

LEGAL AND LEGISLATIVE COMMITTEE

May 20, 2008

3:00 P.M.

Councilman Benson, Chairman, called the meeting of the Legal and Legislative Committee to order with Councilmen Rico, Robinson, Gaines, Page, Pierce, Bennett, and Berz present. City Attorneys Randy Nelson, Ken Fritz, and Valerie Malueg were also present; as was Management Analyst Randy Burns and Shirley Crownover, Assistant Clerk to the Council.

Others present included Dan Johnson, Matt Lea, Chief Mike Williams, Lt. Woosley, Mark Keil, Ed Hammonds, and Daisy Madison. Richard Beeland joined the meeting later.

Chairman Benson called the meeting to order and went over the Agenda—Police Department Purchases; Information Systems purchase; Wrecker and Towing Ordinance; Council's Audit Responsibilities; Menacing Dogs; Menacing Coyotes; Collection Agency Fee Agreement; and Appropriation to the Library. Chairman Benson asked if there were any other items that need discussing.

Councilman Page questioned if we were not going to talk about the replacement for Councilman Franklin?

Chairman Benson stated that we might mention the election dates.

Councilman Pierce questioned talking about the situation at all, saying that it was not worthy of being discussed.

Councilman Page stated that he thought the Council needed an update; that all he knew was what he read in the newspaper and saw on the news—nothing more. He stated that he needed an update.

Chairman Benson stated that we could put this item at the end of the agenda and see if we have time to discuss it or if we even deem it necessary to discuss it.

MIKE WILLIAMS---PURCHASES FOR POLICE DEPARTMENT

Chief Williams turned the purchases over to Lt. Woolsey, who proceeded with a purchase for a Ladder Shield. Five bids were sent out, and there was only one response—Patriot 3 Inc. in the amount of \$12,077. This is 100% grant funded. There was a second purchase that was also grant funded and a third purchase of Wireless Video Fiberscope Contract. This was sent to seven vendors and there were two responses. The recommendation was for Tactical Electrics in the amount of \$19,600. This also was 100% grant funded. **On motion of Councilwoman Bennett, seconded by Councilwoman Berz, these purchases will be recommended for approval by the entire Council.**

Councilwoman Bennett noted that she had attended a Homeland Security meeting this morning and realized how important it is for us to have State-of-the-Art technology.

Councilwoman Berz confirmed that no matching funds were needed.

Chief Williams went over another purchase for Sig Sauer Handguns, with Gulf States Distributors being the best bid in the amount of \$33,250.00. Chief Williams noted that this would come out of their Training Budget. **On motion of Councilwoman Robinson, seconded by Councilman Rico, this purchase will be recommended for approval by the entire Council.**

Councilman Pierce stated that he was not trying to be contrary but wanted to know if these purchases were fast-track items? Chief Williams responded that they were yearly requirements, and they had changed manufacturers. Councilman Pierce questioned why this was not handled in a Safety Committee? Chairman Benson explained that the Chairman of the Safety Committee had postponed the Safety Committee meeting. Councilman Pierce noted that there were three members of the Council on each committee, and a meeting should not be postponed. Chairman Benson reiterated that it was the Chairman of the Safety Committee that had postponed the meeting. Councilman Pierce stated that these purchases could have just come at the regular open meeting at 6:00 p.m.

Attorney Nelson added that Administration feels like if there are any questions up front that they could be answered at this time (committee meeting).

Councilman Pierce stated he felt like voting on these in committee makes it a “done deal”. He questioned who the committee was making the recommendation for approval to? Chairman Benson responded that the recommendation is made to the Council, with Councilman Pierce noting that the Council is all present right now.

MARK KEIL—PURCHASE FOR INFORMATION SYSTEMS

Mark Keil was present to go over a change order for a contract that was entered into six months ago; we had been working with a contractor on port security and Federal funds “dried up”, and he had to use Staff. He noted that the “not to exceed amount” had been reached.

Councilman Pierce questioned if we needed a Resolution on this? Mr. Keil explained that it was just a normal purchase. Councilman Pierce noted that we had nothing in writing concerning this before us.

Councilwoman Bennett confirmed that this would come before the Council this evening as a purchase.

On motion of Councilwoman Robinson, seconded by Councilwoman Bennett, this will be recommended for approval by the entire Council.

WRECKER AND TOWING ORDINANCE—PHIL NOBLETT

Attorney Nelson stated that Attorney Noblett is in Knoxville today; that he had a copy of the entire Wrecking and Towing Service Ordinance, with proposed changes in “red”. (This Ordinance is made a part of this minute material). Attorney Nelson stated that it would be the homework assignment for Councilmembers to read this in the next two weeks, when Attorney Noblett will be able to be present.

