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From: Crownover Shirley
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LEGAL AND LEGISLATIVE COMMITTEE

October 14, 1997

4:45 P.M.

The meeting of the Legal and Legislative Committee was called to order by Councilman Lively, Chairman, with Councilmen Crockett, Taylor, Rutherford, Pierce, and Hakeem being present. City Attorneys Michael McMahan and Phil Noblett were present. Also present were Management Analyst Randy Burns and Shirley Crownover, Assistant Clerk to the Council.

Others present included Adm. Boney, Adm. Marcellis, Jack Wilkinson, Bunky Wright, and Jerry Moody.

DISCUSSION REGARDING METAL GATE ENCLOSURES ON DOWNTOWN BUSINESSES

Chairman Lively stated that Councilman Crockett had asked for this discussion. Councilman Crockett stated that somebody had called him about debating whether or not the Council had had this conversation. He stated that the Council had had this conversation with plenty of opportunity to hear everything, and it had been thoroughly discussed, and the Council passed an Ordinance concerning this, which was in place, and it was not the purpose of this committee to open this discussion again but to understand how this Ordinance that had been passed by the Council was not being enforced.

Adm. Marcellis offered some background. He stated that three businesses had rolled up iron doors in the downtown area when the Ordinance was passed--that one business took them down and two kept them up. Jerry Moody of the Inspection Dept. was present and stated that McDonald's also had one, and he cited McDonald's, Soul Man Shop, and the Dress Up Shop and did not have good luck with the Court--that McDonald's took theirs down and also the Jewelry Store took theirs down immediately; that the Soul Man and Dress Up Shop took their cases to Court, and the City lost the cases.

Attorney Noblett stated that in July of 1993 the Council passed Ordinance No. 9928; that when it was drafted the City Council thought

that in the downtown area there might be a problem with handling fire calls, and they asked that the barriers be taken down in 1993; that the Building Inspection Dept. started trying to get the businesses to take them down, and the businesses were not moving very quickly, and they were cited to Court; that McDonald's took theirs down but the Soul Man Shop and Dress Up Shop said "No" and took their cases to Court; that they were cited by Mr. Moody, and there was a hearing in July of 1994, and the Judge heard the proof, and Judge Williams dismissed the cases. He stated they then filed a Notice of Appeal to Criminal Court, and he (Attorney Noblett) was approached with a legal lesson--that he could not file Notice of Appeals of adverse rulings out of City Court because double jeopardy might ensue, and it could not be appealed to Criminal Court for another ruling. He reiterated that we cannot appeal adverse rulings from our City Judge--that we have to rely on the City Court Judge.

Councilman Swafford asked about the bottom line of why these cases were overturned. Attorney Noblett stated that Judge Williams did not think there was substantial reason to treat people downtown any differently from other sections of town.

Councilman Crockett raised a constitutional point, stating he thought this body (City Council) was the legislative body, and after careful debate, the Council had decided on a point of legislation, and Administration was the enforcing arm, and unless it was unconstitutional, he thought it should be upheld in City Court.

Attorney Noblett responded that the Judicial Branch has the power to uphold convictions of violations of Ordinances; that the Judge found this Ordinance drawn for the downtown area and not the entire City unfair. Councilman Crockett responded that many of our Ordinances pertain to particular parts of town, and not the whole City, and are very specific, prompting Councilman Lively to say "too specific". Councilman Crockett asked if all of these Ordinances were illegal and questioned if this action on the Judge's part would not be setting a precedent.

Attorney Noblett stated that they had a ruling from Chancery Court to make a Declaratory Judgement--that if we got into Criminal Court we would lose.

Councilman Pierce questioned taking these cases to the State Court and bypassing City Court. Attorney Noblett responded that the City Court has the power to enforce; that there are specific State Statutes outlining powers. Councilman Pierce suggested combining City Court and Sessions Court.

Councilwoman Rutherford questioned what would happen if we took this to the Chancellor and asked for an interpretation, and he determined that it was a good Ordinance--would the doors then go up in the future? Attorney Noblett stated this could happen if the City Court Judge chooses not to follow.

Councilwoman Rutherford moved that this matter be taken to Chancery Court for a Declaratory Judgement. This was seconded by Councilman Crockett.

Adm. Boney asked what would happen if the Chancellor rules against us, questioning what it would do to all the other Zoning ordinances.

Attorney McMahan stated that there is nothing wrong with differentiating downtown from other parts of the City.

Councilman Swafford stated that if we should lose, we would be at the same place we are now anyway and stated he felt we should do whatever we need to do at this point; that we could spend hours and hours on this, and it would not do any good, and we needed to pursue what we need to do and correct it.

Attorney Noblett explained to Adm. Boney that this did not involve the Zoning Ordinance.

