



**CLARKSVILLE CITY COUNCIL
SPECIAL SESSION
JANUARY 29, 2013, 4:30 P.M.**

**COUNCIL CHAMBERS
106 PUBLIC SQUARE
CLARKSVILLE, TN**

AGENDA

- 1) CALL TO ORDER
- 2) PRAYER AND PLEDGE OF ALLEGIANCE
- 3) ATTENDANCE
- 4) HUMAN RESOURCES
 1. **ORDINANCE 59-2012-13** (Second Reading) Amending the Official Code relative to voluntary demotion
 2. **ORDINANCE 60-2012-13** (Second Reading) Amending the Official Code relative to human resources, employee due process, and probationary employees, and drug and alcohol disciplinary process
- 5) FIRE & RESCUE
 1. **ORDINANCE 61-2012-13** (First Reading) Authorizing purchase property on Ashbury Road for Fire Station #6 (*Public Safety Committee: Approval*)
 2. **ORDINANCE 62-2012-13** (First Reading) Authorizing a budget amendment and acquisition of property on Main Street for future expansion of Fire Station #1 (*Public Safety Committee: Approval*)
- 6) CODE OF ETHICS
 1. **ORDINANCE 67-2012-13** (First Reading) Amending the Official Code relative to Code of Ethics
- 7) ADJOURNMENT

ORDINANCE 59-2012-13

AN ORDINANCE AMENDING THE OFFICIAL CODE OF THE CITY OF CLARKSVILLE, TITLE 1.5 (HUMAN RESOURCES), CHAPTER 4 (COMPENSATION), SECTION 1.5-405 (PAY ADJUSTMENTS), SUBSECTION “h.” RELATIVE TO DEMOTIONS OR REASSIGNMENTS FROM A JOB POSITION WITH A HIGHER JOB POSITION CLASSIFICATION RATING TO A JOB POSITION WITH A LOWER JOB POSITION CLASSIFICATION RATING

WHEREAS, the City Council desires to encourage the promotion of its employees within the various City departments to continue professional growth and achievement in order to fulfill the needs of those departments; and

WHEREAS, some of these promotions may entail new job duties, requirements, hours of operation and increased responsibilities; and

WHEREAS, on occasion some promoted employees may decide that the promotion and its attendant job requirements ultimately may not be to their benefit, and may therefore seek a voluntary demotion in order to return to the employee’s previous job position; and

WHEREAS, in many instances voluntary demotions are not the result of any disciplinary actions and are only the result of the desires of the individual employees, and the employee performed in a successful manner at the lower job position and are a valuable human resource for the City; and

WHEREAS, in some instances where the employee’s pay rate or salary is above the midpoint of the pay range of the employee’s previous position, and the employee accepts a promotion, but then at some later point in time decides to take a voluntary demotion, then the employee’s pay or salary could be set below the pay or salary the employee had before taking the promotion; and

WHEREAS, the City Council desires to encourage employee promotion within the departments, and does not desire to disincentive an employee from seeking a promotion with the risk that the employee’s pay could be reduced from a voluntary demotion to a point lower than the employee’s pay rate before taking the promotion.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CLARKSVILLE, TENNESSEE:

(1) That Title 1.5, Chapter 4, Section 1.5-405(h) of the Official Code of the City of Clarksville is hereby amended by deleting the current language therein and substituting therefore the following language:

Sec. 1.5-405(h). *Demotions or reassignment to a lower job position classification.* A demotion occurs when an employee is returned or transferred to a job position with a lower job position classification rating. A demotion can occur either as a result of the employee discipline process or as a voluntary demotion.

- (1) *Demotion as a result of the employee discipline process.* An employee who has been demoted from a job position pursuant to the employee discipline process or for other just cause to a job position with a lower job position classification rating shall have his pay reduced to a level between the minimum and the midpoint of the salary range for the lower level job position as determined by the director of the department of human resources in consultation with the department head of the affected employee.
- (2) *Voluntary Demotion.* When an employee chooses a voluntary demotion from a job position with a higher classification rating to another job position with a lower classification rating, and the demotion does not result from any employee discipline process or just cause, the rate of pay for the employee shall be reduced to a rate within the range for the lower job position classification, as determined by the director of the department of human resources in consultation with the department head of the affected employee, but said rate of pay shall not be lower than the rate of pay of the affected employee on the calendar day immediately prior to the effective date of the employee's former promotion to a job position with a higher job position classification rating.

FIRST READING: January 14, 2013
SECOND READING:
EFFECTIVE DATE:

ORDINANCE 60-2012-13

AN ORDINANCE AMENDING THE OFFICIAL CODE OF THE CITY OF CLARKSVILLE, TITLE 1.5 (HUMAN RESOURCES), CHAPTER 5 (HIRING), CHAPTER 10 (DISCIPLINARY ACTION), AND CHAPTER 15 (MISCELLANEOUS).

