

LEGAL AND LEGISLATIVE COMMITTEE

May 4, 2010

3:50 P.M.

Councilman Murphy, Chairman, called the meeting of the Legal and Legislative Committee to order with Councilpersons Robinson, Rico, Benson, Ladd, Scott, Gilbert and Berz present. Councilman McGary joined the meeting later. City Attorneys Michael McMahan, Ken Fritz and Crystal Freiberg were also present, as was Shirley Crownover, Assistant Clerk to the Council.

Others present included members of the Beer and Wrecker Board, Greta Hayes, Chief Maffett, Jerry Stewart, Gary Hilbert, Dickie Hutsell, Chief Rawlston, Jim Templeton, Dan Johnson, Solomon Hatch, Greg Haynes, Barry Bennett, Lee Norris, Dennis Malone, Chief Parker, Lt. Francis, Capt. Dunn, Cathy Fulghum, Bill Payne, Richard Beeland, Steve Leach, Sgt. Haskins, and Daisy Madison. Chief Dodd joined the meeting later.

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

JAMES MORELAND—CRIME PREVENTION

Chairman Murphy welcomed Mr. Moreland as a friend and member of the East Side Weed and Seed Concern.

Mr. Moreland stated that there could possibly be a bad situation in the summer concerning gangs, guns and safety; that he had met with several groups, including the Police Dept. and members of Brainerd and East Chattanooga community groups; that the major concern was summer; that he had held meetings with gang members and potential gang members, and they were telling him that there would be a “Blood Bath” this summer. He asked that the Council help them not have this situation. He mentioned that Recreation Centers are closed on weekends, and we have a lot of young folks walking the streets and “idle minds are the Devil’s workshop”. He noted that the extreme concern was early evenings from 6:00 p.m. to 2:00 a.m.; that kids should be in the house by 9:00 p.m., but this was not happening; that his concern was what has to be done to give the Police Department more manpower—that if he could add up the hours that these guys investigate, he could take a good vacation—that we need to convert money to prevention. He reiterated that we are headed for a bad time; that when people sat on their porches, it was like the 4th of July with all the shootings; that people have guns, and we are not living 40 years ago when people had respect for police officers. He stated that he was asking the Council to help them be pro-active to make sense and to prevent crises. He stated that when young people told him something, he believed them.

Chairman Murphy stated that we would be discussing regulation of certain community gatherings later in this committee at this session and would be having City-County Budget meetings.

Councilwoman Berz stated that she was glad Mr. Moreland was here; that she and Councilman Gilbert had the job of working with Parks and Recreation with prevention programs. She asked if Mr. Moreland was talking about keeping Recreation Centers open on Saturdays with new ways of doing things.

Mr. Moreland responded that Greta Hayes and he were working together to get young people involved; that some young people were salvageable; that they were trying to inject good young people in good programs. He mentioned a dance contest and competition that were good things for their community.

Councilwoman Berz asked about mid-night basketball and dance contests that might go until 2:00 a.m., asking if he was wanting non-traditional hours to serve kids.

Mr. Moreland responded that there were people who knew the best times to do things; that we need to get the right folks in the room to see what activities will best serve kids at this time; that he could say that Recreation Centers are being upgraded to be more meaningful—that they had been like babysitting and just a place to hang out, but there had been some major changes to support the schools; that it was a slow process, but we needed to just have the opportunity to get kids on Saturday.

Councilman Gilbert stated that Mr. Moreland had been there, and he was saying this to be true; that we need to get to doing something with all of our problems with programs that can be measured; that Parks and Recreation has done this and need to make an improvement with many programs in the future to help youth. He mentioned Swag Fest and young people coming to the Council—that we were looking at the future; that we need to look at crime, and it will take all of us to do it; that we need to be pro-active.

