

LEGAL, LEGISLATIVE AND SAFETY COMMITTEE
AUGUST 21, 2012
3:30 P.M.

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

Others present included Dickie Hutsell, Chief Dunn, Johnny Feagans, Dan Johnson, Lee Norris, Jerry Stewart, Matt Lea, Jim Templeton, Bill Payne, Greg Haynes, Larry Zehnder, Tony Boyd, Daisy Madison, Steve Leach, Richard Beeland, Danny Thornton, Chief Parker, John Van Winkle and Maria Sirchia.

STREET VENDORS

Chairman Murphy noted that Chief Dunn and Dickie Hutsell were present in the interest of this topic. While preparing presentation the minutes were approved by **Councilwoman Ladd, seconded by Councilman McGary.**

Mr. Hutsell stated that there were a number of cases downtown concerning facilities that had been cited to the Beer Board—that there had been numerous violations and most of them were violations on sidewalks; that this involves officers having to come in and testify. In this case, an attorney was defending street vendors (hot dogs) that were being sold outside of a facility—Southern Comfort. He referred to Section 11-377 that makes provisions for sidewalk vendors and permits through the Treasurer’s Office. Parks and Recreation Dept. can revoke the permits; that Chief Dunn had a concern of overtime involved with dealing with this issue that had taken place around 3:00 A.M.; that we had sidewalk vendors at 3:00 A.M., and this was when disorders were erupting; they were requesting the appropriate action be taken to restrict their operating hours until 12:00 midnight.

Chief Dunn added that what this amounted to to them was just a place to congregate; that the Hot Dog Vendor had hired security and this is causing more and more issues and also a lot of overtime, mentioning \$2,700 that was spent in downtown overtime.

Chairman Murphy confirmed that they were wanting the closing time for the Hot Dog Stand to be at 12:00 midnight.

Councilman Rico asked “why not cut them off earlier?” He questioned why they should even be open at 12:00 midnight?

Attorney McMahan was asked to draft something for the Code.

FIRE DEPARTMENT GRANTS

Chief Parker went over two Resolutions on next week's agenda (g) and (h). **Resolution (g)** authorizes a 2012 Staffing for Adequate Fire and Emergency Response Grant issued by Homeland Security under FEMA in the amount of \$1,765,848.00. He explained that there would be no third year and that this was a match. Councilwoman Scott asked if they had told the individuals hired that they could not guarantee their jobs? Chief Parker stated that that was their intent—that they had not gotten this in the past. **Resolution (h)** authorizes a 2012 Assistance to firefighters Grant issued by Homeland Security under FEMA in the amount of \$108,972.00, authorizing a city match of 20%. This would involve carbon monoxide alarms; that they had purchased a few and firefighters had been trained.

Councilman Murphy asked if there were any questions about the land purchase for the new fire station. There were none.

RESTRICTED ON-STREET PARKING/FORT WOOD

Chairman Murphy asked Mr. John Van Winkle to go over where they were in agreement with Fort Wood and also where they were in disagreement.

Mr. Van Winkle explained that they received a petition from Fort Wood asking for three changes to the existing Ordinance; that they had a program set up for this neighborhood. First, they agreed on the Traffic Study and the parking demand and were willing to extend the border to Central Ave.—that there was sufficient justification for making this change. Secondly, he stated that he understood the issue and could not disagree with the problem; however Traffic Engineering's recommendations were different. Fort Wood wanted to change the Ordinance and extend the hours of restrictive parking to 7:00 a.m. Monday through Friday at 6:00 p.m. Traffic Engineering wished to eliminate this second change in the Ordinance and its enforcement and allow a one-hour tolerance; that Fort Wood proposed eliminating this one-hour tolerance and contend that anyone parking without a sticker would be subject to being ticketed. He went on to say that the Police Dept. had done some enforcement but not at an effective level; that with the passage of the CARTA proposal, enforcement would include Fort Wood, also, and he would like to give them the opportunity to see how this is working. He stated that he thought it was premature to change the Ordinance at this time; that the first step is to see how the CARTA proposal will work.

