get more participation, and the idea of 15% of the total number of registered voters would make more sense.

Councilwoman Scott stated that right now, she did not support 15% of the total registered voters, noting that there is a huge difference between registered voters and those who actually vote; that many voters do not even come out to vote for City Council, and this is not a good sample.

Councilman Benson admitted that he had not read everything that had been written and asked if the only reason a Councilperson could be recalled was for moral turpitude or malfeasance? Attorney McMahan explained that it did not mention a cause; that it says that the Charter can be changed with regards to the number of signatures required on a petition—the only thing we can change is the number of people required.

Councilman Benson stated that if justification had to be given, then the numbers should change; that right now it is a carte blanche number, and it should be higher in order to get a recall.

Attorney McMahan stated that the Council, instead of 15%, could say 20% or 30%; that the rest of the State is at the 15% level—that about all of the cities in Tennessee say 15%. Councilman Benson stated that 15% would be fine, without a cause.

Councilwoman Berz confirmed that we were just talking about the Recall Provision and asked Attorney McMahan to say it in “English”. She wanted to know what percentage it would take to get a petition? Attorney McMahan responded 15% of the registered voters. Councilwoman Berz asked what the situation would be if the petition carried through and there was a new election? Attorney McMahan explained that for a recall, there would be a yes or no vote and then a subsequent election if the vote was “yes”. Councilwoman Berz stated that this had not been discussed thoroughly in public forum; that people get scared when they hear the word “recall”, and this was absurd; that the City Council should not be held hostage by fear; that the difference between the executive branch and the legislative branch is interesting; that a council person can’t act unilaterally—that it takes five votes and the participation of nine people. She noted that an executive’s behavior can be by “Executive Order”, which give them a lot more power, but even an executive should not live in fear. She urged that before we make any decision that could be a fait accompli in regards to a recall, that we need to see what it will look like. She stated that she was not sure why this is even on the Agenda—that we should not live in fear of a recall.

Councilwoman Robinson stated that she did think this bears a lot of discussion; that we are putting our thoughts out there; that it really troubled her that people who are elected are subject to being recalled in the absence of malfeasance—that she thought recall should be for criminal behavior; that to her a recall would occur if a person does not pass “muster” and that recall would be called “the next election”; that people running for office that do not do a good job or who are not popular, won’t be re-elected. She stated that a person should be censured if they had committed a crime; that it is just human nature that the general public is going to

have an opinion about everything, and there will always be people who will either approve of a decision that has been made or disapprove; that if the Council passes a Budget are people going to “wildly” accept it—“no”! She noted that being able to express an opinion is called “democracy”, but this does not give the populace the right to throw someone out of office just because they don’t like something like the budget. She stated she did not know what it said in State Law, but if a recall comes up and a person is threatened by it just because an active group does not like the way they voted, then this is wrong and it is wrong even if it is a State Law.

Councilman Rico stated that what we are proposing just “mirrors” State Law.

Councilwoman Scott stated that in England, they can dissolve Parliament. She stated that she thought, and the City Attorney could check this, there had to be a reason in Tennessee State Law—that it might not be specific but a reason had to be stated. Another thing, she continued, was that a number of cities are actually putting a percentage based on the number who voted in an election and six cities made it be the actual election to determine a recall. She noted that a recall happens in two stages—the first being, do you wish to have this person recalled and the second stage follows, “who do you want to replace this person?” She stated that there did not have to be two separate elections. She stated that it was the will of the people who put us here and 50% of people who actually votes in an election would be a substantial number, and she thought we should look at something like that. She noted that people are registered to vote but don’t vote in City elections. She stated that we should not be so insulated from the will of the people that it would be impossible to do a recall.

Councilman Benson spoke to 50% of the people voting—that in Sally Robinson’s district, that would not be too many people; that in the absence of a cause, it is carte blanche; that the threshold should be higher with the absence of a cause such as moral turpitude or malfeasance. He went on to say that we have had a bad experience and have “scar tissue”; that the Mayor was being recalled because he did something that that group did not like, which was not a justified cause; that the threshold should be high, because this could happen to any of us; that the City did not pay the Mayor’s fees, and what he did was in the line of duty; that in the future people could be mistreated because of the way this Ordinance is written; that this recall is still in Court and is not costing us, but it is costing our Mayor; that we needed to do something quickly because this could happen to others. He suggested discussing this further at a 1:00 p.m. meeting that Councilwoman Berz could mediate.

Councilman Gilbert stated that regardless of who gets recalled, it should be based on a criminal act and not something where someone just disagrees; that people disagree with the Mayor on a lot of things. He questioned going by State Law—that it was not fair for individuals who did not vote to have an option on recall.

Chairman Ladd noted that views had been expressed; that Councilwoman Scott and Councilman Benson wanted more discussion on this; that it could be deferred, and we could schedule a Work Session on this.

