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LEGAL AND LEGISLATIVE COMMITTEE

March 9, 1999

4:30 P.M.

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

Chairman Franklin called on Attorney Nelson to outline the agenda for tonight's meeting. Attorney Nelson noted three issues:

- (1) Appellate process in light of the Cornell Green Personnel Case;
- (2) How matters are placed on the Agenda;
- (3) Construction Companies using property in residential neighborhoods.

PERSONNEL APPEALS ISSUE

Attorney Nelson noted that this issue was raised as a result of the Green case; that there was a four-person panel and the vote was two to two; that only one vote was taken on the matter, and it was not clear whether this vote was a verdict of "guilty" or "whether the punishment needed to be changed". Attorney Nelson passed out some rules to the committee and referred to Rule "10" which stated that the Executive Branch has the burden of proof as far as the cause for disciplinary action is concerned, and the employee has to bear the burden of proving that the punishment is disproportionate to the offense; that the employee is either not guilty of the offense or he feels that the punishment is disproportionate to the offense. Attorney Nelson stated that the Chancellor said that the same panel would have to hear this case all over again; that there needed to be another hearing and vote within 60 days.

Councilman Pierce stated this was a case where the man called in sick, and he was asked to come to work immediately and when he came in, his supervisor said he had been drinking and fired him. He stated that there was a split decision--that two upheld what Administration had done and two thought it was unjust. He stated the man was about 55 years old.

Councilwoman Rutherford stated that she thought the man had been to work previously in an intoxicated condition.

Councilman Pierce stated that the man had called in sick; that the City did not have a doctor to examine a person, and he questioned his being called in when he said he was sick.

Attorney Nelson stated that he had a transcript of the hearing that anyone could read.

Councilwoman Hurley asked what would happen if the case was re-heard and the vote was still split. Attorney Nelson stated it would have to be taken back to Chancery Court; that it needed to be decided if there was an offense and then if the punishment was disproportionate. Attorney Nelson stated that it had to be the same panel, and we would have to wait until Councilman Hakeem gets back.

Councilman Pierce still questioned Administration saying a person has to come to work when the person says he is sick and then saying the reason he was not coming to work was because of drinking and not because of being sick.

Attorney Nelson noted that we did not need to hear the case at this time, and the panel could reconvene when Councilman Hakeem gets back.

Councilman Pierce questioned why not just have another full hearing. Councilwoman Hurley stated if we had another full hearing, we would need more than four people. Attorney Nelson reminded them that the Chancellor said there could not be more than four people. Councilwoman Hurley suggested that Attorney Nelson go back to the Chancellor and ask him to allow a new hearing. She questioned what the original four panel members' rationale would be for changing a vote if they felt like they did a good job in the beginning.

Chairman Franklin asked what if the vote was two to two again.

Attorney Nelson stated that we needed to have it put in the rules that all personnel panels that met had to have an odd membership; that it was not a part of the written rules now. Councilman Pierce stated that he was almost assured that we had five Council members to volunteer for this panel and only four showed up.

Attorney Nelson stated he could go back to the Chancellor and ask for a new panel or an expanded panel. Councilman Crockett suggested that the case just be heard by the three panel members that are in town. Attorney Nelson clarified that what the Council wanted him to do was to ask the Chancellor for a new or expanded panel and also to amend the rules to call for an odd number on a personnel panel.

PUTTING MATTERS ON THE AGENDA

The next issue that Attorney Nelson addressed was placing matters on the agenda. He stated that this was brought up in the Council meeting. He explained that Administration has to have agenda matters to their office (City Attorney) by 4:00 on Thursday--that they draft the agenda on Friday morning and then mail it out Friday afternoon to the press, each of the council members, and the council office--that it also goes on a web page; that by 5:00 P.M. on Friday, the meeting for ten days off has been set. He explained that if an item needs to be added to the agenda outside of the established procedure that it needs to be approved by the Chairman of the Council, Vice-Chairman, or two members of the Council so that the City Attorney's office can make the correction. He explained that the corrected agenda goes only to the Council Office. He stated this was the present process with one other change--that Mayor Kinsey wants matters coming from Administration to be given to the City Attorney's office by 5:00 P.M. on Wednesday so that he can get an advanced copy on Thursday.