Janice Heath of 928 Oak Street spoke, identifying herself as the President of the Fort Wood Neighborhood Association. She stated that this did extend to the 900 Block, where she lived, and there was no parking available. The other issue is growth of the UTC campus—there is a record number of students; that they had addressed these two differences with Mr. Van

Winkle. She stated that the key component was elimination of the “grace period” (one hour); that enforcement is inefficient—that two stops are made and enforcement is sporadic. She stated that a second problem with one-hour grace period is that it allows students to fill streets without disobeying the law; that students can park and attend a class without tickets with this “grace period” and parking can extend well into the evening because there are evening classes; there are also lectures and concerts in the evening which puts a strain on the parking arrangement—Mondays through Friday in the p.m. She stated that this was not an unusual request—to have residence “only” parking on a 24-hour basis.

Chairman Murphy asked Mr. Van Winkle if both Oak and Vine were one-way? Mr. Van Winkle responded that Oak was two-way and Vine one-way. Chairman Murphy stated that he often ran through this neighborhood, and it was beautiful. He asked about angle parking on a one-way street? Mr. Van Winkle responded that there was not enough room.

Councilman McGary stated that this had been a conversation for some time in Fort Wood; that there had been discussions among Fort Wood, UTC, and himself. He stated that he knew Mr. Van Winkle was putting hope in CARTA, and he, too, hoped this would be a remedy; that he essentially wanted to wait and see because he thought changes to the Ordinance would be premature. He asked if CARTA should not be the remedy, had he put all the other options on the table? He wanted to know what Mr. Van Winkle envisioned as another alternative?

Mr. Van Winkle responded that one thought he had in talking about changing the Ordinance was enforcement; that Tom Dugan had assured him that they had the one time ability to extend the hours of enforcement until 11:00 p.m.; that we could amend the Ordinance to go to 11:00 p.m. Also, he understood the comments concerning one hour classes—that this could be reduced to 30 minutes and those making a brief stop would not get a ticket. He still was in favor of giving CARTA a chance to run their program; that he thought we should take a look and see what CARTA can offer. He asked that the CARTA representative present speak.

Lisa M. of CARTA spoke next. She stated that they were putting together their whole program and breaking the city into zones; there will be ambassadors and more people in the area, and they can help with the problem—that they may not solve it, but they could assist with enforcement.

Councilman McGary asked the Fort Wood people if they had had an opportunity to meet with the representative of CARTA, and the answer was “no”. He stated that prior to voting on this, he would like this to happen. Someone from Fort Wood added that Brent Matthews of CARTA had talked to “Joyce”.

Ms. Heath addressed the 30-minute grace period and asked if it would be feasible to manage enforcing someone coming back in 30 minutes? She noted that school had started and if any parking space was available, it filled up quickly.

Mr. Van Winkle stated that he had discussed this with Tom Dugan, and he said it would not be a problem with enforcement—that there would be an automated system to capture tag numbers.

Lisa M. agreed that they would be looking at license plates recognition with this program, and it would be quicker than having someone on foot; however there would be someone “on foot” as well. She stated that they were in the development process themselves.

Councilwoman Scott asked in view of these facts, what was the timeframe if we go with Mr. Van Winkle’s implementation? The CARTA representative responded that they would start the first. She wanted to know what the period of time would be to see if this was working or not? Mr. Van Winkle responded that that would be open for discussion—that it could be through the school semester; that if people realize the pressure is off, they will revert to their old habits; that CARTA’s stricter enforcement has promise; that the timeframe could be the end of the term.

Councilman McGary stated that he would like to recommend that Ms. Heath, Mr. Van Winkle and himself have a follow-up meeting in depth; that he would like a called meeting within the next week and would like to defer this for a week.

Chairman Murphy stated that deferral would be subject to the motion made tonight.

Mr. Van Winkle stated that they would like to go ahead and expand the district and this be approved; that if the Council wanted to hold up everything, that was fine, too.

Attorney McMahan explained that the current Ordinance only expands the zone; the hours are not included; that he thought to pass what we have is a good idea.

Ms. Heath responded to Mr. Van Winkle concerning signs that are ready for a trial period; that if they put the signs up, they might have to be taken down. As far as extending the current restricted area, several neighbors do not want the current system where they live. She stated that she was not sure this is a positive thing.

Chairman Murphy noted that there is some discretion in enforcement; that some things fall under the Traffic Engineer’s discretion; that it is his call—that we could take all discretion away, but he did not think that would be smart.

Councilman McGary suggested extending the zone, stating that he would still welcome a conversation to hash out these other issues.

CHARTER CHANGE OF ELECTION DATES

This pertained to **Ordinance First Reading (b)** on tonight's agenda. For this discussion, Chairman Murphy came out of the chair, and the meeting was chaired by Councilwoman Ladd.