WHEREAS, the City Council finds it advisable to amend the City Code concerning disciplinary action to remove the language requiring the Director of the Department of Human Resources to ensure that any disciplinary action taken against an employee were “appropriate and generally consistent,” because the Department Head should be the primary adjudicator of the appropriateness of disciplinary action against an employee, and not the Director of the Human Resources Department; and

WHEREAS, a recent Tennessee Court of Appeals opinion has interpreted part of the due process provisions pertaining to disciplinary action in a manner contrary to the intent of City Council; and

WHEREAS, the City Council desires to amend the City Code concerning the probationary period of employees, to more clearly articulate that probationary employees are not entitled to any due process procedures; and

WHEREAS, the City Council desires to amend the City Code to provide for flexibility governing the disciplinary process for employees who test positive for abuse of alcohol and / or drugs.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CLARKSVILLE, TENNESSEE:

(1) Title 1.5 (Human Resources), Chapter 5 (Hiring), Section 1.5-502.5 d. of the Official Code of the City of Clarksville is hereby amended by deleting the current language therein and substituting therefore the following:

Section 1.5-502.5

- d. At any time during the probationary period, the department head may terminate the employment of any probationary employee within their department, with or without just cause, and said probationary employee shall not be entitled to the due process procedures afforded non-probationary employees as provided for by Chapter 10 of this Title.

(2) Title 1.5 (Human Resources), Chapter 10 (Disciplinary Action), Section 1.5-1001 c. (Minimum Due Process) of the Official Code of the City of Clarksville is hereby amended by deleting the current language therein and substituting therefore the following language:

Section 1.5-1001

- (c) *Minimum due process.* All regular, non-probationary employees will be afforded the benefit of due process for any disciplinary action in the form of reduction in pay, suspension without pay, demotion, and dismissal, except as may be otherwise provided in Section 1.5-1504 pertaining to employee abuse of alcohol and / or drugs. Due process requires that established rules and procedures for disciplinary action are followed and that employees have an opportunity to respond to charges made against them prior to the decision on the disciplinary action to be taken. Due process consists of the following:
- (1) Employees shall be notified of the charges against them. Such notification will detail times, places, and other pertinent facts.
 - (2) The notification will provide for the employee to have a pre-decision discussion. The employee shall be given a reasonable period of time to prepare to answer charges and present information which might influence the disciplinary decision.
 - (3) The person conducting the pre-decision discussion will be a department head or the senior supervisor in the employee's work unit.
 - (4) The meeting outlined above shall be for the purpose of allowing the employee to present information to the manager regarding the disciplinary action under consideration.
 - (5) The discussion shall be informal. The employee shall have the right to present written statements from witnesses, or his or her own written or oral statement, or any other relevant information with regard to the charges. Attendance and participation by persons other than the department head and the employee shall be at the discretion of the department head.
 - (6) If the employee declines the opportunity to have the discussion or present information, the provisions of this section shall be deemed to have been met.

- (7) For disciplinary action in the form of a written reprimand, regular non-probationary employees shall be afforded the benefit of due process through an informal counseling session with their supervisor or other management personnel from their department who prepares the written reprimand, and said informal counseling session shall be conducted at the time the written reprimand is provided to the employee, and wherein the employee shall be given an opportunity to explain the circumstances surrounding their conduct giving rise to the written reprimand. The employee's supervisor or other management personnel from their department who prepares the written reprimand shall take into consideration the explanation of the employee concerning their conduct and determine whether to proceed with issuance of the written reprimand. The decision concerning the issuance of the written reprimand made by the employee's supervisor or other management personnel from their department who prepares the written reprimand shall be final and the employee shall have no right to an appeal therefrom. No other due process shall be required for the issuance of a written reprimand.

(3) That Title 1.5 (Human Resources), Chapter 10 (Disciplinary Action), Section 1.5-1001 f. (1)(b) of the Official Code of the City of Clarksville is hereby amended by deleting the current language therein and substituting therefore the following language:

Section 1.5-1001 (f.)(1)

- (b) Except as provided in subsection f.(1)(c), allegations of employee misconduct which could warrant reduction in pay, suspension without pay, demotion, or termination, will be thoroughly investigated and documented at the department level. Prior to the decision on any discipline by the department head, the employee will be afforded due process as set forth in subsection c. Upon completion of the investigation and application of due process, the department head will decide whether to impose discipline, and what discipline to impose. The department head will then inform the employee in writing of the discipline decision, and will advise the employee of his or her right to appeal. The employee will have ten (10) calendar days to appeal the decision by notifying the human resources department head in writing. If the employee does not appeal the discipline decision, or does not appeal in a timely manner, the discipline shall become final.

(4) That Title 1.5 (Human Resources), Chapter 10 (Disciplinary Action), Section 1.5-1001 f. (1)(c) of the Official Code of the City of Clarksville is hereby amended by deleting the current language therein and substituting therefore the following language:

Section 1.5-1001 (f.)(1)

- (c) All allegations of employee misconduct that involve sexual harassment or hostile work environment, illegal discrimination, workplace violence, and/or wrongful retaliation, will be referred by the department head to the human resources department to conduct the entire investigation. Any such allegations will be thoroughly investigated and documented by the human resources department. Upon completion of the investigation, the human resources department will provide the results of said investigation, with all supporting documentation or materials, to the appropriate department head of the employee. Prior to the decision on any discipline by the department head, the employee will be afforded due process as set forth in subsection c. Upon completion of the investigation and application of due process, the department head will decide whether to impose discipline, and what discipline to impose. The department head will then inform the employee in writing of the discipline decision, and will advise the employee of his or her right to appeal. The employee will have ten (10) calendar days to appeal the decision by notifying the human resources department head in writing. If the employee does not appeal the discipline decision, or does not appeal in a timely manner, the discipline shall become final.

