

**LEGAL AND LEGISLATIVE COMMITTEE**  
**FEBRUARY 2, 2011**  
**3:00 P.M.**

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

Others present included Dan Johnson, Judge Paty, Judge Bean, Lt. Carroll, Jerry Stewart, Gary Hilbert, Mark Timon, Chief Parker, John Bridger, Karen Rennich, Justin Holland, Dickie Hutsell, Al Chapman, Larry Zehnder, Jim Templeton, Richard Beeland, Greg Beck, Dennis Malone, Ron Swafford, Daisy Madison, Chief Dodd, and Bill Payne. Randy Burns and John Van Winkle joined the meeting later. Also joining the meeting later were Attorney Noblett, Brian Shults, and Officer Collins.

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

**CONCERNS OF JUDGES PATY AND BEAN**

Chairman Murphy noted that we would take the issue of the Judges first and called on Judge Paty.

Judge Paty thanked the Council for allowing the opportunity to address them concerning the possible move of the City Court Clerk's Office and City Court. (A complete copy of her remarks is attached to these minutes as soon as available). She stated that no one from the Mayor's Office had contacted her about the move or given any justification—that what she had heard with second or third hand; that she learned about it first after reading an article in the Times-Free Press. She stated that it was not the Mayor's decision to move court but should be based on a council vote. She noted that renovations were being made to the Tennessee American building and asked if this had been approved and allocated. She noted that measurements had been taken at their office, and the building is being painted. She referred to a Requisition in the amount of \$6,000 for cable and connectivity and questioned how this was approved and allocated, again stating that her information was second and third hand. She stated that this renovation needed to stop until a determination is made by the City Council; that there had been no feasibility study or figures for the cost.

She went on to say that there were three branches of government and all are elected officials; that when City Hall was renovated, she did not question the Mayor because it was not in her judgement; that the Mayor was planning to spend more money on a building that was not designed for a court—that it would be the same as the Judicial Branch asking the Mayor to move out of City Hall. She added that they were safe and secure and easily accessible. She

also noted that the City had contributed \$4 million towards the construction of the Courts Building and no rent was paid for its use—that money was pro-rated for the City's share of utilities and security, and if the court was moved, all of these costs would be borne by the City.

She and Judge Bean extended an invitation to the Council to come to the Court Building to see the security entry and accessibility. She noted that probably most of the Council had been to the Court Building but maybe had not seen the entire layout and where the prisoners are held. She noted that the old Water Co. has no holding cell, and they could not safely transport prisoners; that this was not a well-thought out plan and had not been fully considered. She noted that the Mayor had talked about consolidation of the courts and questioned if it was to be "consolidation or separation"? She went on to talk about safety and security issues and convenience to the public, which is covered in her report; also the part that police officers play. She mentioned the parking issue and ended her remarks by saying that the move is not logical, and the building was not large enough to hold litigants—also adhering to the Fire Code and Handicap accessibility. She talked more about the expense of moving and the expensive equipment that would have to be moved—which would not be a cheap proposition. She emphasized that the Council was the body to make this decision and that moving would be a great setback to the City.

Judge Bean spoke next and thanked the Council for letting them make an appearance concerning this dispute. He stated that he had worked with Judge Paty—that she works hard and is very conscientious—that they both worked hard and were team players. He noted that he had taken a car allowance but Judge Paty had not; that she did not even have a city phone. He went on to say that he was a long time supporter of Mayor Littlefield, mentioning an incident about the ridge cut in 2000—that he and Mayor Littlefield had a long friendship, but he did feel it was his duty to voice his opinion. He mentioned to exhibits that he would give to the Council—one legal and one historical exhibit. He mentioned the part that Mayor Littlefield had played in moving city court to a first-class facility. He noted that in the last two and one-half years that Administration had not appointed a City Court Clerk because of the plan to consolidate the courts and now that seems to have changed; that last summer when the tax increase was being talked about, nothing was said about City Court—that this was something that had come up recently. He went on to say that City Court does not have to make money, but they were in the "black" with \$4 million dollars annually—that even after the salaries of the judges, the clerk and court officers, there was a 75% profit. He stated that he really did not know why this issue had come up; that they did not ask where the money went. He mentioned a shooting that had happened in City Court in the past and that the city had wanted more security. He noted that the move would mean additional parking spaces and security guards that would have to be hired by the City. He mentioned another main issue—the Indemnification Agreement—Article 4, which he read that says the County will be liable and the City will be held harmless—that if they moved down here, the City would bear all of the liability.

