

**LEGAL AND LEGISLATIVE COMMITTEE**  
**NOVEMBER 9, 2010**  
**4:35 P.M.**

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

Others present included Dan Johnson, Jan Turner, Larry Zehnder, Richard Beeland, Daisy Madison and Ken Fritz.

**ETHICS REFORM**

Chairman Murphy stated that we were here today to discuss ethics, particularly a concern of Councilwoman Berz.

Councilwoman Berz stated that her concern had to do with the definition of “personal interest” in Section 2-751. This concerns some in government having an unfair advantage and how votes are cast and where there is a special interest, might a councilperson vote to enhance. She questioned how this was connected in taking it one way or another way and questioned if it would be a conflict of interest if Southern Lighting sells to the City of Chattanooga because Councilman Benson’s family is involved. She stated that she did not think this was what this Ordinance was supposed to do. She went on to say that if she had an interest she would have to disclose this and could not vote—that what this says is that no one on the City Council can do anything that smacks of doing business with the City. She used another example of Councilwoman Ladd and her cleaning business and questioned if this was the best cleaning service in the City, would this be saying that the City can’t do business with her? She stated that she was trying to figure out where this came from and why it would be wrong if she did not vote on it? She urged that the Council not get “narrow”.

Councilman Benson stated that he could tell her exactly, concerning his company or any other company; that he would not want, under any circumstances, even if he did recuse himself, Southern Lighting doing any business with the City. He explained that he might be expected to trade favors.

Councilwoman Berz stated that this is happening anyway.

Councilman Benson stated that if the City was buying from him, then he would be indebted to someone—that this was just human nature.

Councilman McGary stated that his concern was the same as Councilwoman Scott's, referring to Section 2-760 that reads "*an appointed official or an employee who violates any provision of this chapter is subject to disciplinary action*". He questioned if "censure" only applies to each other or outside and if so, what is the process of censure? He stated that this needed to be spelled out clearly so that the Council can know their responsibility and what we can and cannot do. He stated that this needed to be clarified to know the extent of our power.

Councilman Rico stated that he thought this was clear and simple—that an elected official can't do business with the City; that it is a conflict of interest and a no-no—that we just can't do it. He told of losing a \$2,000 contract with the City after he was elected, because he then worked for the City. He emphasized that we can't do business with the City.

Councilwoman Berz stated that she was not talking about anything sleezey or slimey—that we just needed to be careful of our wording.

Councilwoman Scott stated that she thought the law exempted government from doing business with any elected official that had stock in a company.

Councilman Murphy questioned if councilmembers should add a disclosure about real property? He stated that 50% own property, and we have rezoning requests and people don't know what we own. Councilman Benson stated that in such cases, a Councilperson should recuse himself. Councilman Murphy still questioned if councilmembers should not file what they owned in the City?

Councilwoman Berz pointed out that the Council votes on money for agencies, questioning what if a councilmember had a relative in a private role in an agency?

Attorney McMahan stated that an unpaid board member is not a conflict of interest.

At this point, Attorney McMahan noted that we have a big agenda for the Legal and Legislative Committee next week, concerning annexation and de-annexation—that it could be a very long Legal and Legislative Committee meeting and suggested that the meeting start at 2:00 p.m.

Councilman Benson asked when Legal and Legislative would again do "chickens"? Attorney McMahan stated that he could prepare a document that would be pro-chicken on the agenda, and the Council could vote it up or down.

Councilwoman Ladd stated that she thought we should work through more pressing issues first and put "chickens on the back burner". She stated that we have a pretty pressing amount of issues and chickens might be something that could wait until after the holidays until we get through more pressing matters.

Attorney McMahan noted that the Council also needed to discuss the recent Charter referendum and how we will handle disciplinary hearings; that the Council needs to decide what they want to do in December so that this can go into effect in January.

Chairman Murphy stated that this could also be discussed next week, and the Legal and Legislative Committee meeting could start at 2:00 p.m.