(5) Title 1.5 (Human Resources), Chapter 15 (Miscellaneous), Section 1.5-1504 (Use of Alcohol or Drugs) of the Official Code of the City of Clarksville, shall be amended to add the following language as new subsection “e.”:

Section 1.5-1504

- e. All employees who test positive for drugs and/or alcohol on any mandatory alcohol and / or drug screen test shall be disciplined, to include immediate suspension without pay or termination, without the benefit of due process as provided for in Chapter 10 (Disciplinary Action) of this Title. In such cases, due process shall be as is provided for in the City’s Alcohol and Drug Abuse policy promulgated by the Department of Human Resources, as may be amended from time to time.

FIRST READING: January 14, 2012
SECOND READING:
EFFECTIVE DATE:

ORDINANCE 61-2012-13

AN ORDINANCE AUTHORIZING ACQUISITION OF PORTION OF C.D. BAGGETT FAMILY PROPERTY FOR FIRE STATION 6

WHEREAS, a portion of certain real property known as the C.D. Baggett Family Property and identified more particularly in Exhibit A attached hereto (hereinafter, the “Property”) abuts the real property where Fire Station 6 is located; and

WHEREAS, the City of Clarksville seeks to acquire title to the Property; and

WHEREAS, funding for this acquisition has been authorized pursuant to the FY13 Capital Projects budget (Ord. 100-2011-12).

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CLARKSVILLE, TENNESSEE:

That the Clarksville City Council hereby authorizes the acquisition of the Property, more fully described in Exhibit A attached hereto, from the C.D. Baggett family.

FIRST READING:

SECOND READING:

EFFECTIVE DATE:

EXHIBIT A

Land Description
Of a portion of the
C.D. Baggett Family Property
0.09 Acres+/-

Being a parcel of land in the 3rd Civil District of Montgomery County, Tennessee, said parcel being a portion of the C.D. Baggett Family property as recorded in Official Record Volume (ORV) 1065, page 1983 Register's Office Montgomery County, Tennessee (ROMCT), said parcel being generally described as south of and adjacent to Ashbury Road, east of Fort Campbell Boulevard, and north of Taylor Road, said parcel being more particularly described as follows:

Beginning at an iron pin found, (a ½" rebar), said pin being the northwestern corner of the City of Clarksville Property (Fire Station 6) as recorded in ORV 52, page 329 ROMCT, said pin also being the northeastern corner of said C.D. Baggett Family property, said pin also being South 61°47'27" West for a distance of 155.17 feet from the intersection of said Ashbury Road and Shannon Street, said pin also being on the southern right of way of said Ashbury Road, said pin also being the northeastern corner of the herein described parcel;

Thence leaving said right of way and with the western boundary line of said City of Clarksville property, South 19°25'35" East, a distance of 159.84 feet to an iron pin found, (a 5/8" rebar), said pin being on a northern boundary line of the Anne G Swanson property as recorded in ORV 1204, page 1192 ROMCT, said pin also being the southeastern corner of the herein described parcel;

Thence leaving said western boundary line and with said northern boundary line, South 70°30'40" West, a distance of 24.10 feet to a point, said point being the southwestern corner of the herein described parcel;

Thence leaving said northern boundary line on a new severance line crossing said C.D. Baggett Family property, North 19°25'35" West, a distance of 159.89 feet to a point, said point bearing Tennessee State Plane Coordinates with a northing of 819194.6089 and an easting of 1555494.5867 North American Datum 88/Grid North, said point also being the northwestern corner of the herein described parcel, said point also being on the southern right of way of said Ashbury Road;

Thence leaving said new severance line and with said southern right of way, North 70°38'25" East, a distance of 24.10 feet to the Point of Beginning, said parcel containing 3,852.8 Square feet or 0.09 ACRES, more or less.

Together with and subject to right of ways, covenants, conveyances, and easements of record, and not of record.

GENERAL INFORMATION:

