

LEGAL AND LEGISLATIVE COMMITTEE

July 1, 2008

3:00 P.M.

Chairman Benson called the meeting of the Legal and Legislative Committee to order, with Councilmen Shockley, Rico, Pierce, and Page present. Councilwomen Robinson and Bennett joined the meeting later. City Attorneys Randall Nelson and Ken Fritz and Shirley Crownover, Assistant Clerk to the Council, were also present.

Others present included Lee Norris, Larry Zehnder, Paul Page, Barry Bennett, Greg Haynes, Jim Headrick, and Richard Beeland. Daisy Madison, Dan Johnson, Danny Thornton, and Marie Chinery joined the meeting later.

Chairman Benson went over today's topics, including a legislative update from Rep. Gerald McCormick; a brief discussion regarding the Wrecker Ordinance; the Solicitations Policy; and the Transportation Ordinance. Concerning the Transportation Ordinance, he stated that he thought we had gotten to the point that we can talk to the attorney about what to draw up and bring back to us in two weeks. He called on Rep. McCormick and thanked him for coming.

REP. GERALD MCCORMICK—LEGISLATIVE UPDATE

Rep. McCormick began by saying that he is Chairman of the House Delegation and had not done a good job of letting the Council know what is going on. He stated that 4200 Bills had come before them, and they passed 1000—however he was not going to go over all 1000! He stated that they passed the Budget—that it was a balanced budget; however the contribution to local education was not good—that \$8 million dollars was expected, and the contribution was less than \$1 million. He did, however, state that he thought we were going in the right direction. He went on to say that the State Budget was \$28 billion dollars—one-half federal and one-half state; that next year was looking tough as the economy was hitting us hard. He did say, however, that he thought the Governor did a great job in cutting 5% of State employees and doing it in a business-like way.

He went on to say they had done a lot of work with the lottery and if the Council received any calls about this to please forward those calls to them; that they spent all of the money and started some things with construction costs, Hope scholarships, and Pre-K, which are all uses that this money can be put to.

Rep. McCormick stated that one thing, he did not serve on the Governments Operations Board but one thing that has passed was competitive cable; that now Cable Companies can go straight to the State, and they were trying not to “cherry pick”

He stated that probably one of the most important things relating to City Government was “impounding” money to the City and County—that they had “earmarked” this to go directly to the City and County.

Rep. McCormick stated that there were a number of other things, but nothing that really affects local government; that he should have brought Vince Dean with him because he was good to have on the delegation. He did say that they were making sure we have a “paper balance” as well as on the computer—that Hamilton County was the “model” on this. He asked for questions.

Councilwoman Robinson stated that we had a Councilman at this table—Dan Page—who had asked about the worst case scenario with fuel cost acceleration and wanted to know how the State is handling this?

Rep. McCormick stated that he knew Councilman Page was a good councilperson—that he was his Councilman.

Councilman Page stated that his question was centered around the cost of fuel emergency; that he knew the State used a huge amount and who knows where this crisis will go. He wanted to know how the State planned to handle this?

Rep. McCormick responded that in the past, the State would be asking to collect more money from the City; however they were working on State buildings and making appropriations on energy-efficiency in school buildings. He stated that he knew this was not a good answer; that we want our State Troopers on the road, and it would be hard to put them on bicycles—that he did not know the answer because there was no clear-cut answer; that he knew government could be incredibly wasteful—that the Governor does have an Energy Task Force.

Councilman Benson asked him about the State limits and the City being able to only use a \$50.00 maximum fine since 1980? Attorney Nelson corrected him, saying that this was the way it was during the entire 19th Century! Councilman Benson stated that a \$50.00 fine was a travesty, with Councilwoman Robinson adding that we want this changed.

Rep. McCormick explained that this would be a constitutional change, which takes a lot of effort—a two-thirds vote with a formal Resolution to present to the delegation.

Councilwoman Robinson asked if the Council would have to stipulate the amount in the Resolution?

