

LEGAL AND LEGISLATIVE COMMITTEE

August 31, 2010

4:00 P.M.

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

Others present included Richard Beeland, Dan Johnson, Larry Zehnder, Chief Parker, Daisy Madison, Dardee Long and Phil Noblett.

LEASE AND MANAGEMENT OF CHATTANOOGA ZOO

Attorney Freiberg was present and stated that she would go over the last of what she had heard concerning the Agreement. She referred to Section 13-8 where the second sentence had been altered, mentioning \$150,000 and the payment being reduced from the annual appropriation; that the City will not take anything away from the Zoo if they would not be able to operate in a reasonable manner. She went on to say that the Loan Agreement would be amended in terms of five years, directing attention to the new terms in Sections 5 and 6, noting that \$1.7 million dollars remains on the loan and \$150,000 will be paid on a yearly basis starting July 1, 2011 with no fixed terms; that for every \$2.00 that the Friends of the Zoo raises, they will receive credit for \$1.00 to be approved up to \$250,000. The maximum length of the loan is 11 years. She explained that the paragraph had been altered to make it in the present tense. The insurance is the same. Section 6 says subject to allocation of the Council.

Gary Chazen with Friends of the Zoo spoke, stating that the terms of this amendment would really enhance their fund raising ability; that there had never been a match arrangement, and this would help them raise money; that they had put \$10 million dollars into the City Zoo and that the Zoo was a great enhancement to the City and a great amenity to Warner Park.

Councilwoman Robinson stated that Friends of the Zoo had been a generous partner.

Mr. Chazen thanked Dan Johnson, Daisy Madison and Mayor Littlefield for bringing this about.

Councilman Benson thanked Mr. Chazen for the help that Friends of the Zoo had brought about in pulling us out of a difficult spot.

Mr. Chazen gave credit to Dardee Long and her staff, which he said was incredible.

Attorney McMahan stated that if the Council wanted to tie the two documents together, they could—that they were ready. Chairman Murphy was in agreement to do it all at once.

Chairman Murphy stated that **Resolution (h)** expressing support for the expansion of the National Park boundaries in the vicinity of Missionary Ridge would come up next week and had been discussed, and he did not think that we needed to go over this at this time.

RECALL ISSUE

Attorney McMahan provided for a telephone conversation with Councilwoman Berz, who was out of town. He then proceeded with his recommendation. He stated that everyone had heard today that Mayor Littlefield had filed a complaint against the Election Commission; that his remarks were in respect to the petition that had been filed; that the document that was filed was in his hand. He explained that the primary problem lay in the difference of City Charter 3-18 and State Statute 2-5-251 in regards to recall—that these two provisions were inconsistent; that the State Statute required 15,000 qualified signatures to recall and our City Charter requires 9,000. He noted that the recall petitions filed with the Election Commission contained between 9,000 and 10,000 names—that under one interpretation this number is sufficient and the other interpretation the number is insufficient. Another inconsistency that we are dealing with is that the City Charter calls for a Special Election and the State Statute calls for a municipal or county election. In the latter case, we would have to wait until August 20, 2012 or March of 2013. Attorney McMahan stated that the two big issues were the number of signatures required and when the election would be held.

Some of the smaller issues were that the petitions did not contain a date for each signature and State law clearly requires dates; that Mayor Littlefield has asked the Court to look into this and disqualify if the State overrides the City Charter. He reiterated that the two major issues were the number of signatures and when the election would be held.

Another issue falls under the Question part, with the question “Should he be recalled”? and if voters say “yes”, then there is the decision of who would be elected for the rest of the term.

Attorney McMahan stated that these are some of the most important features; that this had been an unresolved legal issue for many years, and we need to know what is required—the City Charter or the State Statute or what is reconciliation. He stated that this was an important question for citizens and the Council—that we have two sets of laws, and the Election Commission needs a Judge’s determination. He stated that former City Attorney Nelson had come to the same conclusion; that there is legal ambiguity, and this needs to go before a Judge.

Attorney McMahan was asking that the Council authorize him to represent the City as a Public Entity, stating that there may be a court hearing this week or soon.

Councilman Benson asked if they might ask for a permanent injunction? Attorney McMahan responded that there was no preliminary injunction; that this was filed in Circuit Court and that is where he would intervene.

Councilwoman Scott questioned if the Council had the authority to file a lawsuit to change the charter? Attorney McMahan responded that we were not changing the Charter—that the next opportunity to change the Charter is August 2012, and this might need to be addressed then.

Councilwoman Ladd asked when Attorney McMahan said “intervene”—what did he mean? Attorney McMahan responded that he would be asking the Judge for a Declaratory Judgment; that the City should be in Court.

Councilwoman Scott still wanted to know what authority we had to file in this matter? Attorney McMahan responded that it was under the City Council’s authority—that he could not file without the Council’s authority. He added that the City has a clear right to participate. She asked if it were a legislative role, and he responded “yes”.

Chairman Murphy stated that citizens needed to understand that we would be interposing in the interest of the corporate city and citizens in clarity of these matters; that it was essential to know what the Law is.

Attorney McMahan stated that to issue a Declaratory Judgment would be in a neutral manner. Chairman Murphy asked “the Initiatory Process, also”? Attorney Noblett responded that 25% provides an Initiatory.

Councilwoman Scott stated that she would like to read what Attorney McMahan had. He stated that there would be a draft tomorrow.

Councilwoman Robinson asked if it would be a local judge? Attorney McMahan responded that he could not speak to this.

Councilman Benson stated that we should not be operating in a confused state—that this is a Damocles Sword situation, without our knowing the true process; that we owe it to the City to know the “rules of the game”.

Attorney McMahan stated that the Election Commission would like for a Judge to decide.

Councilman Gilbert stated that it was the Mayor's right to appeal and asked if we were still looking at 2012? Attorney McMahan responded that it could proceed in November.

Councilwoman Scott asked if all of these questions would not be answered anyway? Attorney McMahan responded that they may be answered, but we need to participate. She wanted to know what he meant by "participate"? He responded that we might be able to bring up some different points in regards to the history of the Charter.

Councilwoman Robinson confirmed that the Mayor has another lawyer and that Attorney McMahan would be representing the City of Chattanooga. She added that she thought the City needed counsel at the table.

Attorney McMahan stated that this could be voted on tonight at 6:00 p.m.

Councilwoman Berz stated, by telephone, that she did not think she could attend tonight's Council meeting by phone. Attorney McMahan explained that she could not vote by phone. She stated, at this time, that she thought we should proceed with this intervention—that the City should be part of the suit.

Chairman Murphy stated that he wanted the citizens to understand fully; that questions could be raised by counsel—that this was important for the citizens and City government for all to know the rules of the road; that we would be at the table, advocating for citizens.

Councilman Gilbert stated that this should be explained tonight so that citizens will understand that we are trying to cover the City of Chattanooga.

Councilwoman Scott stated that she was concerned about the lack of announcement of this in advance to the public in this matter; that some might want to be present to hear this. She questioned how they would have the opportunity to do this? Attorney McMahan responded that they probably would not have the opportunity—that this had all occurred between last Friday and today.

Councilman Benson stated that he felt we should enter into this lawsuit in a petition to the Court; that we are representing the citizens, and the citizens need to know what the clear procedures are.

Chairman Murphy asked if Attorney McMahan could estimate the cost of this participation? Attorney McMahan responded that we would have no expert witnesses—that the staff would be handling this, and they are already paid for; that it could be less than \$100.00—that there would be a fee to file but no injunctive relief. Chairman Murphy asked if the net cost would be less than \$1,000. Attorney McMahan stated that it should be less than \$1,000.

Attorney McMahan asked Councilwoman Berz, by phone, if she had anything further. She did not.

On motion of Councilwoman Robinson, seconded by Councilwoman Ladd, the minutes of the previous meeting were approved as published.

The meeting was adjourned at 4:30 p.m.