

LEGAL AND LEGISLATIVE COMMITTEE

May 25, 2010

3:50 P.M.

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

Others present included Dan Johnson, Chief Maffett, Larry Zehnder, Chief Parker, Chief Rawlston, Daisy Madison, Richard Beeland, Chief Flint, and Capt. Dunn.

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

Chairman Murphy asked if there was any new business.

Councilwoman Scott stated that she had a couple of issues; that recently she got an e-mail about a report done by the Internal Auditor regarding conflicts with the City Attorney's office and their employees becoming City employees. She stated that she had a question about compliance with State Law, and one of the recommendations was to have this issue looked at. She stated that it could not be looked at by our City Attorney and questioned how we got a second opinion to see that we are totally in compliance with the issues; that based on the Internal Audit, we could get an attorney to do this or the Comptroller of Municipal Auditing; that in the Council's position of oversight, she stated that she would be more comfortable with a second opinion.

Councilwoman Berz stated that the question had been raised as to how to address this and asked if we would have to allocate funds from our budget or would we want to just make a request of the Comptroller?

Councilwoman Scott stated that we could do this at no dollars to us; that if the State Comptroller is willing to look at it, why not? She stated that this was not something that we would need to hire someone to do.

Councilwoman Ladd stated that she agreed with Councilwoman Scott; that we should ask the State Comptroller at no charge and address this concern.

Councilman Benson stated that we were having more questions than ever before; that it took a long time for the Auditor to come up with this.

Attorney McMahan suggested that MTAS might be a better resource. Councilman Benson questioned him as to why he would say that; that he did not think they would be that helpful.

Councilwoman Berz stated that our Auditor suggests we have someone to look into this—whatever wording works best.

Councilwoman Scott stated that she had a second issue; that one of the things that concerned her is the position of the Council's oversight. She read a Resolution that she had penned, "***Whereas the City Council has a duty of legislative oversight for compliance with ordinances, state and federal laws; Whereas the City Council should perform its duties in a timely manner; the Legislative Body shall be notified of municipal actions which are considered to be a potential or actual violation of municipal ordinance, state or federal law. The duty for timely reporting shall apply to, but not be limited to, the following entities: City Attorney's Office, the Internal Audit Department, and Administrators.***" She stated that she would like to suggest that the Council get full notification of issues a little sooner than we have in the past; that she felt months behind in hearing about issues, and she would like to be informed much sooner than just reading something in the newspaper. She suggested that we adopt something like this.

Councilwoman Robinson asked for an example.

Councilwoman Scott responded that we all know about sewer overflows and are horrified, but she did not know until an employee called her and told her the number of sewer overflows; that we should be under a moratorium for hooking up new people to the sewer with us having 162 overflows. She mentioned also the information about the TDEC findings—that the Council was briefly given information one day, and she did not know how many received official TDEC information; that the Council had to pull it from different places, and such information should be sent to us when it is fresh and new, and the Council should be informed of it. She stated that the Council is asked to do due diligence with a superficial view; that there were more issues that she could talk about.

Councilwoman Berz stated that Councilwoman Scott has a good point; that in looking at budget issues, the Council could make a decision that was not in the best interest of the City; that concerning Water Quality, we let it ride; that we did not have information to begin with. She stated that she really related to what Councilwoman Scott was saying; that we need input from folks; that folks will say “Did you know?” She stated that to do due diligence, we should have the knowledge to determine how we go about things and to know how this happens.

Chairman Murphy asked Captain Dunn how often allegations are made against Police Officers that are unfounded? Captain Dunn responded that he could not give him a number but probably 75% of the allegations were unfounded. Chairman Murphy asked about motor vehicle collisions involving city vehicles. Attorney McMahan responded that there was approximately one a day.

Councilwoman Berz stated that she did not think we were talking about these kinds of issues.

Chairman Murphy questioned if we wanted information from Internal Affairs on every complaint against an officer; that before we say this is great and pass it, we need to consider every potential violation.

Councilman Benson stated that he would change some of the wording—that “administrators” should be changed to “administration”. He stated that he liked the intent; that in regards to the violation of the Consent Order of the Clean Water Act, the Council was not told that everything was about to blow up. He reiterated that he liked this intent.

Chairman Murphy stated that we needed to draft something that would achieve this intent and is manageable.

Councilwoman Rico stated that he did not think anybody was trying to hide anything; that most of the time the Council could not do anything about it if they knew; that we will always be having problems, and we need to deal with them as they come along.

Councilman Gilbert stated that he agreed with Councilwoman Scott—that we can’t wait until problems come along; that he would like to have more knowledge of things before the newspapers get it; that the Council has an obligation to the public to make sound decisions, and he did not see anything wrong with this.

Councilman Rico stated that he hated to bring his issue up because the Councilman in question was not here and would think we are picking on him; that this goes back to the Code of Ethics and reviewing it and deciding whether it is a conflict of interest.

Councilman Benson stated that the Code of Ethics is not what the Council discussed and asked if this was the State or local version? Crystal Freiberg responded that MTAS gave us a model code, and we altered it. Councilman Benson stated his understanding was that you can't do anything for personal gain for your family, but it does not say "anyone" and mentioned a situation where he might tell a developer about available land, which would be for the personal gain of the developer. Ms. Freiberg stated that this Code of Ethics is straight from model rules. Councilman Rico stated that Councilman Benson, in using his example, did not lobby anyone, prompting Councilman Benson to say that he did give them information. Ms. Freiberg assured Councilman Benson that he was okay, and she stated that personal interest was defined.

Chairman Murphy stated that we have to re-visit this about ethics.

At this point he called Captain Dunn and Chief Flint to the table in regards to regulating assemblages of people. He first questioned Chief Flint, stating assuming there is 1,000 sq. ft. in a strip mall configuration, at what point do you require two separate exits? Chief Flint responded that retail was considered as mercantile and based on their codes if there are 50 or above people, two exits are required. Chairman Murphy asked him why it was important to have two exits? Chief Flint responded that they wanted them to be remote and allow people to exit two different ways to get out; that the International Fire Code says that people have to be able to safely exit.

Chairman Murphy asked Captain Dunn if this were true in retail spaces, and he responded "yes". He asked Captain Dunn if there was a particular time of day when there is greater volume and severity. Captain Dunn responded "after 11:00 p.m.". Chairman Murphy asked him how long he had been a police officer and was told that he had 28 years with the City.

Councilman Rico asked Chairman Murphy what he was getting at??

The meeting adjourned at 4:10 p.m.