Attorney Nelson noted that four years ago this was presented to the Legislature, and the Constitution required a majority vote, so while we got the majority vote, we did not get the super plurality—that it was a tough fight. Rep. McCormick suggested that it might could be done through a Statute rather than a constitutional change.

Attorney Nelson added that the people voted in favor of it—that \$50.00 was not justice.

Councilwoman Bennett added that Public Works has chronic situations that are costly to the City.

Rep. McCormick stated that he remembered court cases being thrown out—that he would do what the Council told him to do about this.

Councilman Benson also asked him about legislation that was passed concerning a \$25,000 limit and wanted to know what the reasoning was on this?

Rep. McCormick responded that he thought the City generated this—that this was specifically for the City of Chattanooga; that he thought the Council asked for it.

Paul Page finally stated that he was the one that asked for it—that it was not at the Council's request.

On the issue of open government—Rep. McCormick stated that he was for it—that they made an exception for Erlanger because they were a public body in the private competition field.

Councilman Page stated that he had one question—that Rep. McCormick had been there a few years now and wanted to know his personal thoughts about Tennessee State government and what his personal goals were.

Rep. McCormick responded that he had finished his fourth year; that it had been very interesting, and he had met interesting people; that it takes time before one knows what he is doing; that on our delegation, with the exception of Dr. Brown—that Bo Watson and himself were the senior members; that when Ward Crutchfield left, it was a big loss; that we had also lost Bobby Woods and Bill McAfee; that our delegates are on different committees—that he, himself, was on the Commerce and Education Committee—that everybody is scattered out and that he thought we had a really good delegation on the whole—that they were hard-working and good; that JoAnne Favors was every effective and had done a fantastic job; that Tommie Brown was influential and well-respected. He noted that he was running unopposed this year and that the representatives had to try to remember who their boss was—the people who put them there—that it was a good group.

WRECKER ORDINANCE

Chairman Benson stated that the Wrecker Ordinance would be discussed on July 15th; that he thought each of the Council had learned enough; that on I-75 city limits when large trucks wreck, there is only rotation service.

Mr. Paul Page stated that this was not entirely true—that they were in rotation, but it was at the owner’s request; that when a truck turns over, they are asked who they want, and he was proposing this be in writing.

Chairman Benson stated that in Class C with hydraulics, when an 18-wheeler wrecks, they are not being called. Mr. Page added that we were taking “mechanical” out.

Chairman Benson stated that he had been to Miller Industries and also smaller wrecking companies; that his mind would get made up each time by the person he was talking to—that it was very difficult to see what changes need to be made.

Mr. Paul Page stated that the rotator class would be called if there was a necessity for a side-arm to pick it up.

Chairman Benson stated that he thought we were contemplating removing this and having Class C called and tell them where the wreck is—that if they can’t handle it, that the way it is presently—they would lose their place on the rotation list. He again reiterated that this would be discussed on July 15th.

Councilwoman Bennett asked if there was any information concerning the period of time that it takes for a rotator and the response time prior to using a rotator to do the whole job?

Mr. Paul Page responded “no”—that he had checked with two cities and the State and none of them recognize the Class of Rotators.

Chairman Benson pointed out that T-DOT and the Highway Patrol say that we should continue with rotators.

Councilman Page asked Paul Page to provide the Council with data or information. Chairman Benson stated that Paul had already provided him with info that he would get to the Council.

Paul Page asked if Councilman Page and the Council wanted information from other cities?

Councilwoman Bennett stated that some say we would be going back in time without rotators; that we should have data that has been done before on this—that it is said they can clear a wreck faster, and it is the highest and best use.

Councilman Page stated that all the Council was getting were opinions, but he would like these opinions backed up with data.

Paul Page agreed that there was controversy upon controversy because rotators are not well-accepted across the United States and other cities do not do this; that they are trying to create a monopoly here.

Councilman Rico stated that fairness seemed to be the biggest problem, with Chairman Benson disagreeing, saying that safety was the biggest problem. Chairman Benson stated that he had an open mind but this had been perplexing.