Councilwoman Ladd noted that concerning the “chicken” issue that community people would want to be involved.

The meeting adjourned at 4:55 p.m

**SAFETY COMMITTEE**  
**NOVEMBER 9, 2010**  
**4:00 P.M.**

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

Others present included Dan Johnson, Jan Turner, Larry Zehnder, Paul Page, Richard Beeland, Sgt. Haskins, Officer Topping, John Bridger, Dickie Hutsell, Missy Crutchfield, Daisy Madison, Bob Doak and Fred Weinhold. Attorney Ken Fritz joined the meeting later.

**WRECKER ORDINANCE CONCERNS**

Since several were present in the interest of this issue, Councilman Murphy agreed to let Councilman Benson proceed with the Safety Committee. Chairman Benson stated that the Council needed to critique what has been in place for a year concerning non-consensual towing on private lots; that Officer Haskins was here and also Fred Weinhold, Chairman of the Beer and Wrecker Board. It was noted that no one from the Wrecker Industry was present. Bob Doak with the Convention and Visitor's Bureau was also present. Chairman Benson noted that one complaint was if the penalty for the violation was commensurate with the violation; that we did not want to make the penalty too little to deter illegal parking but not so much that it was an exorbitant punishment. He asked Mr. Weinhold to join the Council at the table.

Mr. Weinhold referred to the new section of the Code—Non-Consensual Towing, which was different from the Beer Board's recommendation. He stated that they recommended an absolute cap of \$125 per day and \$135 per night and weekends; that there was a \$50.00 allowance for winching and unlisted charges.

Chairman Benson stated that including winching, it could reach \$350 to \$400.

Mr. Weinhold stated that the reported letter mentioned \$250, and this was discussed at the meeting last week—that a normal bill can be \$250.00 with a justification of \$135.00 cap plus \$50 for winching and \$65 for picking up the car when it is not regular business hours. He questioned this amount, with Councilman Murphy noting that they charge this "because they can". Mr. Weinhold went on to say that towing companies have been complaining, and the public reaction continues to be negative; that one thing that hit him was that when we were talking about the Ordinance, we got the viewpoint of the towing companies, the property owners, and citizens, but we did not take into account the views of our visitors; that he was concerned with our scaring off people—that rather than being a speed trap, we were becoming a towing trap, which scares people off; that he was in favor of keeping property lots clear.

Councilwoman Robinson noted that this was an unintended consequence.

Mr. Weinhold stated that we should not be negotiating with towing companies but should be concerned regarding the public, both our citizens and our visitors and come up with a number that passes the “smell test”; that \$135 is reasonable but questioned if \$250 was reasonable.

Chairman Benson asked if we were higher than Nashville and Knoxville, and was told that we were—even higher than Atlanta which is around \$100.

Councilwoman Berz stated that her concern was two-fold and not about the fee; that her concern was lack of notification to people; that people need to know what the fees are—that when people violate, we are at fault when people don’t have total notification—our responsibility is proper notification and let people know if you park in a certain place, you will be towed and the fee can be up to ----; then they have to take on the responsibility; that if they park in privately paid lots and violate, then our fees are valid; that it is up to the City to establish fees, and if we give proper notice, then those that park assume the risks.

Councilman McGary stated that he was hearing two arguments—that the towing industry was unregulated and could charge up to \$500 or \$600—that he had no idea what they were charging, but this was a figure; that he did not think the recommendation from the Beer Board and the Council differed substantially—that his point was that the difference was not substantial. He questioned what we were talking about—that the fees are now capped?

Mr. Weinhold stated that they were not capped with the Ordinance that we had passed; that there is an unlimited amount that a towing company can charge if they pick up after hours.

Councilman McGary mentioned the day and night thing and fees if the vehicle was impounded. He still questioned if we had not already set a cap.

Mr. Weinhold explained to him that there was not a cap on pick-up fees outside business hours; that when people park on Saturday, they are having to pay whatever the towing company chooses to add on.