Councilwoman Berz agreed that the wisest thing to do is to defer this—that we need an educational session, and it should be in the small room for discussion and could be open to the public; that we needed to educate ourselves and have everything in place; that constituents could have input; that she knew how her constituents were thinking now—that it should be malfeasance; that we needed an educational session as soon as possible.

Chairman Ladd stated that we could do it next week on Tuesday at 1:00 p.m.

Councilwoman Scott indicated that Attorney McMahan thought this was the leading thing on the ballot and questioned when we had to make a decision for this to go forward on the ballot? Attorney McMahan stated that he would have to calculate the date; that he thought it would be by the first of August, but he needed to double check this. Councilwoman Scott indicated that she would also like a discussion for term limits and moving the date of the election and asked if these two items could be added to the same meeting? Chairman Ladd responded that both of these issues would be lengthy and did not think the three issues could be accommodated in one meeting. Councilwoman Scott asked if these two items could be discussed another day during the same week? Chairman Ladd stated that there could be a meeting at 1:00 p.m. on Tuesday on the current item. She questioned if the other two issues could be discussed on Thursday?

Councilwoman Berz noted that these were three very important issues to be tied together—that one is the Recall, which needs to be cleared up and time is of the essence; that the other two issues involve term limits and when the election is held, which needs some deep discussion and does not have to be now—that time is not of the essence in this case.

Attorney McMahan noted that these changes could not take place before 2014, with Councilwoman Berz noting that this would still affect people getting elected the next time. Attorney McMahan noted that we changed the form of government by Court Order—that if the term is shorter, we have to pay them for the term. Councilwoman Berz stated that all of the sudden, these other two issues have become urgent, and they are not urgent; that it is urgent to clean up the recall issue because it is not in accordance with State Law; that these other two discussions are getting pushed in, and she did not think this was the wise way to make a decision; that the meeting on the recall would be from 1:00 p.m. to 3:00 p.m. on Tuesday and suggested not talking about these other issues right now and not scheduling a meeting right away to discuss them.

Chairman Ladd stated that Councilman Murphy had said that he would schedule a time to discuss these other issues; that he is the Chairman of this committee and the one who should get it scheduled at a distant time.

Councilman Rico suggested the Attorney preparing three different Ordinances and letting the Council vote them up or down—the Recall, Term Limits, and Election date.

Chairman Ladd asked if we wanted to concentrate on voting on the Ordinance we have right now? Councilman Rico maintained that we could vote on each separate one; that he was ready to vote right now and thought that most of the Council could vote right now. Councilwoman Ladd stated that she would be reluctant to vote right now.

Councilwoman Scott stated that she disagreed with the comment that time is not of essence on these other two issues; that the City Attorney has said that it would be two more years before this could come up again—that time is of the essence in giving the public the opportunity to vote on term limits and to vote it up or down in November. She went on say that she thought it was the Council's overwhelming responsibility to do both of these; that the Public is quite capable of making up their mind on this and voting; that we have known about the recall issue for some time and have had time to put this on the ballot; that the Public is smart enough to vote on all of this if we give them the opportunity.

Councilman Benson stated that it was not a matter of being "smart" but a matter of being "enlightened"; that term limits is a really "loaded" issue and discussion on this had really turned his thinking around; that the Public would be naïve if they thought this is simple—that it was something like the "Blue Laws"—when people understand, they change their minds; that it would be naïve of the public to vote on something they don't understand; that reasons were given in either 1993 or 1994, and he urged the Council not to rush on this and to educate people and to educate ourselves.

Chairman Ladd asked if we wanted to have a discussion on Ordinance 6(b) scheduled for 1:00 p.m. to 3:00 p.m. on Tuesday, just to address this one item and discuss Term Limits and the election process at a later date? She went around to each Councilmember to get their input: Councilwoman Scott wanted to discuss all three issues; Councilwoman Robinson wanted to have a discussion on recall but said "no" to a discussion the other issues; Councilman Rico said "no" to any further discussion; Councilman Gilbert said "yes" to discussing the recall issue but stated that he was not clear on the date for the other issues, whether it would be on Tuesday or Thursday—that he would vote "yes" to having a discussion; Councilwoman Berz voted "yes" to the discussion on recall but suggested another day for the other issues—not all of them right now; Councilman Benson voted "yes" to a discussion on Recall on Tuesday and "no" to an immediate discussion as to the other two issues, suggesting some education; Chairman Ladd voted "yes" to a discussion on Tuesday as to recall and "no" as to a discussion on the other two matters. She went on to say that it is the Council's preference to defer this

Ordinance tonight for further discussion next Tuesday from 1:00 p.m. to 3:00 p.m.; that it would be the responsibility of the other Chairman (Chairman Murphy) to approve a time for discussion on the other two issues.

On motion of Councilman Rico, seconded by Councilwoman Scott, the minutes of the previous meeting were approved.

This meeting was adjourned.