Mr. Moreland stated that there was a lot of effort in the community to make a connection with the Police Department; that we have to bring more partnerships together; that officers are getting to know that we are all working for the same cause, and we need to support these guys—that he had ridden with them and did not know how they did it; that we need to give them support. He went on to say that he was sick and tired of all the shootings and what goes on in schools; that if we don't do something, we will find ourselves in a struggle; that they tried to bring new business growth to the area, but they won't come because crime is out of control; that this is a challenge; that he looked at the paper on Saturday the 24th—that 1,000 people gave their services to the community on that day, but it was not in the newspaper; however on the front page, it talked about people with guns; that we have a task before us and that he appreciated the time to ask the Council for consideration.

WRECKER AND BEER BOARD ORDINANCE—TOWING

Councilman Benson asked to speak, explaining that the Beer and Wrecker Board had been formed to cut down on time at Commission meetings—that if these concerns had to be handled by the Council, that our meetings could go until 11:00 p.m.; that the same was true of the Variance Board; that the Beer and Wrecker Board had been working on this issue for two months—that they had a lot of experience and were really an extension of the Council; that they got no pay and no free meals; that consensual towing and non-consensual towing were two different issues; that non-consensual is where private property owners contract with a Wrecker Service to haul cars off; that some are hired to sit there and wait; that we listened last month to what some wrecker services have to endure with drunken people and brawls and why they need so much money; that some business owners were hiring them, and they sit there and wait—that they are not called from their beds at night and on weekends; that the Beer and Wrecker Board had come to us with a proposal for non-consensual towing; that whomever is the spokesperson deserves a great deal of appreciation, and the Council needs to listen to their advice.

Chairman Murphy called on Fred Weinhold, Chairman of the Beer and Wrecker Board.

Mr. Weinhold stated that he had been Chairman since 2001-2002; that they were hearing complaints from people about towing companies charging \$300 to \$400 for non-consensual towing; that they had also heard from the towing industry; that he would try to relate to the Council where they were with this—that all of their members but one were present today; that they felt there needed to be a cap on regulation to deal with this; that some with these very high numbers were not good for the City; that they discussed how to regulate and what the right numbers were; that we don't want them gouging people; that they were not trying to protect those who parked illegally but were trying to come up with an appropriate rate; that they had contacted Knoxville and Nashville concerning their numbers; that they felt they had come up with a reasonable set of numbers; that they felt the numbers should be the same as wrecking companies who help motorists with problems on the highway; that a few more dollars might be appropriate, which have not been included.

Councilwoman Berz stated that we had had a lot of discussion about this and had come up with another thought, which was the issue of notice; that fees could be set at a certain level and this should be regulated by due process; that there should be a notice of (x) amount fee for towing; that \$400 was ridiculous; however the real issue was notice; that people should know the penalty. She stated that she noticed signs that were here today.

Councilwoman Scott stated that she had two questions—that the Ordinance in the second paragraph talked about telephoning the Police Department. She asked if this could be by e-mail?

A representative from S&H Towing stated that they had to call within an hour.

Councilwoman Scott asked if this could be done also by e-mail?

Attorney Fritz explained that this was just to give options. Councilwoman Scott still asked about whether it should be by telephone or e-mails? Chief Maffett explained that 911 is the only place to go, prompting Councilwoman Scott to say that then the Ordinance should not say “electronically”. Her second question concerned notifying the Police within two hours on Page 1 and then on Page 3 it says one hour. Attorney Fritz stated that this could be changed. Sgt. Haskins stated that he had no problem with cell phones.

Councilwoman Ladd stated that she agreed setting a cap was a smart approach; that she supported Councilwoman Berz about notification of the consequences. She stated that she did question the amount set in this Ordinance; that she felt it was too low for businesses to cover their costs; that we are trying to regulate a business we don’t know anything about; that we are saying that we believe this is the fair market, and we should not second guess this; that she felt it was too low; that we need fair and firm enforcement to send a message; that businesses will lose money; that we have to have some “bite” to this; that this can be a nightmare and rates need to be set higher.

Councilman Gilbert asked if we were just talking about businesses and not residences, mentioning that if he parked his car in front of a million dollar home, it would not be there for two days; that they would say this has to be removed; that if one says the charge of \$400.00 if parked illegally and towed and people still chose to park there—that people do have a choice.

