

## LEGAL AND LEGISLATIVE COMMITTEE

April 14, 2009

3:30 P.M.

Councilman Benson, Chairman, called the meeting of the Legal and Legislative Committee to order, with Councilpersons Gaines, Robinson, Rico, Berz, and Gilbert present. City Attorneys Mike McMahan, Ken Fritz, and Crystal Freiberg were present, as was Shirley Crownover, Assistant Clerk to the Council.

Others present included Larry Zehnder, Dan Johnson, Jim Templeton, Daisy Madison, Barry Bennett, and Solomon Hatch. Chief Maffett, Chief Williams and Rick Woods joined the meeting later.

### AMENDMENT TO TRANSPORTATION BOARD ORDINANCE

Before beginning the meeting. Chairman Benson handed out a letter from Gerald F. Nicely of the State of Tennessee commending the City of Chattanooga for the passage of the Chattanooga Traffic Incident Management Service Ordinance. (A copy of this letter is made a part of this minute material).

Chairman Benson noted that we had members of the Taxi Board present and asked if Mr. Duckett was here. He also added that Councilman Rico serves on the Taxi Board. He went on to say that we have come a long way from the time when we had five Taxi operators on the Board; that it had been reduced to three and now there was still an issue of conflict of interest in court. He added that Mr. Curry was very adamant about members of the industry having to be on the Board. He went on to say that now we are at the point that we have so many problems and needed some suggestions; that suggestions were in order to get off the "hot spot", which entailed removing any industry member from being on the Board and setting up an Advisory Board with just three members. He asked Attorney Fritz to respond to the amendment being made, stating that he thought Mr. Curry was in favor of this.

Attorney Fritz handed out a Draft Ordinance to the Council, which is made a part of this minute material. He read that it would be amended to read "*There is hereby created a Transportation Board that shall consist of (9/7) members appointed by the Mayor from the public at large and confirmed by the City Council.....Nominations for appointment to the Board shall be solicited through the City Council members per district from broadly representative community groups, including, but not limited to the Chattanooga Convention and Visitors Bureau, food and restaurant industry, hotel and motel industry, Chamber of Commerce, Chattanooga Airport Authority, Chattanooga Area Regional Transit Authority, persons involved in public transportation and planning that are not members of the vehicle for hire industry*". "*The board shall organize its work as needed in coordination with the Transportation Board. The motor vehicle passenger for hire advisory board shall further be an advisory board for citizen input with reference to the planning and implementation of the community development program*".

Attorney Fritz also presented a draft based on the City of Nashville's program. He went on to add that Knoxville does not have a Board; that this is done by the Police Department, itself; that there is a Knoxville Transportation Authority, which also includes busses; that if a person is denied, then they can go to the Knoxville Transportation Authority. He mentioned that this was done differently across the State.

Councilman Rico stated that he would really prefer that nominations not be made from each City district per district but have members at large.

Attorney Fritz pointed out that the language in the Nashville Ordinance just says seven members. He noted that all of this was just "sample" language.

Chairman Benson noted that the way this is written, we could be going back to having members from the Industry on the Board.

Attorney McMahan suggested that it could read seven members without conflict of interest.

Attorney Fritz stated that there was no language here dealing with conflict of interest—that it does not say "not to"; that he could add such language if the Council so desired.

Councilwoman Berz stated that she was looking at this fresh and questioned why we needed a Board?

Attorney Fritz responded that there had always been a Board.

Councilwoman Berz stated that she might like for the Police Dept. to give a license. She asked if the Board issued permits or what they did?

Attorney Fritz agreed that it could be done administratively; that it used to be done by CARTA; that when the City took this over, they created a Taxi Board.

Mr. Duckett agreed that the taxis used to be operated under CARTA, which was inflammatory, and the Mayor created the Taxi Board with four members; that this was in 1992, and there had never been any problems, but now we had problem with people "scamming" the system; that heretofore there had never been complaints by anybody, but now we had a person trying to beat the system and had filed for an application without owning a taxi cab—that it was a big scam! He reiterated that it had been running fine since 1992, but a person came forward who did not have any money for cabs or insurance, and they were suing everyone all across the board; that the Board had been fine until the people wanted to "muscle" their way in; that no problems existed until they wanted to "muscle" their way in; that they made it competitive, saying that the Board was stopping them from getting a license.

Councilman Rico took issue with Mr. Duckett saying there were **no** problems before; that there had always been problems with complaints; that we had to regulate the Taxi Industry; that the reason he suggested that Mr. VanHooser be allowed a license was because he thought he was legal; that they were talking about an Anti-Trust suit that alleged that the Blacks wanted to keep the Whites out, and the Whites were saying “we want our share”. He went on to say that Mr. VanHooser did not have his papers in order.

