

## **LEGAL AND LEGISLATIVE COMMITTEE**

**August 10, 2010**

**4:30 P.M.**

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

Others present included Dan Johnson, Fredia Kitchen, Randy Ray, Dardee Long, Donna Kelley, Mark Keil, Daisy Madison, Larry Zehnder, Madeline Green, Chief Parker, Richard Beeland and Greta Hayes. Attorney Phil Noblett joined the meeting later.

### **FRIENDS OF THE ZOO AGREEMENT**

Chairman Murphy noted that Robin Derryberry, representing Friends of the Zoo, was present; that one of the changes made to the contract was without modification; that we could pass it but Friends of the Zoo will not sign it—that he thought it was “workoutable”.

Ms. Derryberry thanked Chairman Murphy, stating that the partnership between the Friends of the Zoo and the City has been remarkable; that they had worked hard to make this the best little Zoo in America; that they wanted to come to a resolution; that the Friends of the Zoo will operate and manage the Zoo diligently. She wanted the Council to be aware of the \$850,878.95 capital investment, plus paying \$300,000 in loan repayments; that they had grown from 2.5 acres to 13 acres. She stated that they sponsor 20 events every year to keep this Zoo open; that the Friends of the Zoo go ahead and maintain the Zoo for the City. She stated that there were several alternatives.

Chairman Murphy explained that the concern was that the way the agreement is written is that if the Friends of the Zoo don't make their loan repayments, the City could offset the management fee; that a future Mayor could set the Zoo down, and there would be nothing the Friends of the Zoo could do about it.

Councilman McGary questioned the language.

Ms. Derryberry stated that there were four or five alternatives; the first being to turn the loan into a one-time appropriation; that there were other alternatives we could talk about.

Councilman Benson asked if they received the loan completely or if it were incremental? Ms. Dardee Long stated that they had received the money and had spent \$850,000 in capital investments.

Chairman Murphy stated that the Friends of the Zoo had contributed \$850,000; that the Loan was for \$2 million dollars, with \$1.7 million dollars left.

Ms. Derryberry stated that they were putting money back into a City asset, with Chairman Murphy adding that Friends of the Zoo did the capital campaign.

Ms. Long explained that in 2008 many of their pledges were for 2-5 years and the money was spread over a period of time, and they wanted to see this finished.

Councilman Benson noted that they came to the Council and stated that they did not have the money now, and the improvements could be made with this loan.

Ms. Derryberry again stated that they would like the loan made into an appropriation.

Councilman McGary noted that Ms. Madison had included this clause in question for the City's safety.

Chairman Murphy stated that there were a lot of ways to achieve a workable solution; that there were other things to do and not make the loan go away but to give them credit to leverage the debt; that there is the issue of the outside debt, and the language may say that we don't care—that it implies "you did not make all of the loan payments, and we won't pay you a management fee".

Councilman McGary stated that there were two issues—the loan itself and the language; that the language was the City's business.

Chairman Murphy stated that if the loan goes away—this problem goes away.

Councilwoman Ladd stated that in the information sheet provided, FOZ had contributed \$850,878.95 in capital investment. She asked if they raised the \$850,000.00? Ms. Long responded that during 2009, they paid \$300,000 in loan payments and \$550,000 in capital investments. Councilwoman Ladd noted that the numbers were not adding up—that the \$300,000 was in repayment and the investments were in addition.

Councilwoman Berz noted that the Friends of the Zoo had invested \$9.8 million in a city owned asset with private dollars. She asked if they knew what the asset was worth and was told "no". She stated that she was trying to "get her arms around this". She asked if this was a \$2 million dollar loan to ourselves?

Chairman Murphy stated that we needed to do a Management Agreement—that this has been muddy. Ms. Long indicated that they had paid contractors. Councilwoman Berz stated that if it is the City's asset, we should pay them ourselves.

Councilman Benson stated that the Zoo was in the “pits” when this happened; that Doug Warner came to us—that they took on a tremendous load financially. He stated that he never expected to get the money back—that he looked at it as “seed money”. He asked if we could cancel this debt?

