

LEGAL, LEGISLATIVE AND SAFETY COMMITTEE

AUGUST 2, 2011

3:30 P.M.

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

Others present included Dan Johnson, Johnny Feagans, Ron Swafford, Danny Thornton, Paul Page, Sgt. Collins, Sgt. Haskins, Daisy Madison, Chief Parker, Dickie Hutsell and Officer Snyder. Members of the Beer Board were also present.

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

BEER REGULATIONS FOR CATERERS

Chairman Murphy called on Attorney Fritz. Mr. Fritz stated that members of the Beer Board and Sgt. Haskins and Sgt. Collins were present regarding permits for caterers to sell mixed drinks who had no local Beer Permit and the need for them to obtain a Beer Permit.

Chairman Murphy thanked members of the Beer Board for being present and for their service, noting that four members were present. He asked if any of them wanted to address this issue at this time. He stated that we would hear from the Regulatory officers first.

Sgt. Haskins explained that there were issues under the Beer Codes when we don't regulate caterers, and they set up anyway; that inspectors for ABC don't work holidays and overtime and caterers with ABC licenses get very little regulation; that a Beer License is a "big stick"; that caterers will set up shop and under the new Ordinance, ABC will give us prior notice so that we can be sure they are following protocol. He stated that we do not want to police every wedding but that he would get calls from officers where caterers had no beer license but did have an ABC license and no food was involved, and he would have to tell our officers that we don't regulate those with ABC licenses; that if an ABC regulatory officer happens to be working that night, he could call them.

Councilman Gilbert stated that they could not regulate all caterers because we do not have that kind of manpower; that all should be required to have the same restrictions. He asked who would determine who will be regulated? He again noted that there were so many caterers.

Sgt. Haskins noted that actually there are only 12 caterers. Councilman Gilbert responded that there are others who cater who don't do it for a living but just do it for friends—that there are so many. Sgt. Haskins noted that if they are serving beer that they are technically in violation; that most people get a licensed caterer.

Chairman Murphy stated that Sgt. Haskins was talking about ABC agents; that our police officers can charge people with State Law violations; that if there is no one on duty with ABC, could our officers cite within regulations? Sgt. Haskins responded that it depended on the type violation; that many of our officers are not familiar with the Beer Code—that a lot of the problems are administrative and not legal problems.

Councilman Benson stated that he would like to recommend an addition to the Ordinance and asked how they defined a caterer? Sgt. Haskins responded that there was a definition in there, with Chairman Murphy noting that Attorney Fritz had copies of the Ordinance.

Councilwoman Scott stated that she needed some clarification—when a caterer gets a permit is it one that they can hold or is it time-limited? Secondly, she noted, that the Beer Board may suspend a license for a certain number of days. She questioned if we could suggest a fine, like exists in other portions of the Code? She noted that if we just suspended them for five days, it could be that they would not even have an event in that five days and questioned how that would be a punishment? Attorney Fritz responded that general provisions apply to all permit holders. Councilwoman Scott asked if the penalty for a caterer would be the same as the penalty for a business that is open five days a week? Attorney Fritz responded “yes”. Councilwoman Scott questioned if it would be a penalty if they don't have another event for a week? Attorney Fritz responded that the Beer Board had to deal with violations.

Sgt. Haskins noted that license holders can be issued a civil penalty; that this is a new precedent under the new Ordinance. Councilwoman Scott asked how we determine what a civil penalty is—could it be \$1,500? Attorney Fritz stated that the maximum is \$1,500—that the Board will have to determine this as they consider matters. Councilwoman Scott stated that in all sections of the Beer Code it talks about penalties and asked if the rest of the Council was comfortable with this?

Councilwoman Ladd stated that she had held meetings with the representatives of the Beer Board and also the two sergeants two years ago and at the end of her term as Chairman of the Safety Committee, she was unable to continue; that they had gotten to the point of dealing with caterers, and she would approve this; that there are fine points to iron out but this is the direction needed; that it is something they can use, and the Beer Board needs this authority. She stated that she had sat in on meetings, and there were certain things they could not act upon and cases were going to Chancery Court, and they were overruled; that this was a frustrating situation and things needed to be spelled out, and they needed something to use as

a guide; that we had the right people on the Board, and we need to give them backup; that this is long overdue and something they need to do their job.

Councilwoman Robinson asked if when we speak of a caterer, is it a permanent catering hall only? Sgt. Haskins responded that we were not dealing with mobile caterers. Attorney Fritz noted that there was language included about permanent catering halls. Councilwoman Robinson stated that she was not clear about the definition of a permanent catering hall—could this be a kitchen in someone's home? Attorney Fritz responded "yes"—they have to have a location that is permanent to prepare food. Councilwoman Robinson wanted to know how we would determine this? Attorney Fritz responded that we were "piggybacking" off of State Law. She asked what would happen if someone is hosting a reception on private property, and they only want the caterer to provide food and the host will provide the alcohol. She asked if that would be exempt? Attorney Fritz noted that social events are exempt under the Beer Code. Councilwoman Robinson stated that the Ordinance talks about caterers selling alcohol; that it sounds like they provide food and beverages for social occasions.

Chairman Murphy stated that the question is—wedding receptions; that guests are not paying for a glass of wine but the host is paying for the caterer to serve the guest the wine.

