PERSONNEL AND AUDIT COMMITTEE
OCTOBER 18, 2011
4:20 P.M.

Councilwoman Scott, Chairman, called the meeting of the Personnel and Audit Committee to order with Councilmen Rico, Ladd, Benson, Robinson, Berz, Gilbert, Murphy and McGary present. City Attorney Michael McMahan and Shirley Crownover, Assistant Clerk to the Council, were also present.

Others present included Johnny Feagans, Dan Johnson, Karen Rennich, Danny Thornton, David Johnson, Daisy Madison, Beverly Johnson, Stan Sewell, Larry Zehnder, Fire Marshall, Ron Swafford and Chief Dodd.

On motion of Councilman Gilbert, seconded by Councilwoman Ladd, the minutes of the previous meeting were approved as published.

Chairman Scott stated that we had a presentation from the Audit Committee and that David DiStefano was here. She asked Mr. DiStefano to introduce the other members of the Committee.

Mr. DiStefano thanked Chairman Scott and introduced Henry Hoss, Ben Miller, Charles Millsaps, and David Quinn. He then proceeded with his presentation stating that each Councilmember had been given a draft of an Ordinance to amend the City Charter in regards to the Audit Committee's establishment. He noted that this came about because of the development of the Audit Committee; that the goal was to disassociate the Audit findings from the political process; that Best Practices favored this type of establishment in the Charter of the City, but it was not the case here; that the Committee was recommending for long term benefits that the City change this and make this a part of the City Charter. He went on to say that the establishment of the Audit Committee was for the City of Chattanooga and not just the City Council. He stated that he had done research on the method and was ready to present this Ordinance to the Council and Administration. He asked if there were any questions.

Councilman McGary questioned the language in Section 1, Article 4, Section 3.111 that reads "*The Office of Internal Audit shall be independent and separate from any other agency, board or department of the City of Chattanooga and shall report to the Audit Committee, Mayor, Council and the citizens".* He went on to the language in (B) that reads "*The Audit Committee shall consist of five voting members; one member recommended by the Council, one member recommended by the Mayor and three at-large members".* His question was why two of the members would be appointed by the Mayor and Council if this is independent—that if it were going to be independent, it needed to be **truly i**ndependent".

Mr. DiStefano responded that they would still need input from the Council and Administration; that folks were advised by them to some degree; that all of the members came from different backgrounds; that they generally audited private businesses and government is different; that this would assist the Audit Committee.

Councilman McGary spoke to the Committee's responsibility—to review plans by the City Auditor and recommend additional audits. He questioned to what degree they needed to be advised?

Mr. DiStefano explained that the Internal Auditor has a number of sources; that the Hotline is one of the sources; that Councilmembers get phone calls from constituents, which could be relayed to the Audit Committee through this process; that the Council answers to their constituents.

Councilwoman Robinson stated that she wanted to make certain and asked if this draft was written by the City Attorney. The answer was "no".

Attorney McMahan explained that they only went over the form—that the content came from the Audit Committee.

Mr. DiStefano stated that they (City Attorney) did not draft this; that the original draft was formed by the City Attorney and was modeled after a previous Ordinance that was drafted by the City Attorney.

Councilwoman Robinson stated that this was confusing to her; that the City Attorney is the "gatekeeper", and this worried her—having something before us that our Attorney did not write.

Attorney McMahan stated that he did review it and approved the form; that this was generally what they did with ordinances—they reviewed them for form.

Councilman Benson stated that the Audit Committee was doing a great job, and he appreciated all of them. He went on to refer to **Section 3.112 Appointment and Removal of City Auditor.** He noted that this said "*The City Auditor shall be appointed by the Audit Committee and shall receive a salary set by the Audit Committee using established market data and shall be removed from office for cause by the affirmation vote of two-thirds of the membership of the Audit Committee".* He reminded that we were using taxpayers' money for this position, and this would give this person more autonomy than anyone else in the city. He questioned this position being appointed by the Audit Committee, again mentioning complete autonomy. He also questioned "*may be removed for cause".* He felt it should read "just cause".

Mr. DiStefano responded that the primary purpose for appointing an Internal Auditor is to disassociate this function from having to report and be responsible to another member of government; that the Internal Auditor has to be able to audit **everybody**, and it would serve as a conflict of interest if the Mayor appointed and hired this person and could also fire him/her: that if the Auditor did something the Mayor did not like, the relationship could "sour"; for this reason this person needed to be hired by a group outside of the Mayor's Office; that it would have to be ratified by the City Council. He explained that they were trying to insulate this function from political pressures or process.

Councilman Benson stated that he could see this rationale but questioned what if the Audit Committee fires someone that we don't want fired—can we then fire the Audit Committee?
Mr. DiStefano responded "no"; that it takes 2/3rds of the Audit Committee to terminate a City Auditor; that there were no provisions from the Council or the Mayor to remove members of the Audit Committee; that when their term expired, they could be removed.

Councilwoman Berz stated that the Audit Committee had done a great job, and she knew what they were dealing with; that Stan Sewell had done an outstanding job, and she thought that they had come up with a real winner design; that they had all done a fabulous job; that they were talking about putting this up for a vote to take a look at this; that there should be votes to welcome this. She asked if this covered all concerns—that they would like input from Administration and the Council—that input would be very, very helpful. She stated that the way it stands now, the meetings are open meetings—that it is a Council function. She questioned if this would be open to the public? Mr. DiStefano stated that there would be no change in their responsibility under the Open Meeting Laws—that they were not changing who they were. Councilwoman Berz stated that the Council would make recommendation, and she thanked Mr. DiStefano.