Mr. Johnson responded “not without ramifications”. He went on to say that in 2008, the Friends of the Zoo did a tremendous job, mentioning their fundraising campaign in 2007, where they raised money to renovate the main entrance; that in 2008, they did not have the cash flow, and we loaned them \$2 million dollars with a pay back procedure; that they had made \$300,000 in payments—that it was supposed to have been \$100,000 quarterly; that they chose other capital improvements rather than paying on the loan, and the City was not consulted about this—that this goes tit for tat both ways; that \$1.7 million dollars is owed us and to protect the taxpayers, an arrangement was made to pay this back; that this is a note receivable, and the appropriation came out of the “rainy day” fund. He again stated that there would be ramifications in canceling this debt.

Ms. Madison stated that she would like to restate that everyone is proud of the Friends of the Zoo, but this is a business decision that we have made; that the loan was made under the assumption that there would be pledges later, and we provided the money upfront; that either the pledges did not come in, or they used the money for other improvements; that when we decided to appropriate these dollars, part of this process was in the Budget and some of the dollars would be in the reserve.

Chairman Murphy confirmed that this debt is part of our Reserves and not actual cash; that part of our Reserves is an IOU from Friends of the Zoo. Councilman Benson questioned if there are other IOU’s in the Reserve? Ms. Madison responded—not in the General Fund.

Councilwoman Scott asked if there was a cash flow issue because they had not made their payments? She asked if it were possible to restructure the loan over a longer period of time at a reduced rate, which would allow it to be repaid and give them some breathing time? Ms. Madison responded that this had already been done—that the Mayor has deferred the payment; that what they anticipated with the language was don’t just ignore the payments without some consultation with the City. Councilwoman Scott confirmed that this was just a “word of mouth” understanding that the loan would be deferred; that it could be put in writing and would transcend whomever might be elected and included could be that capital improvements would be asked to be transferred to the City.

Chairman Murphy stated that if they made capital improvements, it belonged to the City.

Councilwoman Scott stated that continuing to spend when you have a debt can be questionable; that this is part of our Reserves, and this was an agreement to protect the Reserve Fund and give leeway to the Zoo to meet us half way.

Councilwoman Berz stated that she had heard that we allowed them some leeway in repaying this debt and that they used money without consulting the City.

Ms. Derryberry stated that Friends of the Zoo had been very pro-active with communication with the City. Ms. Long added that they met with the Mayor, Dan Johnson and Daisy about this. Councilwoman Berz added that they spent \$850,000 on an asset that was ours without permission.

Chairman Murphy stated that it was not credit dollar for dollar—that one could spend \$45,000 in their kitchen, and their house would not be worth \$45,000 more when the work was done.

Ms. Madison stated that Administration had no intention of crippling the Zoo's ability to operate; that it was a loan with no mechanism to insure how the dollars were spent; that it should be in a manner acceptable to the City—as owner—and to look out for the loan repayment, itself. She stated that they had offered revised language to Mr. Zehnder to look at with the operators of the Zoo giving us some idea as to how the dollars are being spent; that she really did not recommend forgiving the loan as appropriate in terms of our Reserves.

Chairman Murphy asked if this was shown in the Cash Reserves as an asset?

Mr. Johnson questioned if this was the appropriate place to negotiate, stating that this issue should not have been brought here to negotiate—that this was a business arrangement.

Ms. Derryberry stated that that was not their intention either; that they met a month ago and reasonably asked to have an alternative provided for today's meeting; that they wanted to get this negotiated and move on.

Councilman McGary stated that this was enlightening to him and asked if there was a way we could get consensus for the Friends of the Zoo and Administration to work this out and then come back to the Council.

Chairman Murphy stated that this was not really well pleasing to him; that the Mayor's Agreement is before us; that we can make sure this Mayor is in accordance, but we don't know who the next Mayor will be, and this was a way to tweak this.

Ms. Derryberry stated that they had been working on this for two years.

Councilman McGary stated that this body can change this language, but the two other parties should be the ones directly involved with the loan.

Chairman Murphy stated that if Friends of the Zoo don't make their payments it can offset the management fee.

Ms. Madison stated that they had asked for alternative language from Friends of the Zoo; that she did not expect this to come up in this setting.

Councilman McGary stated that the Council has the final say on the language.

Ms. Freiberg explained that the Loan Agreement is separate from this Agreement, which is a Management Agreement; that changing the terms of the loan can't be done with this Management Agreement; that any alterations to the loan can't be made.

