

LEGAL AND LEGISLATIVE COMMITTEE

July 28, 2009

3:15 P.M.

Councilman Murphy, Chairman, called the meeting of the Legal and Legislative Committee to order, with Councilmen Benson, Rico, Ladd, Scott, Gilbert, Berz, Robinson and McGary present. City Attorneys Michael McMahan and Phil Noblett and Shirley Crownover, Assistant Clerk to the Council, were also present.

A copy of those present is filed with the minute material of the Agenda Session of this date.

On motion of Councilman McGary, seconded by Councilwoman Robinson, this meeting was moved ahead of Public Works, as the majority of the people in the room were present for the Legal and Legislative Committee meeting.

“BUILDING AND TRADES COUNCIL PROPOSED ORDINANCE”

Chairman Murphy asked for proponents of this Ordinance to speak first.

Melvin Brewer, Vice President of the Chattanooga Building and Construction Trades Council was the first speaker. He referred to **Section 2-553** of the Draft Ordinance, changing the wording to “*shall be given*” rather than “*may be given*” to consideration in evaluating “the lowest responsible bidder submitting the best bid”, stating that this was important to young people and people moving into new careers. This section deals with the residency of the bidder’s workforce; whether the bidder provides health insurance benefits; whether the bidder provides pension benefits; and whether the bidder participates in an apprenticeship program. **Section 2-568** deals with incentives for awarding city contracts. He agreed that this might need more transparency but could be fixed, emphasizing that this was **not a union versus non-union issue**.

Kenny Smith, who is a School Board member and also a member of IBEW Union, was the next proponent to speak. His main emphasis was apprenticeships, explaining that they were a joint venture between labor and management and were five-year programs with tons of training in the classroom and in the field. He was also a proponent of a Stand-Alone Technical School. He mentioned that local money stays here with local employees—that he would like to see all work done by local workers. He noted that Chattanooga State, as does UTC, gives college credit for apprenticeships.

Councilman Rico suggested before other speakers that we get a legal opinion, with Councilwoman Berz asking that all be allowed to speak. Councilwoman Gilbert agreed that we needed to listen to everyone.

Roger Tudor, President of AGC, spoke in opposition. Before beginning his remarks, he expressed surprise that the Building Trades had not contacted AGA, who represents 300 contractors, before bringing this to the floor. He expressed a concern with the 5% incentive for hiring local workers within a 75 mile radius, noting that already 96% of contractors are within a 75 mile radius and perform \$22 million dollars contracts—that there is 100% participation already. He also noted that many of their members are minorities and do not participate in apprenticeships. He emphasized that AGA was well involved with training and education, mentioning the program at East Ridge High School and programs with Chattanooga State and UTC and 32 scholarships being awarded. He commended apprenticeships for those who could afford to participate but did not think others should be penalized if they could not, questioning why city government should tell a business what to do? He maintained that a 5% incentive would be detrimental to those who do not participate.

Hayes Ledford of the Chamber of Commerce was the next to speak in opposition, stating that he seconded what Mr. Tudor had said and that this could cost jobs in the long-term and could restrain our local companies from expanding to other markets—that this could start a “turf war”, as some of our contractors work around the world on a global level and existing industry is expanding; that we have a good formula working in Chattanooga, and he questioned “tinkering” with it. He ended by saying that a fair and open bidding process is good business with a level playing field.

Jerry Hannah, a member of the Minority Contractors and also AGA, spoke in opposition. He noted that he felt strongly about training and several years ago had gone to his congressman concerning diversity in training. He noted that his employees could meet the criteria for working with the City and had asked for the opportunity to bid on smaller packages but were told “no”. He questioned a “set-aside” for a particular group, noting that if workers can’t find work in the City, they have to go outside the 75 mile radius—that this was a “double standard”.

Bobby Adamson, President of the Minority Contractors Association and also AGC, also spoke in opposition. He noted that they had asked for a Disparity Study but had been told there was not enough money. He contended that this should not be done, as it does not level the playing field if they had to have a pension plan and insurance in place; that they were looking at a better way to sit at the table and were asking for an opportunity and not a handout.

Gary Watkins of IBEW was the next proponent to speak. He was past president of the Labor Council. He stated that he knew they had two people on staff with training programs, and the union was making an effort to visit every school to train young people with equal access. He stated that this was not a contractor-based bill, and this was the reason they did not go to AGC first; that they were just trying to get local people working with benefits and pay—that the cost for an apprenticeship and giving an incentive was a “wash”.

Councilman Benson mentioned reciprocity in regards to Mr. Watkins’ remarks, with Mr. Watkins disagreeing, saying it was not reciprocity—that it does not matter where the contractors come from, but they want the workers to be in a 75 mile radius.

Councilman McGary stated that first, we needed to get a legal opinion, stating that he had heard there was an Ordinance passed 20 years ago that had to be rescinded.

Attorney McMahan stated that he had also heard about this Ordinance but had not researched this. He stated that if one read Tennessee State Law, it talked about a level playing field and allowing one to bid on a job, questioning penalizing one because of lack of insurance while giving an incentive to someone who had insurance with an \$800 deductible. He questioned how we could enforce these provisions because we would not know where workers came from—that we could not write a law like this with a level playing field; furthermore, the U.S. Constitution prohibits this, calling for free commerce across state lines. He allowed that there might be lawyers with other opinions, but he did not think this would pass legal muster and that it could not be fixed.