OWNER: CITY OF CLARKSVILLE
FIRE STATION NO. 6
CLARKSVILLE, TN 37042

TAX MAP NO. 0436 'F' PARCEL NO. 013.00
CURRENT ZONING: C-5
DEED REF. # O.R.V. 82, PG 329
3rd CIVIL DISTRICT

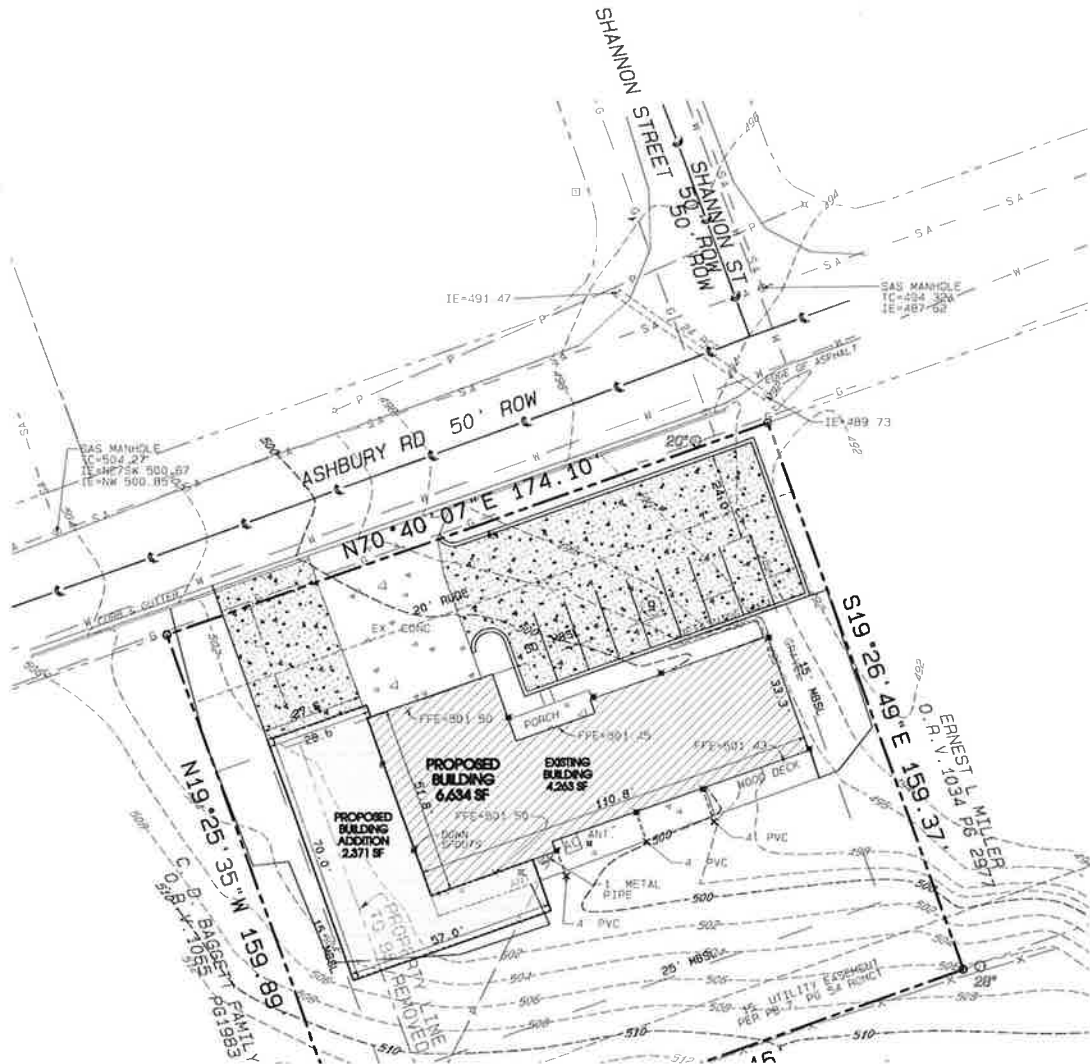
SITE DATA:

TOTAL ACREAGE: 27,798.47 SF
(0.64 +/- ACRES)
PROPOSED BUILDING AREA: 6,634 SF (8.5%)
TOTAL BUILDING AREA: 6,634 (23.8%)
PROPOSED VEHICULAR USE AREA: 5,077.32 SF (18.2%)
TOTAL VEHICULAR USE AREA: 6,990.74 SF (22.9%)
TOTAL IMPERVIOUS AREA: 13,183.36 SF (47.4%)
PROPOSED USAGE: FIRE STATION

GENERAL NOTE:

All utility locations are approximate and are depicted based on location of utilities by local utility authorities, visible appurtenances, or maps prepared by others. These locations are no guarantee that there are no other utilities either public or private, that are not shown on this survey.

NOTE: ALL SITE LIGHTING SHALL BE DIRECTED INWARD WITH SHIELDED HOODS. NO LIGHT SHALL SPILL ON ADJACENT PROPERTY



ORDINANCE 62-2012-13

AN ORDINANCE AMENDING THE 2012-13 OPERATING BUDGET (ORDINANCE 100-2011-12) AUTHORIZING THE CITY OF CLARKSVILLE FIRE RESCUE TO INCREASE FUNDING IN THE AMOUNT OF \$60,000 AND AUTHORIZING THE CITY OF CLARKSVILLE FIRE RESCUE TO PURCHASE REAL ESTATE **ON MAIN STREET** FROM THE HEIRS OF HOWARD BROWN MOSELEY, DECEASED, FOR FUTURE EXPANSION FOR FUTURE EXPANSION OF FIRE STATION 1

WHEREAS, certain real property adjacent to Fire Station 1 (hereinafter, the "Property"), more fully described in Exhibit A attached hereto, has come available for purchase; and

WHEREAS, the Property would be used for future expansion for the Clarksville Fire Rescue Department.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CLARKSVILLE, TENNESSEE:

That the following Budget Amendments be made:

Fire Department Expenditures:

Land Purchase	10422004-4710	Increase:	\$60,000
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BE IT FURTHER ORDAINED that the Clarksville City Council hereby authorizes the acquisition of the Property on Main Street, more fully described in Exhibit A attached hereto, from the Heirs of Howard Brown Moseley, deceased, and that the source of funding for this \$60,000 shall be from the fund balance of the General Fund.

FIRST READING:

SECOND READING:

EFFECTIVE DATE:

Legend
IPO ●
IPN ●
Point O
Public Utility &
Drainage Easement
Minimum Building
Setback Line
Fence
Overhead Wire
Boundary

P.U.&D. Esmt

M.B.S.L.

— OHW —

Main Street

IPO

Approx. 15' Alley

51.41'

80.92'

The Ninth and Christ
Main Church pg 2487
Vol. 693,

83.75'

P.O.B.