Councilwoman Berz stated that we had spent a lot of time about changing the dates, and she was not sure how this came about and why we wanted to do this; that she was very much in favor of metro government, when we would be ready for this; that she thought combining the dates for elections was the wrong backdoor approach to metro government and also the city has unique issues and because of the uniqueness of this election, cold weather should not enter into the reasoning; that the city election should not be subsumed along with County and Federal issues—that we would be getting the “short end”; that people who are committed understand that this is a time for the city to maintain its uniqueness. She noted that the argument had been made that we would have a larger voter turnout in August; that there would be more people running; however she would not be in favor of sacrificing the City's uniqueness just for the sake of convenience. Secondly, the argument was made that this might save money—that this might amount to \$25,000, and we spend money on all kinds of things, and she did not think saving money is where we want to go if we have to save it on the election; that in the grand scheme, we would be subsumed. She stated that she would not debate the issue—that the issue is one of values.

Councilman Murphy stated that this was “well said”. He went on to note that the August election is partisan, and we are not partisan—thank goodness. Another point of interest to him was the record turnout—in Hamilton County it was 20%; that he went to the Election Commission website, and this was the highest number in August and included places like Mowbray Mountain in the county. He went on to give the figures of 8.8% turnout in Councilwoman Berz' district; 9.5% turnout in Councilman Rico's district; 3.6% and 11.5% in Councilman McGary's district. He questioned lumping our municipal election with a partisan election when there is no turnout benefit at all. He questioned why we would even consider doing this. He mentioned that several on this Council were in a run-off; that a November run-off after an August election would be a very, very, very long time, and something that he did not like; that he thought this was a “solution in search of a problem”.

Councilman Rico stated that he would defer to Councilwoman Scott.

Councilwoman Scott thanked him. She stated that first of all, it never occurred to her that changing the date of the election would be a preamble to metro government; that there were only two cities that were not included—Collegedale and the City of Chattanooga—that she did not think that merging the election would be a metro move. She stated that all cities are unique—whatever their date of elections; that anytime we can save money, it can be of benefit—repetitively. She mentioned the signs in October and November in the election cycle

for president; that we will have signs, robo calls, and clutter—that the election is ongoing and these things would already be here; that if we moved the election to August and November, we would be free of clutter in December and during religious holidays. Also, she mentioned there would be less of an issue campaigning when people are getting their taxes done.

Councilwoman Scott stated the other issue about the City of Chattanooga not being partisan; that others are not either; that having it at this time does not make it a partisan race; that if it does not matter about saving money and having less clutter for a smaller period of time, then okay, but her constituents were favorable of this and think that we should do it; that we have two cities doing this during the coldest months and costing more money.

Councilman Benson wanted to speak and Councilman Rico reminded that he had given his time to Councilwoman Scott because Roberts Rules of Order stated that someone for and against could speak. Councilman Benson disagreed.

Councilman Rico stated that in all political races, it was very important in his opinion to focus on the people running; that we could get the State, County and Federal involved, but the City is important to us—that people focus on who we are and what we stand for.

Councilman Benson stated that in his experience “If it is not broken, don’t mess with it”; that legislative people are elected by the people and when everyone else is running, we will be lost; that we need better representation for this legislative body and only this one election should be the focus. He noted that it was more expensive to run a National, State, and County election, mentioning the law of supply and demand—that the price would go up for billboards. He stated that he did not start in November; that usually city elections are started after the national election and Christmas; that it is more economical to run in January and February and not confuse this with the National, State, and County elections; that there is a County Commissioner in each district and people could get confused as to who is running for County Commission and who is running for City Council. He stated that if it is not broken, tell him why this should be fixed?

Councilman Gilbert stated that what Councilman Benson is talking about is true concerning billboards and signs; that availability would be slim at the same time, and the city election would get lost; that Councilman Rico is correct—that we would not be able to get the issues out; that it would look like the Presidential race and Congressional race were outweighing us and more important; that they could afford this; that the election time we have now is currently the best practice to get the message across—that otherwise we would get lost in the shuffle.

Chairman Murphy stated that if it were less expensive to run, it would help our challengers.

Councilwoman Robinson stated that Councilman Murphy had struck a chord—that we are unique, and we are non-partisan, and we govern irrespectively of the issue of whether it is a Republican or Democrat issue. She stated that we work for the people and our votes are not along party lines, which is very, very different from any other governmental body; to divide people up would be a terrible mistake.