Mr. Duckett stated that they were basically saying that there was not a fair segment of people on the Board; that they voted for Mr. VanHooser because he met the conditions.

Chairman Benson stated that there needed to be quality assurance so that citizens would know that their drivers were not using drugs or drinking—that citizens needed to feel safe; that we had gotten into all kinds of things; that regulation of the Board was necessary.

Mr. Duckett agreed that it needed to be regulated; that there were so many chances to have unseemly characters infiltrating the system; that when a person is trying to “scam” you, they try to direct attention elsewhere.

Chairman Benson noted that this was tied up in Chancery Court.

Mr. Duckett stated that the Judge had determined that there was a conflict of interest.

Chairman Benson questioned if we should not wait to discuss this until the Judge makes a ruling?

Mr. Curry stated that conflict of interest should not have come up; that the Taxi Industry needed to have people on this Board; that he worked for Mercury and had no representation on the Board.

Chairman Benson pointed out to Mr. Curry that he was saying that only Taxi Industry people could represent him, yet he had hired a lawyer!

Mr. Duckett stated that a lawyer who understood this was fine; that there were people trying to get around the rules.

Chairman Benson still questioned if we should not wait until after this gets out of court?

Councilman Rico stated that the person in question mis-represented the information that he brought to the Board, with Mr. Curry adding that he was a “con” man.

Mr. Duckett stated that he would like to outline how this happened; that this person sneaked through the back door and made this a racial issue; that he had given them bad information.

Councilman Rico noted that on the Wrecker Board, there is no one in the business; that a person did not have to know anything about taxis to be on the Board.

Chairman Benson mentioned that we had only one Regulatory Agent and that he was sick. He also noted that there had been reports about violence.

Mr. Duckett stated that they were trying to regulate this.

Chairman Benson stated that he thought we needed another Regulatory Officer. Officer Maffett stated that the Regulatory Officer had been out with surgery.

Mr. Duckett stated that Mr. Curry had asked the question about the City Auditor looking into this.

Councilman Rico stated that the only problem was that we had a guy who was not in compliance with the rules; that the information given to the Board was that he was in compliance.

Attorney Fritz stated that there were three lawsuits pending; that one that is not resolved is appointment to the Board and then there is the issue of the All American Cabs having to be certified and this was revoked and a complaint filed and then there was the allegation of conflict of interest.

Attorney Freiberg explained that basically the original lawsuit revoked certification because the person in question had a criminal conviction; that there was a lawsuit, also, because members of the Industry were on the Board; that there had been a hearing about conflict of interest, which was a different set of the Code; that the Judge did not make a final finding and there would be hearing on the 22<sup>nd</sup> concerning conflict of interest. She went on to say the revocation was sent back to the Board because the Judge said the crimes had not been committed in the last three years and now there was another writ about the second revocation; that the conflict of interest issue would be on the 22<sup>nd</sup>.

Councilwoman Berz stated that this should take care of one of the issues.

Mr. Curry stated that at the last meeting they took “him” down, stating that the Judge was looking at this “cross-eyed”—that this man was a thief, firebug and a con man.

Mr. Duckett agreed that this was the person that had caused all of this commotion.

**SPECIAL EVENTS PERMIT REQUIREMENTS**

Attorney Freiberg stated that Councilwoman Berz had asked if we had an amendment to our most recent Ordinance; that also the Police Dept. had a representative with input; that basically this Ordinance (copy is made a part of this minute material) was included in the Chapter relative to Alcoholic Beverages in regards to regulating events where alcohol was served after 11:00 p.m.; that you would have to get a permit if you fit under this definition; that a “Commercial Special Gathering” means any special event organized and conducted by any person or entity that does not qualify as a tax-exempt nonprofit organization; that the most important part of the Ordinance was **Sec.5-189 Definitions**, where the definitions are fairly normally tailored so that we would not be including restaurants but events that would cause noise problems in communities. She went on to say that the permit cost would be \$50.00 and would be obtained from the Beer Board, who would be responsible for giving these permits out. She stated that she had sent the Beer Board a draft of this in order to give them an opportunity to look over this.

**Section 5-191 (a) through (h)** outlines the information that needs to be included in the application for a permit. She stated that they were pretty specific as to what has to be provided; that this information would have to be submitted to the Beer Board, and they would approve or deny the application within 10 calendar days and give such applicant written notice of the decision. She stated that she would like to know if the Beer Board thought 10 days was feasible.