Councilman McGary responded “then we have uncapped outside business hours”; that he thought the maximum amount was capped for day and night; that the maximum amount, including impoundment, should be capped as well; that it seemed one aspect was not capped.

Councilwoman Ladd stated that we spent three meetings hammering this out with the same arguments we are hearing today. She stated that she had seen only two letters; that it was never about the \$250 fee; that she had gone to this parking lot mentioned in the letter and signs were at every parking space telling you which businesses you could patronize. They also

stated exactly what could be charged, and all this was on these signs; that it was a true violation of this sign and people understood what they were supposed to do; that this was discussed at the last Beer Board meeting; that our visitor numbers are way up and more people are coming to Chattanooga, and we had just received **two** letters. She stated that this was not a good argument. She mentioned a letter to an editor where a person was angry over a \$11 parking ticket—that when people get angry, we get complaints. She stated that she was against re-visiting this with the same arguments; that she was not empathetic with people who park just where they want to.

Sgt. Haskins responded to Councilwoman Ladd that there might just be two letters but that we had had many calls; that it was only about non-consensual tows and those are capped but then we have storage and winching; that just to pull up a truck, there are additional fees; that a cap would help; that he worked at the pleasure of the Beer Board; that the problem with our present Ordinance is that if there is any “wobble” room, some will “wobble” through it.

Councilwoman Scott stated that she did have a problem with “piling” on charges and “one size fits all”, mentioning having to have a cap on each individual thing. She stated that all of this could not be put on a sign—that it could be up from \$125 to \$300—that there was no way of letting a person know by a sign. She was also concerned about them saying “give me the money in cash”, which was a larger snowball; that most people don’t carry cash; that the complaints she had received about wrecking companies were about a specific company rather than wrecking companies city-wide; that one or two companies are creating a problem. She asked the Attorney if the problems are with a particular area, what our options are and if we needed to investigate to find out the truth?

Attorney McMahan responded that this has been investigated—that there are two sides to the story; that the wrecking company had denied the allegations.

Councilwoman Scott stated that she was thinking more globally; that three or four complaints are the same entity. Attorney McMahan stated that this operation has a contract with a group of restaurants to tow for this particular lot that is heavily used—that they have two wreckers towing cars. She asked about the contracts—if they were money contracts? Attorney McMahan responded that they probably don’t have written contracts with the restaurants. Councilwoman Scott stated that there were some unsubstantiated rumors potentially relating to the business owners and the wrecking company (kick backs) occurring and asked if the City Ordinance stated that it is illegal to do this. She questioned how many business owners were aware of this?

Chairman Benson mentioned the list of calls we had received.

Officer Topping noted that a company could justify a \$250.00 towing fee--\$135 to tow plus \$50 for winching and an additional \$65.00 for pickup fees.

Chairman Benson mentioned that a man had told him that if he had a wreck tonight that the charge would only be \$135, and this requires a lot of reports and cleaning up of glass.

Councilman Gilbert stated that he agreed with Councilwoman Berz about the signage; that we can't predict wrecks, but when a person parks illegally, he makes a choice—that he had no sympathy for the violator—that he deserved it. Chairman Benson asked him how **much** the person deserved?

Councilman Rico stated that he thought we had a cap and mentioned a person who got a bill for \$700; that he got a call about this; that he went the next day to get his car; that the bill was negotiated down; that loopholes cause problems.

Councilman McGary stated that he did not wish to revisit this. He asked if there was a loophole?

Mr. Weinhold explained that there was a loophole used by wrecking companies that allows them to charge a pick-up fee, which is additional. He mentioned a phrase in the Ordinance which is not capped—that this was their logic for the \$65.00.

Councilman McGary wanted to know what constitutes a pick-up fee.

Councilwoman Berz stated that we had spent a lot of time on this and thought we had regulated everything—now we find out that there is a different section.