Attorney Fritz reminded that we are only talking about caterers with ABC licenses; that what Councilwoman Robinson is referring to are those without an ABC license.

Councilwoman Berz questioned there only being ten caterers in Chattanooga. Sgt. Haskins responded that there were twelve that complied with ABC regulations. She confirmed that only 10-12 comply; that she thought the problem was with other people who cater events; that she was all for this regulation but did not think it reached far enough—that those we are talking about are already regulated and now we are saying, we will regulate you further—that the problem is not with those that are regulated that we have no way of regulating—that she thought there were holes in this, and we needed to go further.

Attorney Fritz talked about the Attorney General's Opinion—that those with an ABC License will be required to have a Local Beer Permit.

Councilwoman Berz stated that people can drive up in a truck and serve, and they are not regulated by anyone, and the police have their hands tied. Attorney Fritz stated that they have no authority to sell alcohol without a license.

Councilman Gilbert asked if in that case, they could only be fined \$50.00?

Councilman McGary stated that he would like to hear from a representative on the Beer Board in relation to the issue discussed by Councilwoman Scott concerning penalties in the Ordinance and what the penalties should be.

Fred Weinhold spoke. He stated that he would address a couple of points on penalties in the Ordinance, as he understood it, speaking to the penalties that Attorney Fritz had mentioned—suspension, revocation, and fines; that he would think that the \$1,500 fine that is maximum would be reasonable; that it would be the Beer Board’s choice to decide what should be applied; that frequently they did apply the maximum but primarily used three or more days suspension; that with Riverbend, \$1,500 was the practical solution.

Councilman McGary asked if this language needed to be included in the Ordinance? Mr. Weinhold mentioned the penalties in the rest of the Ordinance, stating that he would have to defer to Ken Fritz for an answer to this. Councilman McGary noted that Councilwoman Berz had stated that we were regulating those that were already regulated and others were “flying under the radar”. Mr. Weinhold responded that everyone had a view in mind with caterers; that all this is not what they mean in this Ordinance—that we are talking about caterers who are commercially involved with a physical facility with a State License—that we are only talking about this level of caterer. Mr. Weinhold stated that this is just the first step and is tied to the existing State Legislation and is a fine place to start; that we will have to “tinker” with this over the years; that we don’t know enough at this stage that we need to know to go beyond State Law; that we will try our first step with this because these are the people that led to the problem; that we will make this step work and finish later; that we may need some State Law changes for people without ABC licenses.

Councilman McGary stated that it had been indicated that the ones without the ABC licenses are causing the problem; however Mr. Weinhold thinks it is the other ones—that both groups are being considered, and he wanted to know where the problem was? Mr. Weinhold stated that his data source was Sgt. Haskins. Sgt. Haskins responded that events where there are licensed caterers was the issue—not those “flying under the radar”; that these licensed caterers rarely get checked.

Councilman Gilbert asked if there was a penalty for a person that does not have a license and could he be fined? Sgt. Haskins stated that he did not know—that it would be up to the Judge—that he could get jail time. Councilman Gilbert confirmed that there could be jail time, with Sgt. Haskins saying that it was possible. Councilman Gilbert stated that he felt like Councilwoman Berz—that a lot of people cater with alcohol that don’t have a license—was Sgt. Haskins saying that these people don’t cause a problem? Sgt. Haskins stated that he was telling the Council about the ones that he was aware of.

Councilman Benson stated that in the past we had identified problems with the Beer Board and never put the solutions into gear, and there is a morale problem; that we encounter loopholes and never go any further; that this is a first step to get control and that he agrees with Mr. Weinhold that we may have to “tinker” with this; that the Beer Board has come to us with this amendment; that nothing is infallible; that right now we need to give something back to this

Beer Board; that he had a lot of questions but urged to not let this go as we have in previous years into another Study or committee.

Chairman Murphy noted that there was a subcommittee of this committee, consisting of Councilpersons Scott, Berz, and McGary; that they would look at this issue more broadly; but this seems to be something we can all agree on.

Councilwoman Berz stated that she was for this in regards to licensed caterers but she would think if we are talking of that level that it would include Finley Stadium, the Tivoli and Memorial and Riverbend. Sgt. Haskins explained that all of those places are licensed and would not be covered under this—that they all have Beer Board licenses. She wanted to know who was out there that we were talking about—that she did not think it was a secret list.

Attorney Fritz stated that he had asked for those in surrounding counties and including the surrounding counties, there are only 10-12 with ABC licenses. Councilwoman Berz confirmed that these are the ones that this law refers to, stating that we should go a little further—that we need to be “real” about the problem.

Sgt. Haskins agreed that we have to “tinker” with the stuff; that loopholes have to be addressed; that we have identified this problem and are working on it; that if officers call him, he would be able to tell them that they could take these people in front of the Beer Board, and it will be regulated.

Chairman Murphy thanked the two sergeants and also the Beer Board members who had come to the meeting today.

Attorney Fritz stated that the second part of the Ordinance seeks to amend the part that says “Revoke Beer License for due cause”—it will now say “suspend or revoke”. It is now limited to revocation but will now say “suspend or revoke for due cause”.

Councilwoman Scott asked what about “suspend, revoke, or fine for due cause”? Attorney Fritz stated that this should be a given but this can be added.

Chairman Murphy stated that this would be on next week’s agenda.

The meeting was adjourned at 4:00 P.M.