

## **LEGAL AND LEGISLATIVE COMMITTEE**

**July 7, 2009**

**3:20 P.M.**

Councilman Murphy, Chairman, called the meeting of the Legal and Legislative Committee to order, with Councilmen Benson, Robinson, Rico, Gilbert, Ladd, McGary, Scott, and Berz present. City Attorneys Phil Noblett and Ken Fritz and Shirley Crownover, Assistant Clerk to the Council, were also present.

Others present included Larry Zehnder, Gary Hilbert, Jim Templeton, Dan Johnson, Richard Beeland, Lee Norris, Dennis Malone, Steve Leach, Dickie Hutsell, Vicky Haley, Joe Booth, Tony Sammons, Greg Haynes, Chief Maffett, and Officer Haskins.

### **GUNS IN PARKS LEGISLATION**

Chairman Murphy called the meeting to order and called as his first witness, Adm. Zehnder. He stated that he wanted to ask Adm. Zehnder some questions for the record. He first asked him, generally speaking, what his Department's position was on the issue of guns in public places? Adm. Zehnder responded that there had been a prohibition of firearms ever since he could remember; that they could put a sign up that says it is illegal to carry a firearm; that the fact that this is posted helps them to be able to enforce this—that whether it is good or not good, it gives their rangers something to enforce.

Chairman Murphy asked him if this system was working well? Adm. Zehnder responded that there had never been an incident.

Chairman Murphy asked the cost association with re-posting? Adm. Zehnder responded that all parks have a park sign stating the rules and regulations for the park area such as “No Alcohol”, “No Camping”, and “No Firearms”, etc. This is posted in most of the large parks; that if the law requires separate signs according to the interpretation of the State Code, and it requires extra signs at all entrances that he would foresee that we would need 150 signs to be processed and installed; that in dollars and cents we were talking about \$7,500. Chairman Murphy asked if the State would provide any funds for this purpose, and the answer was “no”.

Councilman Gilbert stated that he had been involved in football and baseball for many years and guns should simply be kept out of these areas; that when dealing with children, parents often get “heated” and guns should be prohibited in parks dealing with kids.

Councilwoman Robinson echoed “absolutely”!

Councilman Rico asked if Park Rangers were armed and was told “no”.

Councilman Benson stated that it was not necessary for them to be armed; that this issue would be on the table next week.

Chairman Murphy asked for Chief Maffett to be his next witness. He questioned him about the level of training for officers. Chief Maffett responded that they get two to three months training and are re-assessed twice a year. He asked him about a concealed permit, with Chief Maffett stating a few days. Chairman Murphy questioned him about police officers that are involved in shoot-outs? Chief Maffett stated very often they don't hit anything and the bullets go astray. Chairman Murphy asked him if there were risks involved with guns in parks? Chief Maffett responded that we would have innocent people getting shot.

Councilwoman Scott stated that one of the issues that has been vocalized is that many members of the general public with gun permits feel that they are not protected in our park system. She asked if we had any statistics in regards to safety?

Chief Maffett stated that we could put rules in place to control this and there should be no problem.

Councilwoman Scott asked if there had been any public muggings or a purse snatching problem. Chief Maffett responded “no”.

Councilman McGary asked what “other similar public places” meant in the caption of the Resolution, noting that it did say public municipal parks, natural areas, historic parks, nature trails, campgrounds, forests, greenways and waterways.

Attorney Noblett responded that this meant any recreational grounds and facilities; any place that had a sign that this is a city-owned public area.

Councilman McGary asked if this meant other areas as well? Attorney Noblett responded any place we are trying to prohibit guns—that it is similar to the trespassing signs.

Councilwoman Robinson stated that she was not sure how many attended “Pops in the Park” over the weekend, but she thought there was in excess of 10,000 people with their families; that it was incomprehensible to her that our State Legislators passed a law that people could carry a gun into such a setting; that right now she felt safe in going to such events and would not hesitate but if this law takes effect, she would never feel safe anymore. She went on to say that we have spent many dollars creating such places as Coolidge Park so that families can have a safe, clean place to go and guns in these places would be a very negative thing for our community, and it would be very wrong to permit this; that we need to set up laws that people can’t go armed in parks.

Councilman Benson asked Chief Maffett if gun permits in parks would make their job harder? He responded that their job would be harder and there would be dead people lying around. Councilman Benson confirmed that it would make their job harder. Chief Maffett stated that we would be inviting trouble.

Councilman Rico stated that he agreed with this but urged the Council not to be naïve—that people do things against the law and just because we put up a sign, it won’t keep them out.

Councilman Benson added that people have DUI’s, and this is not legal.

Councilman Gilbert wanted to be sure that we would include no guns in all pee wee fields.

Adm. Zehnder responded that if they are on public grounds “yes” they would be included.