Existing Pk Nail

N 77°35'39" E
63.60'

30.2'

25.0'

S 16°48'38" E
142.84'

City of Clarksville property
Vol. 530, pg 1040

1 Story Building

Sidewalk

Asphalt

H. Mosley prop.
Vol. 575, pg 564

0.26 ACRES

N 11°12'44" W
123.69'

N 13°37'58" W
29.42'

S 12°47'02" E
11.82'

IPO

IPO

Mark A. Richmond
& Teresa A. Richmond property
Vol. 629, pg 1258

unnamed alley

187.34'

City of Clarksville property
Vol. 753, pg 2370

Franklin Street

84.95'

IPO

IN ROBERT WEARLE
REGISTERED LAND SURVEYOR

Approx Location of 10' Alley
Not in Use. Possibly Still Public
R.O.W. This Property is Included in
the property Description in
Vol. 575, pg 564

SCALE: 1" = 40'

820 Main Street
Clarksville, TN 37040

Property Survey For: Daniel Pitts

Map 66F, parcel D 4.01
Property Recorded in
Vol. 575, pg 564
R. O. Montgomery County
Clarksville, Tennessee
12th Civil District

WEAKLEY BROTHERS

P.O.Box 3409 / 2121 Old Ashland City Rd
Clarksville, TN 37043 648-9445

Land Surveying Civil Engineering

Date: 4-26-07

Job No.: 07-224

Sheet 1 of 1

We hereby certify that this survey has been made using the recorded information shown, that there are no visible encroachments or projections observed other than those shown, and that this survey is correct to the best of my knowledge and belief. This lot is subject to matters on the recorded plat and the findings of an accurate title search. We hereby certify that this is a category I survey and that the ratio of precision of the unadjusted traverse is better than 1:10,000 as shown hereon.

This Instrument Prepared by:
LAW OFFICE OF TED B. HAY, III
320 Franklin Street
Post Office Box 1109
Clarksville, TN 37041-1109

TED B. HAY, III, Administrator of the Estate of
LONZO KELLEY, et al

TO: DEED

HOWARD MOSLEY

THIS DEED OF REALTY executed as of the 4th day of
October, 1995, by Grantors, TED B. HAY, Administrator of the
Estate, of LONZO KELLEY, and THOMAS WAYNE STANLEY, to
Grantee, HOWARD MOSLEY.

W I T N E S S E T H:

That Grantors for a valuable consideration, receipt
whereof is acknowledged, has this day bargained and sold and
does hereby transfer unto the Grantee to have and to hold
unto him, as tenants in common, his heirs and assigns
forever, certain realty situated in the 12th Civil District
of Montgomery County, Tennessee, and bounded and described as
follows:

Beginning at an iron pin in the
general Western right-of-way of an alley
approximately 15 feet in width running
generally southwardly from the general
southern right-of-way of Main Street, said
point of beginning being 83.58 feet from said
general southern right-of-way in a direction
from Main Street South 19 degrees 48 minutes
38 seconds east and running from said point of
beginning with said general western right-of-
way of the aforementioned alley south 19
degrees 48 minutes 38 seconds east 142.81 feet
to a point marked by an iron pin; thence
continuing with the general western right-of-
way of the said alley south 12 degrees 37
minutes 09 seconds east 12.53 feet to a point
marking the general northeastern most corner
of property occupied by the Warioto Regional
Library; running thence with the general
northern boundary of the Library property
south 77 degrees 38 minutes 52 seconds west
84.76 feet to a point in the general eastern
boundary of the Morrow property; running
thence with the general eastern boundary of
the Morrow property north 12 degrees 21
minutes 08 seconds west 30.34 feet to a point
marked by an iron pin; thence with the general
eastern boundary of the Jehovah's Witness
Church property north 11 degrees 11 minutes 42
seconds west 123.80 feet to a point marked by
an iron pin; thence in a new direction with
the general southern boundary of property

49985

owned by Lonzo H. Kelley and Lawrence R. Cox north 77 degrees 17 minutes 55 seconds east 63.66 feet to the point of beginning, contained 0.2660 acres, more or less, according to survey and plat by Clarksville Engineering Services, Inc., a copy of which is attached hereto.

Being the same property conveyed to Lonzo Kelley and Thomas Wayne Stanley the herein Grantors as recorded in Volume 492.

The said Lonzo Kelley is now Deceased with his estate being probated in the Chancery Court for Montgomery County, Tennessee Docket #93-P8-564 with Ted B. Hay, III appointed as Administrator.

TO HAVE AND TO HOLD said real estate unto the said Grantee, HOWARD MOSLEY, and to his heirs and assigns forever.

THE GRANTORS COVENANT that they are lawfully seized and possessed of said real estate, have a perfect right to convey same, that it is unencumbered, and that he will forever warrant and defend the title thereto unto the Grantee, his heirs and assigns forever, against all lawful claims.

Ted B. Hay, III executes this deed in his capacity as Administrator and makes no warrants or representations otherwise.

TAXES for the year 1995 will be prorated.

IN WITNESS WHEREOF, Grantor has hereunto signed this instrument on the day and date first herein written.

Ted B. Hay, III Administrator *Thomas W. Stanley*
TED B. HAY, III, Administrator THOMAS WAYNE STANLEY
of the Estate of LONZO
KELLEY

STATE OF TENNESSEE)
COUNTY OF MONTGOMERY)

Personally appeared before me, TED B. HAY, III with whom I am personally acquainted and who acknowledged that he executed the within instrument for the purposes therein contained.

Witness my hand, at office, this the 4th day of October, 1995.

