

LEGAL AND LEGISLATIVE COMMITTEE
FEBRUARY 15, 2011
4:05 P.M.

In the absence of Chairman Murphy, Councilman Benson called the meeting of the Legal and Legislative Committee to order, with Councilpersons Ladd, Rico, Scott, Gilbert, Robinson and Berz present. City Attorneys Michael McMahan and Phil Noblett; Management Analyst Randy Burns; and Shirley Crownover, Assistant Clerk to the Council, were also present.

Others present included Larry Zehnder, Capt. Snyder, Jerry Stewart, Karen Rennich, John Bridger, Dan Johnson, Bryan Shultz, Bill Payne, Steve Leach, Paul Page, Gary Hilbert, Chief Parker, Fire Marshall Whitmire, Dennis Malone, Jim Templeton, Mo Minkara, Richard Beeland, Daisy Madison, Lee Norris, Fredia Kitchen, and Dickie Hutsell.

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

INTERNATIONAL FIRE CODE

Chairman Benson stated that as a preface to this meeting, he wanted to show a 25 second video to kick us off—that it was ludicrous. This was from Lithonia, Georgia. He asked that the video be played twice. He then stated that we were trying to make the Ordinance work that relates to Fire Prevention; that we had given them four weeks to work on this to make it suitable, and it was at the end of four weeks. He asked that the Ordinance be presented.

Chief Parker stated that this had been presented before; that they had met with the City Attorney, who had made recommended changes; that they were extending the time to two years; that this was similar to what other cities had adopted—that with a major code violation, this could be instituted immediately or a timeframe could be recommended—that overcrowding was a major issue. He went on to say that they had compared the Sprinkler Ordinance to our Nightclub Ordinance—over 100 people, serving alcohol after 11:00 P.M., and live entertainment; that Allemande Hall would be exempt. He reiterated that this mirrored the Nightclub Ordinance.

Councilman Benson thought it meant immediately upon passage or before December 31, 2012—that it could be in the discretion of the Fire Marshall; that as he read this, it could possibly go into effect immediately if the Fire Marshall so decides.

Chief Parker agreed that this would be true if overcrowding was an issue or other strong violations.

Councilman Benson stated that he hoped Chief Parker was right. Chief Parker went on to say that people would be given until 2012 to make changes. Councilman Benson asked if 2012 would cover everyone. Chief Parker responded all that meet the definition of the Nightclub Ordinance. Councilman Benson asked if in 22 months, all had to have sprinklers? The Fire Marshall explained that would be true if they fell under the Nightclub Ordinance.

Councilman Gilbert spoke to nightclubs. He stated that one could call their establishment a Sports Bar and have a large amount of people and the danger would still be present. He asked if the safety would be the same or different for a Sports Bar or Nightclub? Chief Parker responded that this would depend on an individual basis. Councilman Gilbert still contended that whatever business it is called, the danger would still be there. He noted that our Electrical code concerning old buildings that are 100 years old does not come close—that we have “grandfathered” them in and questioned why we had to be so strict on this.

Chief Parker stated that this was the International Fire Code adopted in 2006; that we did not start enforcing it immediately; that in 2011 or 2012 there will be a new Code; that we have to stay within seven years of adopting the Fire Code and we are within seven years of the recent version; that there are no provisions for “grandfathering”. Councilman Gilbert questioned if every regulation would be followed to the “t”? Chief Parker responded that they enforce all the codes; that the builders said they were confusing, and the decision was made to adopt the International Fire Code. Councilman Gilbert still questioned why existing buildings could not be grandfathered in. Chief Parker stated that the first Fire Code states new and existing buildings. Councilman Gilbert pointed out that Nashville has the same Code and their number is up to 200 people. Chief Parker stated that they had chosen not to follow the Code. Councilman Gilbert pointed out that Memphis allows 300 people. Chief Parker indicated that this would be changing in Memphis in the next six months. Councilman Gilbert still felt that we could adopt something that would allow existing buildings to be grandfathered in. Chief Parker felt that this would be putting the public’s safety and the Council at risk; that the City would be held to the Standard, and if we were not following the Standard, we would be at risk.