Chairman Benson had a Synopsis of Changes to the Chattanooga Wrecker and Towing Service Ordinance, which is made a part of this minute material. He explained that this brings us around to another way other than one company with rotation; that other Towing Services can be involved in order to clear traffic around wrecks; that it spreads the playing field. It also requires that an individual has to be put on record if they require a certain Wrecking Service. He urged Councilmembers to read this Synopsis, stating that they had two weeks to read it.

Councilman Pierce asked if Wrecking Services are aware that we are making these major changes and questioned whether or not Wrecker people should not also be involved.

Chairman Benson agreed that Councilman Pierce had a point.

Councilman Pierce asked if we had a list of the major companies?

Attorney Ken Fritz responded that there were two Recovery companies. Councilman Pierce stated that they needed a copy of these changes. Attorney Fritz added that the Beer and Wrecker Board would also like to have a copy of this, too.

Chairman Benson asked if the Beer and Wrecker Board was recommending these changes? Attorney Fritz responded that they were aware that changes were coming.

Councilman Pierce questioned whether or not we should give this to the Beer Board at this point. Attorney Fritz responded that they had seen some of the prior changes, and they should see this also.

Attorney Nelson stated that we would be back with this in two weeks; that a list of the companies could be obtained, and we could send them a copy of the Synopsis and the Ordinance.

COUNCIL'S AUDIT RESPONSIBILITES

Chairman Benson directed attention to Page 3 of the Synopsis that outlines the Position Title of Management Analyst. He stated that Randy Burns had given him a copy of this and that this was the job he applied for.

Councilwoman Bennett agreed that actually Randy Burns had pulled up his job description and that technically he is the Internal Auditor for the Council—that he technically meets the letter of the law. The question is, she stated, what does the Council want this Internal Auditor to do for us; that he was not being used in this regard and that we may need to take a look at the role to see how much oversight he should have and how the Council wants to use his position.

Chairman Benson stated that a meeting had been held and that Mr. Sewell was there; that there seemed to be an agreement that Mr. Burns and Mr. Sewell could work together and coordinate and that Randy Burns would have the oversight.

Councilwoman Bennett pointed out that Mr. Burns was not staffed for auditing services; however he could technically be considered our Internal Auditor; that technically he was here and met the letter of the law; that the question remains how we use his position to provide this kind of oversight; that presently he is not being utilized in this position.

Councilwoman Berz stated that she was impressed by Mr. Sewell's presentation; that if we do meet the letter of the law, that when the Council starts their planning that we can have this as an agenda item; that it is no one's intent to not have this auditing function.

Councilman Pierce stated that we were talking about Randy Burn's position as being the same as an Internal Auditor, and the Charter specifies that we have an Internal Auditor and not just a position—that we are putting Mr. Sewell's position above Randy Burn's position; that he felt the Council was trying to shirk their responsibility; that the Internal Audit Office, he thought, had done a good job to this point—that there had been many indictments in this Administration but not one conviction. He questioned what kind of cases we were presenting? He emphasized that this was nothing against Mr. Sewell. He went on to say that the auditing should be under the Council's purview and not the Mayor's Office. He noted that the Charter says nothing about a joint position; that the Internal Audit Division has a half million dollar budget with their Staff, and it should be the Council's responsibility. He stated that he was one of the plaintiffs that put this form of government and Charter in place, and we should have had an Internal Auditor in place 15 years ago. He stated that he just wanted the Council to do what it should do. He went on to say that this is a power struggle; that he did not want to name the ones who had been indicted, but questioned what was audited and who. He stated that he had not wanted to be in the meeting where this was earlier discussed but now he wished he had been.

Councilman Page stated that he thought there was a possibility that this role (Internal Auditor for Council) could be developed by this way; that we had a Budget meeting and there was a good discussion by Mr. Sewell and others; that there could be a dual reporting system to both Administration and the Council; that he did believe there is a cost issue and that Internal Audit should be budgeted this way to be cost-effective. He emphasized that there could be a dual role between the Council and Administration, and we could have Randy Burns as a liaison to interface and have regular reports. He stated that he thought this could work effectively and that many cities are doing this. He stated that he thought this might be our best approach.

Councilman Pierce responded "What does the Charter say?" He noted that the Charter says independent and not dual.

Councilman Page pointed out that the Council had not had an Internal Auditor for a number of years and to make it dual would take a Charter change, and the Public would have to vote on it. He noted that we would have to change the Charter.