At this point Chairman Benson acknowledged that the Chairman of the Hamilton County School Board was present—Kenny Smith. He asked Mr. Smith if he wanted to say anything.

Mr. Smith responded “no”—that he was just here to see how smooth meetings run.

SOLICITATIONS POLICY

The new proposed policy was passed around and is made a part of this minute material. Daisy Madison was present to go over this.

Ms. Madison stated that this was initiated at the Council’s request as a result of the Police Department’s Ball; that Crystal Freiberg had done a fantastic job on this but that she was in court and she was doing this on Crystal’s behalf.

She noted that the City Council recognizes the value of encouraging contributions for the use of City departments in order to defer the need to raise taxes to provide necessary City services; that these private contributions allow individuals and organizations to take an active role in improving the quality of life; that to promote consistent and best practices by all City employees and departments and to ensure compliance with applicable laws and accounting procedures, this proposed policy needs to be adopted.

- (1) Solicitation of voluntary contributions shall not violate the Code of Ethics for local officials under Tennessee law or Chattanooga City Code; no solicitation shall state or imply that a donation will influence or affect how the party is treated by City officers and employees.
 - (2) All fundraising and solicitation efforts shall be consistent with the missions, goals and mandates of the City; solicitation for personal reasons by City employees not directly related to City operations is prohibited—all donated funds become public funds upon acceptance and shall be used for public purposes.
 - (3) All fundraising and solicitation efforts shall be authorized by the City Council. When seeking City Council approval, the Department shall present a concise, detailed plan of the proposed fundraising project. This can be one-time or ongoing.
 - (4) No Department shall be allowed to maintain a checking or savings account for fundraising activities that is separate from the City accounting system.; these solicitation efforts shall be reported to the City Council in departmental reports—this is just an extension of what we are doing now.
 - (5) These donated funds shall be provided to the City Treasurer within three business days and shall be used only for authorized purposes. Ms. Madison explained that once the Department brings the request to the Council, and it is approved, the funds are to be used exclusively for this project.
 - (6) All expenditures of donated funds shall comply with City purchasing requirements for expenditures of public funds and shall be accounted for with generally accepted accounting practices, in other words, treated the same as all other funds.
 - (7) The Department conducting the fundraising or solicitation activity shall implement an appropriate method of notifying the public of any fundraising efforts. Any donation letter or request by whatever form shall include the following: (a) A description of the specific use; (b) An indication that donation should be made payable to the City of Chattanooga; (c) An address provided for the mailing of any donation; (d) “The decision regarding whether to make a donation will not influence or affect in any way how you will be treated by City officers or employees” shall be included; and (e) A contact person to which the donation should be directed. A letter must be sent back to the donor.

- (8) The Department shall implement an appropriate method of acknowledging and thanking donors based upon the type and/or amount of donation. The acknowledgement shall include the following: (a) A detailed description of the contributions or donation; (b) A description of the specific use for any donation; (c) An estimate of the value of any goods and services provided to the donor; (d) A reminder that for tax purposes, any contribution can only be deductible to the extent that it exceeds what was provided to the donor in goods or services. Ms. Madison stated that most of the Council would be familiar with this.
- (9) City mail services may be used for Council approved solicitation or fundraising projects; mailing lists of City employees or known donors shall not be released, except as required by the Tennessee Open Records Act.
- (10) This policy shall not be applicable to any internal collections to raise money for fellow employees or other families, such as deaths in families.

Councilwoman Robinson asked who would be approved for check writing? Ms. Madison responded the Finance Office—that there would not be any changes in this.

Councilman Page stated that this was dynamic and very well thought out; however he would like to have all donations be given by check as opposed to cash.

Lee Norris pointed out that sometimes donations are made in the way of goods—such as pocket knives.

Dan Johnson questioned if no cash should be accepted?

Ms. Madison confirmed that the recommendation was that donations should be made by check and not cash.

Councilman Page stated that this was his best advice—don't take cash money—that this was the best advice and was his opinion.