Councilwoman Berz still maintained that the issue is notice.

It was noted by a representative of a towing company in the audience that this Ordinance does not specify other rates and winching. Councilman Benson asked if he were recommending a “drop fee”, and he responded “yes”. Mr. Weinhold explained that the Beer and Wrecker Board only regulates district wreckers. The towing company representative questioned them regulating private industry. Mr. Weinhold stated that if it were not a district wrecker, they could not regulate.

Councilwoman Robinson stated that we had focused on the issue of notification and mentioned the sign (made a part of this minute material) with a menu; that if they don't have to winch, they would not be charging as much. Chairman Murphy stated that this was a menu—that if you add up all the costs it could be \$250 plus a storage charge. Councilwoman Robinson noted that they were not advertising storage.

Councilman Benson told of a reporter who called him whose son had parked on Frazier Ave. for a cup of coffee; that he parked illegally at Mr. Zip and called his daddy, who works for Channel 3 TV and told him his car had been towed, and it was over \$400 to get this car back; this Reporter then sat in on a Beer and Wrecker Board meeting and heard this same company say their maximum cost was \$150; the Reporter then called Councilman Benson, saying that he remembered them saying \$150 max and saying that they just put this into effect today; that some are hired to have a wrecker sit there and watch; that we are not trying to hurt the good professional towing companies; that notification is good.

Councilwoman Robinson stated that she would really hate more visual pollution; that this would become part of the landscape, and she regretted this—that she would like to beautify parking lots.

Councilman Benson noted that the Beer Board was well represented today, with Chairman Weinhold stating that seven members showed up.

Chris Keene, a member of the Beer Board, asked to be heard. He stated that it was absurd for towing companies to say they are dealing with cleaning up messes and charging \$300 and \$400; that it should be \$125 and \$135, no matter what they deal with. He mentioned having to pay \$350 in cash to get one's car back; that this was killing downtown Chattanooga and would get us in the end; that people would quit coming if they think they are going to get "robbed" for being there; that there was no way they should be charging \$350 on Frazier Ave.

Councilwoman Robinson agreed that there were problems on Frazier Ave.; that people wait for cars to park there and then pull them in; that there are signs up.

Councilman Gilbert still maintained that people choose to park there, with Councilwoman Robinson stating that it feels like entrapment. Mr. Keene stated that we were talking about the fee—that you can't charge \$350.00.

Councilwoman Ladd stated that she agreed we needed a cap, but we need to make sure it is fair to businesses and firm enough that people will not violate this.

Councilwoman Berz asked what the fee was that was being proposed and was told \$125 for daytime and \$135 for night and holidays.

Councilman McGary asked about what figure the industry wanted.

Councilwoman Ladd answered that two weeks ago, they indicated a fair fee would be \$250 for nights and a different fee for daytime. She stated that she thought \$250 was reasonable.

Councilman McGary asked if this figure was a fair representation of all businesses?

Councilwoman Ladd stated that they could refuse to do this type of towing.

Councilman Rico stated that if we “up” the fee for them there is an inequity with those that do consensual towing.

Councilman Benson agreed that they do have a problem at nights but also questioned the fairness of “maxing out for them” versus the consensual towing companies that fight “bloody” wrecks.

Kathy Jones, a member of the Beer and Wrecker Board, wanted to make it clear that these figures are not arbitrary; that they took Knoxville, Nashville and Memphis into consideration; that she knew unruly people wanted to fight, but this was not arbitrary.

Councilman Rico noted that the rules and regulations for consensual drivers are stricter. Chairman Weinhold stated that they are regulated by the Beer and Wrecker Board. Councilman Benson noted that they have not had a raise in five years.