Councilman Swafford questioned if the Council needed to hold the Resolution dealing with the awning for the Soul Man Shop at 704 Market Street.

Councilman Hakeem stated he felt the Council could proceed with this--that we were not dealing with this but with a legal issue. Councilwoman Rutherford stated the awning should make it look better. Councilman Hakeem questioned giving the appearance of making this business pay.

Councilman Crockett stated that he did not see that they were connected but noted that the awning was already up without a permit.

Councilwoman Rutherford stated if the Council denied the awning that he would take us back to Court, and the Judge would rule and let the awning stay up.

Mr. Wilkinson explained that they were just replacing an awning that had been there for years. Councilman Pierce asked if this was the same location, and the answer was yes.

LIQUOR LICENSE APPROVAL BY COUNCIL

Chairman Lively questioned that if the Council has no authority to disapprove a License, and it has passed all other stages, why are we asked to do it.

Attorney McMahan stated that the State was the main regulator; that we are allowed to look at Zoning and distance requirements and the Police Dept. runs a background check, and if a person gets by those two hurdles, meeting the standard codes and has no criminal record, there is no discretion about denying it--that either the City Council can

approve it or the Mayor could do it. He stated that he had talked to the Mayor about this, and he had no problem in doing it. Attorney McMahan stated he had already drafted an Ordinance to this effect, and it could be put on the Agenda next week.

Councilman Crockett stated that probably every Council person had had one or so in their district. Councilwoman Rutherford stated that this was not the case; that since she had been on the Council there had only been two and one was out in Hixson.

Councilman Crockett asked if it was worth it to the Council to approve these licenses.

Attorney McMahan explained the licenses would still have to go through the whole process, and the Mayor would sign off on it. Councilwoman Rutherford pointed out that the Mayor could sign them without being in front of the TV and news media.

Chairman Lively verified that it would just be going for approval from the Council to the Mayor.

Councilman Swafford stated that he understood that if we don't take any action that the license would automatically be approved within 60 days; that if we vote to deny it, then there would be a hearing. He questioned if the Council approved it, if it would speed up the process for the applicant.

Councilwoman Rutherford stated that it bothered her that the residents had no notification; that she would prefer that the Mayor sign off on these; that she felt there should be some notification to residents.

Councilman Pierce questioned why not do for Liquor Licenses like we do for Beer Licenses.

Councilman Crockett stated that when this was rezoned for Winn-Dixie that he thought a Liquor Store was excluded. Adm. Boney stated that it was not. Councilman Crockett stated that this was rezoned in 1995.

Chairman Lively stated that if the Council had no say so that he would be in favor of leaving it up to Administration's side; that the Council looked stupid sitting there last week.

Councilwoman Rutherford pointed out that zoning notices are posted, stating she thought there should be some sort of public knowledge to residents around specific areas.

Councilman Taylor questioned if nearby residents opposed this, why they did not show up at the Council meeting. Councilman Hakeem stated he thought it was because they knew if it were 500 ft. away, they could not beat it and had no legal standing. Councilman Pierce questioned if opposition meant anything if a person met the guidelines.

Adm. Boney stated he had gotten calls from the Church and the neighborhood; that the Church was in opposition, but they saw what was being done and their lawyer had advised them that they had no case; that since this had been given all this publicity, he could not see why the neighborhood did not know. Councilwoman Rutherford stated that we do not have these every month or two, and the neighborhood would not have any way of knowing.

Councilman Hakeem asked in regards to Winn-Dixie--at what stage had they already acquired the property. He questioned if we were in front of the process enough. Attorney McMahan stated that it had been his experience that it was written into the contract that if the person could not get the proper approval for the license that the contract would be void.

Councilwoman Rutherford stated she did not like this.

Councilman Hakeem stated that he felt maybe we should keep this as it is (Council approval) until we get more input.

Councilman Crockett asked if any C-2 Zone that met the distance requirements was eligible.

Attorney McMahan noted that if you posted this for the neighborhood that it would just get them "riled up", and it was legal and there was nothing we could do about it anyway.

Councilwoman Rutherford asked if C-2 was the only zone for liquor stores. Attorney McMahan stated also C-3 for sure, and he thought the Manufacturing Zone.

Chairman Lively questioned if we were going to continue to do nothing as we did the other night--that he felt stupid just sitting there.

Councilman Pierce stated at that meeting he felt we had no other choice but to vote for it, and he was ready to second the motion until the threat was made. He stated he thought the Council should vote it up or down tonight.

Adm. Boney stated he knew about this applicant and knew they had gotten their 60-day clock started and could wait this out.

Councilman Hakeem asked if we could broaden the meaning of the definition of the character clause within our scheme. Attorney McMahan explained there were restrictions under State Law about which definitions can be broadened.

The meeting adjourned at 5:30 P.M.