Chairman Benson stated that he was once given this advice: (1) That as a new school principal, he should not fool with money; (2) That he was not to fool with women teachers; and (3) However, don't leave the impression that you are not “man enough” if you wanted to! He agreed that cash money is a problem and a bad practice. He wanted to know if there could be fund raising every week if the Council approved it?

Councilman Page stated that he would make the motion to approve this, as written, but stipulate “no cash”. This was seconded by Councilwoman Robinson.

Councilwoman Bennett asked Ms. Madison if she saw cash as a limitation?

Ms. Madison responded that cash is a medium that is more susceptible to theft or fraud but that the City takes cash all the time, but a receipt should be written.

Councilwoman Bennett asked if there was any other way to safeguard taking cash?

Attorney Nelson suggested making double receipts.

Chairman Benson stated that we would have to furnish receipt books. Ms. Madison responded that we already have one.

Mr. Johnson asked if it would be clearer if we said we would not accept cash?

Councilman Pierce questioned **7(d)** that reads City officers or employees. He wanted to know if City officers referred to the Police Department and questioned if we should change the language to “City officials and employees”.

Councilman Shockley asked if “no cash donations” would include buying tickets—that if this were the case, a sale might be lost.

Mr. Johnson responded that if we said “no cash” then yes it would include tickets.

Chairman Benson noted the tendency of people to lose cash or spend it before it is turned in.

Councilman Pierce stated that it would be hard for the officers selling tickets to tell people they would have to write a check, noting, however, that we could get in trouble with cash and ticket handling.

Chairman Benson stated that we could always change this policy a year later if there are problems.

Councilman Pierce asked if we wanted to amend this proposal to include “no cash”. A vote was taken and there were three “no’s”.

Attorney Nelson still suggested asking for double receipts on cash.

Mr. Norris noted that if we stipulated that on every donation you had to reply to the donor, then the paper work for tickets would be a nightmare.

Councilman Page still saw cash as being a real problem, stating that he liked what he saw in the proposal, but he would still hate to see people go out and solicit cash, and we would not have good control—that there was a potential for problems; that he did want to see this passed; that tickets would be a problem, but he was still uncomfortable with cash.

Councilman Pierce stated that we could say no cash, with the exception of ticket sales.

Chairman Benson pointed out that as of yet, we had seen nothing in writing from the Police Department.

Ms. Madison pointed out that they had been before the Council on two separate occasions, with Councilman Pierce noting that we turned them down both times.

Chairman Benson stated that it says here “in writing”.

Councilwoman Bennett stated that at the time the Police Dept. came before the Council, they did not have this specific language.

Ms. Madison suggested that the Council could approve the Policemens’ Ball subject to them following these procedures.

Chairman Benson still maintained that the Council needed a concise, detailed plan.

Councilman Page stated that we were talking about two Resolutions—one would be to approve this proposal, and the other Resolution was the specific one on tonight’s agenda. He stated that he thought the one on tonight’s agenda should be deferred until we have the other one in place.

Dan Johnson pointed out that the proposal does not require a written plan—that it could be verbal.

Councilman Page asked if we were done with this Resolution proposal for today? Ms. Madison responded that this Resolution would not be on tonight’s agenda because we can’t edit it today; that she would like authorization for it to be on next week’s agenda.

Councilman Page moved that this be on next week’s agenda, pending review during committee. Chairman Benson stated that the Police Dept. would need to come before the Council during committee. **Councilwoman Bennett seconded the motion, with the addition of adding the policy regarding cash.**

Ms. Madison stated that they would add the language of “No cash except for tickets sales.

TRANSPORTATION ORDINANCE

Attorney Ken Fritz was present to go over the Transportation Ordinance. Chairman Benson stated that several had met on this—that it was a very difficult problem, but he thought they had the issues resolved; that this would be discussed again in two weeks in the Legal and Legislative meeting and could be on the agenda that night. He called on Ken Fritz to go over the changes.