Councilwoman Ladd addressed the fee being charged on what we regulate; that they can charge add-on fees, and we needed to talk some numbers. Chairman Weinhold stated that was the words on their sign. Councilwoman Ladd stated that it could be the same amount of numbers with add-ons. Ms. Jones added that that the consensual towing companies were not just dealing with normal vehicles but 18-wheelers. Councilwoman Scott questioned if this could be amended for the add-ons. Chairman Weinhold stated that it could read \$125 for day time and \$135 for night and \$15.00 per day for storage and a charge for extra winching. He added that this Ordinance gives a cap without any add-on fees. Councilman Benson noted that there could also be a processing fee. This prompted Councilwoman Berz to ask what was the “real” fee—that that was the figure we should be talking about—the “real” fee; that a person needs to know that when they chose to park here that it could cost a certain number; that it could be more than \$125.00; that this is illusionary, and she would like to know the “real” fee.

Attorney Fritz responded that it “depends”. Councilwoman Berz stated to forget storage. Chairman Murphy noted that if they let the vehicle back down before towing that there could be a charge of \$75.00, and it would still be \$125 per day and \$135 per night.

Councilman Rico questioned why you have to pay cash?

Councilman McGary asked Ms. Jones if the surrounding cities she mentioned that charged \$135 contained some of the details that were being discussed today?

Councilwoman Ladd responded that we would have no idea with other cities; that the cost being quoted has add-ons and that is why the amount is fair.

Mr. Keene stated the price had no add-ons but storage and processing.

Sgt. Haskins stated that he would like to sort out this confusion; that first, it is consensual versus non-consensual; that we have no regulatory status with non-consensual; that they can charge \$500 if they want to, which is not fair; that we have no regulation, and they can charge whatever. Secondly, he stated \$65.00 is not in the Ordinance; that there is a provision—only consensual tows. Thirdly, everything has to be paid in cash, which causes a lot of problems—that people don't carry this much cash and have to go to ATM's during Riverbend, and there is nothing the City can do about it because they are not regulated. No. Four, winching is allowed in consensual towing—that it is needed which is contrary to non-consensual tows; that we are now trying to mediate with no power; that some companies will work with us, and it is all a little confusing.

Councilman Benson stated that we have got to get this settled before Riverbend; that we could pass this on first reading tonight, which would give us a week to digest it and then pass it on second, and if it needs to be amended, we can do this; that we had to get some control on this.

REGULATION OF CERTAIN COMMUNITY GATHERINGS

Chairman Murphy asked Captain Dunn and Crystal Freiberg to come to the table to speak to gatherings such as "Pop-Up Parties".

Ms. Freiberg spoke to the Ordinance before the Council, which is the newest incarnation, which is specifically and narrowly tailored. She explained that the Law was difficult in this area because of imposing something on free speech; that it has to be justifiable without content and has to be narrowly tailored for something specific such as safety, which leaves open other channels. It has to be content neutral. She mentioned a case where they tried a "Party Permit" to regulate parties for commercial or non-profit, and the Courts were saying content; that we have to be very, very careful. She mentioned how we define Special Gatherings—our newest is 50 or more people with alcohol on the premises—that this only includes those that do not end by 11:00 p.m.

Chairman Murphy noted that before we can legislate there has to be a compelling governmental interest such as safety, asking what can be done in this context about Pop-Up Parties.

Capt. Dunn explained that if a business is a warehouse, and they rent it out, it is a different regulatory business than what it is being used for—that it could be retail during the day and at night there could be 300 to 400 people there. He stated that they typically get called out then.