Councilwoman Rutherford asked what the problem was.

Councilman Pierce questioned why Administration did not turn in their items to the Mayor's office first. Attorney Nelson explained that they needed them first in the City Attorney's office because once they get into the system, they don't have to be typed again. He explained to have them arrive in the Mayor's office first would be more cumbersome; that their (City Attorney) sending them to the Mayor's office on Thursday is a courtesy type of thing.

Chairman Franklin verified that it will flow better like it is.

Councilman Crockett had raised the question at last week's Council meeting and stated that the issue is how procedurally we bring things to the Council; that we need flexibility to put items on the agenda that have to be acted on in a time-sensitive manner; that it had become a matter of practice to move insignificant items directly to the agenda from committee; that in committees we need to agree on some kind of process.

Councilwoman Rutherford still questioned if anything was changing.

Councilman Crockett explained that he was talking about the Council's policy--that it is a question for the Council to decide on whether something appears on the agenda; that whether it is a significant or insignificant item, we need an orderly way of dealing with it. He stated he thought it was a better process to bring items to a committee meeting and have them discussed and unless they are time-sensitive issues to have them put on the next week's agenda.

Councilman Pierce stated he could understand what Councilman Crockett was saying, but a Council person would feel anything he wanted to put on the agenda was significant; that everything we do is on fast-track; that every Tuesday we have to alter the docket; that these fast-track items have not been advertised to the public. He stated he had no objections to keeping these items until the following week.

Councilwoman Rutherford asked who would decide if there was a time-element involved.

Councilman Eaves stated that we have a Chairman for this.

Attorney Nelson stated that we have a Resolution that covers this as well--that we can wait until next week rather than "hustle" it on tonight's agenda.

Councilman Lively noted that some issues are time-sensitive--like the one on Coolidge Park that he "okayed" for tonight's agenda.

Mr. J. B. Collins stated that he very seldom asked to speak but asked to speak at this time. He stated that he tried to let people know what is coming up; that if an item is "sneaked" on the agenda, he does not have time to let the people know; that two members of the Council, the Chairman, or the Vice-Chairman can get something on the docket, and the public will not be here to defend it or oppose it.

Councilman Lively agreed that the Council had been guilty of this.

Councilman Crockett stated he thought what we had just discussed was a good policy and process, and we needed to stick with it.

Attorney Nelson questioned if it would be left up to the Chairman to decide on an item. Councilman Crockett stated he wanted this to be the Council's "rule", rather than saying the Chairman should make the decision. Attorney Nelson maintained that someone would have to make the decision as to whether an item is a time-sensitive issue and needs to be on the agenda less than five days before the meeting.

Councilman Crockett questioned if everyone had an agreement on this; for the record he wanted it recorded that we have a consensus of all present today.

CONSTRUCTION COMPANIES USING RESIDENTIAL PROPERTY

Councilman Lively stated that in his district he had a growing problem with this--that construction people were finding a house in neighborhoods and using it for a business; that people were operating used car lots in the middle of residential neighborhoods; that one house had 50 cars in the front yard, and the City continues to let the person off because he says it is a hobby. He stated that there was a "glitch" somewhere, and our Ordinance is not being enforced; that neighbors had called and complained, and the people in Administration just say "get up a petition". He stated that he did not think this was the neighborhood's responsibility.

Councilwoman Hurley noted that the contractors were out of zone.

Councilman Pierce stated that the inspectors would just tell people to call their Council persons. He stated that laws were not being enforced.

Councilman Lively stated that it was getting bad.

Councilman Pierce stated that if we are not going to enforce laws that there is no need to tighten them up.

Councilman Lively stated he would like to look at some suggestions.

Attorney Nelson stated he would look into this and bring something back next week.

The meeting adjourned at 5:15 P.M.