Sally Britt
Notary Public

My Commission Expires: 2-16-98

ORDINANCE 67-2012-13

AN ORDINANCE AMENDING THE OFFICIAL CODE OF THE CITY OF CLARKSVILLE, TITLE 1 (ADMINISTRATION, OFFICERS AND PERSONNEL), CHAPTER 6 (CODE OF ETHICS), RELATIVE TO ESTABLISHMENT OF AN ETHICS COMMISSION AND ADOPTION OF PROCEDURES FOR RESOLVING ETHICS COMPLAINTS AGAINST CITY COUNCIL MEMBERS, TO INCLUDE THE MAYOR, THE CITY JUDGE, THE CITY ATTORNEY, THE CITY CLERK, THE DIRECTOR OF FINANCE, THE DIRECTOR OF INTERNAL AUDIT, AND VARIOUS DEPARTMENT HEADS

WHEREAS, the Clarksville City Council finds the current City Ethics Code is deficient and wholly lacking in setting forth a proper procedure for the resolution of ethics complaints against City Council members, to include the City Mayor, and the City Judge, the City Attorney, the City Clerk, and other various department heads; and

WHEREAS, the Clarksville City Council has determined that it is in the best interest of the City of Clarksville and its citizens to amend the City Ethics Code to remedy said deficiencies;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CLARKSVILLE, TENNESSEE:

1. That the Official Code of the City of Clarksville, Tennessee, Title 1 (Administration, Officers and Personnel), Chapter 6 (Code of Ethics), Section 1-608 (Ethics Complaints) and Section 1-609 (Violations), are hereby amended by deleting said sections in their entirety, and by substituting instead the following:

Section 1-608. Reserved.

Section 1-609. Reserved.

Section 1-610. Ethics Commission – Creation.

There is hereby established an “Ethics Commission” for the City of Clarksville, Tennessee.

Section 1-611. Ethics Commission; Organization, Membership Requirements, Terms.

a. Organization, Number. The Ethics Commission shall be composed of five (5) voting members, who shall be appointed by the Mayor, subject to City Council approval by majority vote of the members present and voting.

b. Membership Requirements. The members of the Ethics Commission shall have been residents of the City of Clarksville, Tennessee, for not less than two years prior to any

vote of the City Council on their appointment. Residency within the City shall be a requirement for continued membership on the Ethics Commission. No elected or appointed official or employee of the City, other than a member of any federal military reserve or state national guard force while not on active duty, or of any other governmental entity, to include national, state or local government, other than a member of any federal military reserve or state national guard force while not on active duty, nor any candidate for any public office, to include national, state or local government, nor any member of any other City board, commission, authority, or other city entity, may serve as a member of the Ethics Commission. For purposes of this section, legally separate, private non-profit organizations or entities that receive City funding shall not be construed as a City entity.

b. Term.

(1) Terms for each member shall be for a period of three (3) years, except for initially appointed members, whose initial terms shall be as provided below to allow for staggered terms. No member may serve more than two (2) consecutive terms.

(2) With regard to initial terms for members, two (2) such members shall serve an initial term of three (3) years each; two other such members shall serve an initial term of two (2) years each; and one other such member shall serve an initial term of one (1) year.

(3) If any member, ceases to be a resident of the City of Clarksville, or qualifies as a candidate for any public office, or is elected or appointed to any public office other than a member of any federal military reserve or state national guard force while not on active duty, or accepts employment with or for any governmental entity other than a member of any federal military reserve or state national guard force while not on active duty, or refuses to continue service on, resigns from, or otherwise ceases to be a member of the Ethics Commission for any reason before the expiration of his or her term, or fails to attend and participate in at least three consecutive meetings or fails to attend at least two-thirds of all properly called meetings of the Ethics Commission within any calendar year period, a new member shall be appointed by the Mayor, subject to City Council approval, to serve the remainder of the former member's unexpired term. Service during any unexpired term shall count as a term for the purpose of computing the limit on consecutive terms.

Section 1-612. Ethics Commission; Member Compensation.

Members of the Ethics Commission shall not receive any monetary compensation for their service on the Commission.

Section 1-613. Ethics Commission; Officers.

The members of the Ethics Commission shall elect officers for the Commission. One member shall be elected to serve as Chairman of the Commission; one member to serve as Vice-Chairman of the Commission; and one member to serve as Secretary for the Commission. Officers may not hold more than one office on the Commission at the same time. Officers shall hold office for one (1) year periods. The City Clerk shall serve as custodian of records for the Commission. The City Attorney shall provide legal advice to the Commission as may be required, and may select outside counsel to provide advice in cases where the City Attorney determines he has a conflict of interest or as he may otherwise determine is required.

Section 1-614. Ethics Commission; By-laws.

The Commission shall adopt and make public by-laws to govern the dates, times, and places for meetings, rules of procedure not otherwise inconsistent with the provisions herein, and any other matters appropriately addressed therein.

Section 1-615. Ethics Commission; Removal of Members.

Any member of the Ethics Commission may be removed as a member of the Commission prior to the expiration of their term in cases of permanent disability, or misfeasance, malfeasance, or nonfeasance in relation to their duties as a member of the Commission, or for other just cause, by resolution approved by a three-fourths (3/4) majority vote of the City Council. Prior to any such vote on removal of any member from the Commission, said member shall have an opportunity to be heard on the issue of their removal in person, through counsel, and / or by submission of relevant written or other evidentiary materials, and may cross examine any witnesses against them who shall be required to testify under oath, and may request the City Council to issue a subpoena compelling the attendance and testimony under oath of any witnesses with relevant knowledge as to any material issue, but the City Council may deny said request upon a majority vote. The date, time and place for said hearing, and the requirements for submission of the resolution for removal to the City Council, shall be the same as and in accordance with the requirements for consideration of other legislative matters as set forth in the City Code.