Councilman Gilbert stated that we wanted to keep jobs in the City; that giving incentives was good because we want to keep jobs in Chattanooga and this provides this and is reasonable. He also mentioned that a Disparity Study had been asked for; that if companies don’t have insurance, we are paying for it. He restated that we were trying to keep money in Chattanooga—that a local company might bid higher, but the money will stay in Chattanooga,

Councilwoman Scott indicated that she would like to get more information, questioning who oversees the contracts, noting that she would like a statement from Purchasing; that she knew a percentage of minorities were part of a union; that she would like to know if we adopted this, what would be the ramifications for us from a contracting standpoint.; that if contractors wanted to participate in a local playing field, that this would come at a price; that she needed more information to see how this balances out.

Councilman Rico wanted to know if anyone was listening to the Attorney, with Councilwoman Berz assuring him that they were.

Councilwoman Ladd indicated that she did not see this as union versus non-union and agreed with Mr. Watkins—that this plan may have flaws, but she agreed with the concept—that local companies pay back to the City and the County; that she would like to see a really compelling plan that would assist all across the board; that this document might have flaws, but she urged to not throw it away, but to “massage” it into an even playing field. She agreed that we did not want the reputation of shutting out outside companies, stating that she still felt this was a good concept.

Councilwoman Berz stated that she had met with Mr. Tudor and also the union folks; that each Councilperson represents people within the city, and we have to speak for the people who are hurting and look at employing at the local level—that this was not union versus non-union but was a people matter—that the two groups were not that far apart and has to be at all levels; that this is an embryonic stage of an idea that will help all. She acknowledged that we can’t get into the realm of telling private people what to do, but with all due respect to our city attorney, she thought there were various ways of looking at this—that it was a very fertile field; that we serve the people who elected us and that Councilwoman Scott did a beautiful job of asking for the facts, and we need to see the facts before making a decision; that responsibility is more than just a dollar figure. She asked that this be tabled and that we come up with a way to deal with the basic concept of jobs for local people without hurting various concerns—that this could be a win-win situation.

Councilman Benson questioning looking into this in more depth, stating that we had done this once before, and it had to be rescinded in 2 ½ weeks; that we could “strangle” ourselves in respect to reciprocity and the same thing would apply to other cities—that he could not visualize closing this city with a wall around it.

Councilwoman Robinson stated that we were all mindful of “Buy Local”; that this is a legal question and not equal across the board; that Mr. Tudor was saying that we are almost at 100% with the 75 mile radius; that our attorney tells us this would not pass “muster”, and we need to listen to him.

Chairman Murphy asked if Attorney McMahan could provide the Council with a brief legal opinion, to which Mr. McMahan stated that he had already done this, and it was put in the Council boxes; that if the Council wanted something more comprehensive, he would be glad to do this.

Councilwoman Berz mentioned a law out of Atlanta that passed “muster”; that she was not sure that she totally agreed that this was blatantly illegal.

Councilman McGary paraphrased, stating that we were for keeping jobs in Chattanooga—that this was good, but we have to keep the wheels turning. He questioned how long we could show favoritism to one group—that it could suffocate our market from both sides; that we need to create jobs for local people but also look out for long-term and how to keep it going.

Mr. Brewer stated that their attorney had a copy of the Atlanta City Ordinance—that the legal issue needed to be resolved, mentioning the Taft-Hartley Act.

PROPOSED BIKE ORDINANCE

David Roddy, Lieutenant with the Chattanooga Police Dept., was present to go over this Ordinance, precipitated by the biking fatality on Ashland Terrace; that one of their concerns was to match our Ordinance with the Tennessee Code Annotated, and this Ordinance is a “mirror” of the State—there will be City citations rather than State.

Chairman Murphy confirmed that this was a mirror statement and asked if anyone was in opposition?

Councilman McGary asked the nature of the Ordinance and Lt. Roddy went over the Ordinance in detail.

Councilwoman Scott had concerns about riding abreast in roadways, noting the heavy traffic on her narrow street where there was poor visibility and the number of Bicycle Clubs and the impossibility of passing. Lt. Roddy read “*Persons riding abreast shall not impede the normal and reasonable movement of traffic and shall ride within a single lane*”. Councilwoman Scott stated that she had not witnessed this happening. Lt. Roddy noted that there is an educational campaign within the Police Dept. and this could be enforced.

Councilman Rico asked about bikes on sidewalks and was told this was not to be; that bikes are considered like motor vehicles and bicyclists can be cited also; that there must be a three ft. clearance when passing.

Returning to two riders abreast, Councilwoman Scott wanted to know if this could be limited based on the condition of the road; that she would like this evaluated by Traffic Engineering. Adm. Leach mentioned the time this would take and his limited staff. Councilwoman Scott indicated that she would rather just take out “two abreast” if it could not be enforced, with Adm. Leach reminding her that this was in the State Law already and could not be eliminated.

At this point Lt. Roddy read a letter concerning a donation that would come forward at tonight’s Council meeting concerning the SWAT Team.

PROPOSED ZONING ORDINANCE RE: SPORTS BARS, NIGHTCLUBS, ETC.

Chairman Murphy passed out a memo to Council members that is made a part of this minute material—the fire department capacity is being changed from 50 to 100. He wanted permission to do this zoning change.

The last point (4) mentioned “misbehaving clubs or bars” and Councilman Gilbert questioned how serious the complaint had to be? Chairman Murphy explained that Item (4) is a separate issue. Councilwoman Berz felt that this was good, noting that the purpose was the interference with the quiet enjoyment of a neighborhood. The distance from portal to the nearest residential zone was discussed by Attorney Noblett. Councilman McGary confirmed that we were only redrafting Items (1), (2), and (3) and that Item (4) was separate.

Chairman Murphy asked that this be placed on the Agenda for next week, with Councilman Rico asking that nothing extra be put on next week’s agenda as this was National Week Out, with Councilman Benson agreeing that this was a hardship on some of the Council. Chairman Murphy felt that this was time-sensitive and should be on next week’s agenda.

The meeting adjourned at 4:30 p.m.