Chairman Murphy asked him how often he deemed these gatherings to have an unsafe capacity? He responded fairly infrequently—that sometimes it is after the fact, and they are not called the night it is happening. Chairman Murphy asked if 300 people in a hair stylist place could cause risks? Capt. Dunn noted risks with egress and evacuation. If it is a house that is not designed for say 200 people, the biggest problem is the number of exits and signage; that often folks are inebriated and need signs and a large number of exits. Chairman Murphy asked him about the difference between something like the Convention Center compared to something without signs and exits? Capt. Dunn responded that there would be blocked egress; that there needs to be fire protection in place such as a sprinkler facility. Chairman Murphy asked in the event of a rapid evacuation, what types of injuries you could expect? Capt. Dunn responded that crowd crushing can cause multiple deaths. He asked Capt. Dunn if he would say this is unsafe. Capt. Dunn stated that when they respond to Pop-Up Parties they have to disperse the crowd; that sometimes a banquet hall will send out party notices to 240 people that stay until 3:00 a.m.; that 380 people could respond and come in; that what they were looking for was to make the person putting the party on to be responsible—that there were no regulations. He told of a Banquet Hall on Wilcox Blvd. that has weekend parties; that there are no regulations and all the promoter is out is the rent for the building and a DJ; that you could take the alcohol out; that you could have 250 people fighting and not much help—that there were no regulations to control this; that people putting the party on should have to have liability insurance and a permit ahead of time; that this was not going away.

Chairman Murphy asked how often this occurs and was told every weekend. He asked if there were problems and was told “every weekend”. Chairman Murphy asked what was the implication for the rest of the City when there was a concentration of police force there? Capt. Dunn stated that officers were being diverted from other parts of the City because they had no back-up, and we were tying up resources that should be available to other places. Chairman Murphy asked Capt. Dunn how long he had been on the Police Force and was told 28 years. He asked him if it were a safe or unsafe situation. Capt. Dunn told of a two year old with gun shot wounds to the head who was in a car that was just passing by; that when you send out an ad, you can’t regulate who shows up—that it is an inherent danger to all. Chairman Murphy asked if it were an inherent danger to others in the city who would have no police protection? Capt. Dunn agreed that officers were all diverted to one location.

Councilman Gilbert asked about security—if they were not certified to have security; that without security, you can't check for guns. Capt. Dunn responded that security has to be State Licensed. Councilman Gilbert asked how many did not have this State Licensed Security? Capt. Dunn responded that the only company that he was aware of that was certified was J. Hall—that they were certified and would run the risk. Councilman Gilbert asked about ownership of the facility and if we could regulate it so that they would have to have a Permit to rent it out for a Pop-Up Party. Ms. Freiberg mentioned the case that she was telling the Council about—that you can't regulate commercial speech. Councilman Gilbert asked if we could not say they could not have a Pop-Up Party without a license—that it would not be legal; also there was no tax involved. Ms. Freiberg agreed that there could be other avenues for violation, but there is nothing that requires them to have a permit.

Councilman McGary inquired about the Fire Department's maximum capacity and whether this is enforced during the day. Chief Parker responded that it is different for different types of occupancy—that there is a "gray" area; that the maximum is 299 and with more people you have to have sprinkler system. Councilman McGary asked who enforces this and was told the Fire Marshall, if they know about it. He asked if this could be done at any time and was told about the right of entry.

Councilwoman Berz stated that we were having these esoteric discussions, and there was a real problem; that with these Pop-Up Parties you have drinking all over the street. She mentioned Renner's Smoked Pig popping up. She stated that this was absurd, and we need to be in control of this; that the proposed Ordinance had obviated Pop-Up Parties; that they should give 30 days notice and proof of insurance, and the Council voted this down, which was a big mistake. She stated that she was a great supporter of the Constitution, but we needed to obviate Pop-Up Parties completely—that we know where they are; that people have a right to promote parties but these are times for safety, and we need to require a Permit, Insurance and proper security; that she did not think this would be a violation of the Constitution. She asked what the problem was. Ms. Freiberg responded the problem was saying you can't have a gathering. Councilwoman Berz stated that we drafted an Ordinance a year ago, and it did not pass.

Councilman Benson stated that you have to have a permit for a parade; that there are all kinds of steps; that we could do the same for Pop-Ups.

Ms. Freiberg stated that we have a parade ordinance; that this is different on private property.

Councilwoman Berz stated that it met legal muster a year ago. Ms. Freiberg stated that she could not say it would not be challenged. Councilwoman Berz stated that roads were being blocked and people are all out in the street and to say that are hands are tied is absurd.