Section 1-617. Ethics Commission; Open Records and Open Meetings.

All records of the Ethics Commission shall be open and subject to public inspection in accordance with the Tennessee "Open Records" law, Tenn. Code Ann. Section 10-7-503, et seq., as same may be amended from time to time; and all meetings of the Commission shall comply with the Tennessee "Open Meetings" law, Tenn. Code Ann. Section 8-44-101, et seq., as same may be amended from time to time.

Section 1-618. Ethics Commission; No Authority to Contract or Obligate City.

The Ethics Commission shall have no authority to contract or be contracted with or to bind or obligate the City in any way and shall not have authority to appropriate City funds for any purpose.

Section 1-619. Ethics Commission; Jurisdiction.

The Ethics Commission shall have jurisdiction over all ethics complaints made against any member or members of the City Council, to include the Mayor, the City Judge, the City Attorney, the City Clerk, the Director of Finance, the Director of Internal Audit, and all other department heads of the City, **as well as all members of any City boards, commissions, authorities, or other like body established by the City, but excluding entities having a separate corporate or other legal existence.** The determination as to whether any individual is a department head shall be determined by the Director of the Department of Human Resources, in consultation with the City Attorney.

Section 1-619. Ethics Commission; Duties.

The Ethics Commission shall have the following duties:

- a. To receive ethics complaints within its jurisdiction, and to hold hearings and conduct investigations in connection therewith as may be required pursuant to the provisions herein; and
- b. To make recommendations regarding any alleged ethics complaints within the jurisdiction of the Ethics Commission as provided herein; and
- c. To maintain records of its investigations, inquiries and proceedings.

Section 1-620. Procedures for Filing and Evaluation of Ethics Complaints.

a. *Complaint procedures:*

(1) Any individual real person may submit an ethics complaint alleging that any one or more City of Clarksville officials, whether elected or appointed, or an employee, have violated the Code of Ethics.

(2) Any ethics complaint must be in writing, signed and sworn to by the complainant, under oath, as properly evidenced by a notary public, and shall contain the following:

- (a) the complainant's legal name and current mailing address, and in addition may include an email address and / or phone number; and

- (b) the name of any person or persons who are alleged to have committed an ethics violation; and
- (c) a brief summary of the facts giving rise to the alleged ethics complaint; and,
- (d) an explanation of why those facts allegedly constitute a violation of the City Code of Ethics (which may include citation to specific sections and / subsections).

(3) Any ethics complaint that does not contain the above requirements shall not be considered, except that upon receipt of any deficient ethics complaint, the City Attorney may, but is not required to, contact the complainant to inform them of the deficiency, whereupon the complainant may have a reasonable time, not to exceed ten days, within which to submit an amended complaint meeting the requirements herein.

(4) All ethics complaints shall first be filed with the City Clerk. Upon receipt, the City Clerk shall annotate the date and time of receipt on the ethics complaint, and log the receipt of the complaint into a running journal kept for the purpose of keeping track of the receipt of ethics complaints and showing the name of the person making the complaint, the date and time of receipt of the ethics complaint, and the name(s) of the person or persons against whom the complaint is made, and any other information that will enable the City Clerk to keep accurate records pertaining to ethics complaints. The City Clerk will thereupon provide a copy of the ethics complaint to the person or persons against whom the ethics complaint is made, and to the City Attorney.

(5) The City Attorney shall determine if the ethics complaint is made against a person within the jurisdiction of the Ethics Commission, except for any ethics complaint alleged against the City Attorney, which shall always be provided by the City Clerk to the Ethics Commission for action. If the ethics complaint alleges an ethics violation against any person within the jurisdiction of the Ethics Commission, as determined by the City Attorney, then the City Clerk shall also provide a copy of the ethics complaint to the Ethics Commission for action as set forth herein. If the ethics complaint does not allege an ethics violation against any person within the jurisdiction of the Ethics Commission, but against one or more employees not within the jurisdiction of the Ethics Commission, then the City Attorney shall inquire into the matter, conduct such investigation as he deems appropriate, and make a determination as to the merits of the alleged ethics complaint, and make a recommendation to the department head of any department in which the employee works regarding his findings, and a recommendation as to any action to be taken to stop the conduct, if still occurring, or to prevent the conduct from occurring in the future, and to remedy any harm or recover any loss that may have occurred through any means deemed appropriate by the City Attorney, and to make any recommendation

regarding any disciplinary action against the employee. The decision to impose disciplinary action, if any, shall be made by the department head, in accordance with the provisions of the City Code pertaining to personnel and disciplinary action.

(6) If an ethics complaint alleges an ethics violation against any person within the jurisdiction of the Ethics Commission, as determined by the City Attorney, then the Ethics Commission, upon receipt of the ethics complaint from the City Clerk, shall thereupon take action as provided herein.

(a) The chairman of the Ethics Commission shall call a meeting of the Commission, which meeting shall be open to and noticed to the public. The City Clerk shall also provide notice of the meeting to the complainant, and to the person(s) alleged to be in violation of the ethics code and named in the ethics complaint.