Councilwoman Ladd suggested deferring this. Chairman Murphy stated that it could be deferred two weeks so that the language could be worked out. Ms. Derryberry indicated that she would like for a meeting to be on the record.

Ms. Long indicated that the Friends of the Zoo wanted to be protected and wanted this language taken out and put language in that protects them; that they had a meeting in early July and agreed on a contract that did not have this language in there; that they thought they could work out the language but all the people involved should be at the table.

Ms. Derryberry indicated that they wanted to continue this discussion and for all the people involved to be around the table to come out with a resolution.

At this point, Councilman McGary asked, in regards to signs, that he would like to have a brief discussion about allowing signs in our Council chambers, asking if we could prohibit signs in the chamber?

Councilman Rico responded that we would still have the problem—that if we stopped this now, they would say we were picking on them again.

Attorney McMahan suggested waiting until September 1<sup>st</sup> or 3<sup>rd</sup>—that this is a critical date, and we could start working on the process after September 3<sup>rd</sup>; that he thought it was a good idea to do something in respect to signs.

Councilman McGary stated that this could be revisited after September 3<sup>rd</sup>.

Councilwoman Ladd asked if someone could read the Ordinance that is in place that talks about yelling out and speaking out and personal attacks to the audience; that this is a tremendous violation to order in our meetings; that you can't tell them this after they get to the podium.

Councilman Rico responded that you can't keep out personal attacks—that the Council is fair game, and there is nothing that can be done unless they are cussing the Council; that we are not just making up these rules.

Attorney McMahan agreed that we could read the rules.

Councilwoman Scott stated that she thought it would be of benefit to read the general rules of decorum to set the tone for an orderly meeting without limiting free speech; that this could be done at every single meeting.

Councilman McGary stated that Ms. O'Neal passed out an Ordinance; that he had looked at other communities, and they do things differently; that some require speakers to ask to speak in advance; that different communities do different things; that he agreed with Councilwoman Ladd and Councilwoman Scott—that the audience needs to know what we expect of them; that we should be working on making this clear that we expect certain things; that when making personal attacks, they should know that we only hear functions of the Council.

Councilman Benson stated that we could do it like we do annexations—that the City Attorney could read the rules.

Councilwoman Robinson stated that the “train had jumped the track”; that she likes the statement made by Councilwoman Ladd—that the rule is that a person can speak only two times in a 30-day period and some try to speak that have already spoken with the argument that they are speaking about a different topic—that this is not acceptable because the rule is two times; that one man had ceded him time, and “we jumped the track”. She went back to 1993, when this was written, and we had a new form of government—that we had nine representatives, and there was a great deal of arguing and disagreement, and the new Council found themselves listening to the same people week after week, and it was impeding progress—that this was not fair; that we need to get people to understand that many people need to have the privilege of speaking and to be heard; that we are not trying to repress but to hear more people.

Councilwoman Scott stated that we don't really have the ability to only hear from 5-11 people; that if the Rule speaks to only two times in the last 30 days, then that person should be at the end of the line; that some people who come down here wishing to speak have challenges, and they do not understand—that when three minutes are up, three minutes are up! She stated that we have to allow freedom of speech, even though the meetings may run longer; that we cannot inhibit someone's right to speak, but we can time them.

Councilwoman Robinson noted that the first Council was sometimes here until 12:00 p.m. and 1:00 a.m.

Councilman McGary stated that we do limit speech—that when people approach us, we let them know what we can do as a Council—that some things are not our function—that we do limit speech. Councilwoman Robinson stated that we should do this—that if it is something we have no jurisdiction over, they should not be before us.

Councilwoman Berz stated that they inform people at the beginning of the RPA meetings that they have three minutes to talk on a topic that they have jurisdiction over; that only allowing a person to speak in a 30-day period did not bother her; that it bothered her when they were not on a topic and are there for “show”; that we should not limit relevant speech—that this is the key; that we need to post these rules and follow them.

Chairman Murphy questioned if we could tell people what they can or cannot inform us about. Attorney Noblett spoke to regulation based on content; that the Council could stay in a meeting a certain amount of time and ask that the people be semi-respectful; but if you restrict based on content you get into First Amendment problems.