Councilman Murphy stated that he was **not** an accountant; that there had been the institution of Internal Auditor since 1941; that Certified Examiners exist and questioned a Certified Fraud Examiner being less than that; that there are only 50,000 Certified Fraud Examiners nationally.

Mr. DiStefano responded that they were looking for people with different expertise; that a Fraud Examiner could be certified to assist them; that they wanted someone with very specific expertise and would be glad to have such a person on board.

Councilman Murphy again stated that he was **not** an accountant but had assisted in fraud cases and some Fraud Examiners were not CPA's; that we were restricting to a pool that was awfully small. He stated that this was a serious issue that was being proposed to put into our Charter; that when we change the Charter, we have to be careful; that it says an Internal Auditor "shall" be provided but designated by whom?

Mr. DiStefano responded that their proposal was that this would be budgeted like any other department and would be in the overall Budget; that they were trying to insulate the Internal Auditor from the "political push and pull"; that they (Audit Committee) would develop the Budget, and the Council could not "starve them to death".

Councilman Murphy asked if the Council would have no power to reduce their Budget?

Mr. DiStefano explained that the budget would be developed in terms of revenue with the assurance that this department would be funded as well. He stated that there might be another way to structure this. He stated that they would have this understanding with the City of Chattanooga; that if the City became irresponsible and the Charter was voted out, there would need to be an Internal Auditor, and they would need a Budget, and if tied in with City, they could not function.

Councilman Murphy stated that Mr. DiStefano was painting the most dire picture—the municipality going bankrupt! He noted that the Budget is the Council's job; that it seems this position comes without limitations, and the Audit Committee could hire whomever they wanted. He noted that sometimes there is removal of Staff—that it is not always the City Council or the Mayor; that this position would be the most difficult to remove in City Government "hands down".

Mr. DiStefano disagreed—stating that a Councilperson would be the more difficult to remove.

Councilman Murphy noted that the City Attorney is difficult to remove, but he has a term of office; that the way this is written, the Internal Auditor has a job for life.

Mr. DiStefano stated that each year, this position would be reviewed by the Audit Committee, prompting Councilman Murphy to ask if there was no term of office? Mr. DiStefano asked if there was a term of office for the Administrator of Public Works? Councilman Murphy responded "yes"—this position is appointed by the Mayor. He went on to say that the Police Chief cannot be removed by just one but has to be removed by both the Mayor and the City Council. He went on to say that there can be a removal of Staff, but the Internal Auditor would have to say he wanted to go. He added that the City would have an office subject to legal liability but not answerable to anybody in government; that this was very troubling to him. He went on to say that the idea of taking it out of politics was great but this says give the job to whomever is holding the job now, who was appointed by the Mayor—that the first appointment is political and this would not be taking it out of politics but puts it directly in politics.

Mr. DiStefano responded that there would be a new group in the City by Charter; that they were trying to establish continuity; that new Audit members would have to be appointed, and they needed these folks in place as they transitioned.

Councilman Murphy stated "no offense to Stan Sewell", who was in the audience, but this does not take it out of politics—that it is a job for life. He went on to say that there is a problem; that this might all be very well intentioned, but he felt it would be far more responsible to the people to have the office of a Public Advocate, which they do in New York. He added that the Mayor has sole authority over the buildings of the City and the way this is written, this individual (Internal Auditor) would have unfettered access. He stated that one of his jobs was also Chairman of the Safety Committee; that the SWAT Team might have something going on that would not be this person's business; that they could complain to the Mayor, and the Mayor might agree that this person (Internal Auditor) doesn't need to know; however this guy (Internal Auditor) could go all places, and there would be times when this would not be appropriate.

Mr. DiStefano responded "or it might just be something that other folks would prefer him not to know". Councilman Murphy stated that he was talking about for safety reasons. Mr. DiStefano stated that it would be the Internal Auditor's job to protect and serve the community, and he might need to get the records.

Councilwoman Ladd stated that she had "dark" hair when this discussion started! She thanked the Internal Auditor (Stan Sewell) and also the Audit Committee. She stated that she did agree with independence of the audit process, but as to the structural issue, she agreed with Councilman Murphy, questioning who the Internal Auditor had to answer to and his autonomy to implement. She stated that the Internal Auditor now answers to the Mayor and if his recommendations are not accepted by the department he is auditing what happens? She stated that in her experiences, when an Internal Auditor makes a recommendation, it is integrated into the department—that in this he has absolute sovereign authority, and this is good for all to keep us out of legal problems. She stated that the Audit Committee had made a good effort to change a process, and she thanked them for doing their job as Auditors.

Chairman Scott asked that councilmembers send their ideas and suggestions on how to overcome these issues directly to Mr. DiStefano and let him take these ideas and run them back through the Audit Committee and see if there is a way of addressing the issues. She stated that if this could be "massaged", it might be acceptable to the Council.

Mr. DiStefano stated that the responsibility of putting this Ordinance on the ballot is the Council's; that there might be some tweaks that need to be made to make this more favorable for acceptance.

Chairman Scott stated that we needed to get this issue tied up within the next seven days so that it can go forward. She thanked the Audit Committee for all that they do and for bringing this before the Council today.

The meeting was adjourned at 4:50 P.M.