(b) At the Commission meeting, the Commission shall evaluate the allegations of the ethics complaint, and make a determination as to whether the allegations would constitute an ethics violation, if the facts alleged in the ethics complaint were true. If the Commission determines that the alleged facts, even if true, would not be a violation of the ethics code, the Commission may dismiss the complaint, or may request additional information from the complainant, or any other person the Commission deems to have material information, in its sole discretion, to determine whether a hearing should be held to determine the merits of the ethics complaint. If the Commission determines that the alleged facts, if true, could constitute a violation of the ethics code, then the Commission shall hold a hearing to determine whether the ethics complaint has merit.

b. Hearing procedures:

(1) If the Ethics Commission determines that a hearing should be held on an ethics complaint, the hearing shall be conducted as follows:

(a) The hearing shall be noticed to and open to the public; and

(b) Notice of the hearing shall be provided to the complainant and to the elected or appointed official(s) named in the complaint (together, the "parties"); and

(c) The parties may, but are not required to, submit evidentiary material to the Commission. If a party does wish to submit such evidentiary material to the Commission, the party must file the material with the City Clerk, with a copy to the City Attorney, and provide a copy of the same to the other parties, at least seven calendar days prior to the hearing, unless, for good cause shown, the

Commission amends the time requirement. The City Clerk shall provide a copy of all evidentiary materials to the Commission members.

(d) The parties shall have a full and fair opportunity, but are not required, to present their positions and facts to the Commission at the hearing. Each party shall be allotted a reasonable amount of time to make its presentation to the board.

(e) Each party shall have the right to represent themselves, and to have the assistance of legal counsel at their own expense, but may not be represented by non-attorneys.

(f) All parties may call witnesses to give testimony at the hearing, which testimony shall be given under oath, with the witnesses stating their legal names. All witnesses shall be subject to cross-examination.

(g) Each party must file with the City Clerk, and provide a copy of same to the City Attorney, a list of the witnesses that the party intends to call at the hearing, and provide a copy of the same to the other parties, at least seven calendar days prior to the hearing. At the hearing, no party shall be permitted to call upon any person to give testimony if that person's name was not included on such list; however, the Commission may permit such an unlisted witness to be called by a party, if in the Commission's discretion, there was good cause for not timely naming the witness and the other parties would not be unduly prejudiced.

(h) Commission members may ask questions of any party, counsel, or witness at any time during the hearing, but the Chairman shall conduct the hearing and determine the order in which Commission members may pose questions.

(i) The committee may, in the exercise of its discretion, permit interested persons present at the hearing to offer testimony under oath, even if those persons were not called as witnesses by any party, and upon majority vote of the members, may cause the City Clerk to issue subpoenas for documents and things or for testimony of persons within the jurisdiction of the City to the maximum extent permitted by law.

(j) The committee may continue any hearing to a later date.

(k) The City Attorney, or an attorney appointed by the City Attorney, shall be present during the hearing to advise the Commission as may be necessary on all legal issues.

c. *Decision to be in Writing.* Whether or not the Commission holds a hearing on the ethics complaint, or dismisses the complaint, it shall issue a decision in writing. If the Commission holds a hearing on the ethics complaint, it shall state in writing whether it finds the ethics complaint to have merit, and if so, which section and subsection as applicable of the ethics code has been violated and by whom.

d. *Vote Required to Find Violation; Burden of Proof.* Any decision of the Commission finding an ethics complaint to have merit shall require the affirmative vote of at least four (4) members of the Commission. The complainant shall bear the burden of proof to prove a violation by a preponderance of the evidence, and the person alleged to have violated the ethics code shall not be required to prove the absence of a violation.

e. *Prohibition on Outside Communications.* Once an ethics complaint has been received by the members of the Commission, and until a written decision has been issued by the Commission, no member of the Commission shall participate in any communication regarding the allegations or merits of the complaint, outside of the Commission's public meetings or hearings.

f. *Report of Decision.* The decision of the Commission shall be submitted to the Mayor, the Clarksville City Council, the complainant, and to the person(s) alleged to have violated the ethics code as named in the ethics complaint.

Section 1-620. Commission Action Upon Finding of Violation.

a. *Report of Decision.* The decision of the Commission shall be submitted to the Mayor, the Clarksville City Council, the complainant, and to the person(s) alleged to have violated the ethics code as named in the ethics complaint.

b. If the Ethics Commission decides that an official, whether elected or appointed, or an employee, within its jurisdiction has violated the Code of Ethics, then the Ethics Committee shall take one or more of the following actions, as decided by affirmative vote of at least four of its members:

(1) Report to the City Council that a determination has been made that the Code of Ethics has been violated, setting forth which section and subsection, as applicable, of the ethics code has been violated and by whom. The Ethics Commission may also make recommendations to the City Council regarding any appropriate remedial action, including censure, that the City Council should consider; and / or

- (2) Make a recommendation to the violator that he or she resign from their respective position; and / or
- (3) Make a recommendation as to any action to be taken to stop the conduct, if still occurring, or to prevent the conduct from occurring in the future, and to remedy any harm or recover any loss that may have occurred through any means deemed appropriate by the City Attorney, and to make any recommendation regarding any disciplinary action against the employee.
- (4) Refer the matter to the City Attorney with a request that appropriate civil action be instituted by the City of Clarksville for restitution, and / or for such other relief as the Commission deems appropriate, and/or a request that the City Attorney refer the matter to the local District Attorney General, or other state or federal law enforcement authority, for appropriate action under general criminal law.

FIRST READING:

SECOND READING:

EFFECTIVE DATE: