

LEGAL AND LEGISLATIVE COMMITTEE

September 21, 2010

3:55 P.M.

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

Others present included Dan Johnson, Gary Hilbert, Lee Norris, Richard Beeland, Dennis Malone, Chief Flint, Steve Leach, Karen Rennich, Bill Payne, Daisy Madison, Mayor Littlefield and Dickie Hutsell. Fredia Kitchen and Vickie Haley joined the meeting later.

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

Chairman Murphy noted that he had sent everyone an e-mail concerning back yard chickens and questioned if we even wanted to have this discussion.

Councilman Benson stated that this was getting to be a way of life—eggs and legs with chickens, but he wanted to bring up about rabbits on Pinewood; that they had a man who had moved rabbit hutches away from his house and placed them right on top of the property line. He noted that rabbits are legal, but this man is deliberately putting these rabbits close to his neighbors; that Mr. Hutsell had seen this; that no one in the townhouses can sit on their back porches because of the odor.

Mr. Hutsell stated that this individual had been in court with Neighborhood Services and Animal Services; that actually the townhouses had nice screened porches, and this man has a very deep lot; that he had even slaughtered goats to eat in front of the neighbors; that the goat problem had gone away. Mr. Hutsell stated that he had to get a warrant to go on the property to investigate an illegal business that was in operation; that this man had eight children and each one had a rabbit right up against a concentration of townhouses.

Councilman Benson indicated that he thought there should be some requirement that these hutches had to be a certain distance from the property line.

Mr. Hutsell stated that Neighborhood Services is fine with all the animals.

Councilman Gilbert pointed out that all neighborhoods have dogs that “poop”, and it stinks so bad—that this is just an issue of rabbits versus dogs and cats.

Councilman Rico added that chickens are a health problem; that if everyone raises chickens it can be a health problem.

Attorney McMahan pointed out that the Water Quality Permit has features dealing with fecal matter.

Councilman Benson again noted that the rabbit hutches are right on the property line, and he thought it was deliberate.

Chairman Murphy stated that this is a matter of local food and if a presentation is made, there are people who will want to listen.

Councilman McGary asked if we needed to regulate this? Attorney McMahan responded that if we have chickens, we will have to regulate.

Councilwoman Scott stated that she would suggest that we have a presentation on this and people be encouraged to bring material.

Chairman Murphy pointed out that some said that chickens were allowed in Nashville, New York City, and Signal Mountain.

Mayor Littlefield added that even Martha Stewart has chickens.

Councilwoman Scott stated that she would like a summary on what we already have on the books. Attorney McMahan indicated that he could provide something on domestic livestock.

Councilman Gilbert asked about an acreage requirement, with Councilman Rico stating he thought it was five acres.

Councilwoman Berz stated that we needed to look at the broader picture; that if you have animals, how far do they have to be located from the property line?

Chairman Murphy noted that it is part of the Animal Ordinance that people are not allowed to have animal waste.

Councilwoman Berz stated that we need to review what we have on the books now.

Chairman Murphy stated that this could be reviewed two weeks from now. He noted that there was also an issue about establishments that sell chicken wings and the Night Club Ordinance; that this issue had been left for suggestions from RPA.

Mr. Hutsell stated that they were looking at a particular location and looking at the 750 ft. space rule; that the Ordinance did not have a lot of "teeth" in it; that violators could go to City Court and pay \$50.00 per day; that they were looking at giving the Council the authority to add conditions and to appeal to the Board of Appeals for relief.

Chairman Murphy mentioned a five-lane road and the distinction between a restaurant and a Sports Bar; that the State pre-empts us and do not distinguish between a Restaurant and Sports Bar. He questioned if it would be wise to not let anyone apply for a while.

Mr. Hutsell stated that we could enact a moratorium to give us some time to study this.

Councilwoman Berz asked what the time limit would be? Ms. Rennich responded that it could be on the October or November agenda, with Mr. Hilbert stating at least three months.

Councilwoman Scott questioned it taking this long and people not being able to operate one of these facilities for three months? Mr. Hutsell noted that they were not getting a lot of applications. She asked if we would legally run a risk of making a situation untenable for a business entity?

Attorney McMahan had been out of the room and Chairman Murphy rephrased the question for him concerning Sports Bars and Night Clubs and approving a moratorium and Councilwoman Scott's question as to the legality of this.

Attorney McMahan responded that he thought three months was a reasonable time.

Councilwoman Scott stated that she understood the timeframe but wanted to know if there was a legal risk for the City saying "no" to businesses for three months? Attorney McMahan responded that this is very restrictive, and we are changing it to make it easier and a moratorium would not prohibit anyone.

Chairman Murphy confirmed that the proper procedure was to refer this to Planning at tonight's meeting.

Attorney McMahan stated that he would not recommend a moratorium; that we were loosening conditions and not making them tighter. Mr. Hilbert stated that this might make things more restrictive and would make things harder. Attorney McMahan responded that we were really "mixing" things now; that if they were more than 750 ft. away, they would not need a Special Exception.

Chairman Murphy mentioned a scenario where a person would get a Permit in November of 2010, and we revoke it for bad behavior. He asked if this Permit would still be revocable?

Attorney McMahan mentioned a vested interest—that he had a strong feeling that the Council could not do what they wanted to do.