Councilman Rico urged to leave the costs of billboards out of this discussion—that people are focusing on us, and we should not act like the cost of running an election is a big part of this.

Councilman Gilbert responded that it is not the cost, but it is a factor; that many don't have the resources, and it is a factor in getting people out to vote for a city person and so that we can give our "spiel". He urged to leave it like it is and go out and meet our constituents—that he had to run twice.

Councilwoman Scott stated that she would point out something to think about—financial and using the taxpayers' funds to pay for an election; that this is not based on what it would take to run for office—that finances should be focused on in determining the cost of an election.

INTERNAL AUDITOR CHARTER CHANGE

Councilman Benson explained that he was advocating minor changes and some fine tuning—that there were two details—one was the market rate for the salary of the Auditor—that he thought this was too broad—that it should be market rate in Tennessee and also additional experience and education should be considered in establishing the salary. On the second detail, he stated that he had talked to two members of the Audit Committee, and they had no objection to this—that to terminate the Auditor, it takes five out of six members. Chairman Murphy corrected that it was 2/3rds or four out of five. Councilman Benson went on to mention filibuster majority, thinking that it should be changed to simple majority—three out of five—that it should say simple majority and also say market rate be the same as anywhere in Tennessee.

Councilwoman Robinson stated that she shared the same concerns with Councilman Benson; that when we voted on this, there had been a lot of work, and she supported this in principle, but she felt that it needed some fine tuning to make it work in Chattanooga, and these minor changes would be a good idea for our citizens.

Councilwoman Ladd stated that her viewpoint was simple—we should not take this back to referendum and ask the citizens to vote on something they had already voted on; that it was not worthy of the time nor money to put it back on the ballot; that there are Audit Committees in a variety of different places, with one of our members appointed by the Mayor and one by us and three by independent professional boards—that she thought we had the right

professional mix and just did not think this was worthy of coming back with a referendum; that the public had voted, and she did not recommend doing this now.

Councilman Rico responded to “market value”, stating that the County Auditor makes more than ours does—that it is “market value” with other cities comparable to our size; that we needed to get politics out of this, and he did not understand our politicizing this—let the Audit Committee do their job.

Councilwoman Scott stated that she thought we should trust the Audit Committee; that they know the market value and belaboring this is micro-management; that this committee requested an explanation in depth multiple times, and some who are talking against it now were for it. She stated to quote Councilman Benson, “This is not broken” and did not need to be fixed; that later on it could be re-visited. She stated the thing that worried her was spending this amount of time on something that has been approved by the Audit Committee and the City Council and has been heard three times and has been revised and 73% voted for this; that tweaking this again is not a simple thing and amounts to a nullification of the peoples’ votes and is a “do over”, and to “do over” just to “do over” is not right; that a good place to begin today is to not send it back; that the public do not want to keep getting this back till everyone gets their way.

Councilwoman Ladd mentioned that appointments to the audit panel consists of two professional societies who appoint two each.

In speaking to the idea that this is injecting politics back into the auditor position, Chairman Murphy acknowledged that it is good to have independence but you also want accountability—that what was passed is confusing.

Councilman Benson acknowledged that he voted for the independent auditor; however some are saying that this puts politics back in as if politics were a “bad” thing—that politics are just people; that we need some connection and control of tax money. As to the idea that we knew what we were voting on—he did not think so—that the summary caption is what was voted on and two small things need to be changed. He again noted that when this came before the Council, he voted for this but also noted that during the election yard signs went up, making the position of auditor political—that politics is not a bad word.

Councilwoman Scott noted that members of the Audit Committee are here and asked the Chair if they could tell us—that the full text of this could be read in the paper, and she asked did we “hallucinate!” She stated that word for word it was in the paper, and (a) did we think the people who voted can’t read? and (b) do we think they can’t understand what they are voting on? She noted that this passed 73% of the vote, and the people are not dumb and to insinuate this is not a wonderful thing.

Councilwoman Ladd, too, questioned the thought that we did not actually understand—that we discussed this three times ad nauseam, and it was hard to think that we were confused on what we voted to put in this referendum; that to say that this Council was confused was disappointing to her.

Councilwoman Berz stated that she was not confused; that if “tweaks” need to happen, this would allegedly say we were confused, and she suggested “no tweaks”. She stated “Let this go forward”. She stated that David DiStefano went over these issues concerning “market rate” and “super majority”, and the definition of office space.