Chairman Benson stated that Councilman Pierce had made implications about indictments, saying nothing had been done about them; that he had left the impression that they were weak indictments. He stated that he would like to hear what our Attorney has to say about this.

Attorney Nelson responded that he had no idea; that he did not practice criminal law; that unless there had been strong cases, there would not have been indictments.

Councilman Pierce stated that he could clearly say that he was arrested “untruly” and was accused falsely, and he was denying the charges; that he had not been convicted, and the case was still in court; that he might still get convicted.

Councilwoman Berz stated that this all happened before her time here; that the issue of an Internal Auditor needed to be addressed; that Chairman Bennett has scheduled a Strategic Planning Session, and the Council needed to design what this job should look like.

Councilman Pierce agreed that we needed to design the job; that all he heard about was space—that all of our space belongs to the City.

Councilman Berz stated that she did not think there was any disagreement—that we just needed to see what this position would look like.

Councilman Page asked if we were going to put this Charter change on the ballot, when would we have to make a decision? Attorney Nelson responded 90 days before the November election, which would be in early August.

Councilman Pierce stated that he did not agree with putting this on the ballot—that this was just a power struggle.

Councilwoman Bennett stated that she had asked Dan Johnson a question about the Organizational Chart and where the role of Internal Auditor fell—that it was not under the Mayor’s office, and the role of the Auditor was independent. She stated that she felt we could still have dual reporting, and this would be the highest and best use; that we could also have the oversight as the role of the Council. She stated that there was a continuing interest in dual reporting—that a lot of this is Administration and there is a certain part that we have to deal with—that the Council is not in the “loop”, and we should be; that we may technically have some title but the job is not being done as it should be done, and we need to determine how it should interface.

Chairman Benson noted that we were talking about the Internal Auditor answering to the Mayor and the Council, and this is not what the Charter says.

Councilwoman Bennett suggested bringing MTAS into this.

MENACING DOGS ORDINANCE—VALERIE MALUEG

Attorney Malueg explained that we have a “Potentially Dangerous Dog” Ordinance and a “Dangerous Dog” Ordinance, but this Ordinance does not address a “Menacing Dog” She read from a new proposed Ordinance **Section 1** that provides the following definition “*Menacing fashion*” means that a dog would cause any person being chased or approached to reasonably believe that the dog will cause physical injury to that person”. She explained that the “Potentially Dangerous Dog” or “Dangerous Dog” was amended to read “Menacing fashion”. **Section 2** was amended to read “*has, without provocation, chased or approached a person in either a menacing fashion or an apparent attitude of attack within the prior 18-month period while that dog was off the property of its owner*”. **Section 2** further reads “*has, without provocation, on two (2) or more occasions within the prior 18-month period, chased or approached a person in either a menacing fashion or an apparent attitude of attack within the prior 18-month period while that dog was off the property of its owner*”. Attorney Malueg added that the distinction between a “potentially dangerous dog” and a “dangerous dog” is one of degree; that it is more onerous if it is deemed “dangerous”. She noted that this was a proposed Ordinance to define the meaning of “menacing fashion”.

Councilman Page stated that this was confusing. He wanted to know how the decision is made if a dog is “menacing”—who makes the decision? Ms. Malueg responded that the Animal Services Officer must believe that this had occurred and a citation will be issued; that the dog owner is given a hearing, and the determination is made by a Court; that Animal Services must have probable cause; that if a dog is deemed “potentially dangerous”, the person has to have been chased or approached in a “menacing fashion” within 18 months; that a witness would have to appear before Court and the dog must be off its owner’s property.

Councilwoman Bennett wanted to know how this works with the Leash Law? Ms. Malueg responded that we do have dogs running at large, and there is a separate citation if a dog is not on a leash—that this is different from being deemed “potentially dangerous”; that dogs can be running at large and not be “menacing”—that this is a separate provision.

Councilwoman Bennett wanted to know where the new Animal Services Department is on this? She stated that she thought it would be important for them to “weigh” in on this; that they will be the City employees engaged in this.

Chairman Benson responded that they endorse this—that he was out there this weekend, and it was a wonderful, wonderful experience; that they have a lot on their plate right now, and it should be open by July 1st, and they support this. He stated that he appreciated Ms. Malueg’s efforts and clarity.

Councilman Pierce stated that there is a nationwide trend concerning “potentially dangerous dogs”. He asked if we could not disband ownership of these type dogs (mentioning Rottweilers); that the only time we get control is after an attack, and he did not think this Ordinance would help the matter any. He went on to say that other cities are disbanding certain dogs.