Attorney McMahan explained that it was an after-hours pick-up fee. Councilwoman Berz stated that she thought we regulated this. Attorney Fritz explained that it is \$20.00 if a person has to be called in; that he was not clear about the winching—that he thought winching was used when the car is off the road.

Mr. Weinhold mentioned Section 35.163 Paragraph 9, which reads about an additional charge, which is after regular business hours—that Mr. Gross pointed this out. Councilwoman Berz still maintained that she thought we regulated this. Mr. Weinhold explained that we did not cap this—that the winching fee was \$50.00.

Councilman Murphy stated that if we are going to regulate this, we need to define winching and when they use a winch; that if a car is off the side of the road, a winch is needed; that we need to define "winch" because it is being abused; that he still thought the costs were exorbitantly high and unfair to our visitors—that visitors don't know the names of all the restaurants; that someone who has been here for ten years might; that he thought this was being abused and that there was a loophole, which needed to be closed and we needed to define "winching".

Councilman McGary asked if it were possible for the Ordinance to say that it is our intent as a Council when you add up all the charges that it cannot exceed (x) amount—that it can be no more—that this is the maximum amount, mentioning \$400.00.

Attorney McMahan responded that he thought \$200.00 would be more in line as the maximum; that storage can be anywhere from one day to a week to three months—that a daily storage fee is not abusing anyone.

Councilman McGary stated that our intent is to cap it; that as much as possible we need to have an Ordinance to communicate, and we should set the standard.

Attorney McMahan stated that the cap could be \$250.00, including two to three days storage, but it should not include indefinite storage; that it could say up to \$250.00.

**Bob Doak** spoke next. He stated that he expected our visitors to be treated fairly; that he agreed if they violated, they should be penalized—what amount, he was not sure—that \$250 seemed high to him; that we need to treat our guests fairly and set the cap; that he did not realize all the various components to this; that tourists would get their vehicle out of storage as soon as possible; that he did not want our city to be known for towing cars; that he wanted people treated fairly.

Chairman Benson asked about a ceiling? Councilman Murphy stated that we needed to close the loophole and define winching and set a cap.

Councilman McGary asked for defining the loophole, defining winching, and setting a **maximum** amount.

Sgt. Haskins asked about a limit to the drop fee? Councilman Murphy stated if the towing truck had not moved away, it should be only \$75.00.

Attorney McMahan stated that his office would bring back something with “blank” figures.

Councilwoman Scott asked if people had to have a license to do police tows? She asked if it were the same for private towing and was told “no”. She asked if wrecker companies were not following the rules, what the penalty would be? She was told they would be cited to court and the maximum fine would be \$50.00.

Chairman Benson stated that there was another topic to be discussed—that the old part of the Ordinance stated that a towing company had to have a telephone. Mr. Weinhold stated that this was in 1986 and pertained to a land line; that now we have cell phones and etc.; that most companies use regular land lines but a few say that a cell phone meets the requirements of the



Ordinance; that 911 people need to be able to get a direct address from a land line. He stated that we needed to define this.

Councilwoman Berz stated that she had sat in on meetings; that we needed to speak in English and call it a land line.

Mr. Weinhold noted that they tried to allow for more flexibility for changes in technology.

Councilwoman Berz stated that she felt we should be very clear and use English and say “land line” telephone.

Councilman Murphy stated that the real issue was that we have to give 911 a location, with Councilwoman Berz stating then use 911 words and say land line.

Councilwoman Scott questioned how this would be tested? Sgt. Haskins stated that this was included in the inspection. She questioned if we do this, how will people who are using cell phones know that this will be amended and asked if we could give them a 30-day grace period?

Councilman Murphy stated that the officer would have some discretion in this.

Sgt. Haskins stated that 99% have a land line, and they know who is using a cell phone. Mr. Weinhold stated they could be reprimanded—that they are against the rules as we are interpreting them.

The meeting was adjourned at 4:35 P.M.