Councilman Gilbert stated that he agreed with Attorney Noblett—that this is in the Constitution; that people feel like they have something to say, and they have the right to say it.

Councilwoman Berz noted that there may be some Council rules that we need to change; that we are not enforcing our rules. Chairman Murphy stated that if we are not enforcing them, then we need to get rid of them.

Councilwoman Ladd stated that they have to right to speak to the Council but not to incite the audience; that we don't have to control what they say, but they should not be able to engage the audience in something like a pep rally—that she would like to see this controlled—that they can talk to the Council.

Chairman Murphy stated that the Chairman could gavel an audience “quiet”.

Councilwoman Robinson asked what the Council was supposed to do when the audience erupts into cheering and shouting? Attorney Noblett stated that the room can be cleared until things calm down. Councilwoman Robinson stated that she thought, last Tuesday, that any attempt to clear the room would have escalated; that this Chairman (Rico) had no choice but to do what he did—that this is very serious; that we need to have an understanding among ourselves and then inform our citizens; that we need to hear what they have to say to us. She went on to say that what we have now is not working and Chairman Rico is not the problem. She asked how we could conduct meetings in a civilized way and demand respect from the audience.

Councilman McGary stated that we needed to have a proper understanding of the rules before we enforce them. He suggested a sign-in sheet that contains the rules and have people sign their name that they will abide by the rules. As to free speech, he questioned whether people could contact the Council about just anything; that sometimes at meetings, people are out of bounds, and we have a non-agenda time for people to speak for three minutes; that there should be some way to tell people that this is what we hear issues about (using the example that a person might get up and tell the Council how to bake a cake); that we could show them via the Charter—that the Charter says this; that what they are talking about is not in accordance with our authority.

Attorney Noblett stated that we do recognize people on non-agenda matters, and they can say what they want to say.

Chairman Murphy pointed out that sometimes people tell us about a celebration at their church—that they can tell us about baking cakes if they want to—that we have not stopped people.

Councilman Rico stated that if they are nice about it, we don't mind what they talk about.

Councilman Gilbert stated that it is not fair—that if people take off from work to come to the Council and speak to us, we should not tell them to get out—that it is not fair; that they are taking time from their job; that we can ask them to not get rowdy—that that is what a Sergeant of Arms is for if they don't want to follow the rules, but we need to let them say what they want to say.

Councilwoman Scott stated that she agreed—that the event last week made us question—that the speakers line up in front of her; that after last week's meeting had adjourned the next person in line was an elderly lady, who told Councilwoman Scott that she had wanted to speak on another matter.

Councilwoman Robinson stated that others "hogged" the microphone, and the little old lady did not get her turn to speak.



Councilwoman Scott stated that we needed to have reasonable rules and the people should be told the rules; that if they did not follow the rules, then the Police could escort them out if they were totally violating the rules and cussing and whatever; that the meeting will go on; that they need to be told that this is not acceptable behavior.

Councilwoman Berz stated that we needed to inform people that it is all right to speak, but we have the right to request the time and place; that we should not regulate content; that if we have not informed people of the rules, they are unfamiliar to them, and they are not happy; that part of the Council's job is to listen—that the meetings might go too long, but this is what the Council gets paid to do.

Chairman Murphy questioned if just reading the rules was sufficient—he suggested making a power point and recording that will play in the assembly room up until the meeting starts at 6:00 p.m.; that the Council might get paid to have long meetings, but we will get a full dose of it within a few weeks.

Councilwoman Robinson contended that some people want the Council to adjourn; that they want the meetings to be disorderly; that if we continue to preside over the meeting and get highjacked, then we have been used; that the Chairman can “gavel” and have the person removed from the podium.

Councilwoman Ladd stated that she wanted to make sure that everyone knows that when we told the gentleman last week that he was out of speaking time, that no media reported it correctly; that this man had given his time up, which meant that he did not get two times; that he had forfeited his time, and this did not change the two times within 30 days, and this was not reported right; that the Council had a list of those who had spoken and when they spoke.

**On motion of Councilwoman Berz, seconded by Councilwoman Scott, the minutes of the previous meeting were approved.**

The meeting was adjourned at 5:30 p.m.