Councilwoman Ladd asked if we could not make the property owner responsible through zoning or consider it a public nuisance or require insurance on the property; if the property owner could be sued since the property owner is allowing this abuse and making money on it. She questioned if this could not be handled through zoning or charge them for police calls; that the owner has to be responsible.

Ms. Freiberg stated that there was a problem with zoning; that most of these places are zoned C-2, where you can do these type of things and nothing in the Zoning Ordinance would prevent this.

Capt. Dunn stated that if you rent an apartment you are responsible—that you assume all responsibility.

Ms. Freiberg noted that the property owner could still be sued.

Councilwoman Scott asked Ms. Freiberg if she had re-written this? Ms. Freiberg responded about five times. Councilwoman Scott asked that this be distributed. Ms. Freiberg stated that she would incorporate the old one with the current one.

Chairman Murphy stated that the problem with doing all we would like to do to regulate out of existence, we would probably be sued; that anything we do has to be reasonable, and we need a 30-day notice; also insurance is going to have to be looked at; that the Council have all taken an oath to not pass anything that would go afoul of the Constitution; that there is a very high need for this and public safety is a needed issue; that something needs to be drafted that would address this in a narrowly tailored way.

Councilwoman Robinson stated that previously we had a location on Brainerd Rd. that was so outrageous that the rest of the City went begging us to do something; that this was out of control, drunk people. She asked why this could not be considered to be a nuisance?

Chairman Murphy stated that this business establishment was no longer in operation, but we are talking about places that could be a hair salon.

Capt. Dunn again mentioned 3220 Wilcox Blvd., stating that they were renovating across the street to do the same thing; that this happens every Friday and Saturday night.

Councilwoman Robinson stated “Get the wreckers involved!”

Chairman Murphy stated that regulations needed to stand the test of time; that if we pass some “feel good” legislation, it will be challenged and struck down.

Capt. Dunn asked if we do nothing to correct this—who is liable? Ms. Freiberg stated that there was no liability for the Council.

Councilman McGary asked in regards to the particular Ordinance that we did not pass, what has not been addressed? Ms. Freiberg stated that this was never actually voted on; that in reading the old Ordinance, there were concerns that this would apply to too many things and would catch things that were not intended. Councilman McGary asked if the language was too tight with no room for expansion and what direction we should pursue to expand it? Ms. Freiberg responded that it was definitely too broad and would catch too many things. Chairman Murphy asked that the draft be circulated.

Councilman McGary asked if the middle ground would be between the two. Ms. Freiberg stated that there was a lot of middle ground; that there was the issue with alcohol and there was timing, and we had to stay content neutral. Councilman McGary asked if this was amending what we have or re-drafting? Chairman Murphy reminded that this was not on for a vote. Councilman McGary wanted to know if this should be substantially re-written. Ms. Freiberg stated that she would take the previous Ordinance and add what has currently been drafted and merge the two together.

Councilwoman Scott asked about requiring a business license or permit and security and leaving out the liability? Ms. Freiberg mentioned people with alcohol and the noise and violence and crime and questioned does it matter if you have a business license or not.

Officer Francis noted that J. Hall was not legal—that their security is not legal at all mentioning State Approved security. Chairman Murphy stated that his wife works for a Security Company, but they would not take this risk.

Councilwoman Berz stated that whether or not alcohol is served, we have Pop-Up Parties; that we could say you can't have one without a 30-day Permit.

Attorney McMahan stated that this would be a clear First Amendment violation.

Ms. Freiberg agreed that it would be very challenging if we do this, and she was not sure how we could get around this, but she would look at it further.

Capt. Dunn noted that most of the parties on Wilcox Blvd. are not serving alcohol, but the people bring it with them; that there were 500 people on Shallowford Rd.

Councilwoman Robinson questioned the nature of this disorder, with Ms. Freiberg noting that it was really difficult.

Chairman Murphy asked that the draft we have be circulated and Councilmembers can have a one-on-one discussion so that all can understand this in the best way they can. He asked that the Draft be circulated through e-mail and that it be sent to Capt. Dunn, also.

The meeting was adjourned at 5:15 p.m.