Chairman Benson advised against this, stating that we have someone in the Council Office that loves pit bulls.

Councilman Page noted that if you look at the 311 List of calls that 50% to 75% of the calls are problems with dogs; that it is important that we talk about this; that there have to be deterrents.

Ms. Malueg stated that for clarity that a dog does not just have to bite a person but can be deemed to be menacing.

Councilman Page asked if a charge is made against a dog being menacing, and it has been determined, what happens to the dog?

Ms. Malueg responded that generally the dog is impounded until there is a hearing; that if the dog is not deemed to be “potentially dangerous” or “dangerous”, then it is released to its owner; that they have to meet restrictions within 6 months.

Chairman Benson noted that the new McKamey Center will spay and neuter any dog that comes in.

On motion of Councilman Rico, seconded by Councilman Page, this Ordinance will be recommended for approval by the entire Council, with Councilman Page adding that something needs to be done, but he did not know if this was it or not.

MENACING COYOTES

Chairman Benson stated that there was a man in his district with 10 acres of land on Jenkins Road, and he had coyotes in his back yard, and they had torn up his cats—that this man had two shotguns and a .22 and stated that this was the only way he knew to get rid of them; however the man had said that someone had told him it was illegal to shoot a gun in the City, and this was the purpose of this meeting—that it was really a problem; that coyotes are adapting to our society and soon will be downtown; that all of the City is talking about the problem. He asked Attorney Nelson if you could shoot a gun in the City?

Attorney Nelson responded “yes”—that many years ago we had an Ordinance precluding shooting a gun in the City; however it was repealed in the mid 70’s or early 80’s; that the Supreme Court ruled that a conviction in City Court could result in “double jeopardy”, and this Ordinance that kept people from shooting guns in the City was repealed at this time. He noted that the only “protected animal” is a bird, noting that hunting licenses can be granted by Tennessee Wildlife for Dove Season. He confirmed that nothing precludes someone from shooting a coyote in the City, urging that they be sure they shoot what they are aiming for.

Councilman Pierce asked if this Ordinance was repealed during the massive annexation effort? Attorney Nelson responded that he did not know the timeframe, but it was not because of annexation—that it was Supreme Court ruling.

Chairman Benson stated that no city had been successful in dealing with coyotes in any other way than shooting them. Councilwoman Robinson confirmed that Chairman Benson was just talking about coyotes. Chairman Benson added that you can’t trap them, mentioning that some cities have tried a bounty system, but it had not been successful.

COLLECTION AGENCY FEE AGREEMENT ORDINANCE

It was explained to the Council that in order to have a collection agency, the City must have an Ordinance to authorize City Court to execute a Contract for collection fee services. We have been using a collection agency for five years.

Councilwoman Robinson asked if we were requested to bid it out. Attorney Fritz responded that they should bid it.

Chairman Benson asked if this would fall under Professional Services?

Ms. Madison stated that they had bid this and would re-bid it.

Councilman Pierce mentioned good success right up front, noting that people don’t mind being threatened, with Attorney Nelson agreeing that they get the “cream off the top”.

Chairman Benson asked if we were paying 40% and was told “no”—18%.

Ed Hammonds, City Court Clerk, noted that when something is turned over to a collection agency it shows up on a person's credit report.

Councilwoman Robinson wanted to know how fines accrue?

Mr. Hammonds responded that the maximum amount is \$50.00 and \$79.00 can be added in court.

Councilwoman Robinson wanted to know how much outstanding we had on the books, and Mr. Hammonds responded "quite a bit".

Attorney Nelson stated that we might be able to encourage more diligence with a shorter bidding period by getting the benefit of a closer "squeeze".

Ms. Madison explained that there is a certain amount of set-up required and changing vendors is not like buying an item—that we do need to re-bid periodically.

Attorney Nelson asked "How often?"

Ms. Madison mentioned five years.

Chairman Benson questioned if we needed to shorten the time.

Mr. Hammonds explained that anything delinquent within 90 days goes to a collection agency.

Councilman Pierce noted that it often costs more for court costs than the fine.

Ms. Madison explained that it cost 18% to pursue with letters and collection agencies; that if we authorize them to institute legal proceedings, they can do that; that it is not aggressively pursued in court for this level of fines; that we could get more aggressive.

Councilman Page mentioned that we had good collateral when people don't pay their taxes—that they will be paid when the property is sold; that his question was related to seeing other companies having two collection agencies and if one was performing better, that one would get more business.

Councilwoman Berz wanted to know what the criteria was for letting a contract?

Ms. Madison explained that it was not a bid but an RFP, and we go with the lowest and best and end up with the one we think can do the best for us.