Judge Bean stated that Mayor Littlefield had graciously took him through the facility across the street, and it was way too small—that it would be the smallest court room in Hamilton County, and the top floor would not sustain a court room; that with security being at the front door, people would have to stand out in the cold. He stated that he did not blame the Mayor for wanting to use the building—that he had wanted to use it for the Office of Sustainability but Dave Crockett turned it down. He mentioned that sometimes people had to be “tased” in City Court and wrestled down—that these were changing times and to have security in place, we would have to hire a lot of different people. He, too, stated that this was a Council “call”—that they had approved the \$4 million dollars for the new Court Building. He noted that the Council does not represent them, nor the Mayor, but the people who elected them and such a move would be a travesty to the people.

He went on to say that everyone was entitled to dignity and to come down from a beautiful court building did not make sense to him and questioned why we wanted to go backwards; that it made no sense, and he hoped the Council would vote “no”.

Councilman Gilbert thanked the Judges for coming and questioned if the only cost for the Court Building was utilities and no fee for rent? Judge Paty noted that there was a pro-rata charge for security, but it was not considered rent. Judge Bean noted that the cost was \$125,000 annually. Councilman Gilbert questioned if the cost would be the same if they moved. Judge Paty responded that there would be a duplication, and the City would be paying more. Judge Bean agreed that there would be a greater cost for security. Councilman Gilbert asked Administration if the cost would be the same or not the same? He went on to say that it did not seem to make sense to move and asked if there were any other expenses that the Council did not know about?

Dan Johnson stated that from what he understood, we would save \$50,000, mentioning court cases and how they are disposed of.

Councilman Gilbert again stated that it did not make sense to move.

Mr. Johnson noted that the building in question had been here for 70 years; that they were painting it and getting it in proper shape; that the County used it for three years for the Clerk and Master, and they had some of the same aspects as City Court; that City Court only handled traffic tickets and no high security was needed; that the traffic was not the same. He added that he was not trying to justify the move.

Judge Paty pointed out that the Clerk and Master and other court was a temporary arrangement, again mentioning the \$6,000 requisition for cable and connectivity.

Councilwoman Berz stated that she was probably the only one in the room who did not read the article about this; that she was coming into this “cold”. She mentioned that we needed a Cost Benefits Analysis and that she believed in the separation of the three branches of government; that the Council needed some explanation as to why this decision was made. She asked if there was anyone present in Administration that could answer this?

Councilman Benson stated that the problem was a breakdown in communication; that the relationship between Administration and Legislation was more and more distant, also the Judicial and moving them in closer proximity might eliminate some of the breakdown. He mentioned that former Judge Williams brought order to the City Court and gave monthly reports from the City Judges as to fines and fees; that he presented a monthly report.

Judge Bean responded that the City Court Clerk’s office was out of their jurisdiction. Councilman Benson still maintained that Judge Williams was here monthly, with Judge Bean again stating that they were not over the City Court Clerk. Councilman Benson stated that the Judges had given their reasons against the move, and the Mayor should be allowed to give his reasons for the move; that the Council needs a better sense of what is taking place—that it might be that the Sessions Judges could handle this. Judge Bean then asked if they were going to make them Sessions Judges?

As to monthly reports, Judge Paty explained that they did not compute the information; that this is done by the Court Clerk’s office, and then it goes to Finance and is readily accessible; that no one had asked for any information, but the figures were readily available; that they were not here to make money but that was the nature of the beast. She emphasized that the figures were readily accessible, but they were not over the Court Clerk’s office any longer.

Chairman Murphy noted that an invitation had been extended to visit the Court Building and asked who the Council should contact about this and when it could be arranged? Judge Paty responded any day between 1:00 and 3:00 P.M., somewhere around 1:30 to 2:30 P.M.; that they would take the Council around to look at the building, including the tunnel that prisoners come through that is not accessible to the public; that they could make this available any day. Chairman Murphy asked if they should e-mail. Judge Paty said either e-mail or call her office.

Councilwoman Scott stated that there was clearly a breakdown in communication between the three branches; that as Councilwoman Berz mentioned, we needed to more clear about all the costs and benefits and needed to know what has been spent and what would need to be spent. She asked if anyone knew what had currently been spent?

Ms. Madison responded that she did not know the numbers but could get them.

Councilwoman Scott stated that a separate session might be needed before one of the Council meetings because of the complexity of this issue.

Councilwoman Ladd stated that there was not a breakdown in communication but **no** communication at all; that there had been no indepth discussion on this dais; that she agreed with Councilwoman Scott and thought we needed to have a response from Administration as to what they intend to do or if this is just a story with “run away legs”; that we needed the initial plan, and we need a plan as to the cost line by line before the Council can move forward; that this needed to stop in its tracks, and we needed to set a meeting with Administration.

Councilwoman Robinson stated that she simply wanted to ask why we are having this discussion? She stated that she was not aware of this issue and wanted to know why it was being suggested; that \$50,000 did not appear to be that much of a savings; that there were a lot of issues, and she wanted to know the rationale.