Attorney Noblett added this would include all public buildings and grounds. He went on to explain that the reason for this Resolution is different—that our Ordinance only allows a \$50.00 fine; however this would be a violation of State Law which can carry up to \$2,500; that signs need to be up by September 1, 2009 and some violations would be heard in General Sessions Court, and this would be a violation against State Law.

Councilman Benson stated that it could be anywhere up to the amount of \$2,500—that a person could be found guilty and not fined this much. Attorney Noblett again noted that it was only \$50.00 maximum under the City’s Ordinance.

Councilwoman Robinson asked the difference between guns and handguns? Attorney Noblett explained that one can carry a permit for a handgun, and it can be concealed on their body; that there are no provisions for long arm guns to begin with.

Chairman Murphy asked if this would be on next week’s agenda. Councilman Benson mentioned time pressure.

**ALCOHOLIC BEVERAGE PASS OFF ORDINANCE**

Attorney Fritz was present with this Ordinance, which he had written.

Chairman Murphy stated that this was an initiative of the Beer Board and e-mails had been sent out showing different languages from other cities in dealing with this issue. He asked Attorney Fritz if he was recommending the language in the Ordinance before us today?

Attorney Fritz explained that the language was intended to be broad to deal with all types of scenarios.

Councilwoman Berz noted that one of the people who had sent in language from their city was Nashville; that their law said something more about the permit holder. She asked if she were the owner of an establishment, how far did her responsibility go? She stated that she could see a chain of events where she would be held liable where she had sold the alcohol and then it had gone to someone else. She stated that one of the other cities had some language that gave some leeway.

Attorney Fritz responded that Nashville used the word “knowingly”. He stated that we were talking about people from 18-21 years old; that they could get it off premise by presenting an I.D.; that State Law can’t say it is covered. He stated that for some reason, our City Code does not address this and the question is to what extent a person should know; that they have some controls that are not getting the job done such as arm bands—this control is not effective. We are trying to regulate so that the responsibility is on the owner; that if an inspector goes in and sees a person who should not be drinking, why can’t an owner see the same thing?

Councilwoman Berz stated that an owner would have to affirmatively “case” his joint to make sure. She stated that “knowingly” was an important word.

Attorney Fritz stated that the Council had the option to include “knowingly”; that an owner could then say that the person had a drink, and he knew nothing about it and therefore had no responsibility; that the case in question was a person under the age of 20 who was drinking and the Beer Inspector saw it and it could be adjudicated criminally; that the Beer Board counted it a violation but the Court said “no”, because our Ordinance does not cover this.

Councilwoman Berz asked Attorney Fritz if he were suggesting that passing this Ordinance would change this? Attorney Fritz responded it would add to our Ordinance and make it clearer. Councilwoman Berz confirmed that this question came up in Court and our Ordinance was unclear and now with this language, our Ordinance would cover this.

Councilwoman Scott asked if we have laws on the book prohibiting a person from handing off drinks. She wanted to know why this person would not be identified as the one responsible?

Attorney Fritz stated that this person would be responsible if he could be located; that if he delivers a drink to a minor, the minor won't tell who gave him the drink; that identifying this person is hard.

Sgt. Haskins agreed that you can't always identify the person who passes off the drink.

Councilwoman Scott stated that it seemed we were not concerned with the person who was actually at fault and trying to find someone else on whom to place the responsibility.

Attorney Fritz explained that we were just trying to cover the situation and eliminate a loophole for the owner who says they just put the drinks out and people grab them; that this is just one scenario—they bring a tray to a table with alcoholic beverages and cokes and just leave them there—that one who is underage can pick up whatever he likes—then the Beer Inspector can walk in and catch the underage person, where the alcohol has been “passed” off; this just makes the permit holder more accountable.

Councilman McGary thanked Attorney Fritz for giving the history of this. He wanted to know what recourse a business owner had?

Attorney Fritz responded that a violation has to be found; that if an owner shows up and says they did not actually know then there can still be strict liability. He again stated that if the Council wants, they could put in the word “knowingly”; however this would be lax control.

Councilman McGary stated that he understood the need but the weakness is that it can turn into a “he said—she said” situation. He wanted to know how this could be enforced?

Attorney Fritz stated that it is whatever vote the Beer Board comes up with; that if the person takes it to Court, this is the best defense if the Beer Board knows they are going to appeal to a higher court of law.

Councilman Rico stated that this is so vague and hard to regulate and the owner has all the risk; that a server can get mad at the boss, and the boss or owner can say he did not know and be truthful about it and no one will believe him, and the server can walk out and get another job.

Attorney Fritz stated that they need to check I.D.'s.

Councilman Rico stated that an underage person can take a drink at the wrong time and the Inspector comes in and sees it, and the owner is at the mercy of the Inspector because he caught him.