Attorney Noblett agreed that we needed to comply with the Code if we adopted it; that if there were exceptions to the Code, we would run the risk of it not being a uniform code that we adopted, and the City could be sued if something catastrophic happened. He went on to say that the NFA includes existing buildings—that if not followed, we could lose our ability to regulate and regulation would go to the State Fire Marshall; that currently sprinklers are on the agenda, and the concern is life safety; that there might be additional requirements in the 2012 Code.

Councilwoman Scott stated that this did make a difference to her, mentioning businesses that serve alcohol and people that use alcohol are in an altered state of consciousness; that we are trying to avoid catastrophes, and she felt comfortable using the number of 100 and giving some consistency with our Ordinance for nightclubs and bars. She stated that she also appreciated

the fact that this could put a large financial burden on some property owners if they needed to be sprinkled; that we are required to comply with a Fire Code within seven years, and questioned if our outside date needs to be 2013 or 2012?

Attorney Noblett responded, at least by 2013.

Councilwoman Scott suggested leaving it at 100 and giving the longer period of time (2013), which would give us less liability on our side and improve our chances with no issues with fires—that this was a fair compromise. She went on to say that the Fire Department should be very clear with violations and not be arbitrary and do the same follow-up with all businesses; that we could go to Court for being arbitrary; that she would vote with this, especially if we identify the critical time this has to happen and where the line is drawn.

Chief Parker stated that if an exit is blocked, then the violation has to be dealt with immediately; that we can order the Club to be closed; that there is also an Appeals Process; that we will come up with criteria and guidelines—that we are mainly looking for overcrowding and clubs not being in compliance.

Councilwoman Berz stated that we may need to be mindful of the Ordinance we passed relative to nightclubs—that some establishments are no longer Sports Bars but Nightclubs—that it is not what the owner chooses to call it, but what it is. She complimented Councilman Murphy, the City Attorney, and the Police Dept. who had sat around the table—that they did an outstanding job of an ordinance that we can be proud of; that she liked the idea of extending the time and tying this into the Nightclub Ordinance—that this is good and the fairest way, and she thanked everyone.

Chairman Benson allowed people in the audience to speak.

The first speaker was **Michael Alfano**, owner of the Comedy Catch. He stated that they just had 22 months to raise \$132,000, and it would be difficult, and he could not stay in business. He mentioned the Life Safety Handbook that states that existing buildings, prior to the date of the Code, shall be allowed to continue—that this is reasonable life safety. He felt that they, as a business establishment, should be grandfathered in to keep their status as is but if they had any other violations, they could be called to add a sprinkler. He mentioned the Nashville code and some sort of a license that allowed them to stay in business as defined by the 2006 Code; that the 2006 Handbook said that established businesses could go with the grandfather clause.

Attorney Noblett responded that he was speaking of an “Initial License”, which comes out of State Law and does not necessarily apply to nightclubs. Mr. Alfano noted that they did fall into “inspections”. Attorney Noblett explained that what he was referring to was talking about State Buildings. Mr. Alfano felt that since they were inspected that they would fall under this.

Attorney Noblett explained that Mr. Alfano has a Business License but not an Initial License—that this was State procedures.

Chief Parker added that the Life Safety Code is used by the State and their facilities.

Councilman Benson questioned who falls under this. Chief Parker responded that Allemande Hall does not fall under nightclubs. Councilman Benson asked about the Choo Choo? Chief Parker responded that he was not sure, prompting Councilman Benson to say then we don't know what we are voting on, again asking what this covered? Chief Parker responded "nightclubs".

Roger Tuder, with AGC, spoke next. He stated that their concern is understanding that the Building Code speaks directly to 30% of value; that we have a new Building Code that extends to 2016; that he was trying to understand if they were talking about just nightclubs or all nightclubs after 11:00 p.m. and a capacity of over 100 people—that if existing nightclubs with 100 people that serve alcohol after 11:00 P.M. would be required to put in sprinklers?