Attorney Fritz explained that the biggest philosophical question concerned who is on the Board and these proposed changes sunsets former members of the Taxi Board and language on source of appointments after expiration of initial terms; industry members would be limited to no more than three.

Chairman Benson explained that the Transportation Industry has more segments than three; that all in all there seven or eight and some say if they can't all be represented then none should be represented; that he thought we had reached a compromise with this change.

Attorney Fritz explained that members of the Transportation Board that served on the Taxi Board before creation of the Transportation Board shall not be eligible for reappointment after their initial term; thereafter, a Board member shall be appointed by the Mayor and confirmed by the City Council.

Councilman Pierce stated that the whole thing was geared around the Taxi Industry before CARTA buses and now he sees it slowly evolving around other transportation pieces; that if we follow each individual suggestion, it makes it all confusing; that he sees this re-constitution against the Taxi Industry, which is made up mostly of the Black community, and it is continuing to disintegrate, starting with CARTA; that the taxi industry was jitneys and one or two dictated; that trying to make everyone happy and changing the law was not fair; that he thought it was discrimination against the taxi industry; that he felt like the industry felt and would join with them in a law suit against the City.

Chairman Benson pointed out that industry members could still be on the Board but that the Board would not be required to have them.

Councilman Pierce pointed out that the sole power would be with the Mayor, and if he wanted to keep them off, he could; that if the Council decides to go with this, he would fight this fight in the Court system. He stated that he was right there with the taxi industry.

Chairman Benson asked Attorney Fritz if there would be grounds for legal action?

Attorney Fritz responded that he did not think the language was discriminatory.

Councilman Pierce stated that Mr. Duckett voted against having cabs, and he did not know if Attorney Fritz had talked to Mr. Duckett or not—that the man had some real strong points; that he had asked them to work with Mr. Duckett and that group; that Mr. Duckett should be in this meeting.

Chairman Benson stated that he had spent a lot of time with Mr. Duckett.

At this point Chairman Benson recognized Mr. Randy VanHoosier with All-American Taxi.

Councilman Pierce stated that he would like to see all of the taxi companies audited.

Mr. VanHoosier spoke and stated that Mr. Duckett and Mr. Fletcher were on the Board; Judge Thomas had ruled that if Mr. Duckett and Mr. Fletcher were on the Board, they could not vote; that at the last meeting Mr. Duckett moved that he (Mr. VanHoosier) be denied ten privileges and Councilman Rico seconded the motion; that this was a direct statement of the Judge and if anyone had a lawsuit, Mr. VanHoosier stated he had one.

Attorney Fritz went on explaining changes—**Section 2** stated “*that any type of motor vehicle for hire may be operated under one (1) Certificate of Public Convenience and Necessity upon approval by the Transportation Board.*”

Section 3 deletes the words “drug test” and inserts “Department of Transportation drug test”.

Mr. Headrick noted that they have a local check; that the Ordinance requires fingerprinting, which they could not do by State Law. Attorney Fritz stated that it had to be spelled out.

Chairman Benson mentioned the cost of a FBI test versus the cost of a TBI test, which is \$29.00, stating that we would just go by one. Mr. Headrick agreed that the cost in the middle is the TBI test, and they would be cutting out the FBI check. Chairman Benson noted that we were trying to tweak the Ordinance and make it better and fairer.

Section 5 allows an inspector or the Board to require driver attendance; that drivers that complete application process and are approved by the Inspector do not have to appear—that what we have currently says they **have** to appear.

Section 6 allows the Board to determine information on drivers.

Section 7 is a technical change that replaces Taxi with Transportation.

Section 8 deletes the requirement for seat belts on pedicabs/pedal carriages.

Section 9 modifies the medical exam for pedicabs/pedal carriage drivers.

Section 10 allows an Inspector to grant 60 day temporary permit to pedicab/pedal carriage drivers.

Section 11 allows pedicabs/pedal carriage drivers to wear i.d. on their person or pedicab.

Section 12 is a technical change that replaces Taxi with Transportation, as is **Section 13**.