Councilman Benson stated that he had been to Beer Board hearings, and they needed a better understanding; that the Chancellor brought this up and told them they needed to clear up the language so that it would be the owner's responsibility; that this is to let the owners know that they have a liability and must assume this liability; that it is their responsibility to see how alcohol is distributed to non-adults; that we will make the Beer Board impotent if we don't give them the tools they need to work with.

Attorney Fritz noted that other cities have similar laws.

Councilwoman Ladd stated that she agreed with Councilman Benson; that this is a risk a business owner takes; that every business has a risk; that certain things fall on the owner, and this is the business they chose. She stated that she saw this as viable and manageable. She went on to say that in her business she has responsibility for chemicals used—that one of her employees could concoct something at home to use, but the responsibility would still be hers and she would be responsible whether she knew it or not—that this was just a risk she had to take; that OSHA could fine her \$20,000, but she was responsible, and it was her risk.

Councilman Gilbert stated that he agreed with Councilwoman Ladd; that he had dealt with OSHA before, and they could fine him for his responsibility.

Councilman Rico also agreed; however he stated that there needed to be a penalty for the one doing the crime, too; that a server could get another job, but the establishment would suffer.

Chairman Murphy stated that if we inserted the word "knowingly", it would not move the ball forward.

Attorney Fritz agreed.

Chairman Murphy noted that a reckless stand might be contemplated; that if “passing off” occurred in a restaurant, there could still not be a liability.

Attorney Fritz responded “yes”; that patrons of 22 years old could sit down with a 20 year old and the 22 year old could have his I.D. checked and then an underage person would join and the 22 year old would order drinks.

Chairman Murphy asked if inserting the word “recklessly” would move us ahead? He questioned if this would be viable.

Attorney Fritz stated that then people would be asking him what “reckless” means; that most of the owners will say they won’t allow this; that they would use “reckless” when they say it won’t happen.

Councilwoman Berz thanked Attorney Fritz very much for his research. She stated that she had a better understanding of the goal—that it was to correct our oversight and give the law some teeth—that “knowingly” was a “hedge” word—that just from listening to “you guys” using such words could cause an argument—that this shall be a violation and maybe we even need stricter liability.

Attorney Fritz stated that the language today is a balance; that the Beer Board would accept whatever language the Council passes; that they were trying to prevent “overkill” and establish “balance”.

Councilwoman Berz stated that the goal is for the owner to be liable irrespective of “knowingly”—that alcohol in the hands of anyone under 21 is strict liability; that if we needed this, she thought we might reach the goal with even stricter language.

Attorney Fritz stated that it is whatever the Council wants.

Councilman Gilbert asked if this pertained to brown bagging also? He wanted to know if the owner would be responsible if someone brought alcohol in a brown bag and gave it to someone underage?

Sgt. Haskins stated every case has to be decided on its own merit; that if the intent is to go around the law, we would hold the club responsible; that if it could be proven otherwise, we would not hold the club responsible. He stated that the case that went to court was negligible—they set a tray down and said “have at it”, and the Judge had a problem and asked that they get him some Ordinance language that would address this.

Councilman Benson stated that this was a big problem.

**C-3 WINE SALES**

Chairman Murphy stated that he understood this was C-3 and C-7 zones and would eliminate the amount of footage from schools, etc.

Attorney Fritz stated that it was for wine only.

Chairman Murphy asked if it was when it was 15% and was told “no”—21%; that this would eliminate the footage restriction in C-3 and C-7 zones.

Councilwoman Scott asked if this would create controversy? Chairman Murphy noted that it was packaged wine only.

Councilwoman Scott asked if there had been adequate notice of this? Chairman Murphy noted that it was on next week’s agenda.

Councilman Rico stated that neighborhoods involved have had notice and the people have no problem with this. Councilman McGary added that the people involved are parents in the neighborhood and are parents of school children, and the businesses in question have procured consent.

Councilwoman Berz stated that this was a good idea but wanted to know what ramifications this might have on future areas and if a Zoning Chart had been done.

Adm. Leach explained that C-3 is downtown and C-7 is defined as North Chattanooga.

Councilwoman Berz stated she thought this was a good thing and would not have a ripple effect.

Adm. Leach stated that this was allowed in C-2 zoning—that this allows wine sales only and releases the 500 ft. setback.

Attorney Fritz asked if the Council wanted modified language on the Ordinance he had passed out with respect to persons under the age of 21?

Councilwoman Berz noted that it could be altered, with Chairman Murphy stating “not just by one person”. Councilwoman Berz still questioned if the language should not be stricter if our goal is strict liability.

Attorney Fritz explained that the Beer Board wanted some discretion.

Sgt. Haskins agreed that stricter liability might clear it up more.

The meeting adjourned at 4:00 p.m.