Councilwoman Robinson questioned **(e)**—A plan for the provision of adequate parking for the special gathering. She questioned if this should be stipulated for outside as well as inside because a lot of the problems were taking place in the parking lots.

Attorney Freiberg stated that this was for indoor and outdoor events; that we had to have a plan for adequate parking; that we might need to define a certain number of spaces per person—that we could put this in.

Councilwoman Robinson again noted that problems were taking place outside of the facility.

The police representative added that people slide under the fences with not enough parking; that there needs to be security to control the parking lots and also the interior.

Chairman Benson stated that he thought (c) on the first page needed to be re-worded where it talks about a “*Commercial Special Gathering*” meaning any special event organized and conducted by any person or entity that does not qualify as a tax-exempt nonprofit organization—that it should read does not qualify but is eligible. Attorney Freiberg agreed that nonprofit organizations might be doing something. Chairman Benson stated that some 501.C organizations can get pretty rowdy. Attorney Freiberg stated that they would still be required to comply.

Chairman Benson asked why it was called a “Special Gathering” and not a “Regular Gathering”? He stated that the regular gatherings are the ones we need to attend to. Attorney Freiberg explained to him that this would be getting into restaurants, with Chairman Benson asking if this just pertained to “Special Gatherings”? The police representative explained that it pertains to establishments that rent out to someone on weekends. Attorney Freiberg added that this was why zoning is important. The police representative mentioned a Rap Party on Friday night would be “special”.

Councilwoman Berz mentioned zoning and special events.

Councilman Gilbert asked about a commercial party where the beer is free? Attorney Freiberg responded that this still would apply.

Chief Williams mentioned a Beauty Shop that was renting out on weekends for parties. He also mentioned an advertisement on the internet at a specific house where there was no permit and we had been able to catch up on this; that we shut them down because of the Noise Ordinance and Parking. Councilman Rico added that they had a “laundry list”. Chief Williams stated that it was advertised on the internet and was to be a big event, with Councilman Rico adding maybe 5,000 people.

Attorney Freiberg substantiated that this was revoked; that the Police Dept. could shut them down with a one-time event; that they were given the authority to revoke on the scene---that we do have a process.

Councilman Rico added that this person was asked to come to the Special Events Board; that there was a police officer, someone from Public Works and Parks and Recreation, and this person had nothing. Chief Williams agreed that under these circumstances there would have been no way of control.

Chairman Benson asked Chief Williams if he felt this was what we needed? He responded “yes”—that we need something to govern these type of permits. He went on to say that he had met three times with Councilwoman Berz and the City Attorney’s office and hammered this out.

Councilman Gilbert asked about family reunions with 100 people where alcohol would be served. He wanted to know how we would determine if it were a Family Reunion or a Party? Attorney Freiberg responded that we could not determine this—that it would pertain to any large gathering after 11:00 p.m.; that it would not apply to the Tivoli, Memorial Auditorium or Riverbend. Councilman Gilbert asked about class reunions and how this policy would be advertised; that they sometimes have alcohol all night long and there are more than 50 people.

Attorney McMahan stated that this had gotten a lot of media coverage already.

Chairman Benson stated that this was a big first step; that we would be ready next week when this comes to us.

### **PERM. EASEMENT FROM HIXSON DEVELOPMENT PARTNERS, LLC**

This is **Resolution (b)** on tonight's agenda that authorizes acceptance of permanent conservation easements from **Hixson Development Partners, LLC** through the Trust for Public Land on a portion of **Lot 2, Morning Pointe Subdivision**, as set forth in Exhibit A to be used as part of the Chattanooga Greenway System, and expressing the gratitude of the Mayor and City Council for said **easement**.

**Rick Wood** of Trust for Public Land was present and explained that this was up in the North Chickamauga Creek area; that he wished Councilman Page was here. He showed a map of the Greenway Farms, stating that this was a donation to Trust for Public Land and was next to the Hixson Middle School; that Greg Vital was donating two easements, and it connects to the Old Hixson Pike. He added that the Board of Education was excited about his. He went on to talk about what would be in place with sidewalks in order to get to Hixson Middle School to Hixson Pike and the Clear Creek Church of Christ—that this would be coming in late May or early June; that the Plan is to connect this with all the land, and there is just one little gap, and we are really excited about this; that we have two easements donated and the City Attorney had already gone over all of this.

Mr. Johnson noted that this was close to the Log Cabin.

Chairman Benson thanked Mr. Wood for all he had done in the past and now and what he would be doing in the future.

The meeting adjourned at 4:10 p.m.