Councilwoman Berz wanted to know if there had been a Cost Analysis on the value of going to court?

Ms. Madison responded “not really”; that we don’t pay unless they collect. She questioned to what the extent the Council wanted to go for a \$129.00 fine; that we have the option to aggressively pursue.

Attorney Nelson questioned how many cases involve automobiles?

Mr. Hammonds again noted that any judgment over 90 days goes to collection.

Attorney Nelson noted on the ones involving an automobile that we could levy.

Councilman Pierce noted that their licenses could be suspended.

Mr. Hammonds stated that if they were not paid in 30 days, the State will suspend their license, and we report these to the State.

Councilman Pierce maintained that the public does not know they will lose their licenses. Mr. Hammonds explained that the State notifies them.

Attorney Nelson noted in the case of taxes, when the parcel of property is sold we get the money; that it would be similar if we have a vehicle driven by the owner. Councilman Pierce agreed that we could seize the vehicle. Mr. Hammond noted that it would have to be a parking violation; that when a person is speeding, it does not involve the vehicle.

Attorney Nelson stated that we could study this. Attorney Fritz added that we might not want the cars.

Chairman Benson still questioned if we should shorten the time on this Ordinance? It was noted that if this Ordinance is approved, it does not say four years.

Ms. Madison explained that this just allows us to increase the fee.

On motion of Councilwoman Gaines, seconded by Councilwoman Bennett, this Ordinance will be recommended for approval by the entire Council.

Chairman Benson stated that it would be on next week’s agenda.

APPROPRIATION TO THE LIBRARY—DAISY MADISON

Ms. Madison went over **Ordinance 6(b)** on next week’s agenda that appropriates \$4,000 from the General Fund to the Chattanooga-Hamilton County Bicentennial Library as a match of Hamilton County funds received. **On motion of Councilman Page, seconded by Councilwoman Robinson, this will be recommended to the full Council for approval.**

COUNCIL VACANCY OPTIONS

At this point Chairman Benson noted that Councilman Page wanted to look into the possible options we have if a Council vacancy occurs.

Councilman Page stated that he wanted to know what is happening and what the Council actually knows about the situation—he stated that he would just “like to know what we know”.

Councilwoman Gaines stated that she would like to ask for consideration that if there are any questions relative to any case at this time, that individual Councilpersons meet with Attorney Nelson; that the Council is not a court, and we don’t have information, and the present situation does not need to be discussed publicly; that we need to act with the proper protocol and according to the law—that until a person is proven guilty and convicted, that they are innocent, and she felt it would be out of order to discuss this as the City Council is not the body to make such decisions. **Councilwoman Gaines made it in the form of a motion that this not be discussed.**

Chairman Benson noted that Councilmembers have had calls saying that he has resigned.

Councilwoman Gaines asked if there was any letter?

Chairman Benson stated that he gotten hold of him on the phone this morning and had also talked to Councilwoman Bennett and that he was very “upbeat” in saying that he was resigning, and he took it as meaning he would not be here today. He stated that they had a pleasant conversation. He asked for discussion concerning Councilwoman Gaines’ motion.

Councilman Page stated that he was in total agreement in not discussing the case; that he understood one was innocent until proven guilty—that he did not want to discuss whether he had done something wrong or not done anything wrong. He stated that he just wanted to know if he had resigned, as reported by the news media and what the date of resignation was—that he wanted facts and not fiction.

Councilwoman Bennett stated that she had not received a formal letter and that she did not have a date; that as soon as she had this information she would notify the Council and also the news media.

Councilman Page asked if he said that he would resign? Councilwoman Bennett responded that she believed that was his intention, but she had not received any letter.

Councilman Rico pointed out that we did not wait for Marti Rutherford's letter before we discussed options. He urged the Council to be fair, stating that people were "on" him about this, comparing it to the way Marti Rutherford was treated. He again urged fairness.

Councilman Pierce stated that we have discussed this enough; that we need to get further information in an attorney-client setting. **He seconded the motion made by Councilwoman Gaines.**

Chairman Benson clarified that information was only to be received in an attorney-client setting.

Councilwoman Gaines stated that we needed to wait until we had a letter of resignation and a time certain; that if the Council had questions, they should ask them to our Attorney in an Attorney-Client meeting. She questioned why we would want to carry this out publicly.

Chairman Benson stated that the committee needed to vote on the "question"—up or down.

The motion passed not to discuss this publicly, with **Councilman Rico voting "no" and Councilman Page "abstaining"**.

Chairman Benson stated that we would have an attorney-client conference on this.

The meeting was adjourned.