Section 14 allows pedicab/pedal carriage drivers to walk pedicabs on sidewalks and **Section 15** modifies where/how pedicabs/pedal carriages may operate.

Chairman Benson pointed out that there was nothing controversial except what Councilman Pierce had brought up. He noted that there were now three from the Industry on the Board—two taxi owners and one horse carriage owner; that the proposal to change would allow no more than three; however the Board did not have to consist of any from the industry.

Councilman Pierce asked how many were on the Board and was told nine (9). Councilman Pierce noted that the Board could not be controlled with three members from the industry.

Councilwoman Robinson asked about **Section 15** that modifies where pedicabs shall operate. She asked if this excluded the Walnut Street Bridge? Attorney Fritz responded “yes”—that the Walnut Street Bridge is not a designated area.

Chairman Benson stated that we had wrestled with all of this and what we came up with did not make Mr. Brown happy.

Councilman Page stated that he thought we had come up with some good changes, except the first one, which is controversial. He suggested that we not change this first one yet and let it operate like it is for a while longer.

Chairman Benson stated that we needed to teach the Conflict of Interest and Code of Ethics to all our Boards.

Attorney Fritz confirmed that after the present members’ terms expire, they would not be eligible for re-appointment.

Councilman Page stated that it would be at the Mayor's discretion; that he would like for it to operate as it is now and build some data.

Councilman Pierce asked if any other Boards had term limits? Attorney Fritz responded "yes"—mentioning the Multicultural Board and the Planning Commission. Councilman Pierce stated that he could see term limits for chairmen but not for board members. Attorney Fritz noted that the only term limit was for present members.

Councilman Page moved that we accept all these changes, eliminating Section One (I) for the time being.

Councilman Rico asked him what he meant by "the time being"?

Councilwoman Bennett seconded the motion with an amendment, adding that she would like the part to stay in that a member should abstain from voting on a matter in which he had a direct personal interest.

Councilman Rico stated that he would ask that the two taxi owners be left on the Board if they would abstain from voting.

Chairman Benson stated that they would need to be very responsible to the Code of Ethics.

Attorney Fritz explained that this involved Roberts Rules of Order—that it spells out more of the particulars. Councilman Pierce suggested giving them Roberts Rules of Order and leaving it as it is.

Chairman Benson stated that they also needed the Code of Ethics.

Councilwoman Bennett asked who was the monitor? Attorney Fritz responded each individual Board member.

Chairman Benson stated that it was evident that one of the members voted on self-interest.

Mr. VanHoosier stated that he did not mind Mr. Duckett and Mr. Fletcher being there, but he did not want them to make any comments on anything that affected his business.

Chairman Benson stated that we could not promise Mr. VanHoosier that.

Mr. VanHoosier contended it was self-interest if they denied him a privilege. Chairman Benson, however, felt that there could be other reasons other than self-interest.

Kenny Smith mentioned a Board that he served on where someone just recuses themselves from voting, noting that Roberts Rules of Order monitors this.

Councilwoman Robinson stated that we needed to train our Boards to adhere to these provisions.

Mr. Headrick confirmed that we wanted a TBI test and not a FBI test.

Councilman Rico stated that he would abstain from voting on this since he was a member of the Transportation Board.

SOFTBALL COMPLEX

Adm. Zehnder was present with an issue on the Softball Complex, stating that Danny Thornton was here to present this, and they would like it to be on next week's agenda.

Mr. Thornton explained that construction was being held up as we try to complete Access Rd.; that they had worked with property owners and needed 27,000 sq. ft.; that they had worked diligently to get them to sign for \$11,000, which was above the market rate; that they would like this on the agenda next week and would continue to try to get them to sign a Slope Easement.

Councilman Pierce asked if they didn't sign, could we not go with Eminent Domain? It was explained that this is what this action would entail.

On motion of Councilwoman Robinson, seconded by Councilman Rico, this will be added to next week's agenda.

The meeting adjourned at 4:25 p.m.