Attorney Noblett responded "yes" they would, again noting that the 2006 Life Safety Code referred to occupancy by the State; that existing structures could be at the discretion of the Fire Marshall—however there is a specific definition of a nightclub that this Council had adopted.

Councilman Gilbert asked if we passed a law on the definition of a nightclub, and the business was called a lounge, could it be "grandfathered in"? Attorney Noblett again went over the definition of a nightclub, mentioning danger to the public and a social gathering place with 100 folks and with alcohol and live entertainment past 11:00 P.M. Councilman Gilbert still maintained that some call themselves Sports Bars and now we are calling them a club; that if they were a Sports Bar prior to us calling them a club, could they be "grandfathered in"? Attorney Noblett responded as far as the sprinkler system is concerned "no"; that this is simply a provision of the Fire Code; that this Council can make a determination if there is a dispute over what something is. Councilman Gilbert explained that he was talking about a Sports Bar that is now a club. Attorney Noblett responded if there are more than 100 people and alcohol is served after 11:00 P.M. and they have live entertainment, they are a nightclub. Councilman Gilbert asked "then they can't be grandfathered in"? He was told "no".

Councilwoman Berz added that it is not what you call yourself but what is happening in the establishment; that before the Sprinkler Ordinance, if a place, irrespective of what it called itself, is a danger, you can say it needs to be sprinkled.

Fire Marshall Whitmire stated that when they see a violation, and the business does not correct it, they could make the recommendation that they put a sprinkler system in—that they looked at the usage and not what a business called themselves.

Jermaine Harper spoke next. He stated that he represented small businesses; that he knew of no businesses that were not concerned about the safety of their customers; that they had requested to have some work time to discuss the rules for clarification, and this had not happened; that this was the first time that they had heard that this proposed Ordinance would be tied into the Nightclub Ordinance, and it appears that this is a proposed opportunity to exclude some; that he had spent time all over the country concerning requirements and questioned what would happen if all new houses had to have sprinklers; that some wanted this to be mandatory, but 22 States had voted against this; that he felt this Council had the same discretion with this Ordinance; that things are vague and left up to discretion—that this gives the Fire Department too much latitude without specific criteria—that all of this is very vague; that after what they had learned today, it was very vague and left to the discretion of the Fire Marshall.

Councilman Gilbert stated that he had to agree with this gentleman—that it is under the Fire Marshall's discretion—that he understood this, and the Fire Marshall was a human being.

At this point, Councilwoman Scott reminded everyone that we have another committee following this one and have guests who are waiting.

Councilwoman Berz stated that it was her feeling that this has been worked on and tightened up; that Mr. Harper had insinuated that we were leaving people out and was talking about discretion; that if he thought we were being discriminatory, she would like to know what he meant by this; that he used the word "vague" and "overbroad" and "arbitrary" and "capricious", and she asked him to be more clear.

Mr. Harper responded that he had heard an occupancy of 100 stated and some cities had an occupancy of 200 to 300 people. He questioned strict violations in the case of their being 105 people—would this be considered a violation or if it would be left up to discretion?

Councilwoman Berz asked him if he felt anything over 100 was a violation, and he responded "yes"—that it would need to be a violation for everyone. Mr. Harper went on to say that people had been left out and at the time of the first reading, they were included; that it seemed that people were specifically trying to craft a position to exclude by tying this into the Nightclub Ordinance. Councilwoman Berz still asked him to be specific in his definitions—that the last time, they were told it was too vague and overbroad, and they had tied it to something specific in order to be very clear, but she was hearing Mr. Harper saying that "some people" were left out. Mr. Harper stated that he didn't know—that there seemed to have been a broader group. Councilman Benson stated this is vague. Chief Parker stated that over 100 people would be a violation. Councilman Benson stated that all of the Council would be given an opportunity to talk concerning this tonight.

The meeting adjourned at 4:50 P.M.