Mr. DiStefano stated that the first thing related was “market rate”—that would be what they thought was appropriate; that it could be defined further at a restrictive level; that they would not match the rate of New York City; that they were taxpayers, too. As for the “super majority”, their purpose was an effort to insulate the Auditor and Staff against the political influence, and there was the accountability, that Chairman Murphy spoke of, to this process. He mentioned political pressure—that people looking at a politician doing their job sometimes think it is inherently flawed; that there can be political control or with insulation have something independent—that it can’t be both ways; that there needs to be a level of independence for the City Auditor to protect from political repercussions; that we have to accept something to work efficiently, and this is the best workable option. He noted that “office space” was not first mentioned.

Chairman Murphy noted that Councilman Benson did not bring the “office space” to us. Councilwoman Berz stated that it was she who mentioned this. Chairman Murphy mentioned the Public Advocate in New York City that was accountable. Mr. DiStefano responded that there are different models for different functions.

Councilman Benson related to Mr. DiStefano that he had talked to him and also to Henry Hoss, and both seemed to understand what he was trying to do; that he thought we had over-excelled in insulation, and he wanted to know how Mr. DiStefano justified four out of five to terminate? Mr. DiStefano responded that they were seeking to make sure issues are clear and that we get the appropriate response to some issues. Councilman Benson noted that even if the Council wanted to do something, they could not; that out of the majority of five people, he thought he could cultivate two people to save his job; that this was an easy way to secure yourself for life. Mr. DiStefano mentioned an individual in disfavor, such as our former sheriff issue, where he left office—that the issue would have to be substantial.

Councilwoman Scott stated that Councilman Benson had mentioned working on other members of the Council—that this gets done a lot—that these are the very things we are trying

to remove this auditor position from; that the City Council or Mayor puts forth initiatives and this body approves or disapproves; that by having the same people control the auditor position—executive and legislative—is a conflict of interest and not in the best interest of the public; that this needs to be independent; that she trusted the Audit Committee and the City Council, and this plan allows this to happen; that we do not need to “marry” politics to what goes on—that the City Auditor needs to be pristine and untouchable in investigating unsound things.

NEW CITY FLAG

Matt Lea stated that the Mayor had asked him to attend this meeting to answer any questions relating to changing the flag; that he had a picture of the existing flag and also the new one and could also relate the history.

Councilman Benson stated that we had worked on this several years ago and got waylaid; that this was vetted by the previous Council.

Councilman McGary stated that he understood the rationale; that if this is a matter the Council has discussed that it needs to be vetted; however, he was uncomfortable voting on this without public response. Chairman Murphy noted that the idea of public input is interesting.

Mr. Lee stated that in 1923, the City Commission approved the flag; that it was not vetted by the community, and he urged caution when thinking of this; that there were problems in the community when some wished to add a symbol to the flag, and there were serious issues with racial things, and he felt that the Council should consider this themselves.

Councilman McGary stated that his understanding concurred with how we go our flag; that he thought the present flag was too similar to the State Flag, and he urged not to replicate the same mistake, but he did want to give the people an opportunity to chime in; that he was concerned with the Council being solely responsible.

Chairman Murphy stated that we were not voting on this until next week, and it was subject to deferral; that if some citizen goes “eek”, we can have at it.

Mr. Lee stated that one of the Mayor’s goals is making sure it is distinguishable and stands out; that the current flag is similar to the State Flag—the colors in general—the simple star is eastern Tennessee, and there is a large wreath of dogwoods, which is the city flower—that we had adopted a flag along with the city flower. He noted that children often ask why our flag looks like the Tennessee Flag? He stated that our goal is something that stands out.

Councilwoman Scott asked if there was an alternative design? Mr. Lee responded that we were using the older seal. Councilwoman Scott suggested that if there is an alternative design that

we put the two designs on a sheet of paper and e-mail this to the schools and let the schools choose; that she did not really care.

Councilman Benson stated that he was in the school system 35 years ago, and we should not put this back in the school system; that some might want a confederate flag; that Dave Crockett did a lot of work on this, but there was opposition.

Mr. Lee mentioned the Sons of the Confederacy.

Councilman Benson stated that he thought this would just be opening up the door. Councilwoman Scott explained to him that her suggestion was not to let the school students draw up the flag but to just to send one and an alternative and ask them which one they liked the best—that she was not advocating re-drawing the flag.

This meeting adjourned at 5:00 P.M.