Chairman Murphy asked him about a moratorium while this Study is going on? Attorney McMahan stated that we could initiate a moratorium if that is what the Council wanted.

Mr. Hutsell noted that there would be no relief on the 750 ft.

MAYOR LITTLEFIELD AND WATER QUALITY PERMIT

Mayor Littlefield stated that this was nothing that the Council had to take action on today, but the Bill will affect us for years to come; that he had received this draft on Friday evening and had printed it off for everyone; that this is the latest Draft of the Proposed Water Quality Permit. He went on to say that we had gone back and forth with the State in an effort to make this more clear and concise and manageable. He mentioned the level of detail involved and the subjective nature of the elements, which will be problematic down the road.

He stated that we are drafting a letter; that we could appeal this but that is not the proper path because the hammer could fall harder and faster; that we want to get along with the State; that this will go into effect the 30th of this month. He stated that Public Works has highlighted the Draft in places that need clarification and further amendment; that we would file a letter concerning the problem areas so that we would be able to go back and say “we told you so”.

Mayor Littlefield stated that Bill Payne is here and had gone through this; that some items can be mis-applied, and it is “regulatory creep”; that we will find ourselves with more and more onerous reports. He noted that when you read through this, you will see that staff will be required to implement all of these measures, and it would be a full-time job for a substantial staff.

He stated that it is easy to see where the fees go—that it is for record keeping and bureaucratic detail, and we doubt the real purpose of all this—that some of this is just a lot of record keeping. He reiterated that this Draft had been printed and highlighted, noting that there is a lot in it that we agree with.

Mayor Littlefield went on to say that there are other elements or issues that we want to make sure we are not in the position for several years; that our Permit is more restrictive and detailed than Permits for other cities such as Nashville and Knoxville; that we have been told that Nashville’s Permit will be like ours—that we want to be on a level playing field with other cities.

Mayor Littlefield stated that he had talked with Councilwoman Scott and had brought his favorite map, showing problems with streams; that the interesting thing is that a lot of the streams are outside the City and flow into Chattanooga; that it makes no sense to hold us to a higher standard if the State is not holding others to a high standard; however this is an argument for another day; that we need to be held to the same standard as all of the rest of the area; that we are a Phase I community and all outside the City are Phase II.

Councilwoman Scott asked about the history of the document and if the City created the Draft and now we want to amend it? Mayor Littlefield explained that the State started with the Draft; that there are Phase I Permits and Phase II Permits and everything needs to be put all together to make it useable and understandable; that the City and State are both working on it, and it is getting better. He noted that the Federal agency also comes into play and is requiring a lot of detail and has changed the language to be more demanding.

Councilwoman Scott asked what protection the City of Chattanooga has with loads of pollutants that come from outside? She wanted to know how this Permit allows us to take into consideration what comes in to us that we can't control?

Mr. Payne responded that we are not responsible for discharges into the River from something such as Chickamauga Creek.

Mayor Littlefield stated that we needed to establish benchmarks.

Councilwoman Scott asked about a situation where we monitor an outfall with mercury; that it has to be reported. She wanted to know how we deal with this and if it goes against us? Mr. Payne explained that this Permit is different from other Permits—that there is no numeric number; that if we found mercury, the State would use this data; that they would expect us to find the source and track it down and eliminate it.

Councilwoman Berz asked if we identify and monitor mercury coming from East Ridge? Mr. Payne responded only that which is in the City of Chattanooga. She wanted to know how this would get here; that it comes from outside the City and it gets to us and is found in our water. She wanted to know what we did then? Mr. Payne responded that we report it to the State. She asked if we had to diligently show we were getting rid of it? Mr. Payne stated that would be the case if it originated in our corporate limits. She asked if we just report it? Mr. Payne explained that outfalls have to be monitored where it discharges; that if it is in the creek, itself, we notify the State; that if it comes out of our pipes, we have to trace it. She asked who pays for the clean-up? Mr. Payne responded that if we find the responsible party, they do—if not, then us.

Councilman Benson stated that this needs to get started soon; that commercial yard people put grass into catch basins; that we need to educate people.

Mayor Littlefield reiterated that it would be very easy to fail to meet all of the standards, noting that previously we had 58 violations and most were issues without significant impact; that if the State holds us to a standard then everyone else should have to meet it; that we will do our best to meet it. He went on to say that our standards should be the same as Hamilton County; that the local TDEC Staff is getting specific and said that Hamilton County had complied; that his concern was that this will get harder and not easier, and we need an understanding of how to achieve it. He noted that the issue at the national level is affordability and stated that he was going to Washington tomorrow and would be talking with the State and the conversations will be intense between now and September 30th.

Councilwoman Berz stated that we went through a lot of Study before the Water Quality Fee was raised and then came down; that unless we have a Plan to remediate it, we are out of compliance if we can't meet these needs. She asked if we raised the funds sufficiently? She noted that this is subjective and questioned the sufficiency of funds.

Mayor Littlefield responded that we went through an Engineering Study to arrive at the fees; that a lot of the funding goes to projects—that some structures go under the roads and houses and some were constructed with wood that is deteriorating. He stated that they believed the funds we set in this schedule will be sufficient—that there is a built-in stair step; that we are working with the State and “holding hands with them” and doing the best we can.

The meeting adjourned at 4:35 P.M.