Councilman McGary stated that he appreciated what the Vice Chairman had said—that it was one thing to hear that there was no communication and someone needed to bear some responsibility; that the Council needed to be given adequate information as to how this decision had been made, and the responsible party needed to explain how the decision was made; that the Council needed good information; that this was embarrassing and a time-wasting effort.

Councilman Gilbert asked that Administration bring the Council a presentation and that the two Judges be present at that time.

Judge Bean stated that they would be glad to meet anytime and told Councilman Benson that they would be glad to submit reports, again stating that the Judges were not over the City Court Clerk’s office.

At this time, the Legal and Legislative Committee was suspended at 3:45 P.M.

**At 4:00 P.M., the Legal and Legislative Committee was again in session.**

Chairman Murphy noted that Councilman Gilbert had asked for a discussion concerning the threshold level of review for Disciplinary Hearings for non-police employees. He called on Councilman Gilbert.

Councilman Gilbert stated that we had passed an Ordinance and had been waiting to discuss this again; that there had been no resolution to the issue; that employees had come to us for a change in the future.

Attorney McMahan stated that the Ordinance stands as is at the present; that any employee that gets suspended and it amounts to as much as 10% of his annual pay is entitled to an appeal; that Fire and Police employees can appeal any suspension.

Chairman Murphy stated that if an employee receives a 28-day suspension, it would not rise to 10% of salary. Attorney McMahan stated that it be more than 10% but then agreed that Chairman Murphy was right, with Chairman Murphy stating that there was a wide disparity.

At this time, Councilman Gilbert asked that Attorney Jack Benson, Jr. be allowed to speak, with Chairman Murphy asking if he was speaking the sentiments of Councilman Gilbert. Councilman Gilbert stated that his memory needed to be refreshed. Chairman Murphy noted that we were short on time and had much to cover and asked Attorney Benson to summarize briefly his position.

Attorney Benson stated that they would just like to have the word "10%" deleted. Chairman Murphy felt that this would be putting the threshold level too low; that we were going to be paying ALJ's or Administrative Law Judges to conduct these hearings, and they would have to hear every minor disagreement or infraction—that there would be a lot of minor infractions. Attorney Benson maintained that there could be some limitation on this—that perhaps it could be a smaller percentage. Chairman Murphy suggested not even using a percentage but saying two to three days.

Councilwoman Ladd stated that we did not need to micro-manage our departments; that we pay for these professional people and need to let them do their job as far as equity and compliance across the board; that we need to trust our professionals that we pay and let them work without our micro-managing them.

Councilman McGary stated that we need to revisit disciplinary hearings; that he would hate to see us shirk our responsibility. He wanted to know what other communities are doing so that we can be up to date.

Councilwoman Scott stated that she did not have enough information to make a decision and would like someone to summarize both positions—the Administration and employees' side; that the Council needs information and the time to think about this. Chairman Murphy stated that he would second this suggestion. Councilwoman Scott stated that an employee group needs to do this and then Administration address the other side if they choose to take another side. Councilwoman Berz also seconded this suggestion, adding that we were not micro-managing.

Councilman McGary stated that the issue was larger than 10% or less; that we needed wider conversation, and this was the Council's responsibility; that he would be in favor of the Council taking this on—that it is our responsibility, and he would volunteer—that we did not need to shirk our responsibility.

**SPECIAL EXCEPTION PERMITS**

Attorney Noblett was present to go over the three Special Exceptions Permits that are on next week's agenda concerning night clubs. He noted that there are special concessions for only certain activities with alcohol being served after 11:00 P.M. and with more than 100 people present. He noted that the Fire Code is also more strenuous. He explained that RPA makes a recommendation for approval and some have more conditions than others; that there is the ability to reduce the distance. He first addressed **Resolution (g)** for Michael Dean for a nightclub/bowling alley located at 6241 Perimeter Drive, Suite 109. He noted that this was a mall-type setting and there was a decrease in the buffer distance; that it was near an R-4 Special Zone.

Councilwoman Berz stated that she had no problem with this; that RPA had done a great job with their recommendations; that she had no problems with a bowling alley. She went on to say that **Resolution (h)** for Misty Dawn Powell to lease for use of a restaurant and nightclub located at 5709 Lee Highway had left out some key recommendations as to noise, etc. She asked that the Council look at her corrections. She added that Attorney Reingold was the applicant and not Misty Dawn Powell. Attorney Noblett pointed out that the new Ordinance states that it has to be in the name of the person that made application for the Beer and Liquor License; that the owner of the property is subject to having their license revoked, and the owner needs to be aware of this. Councilwoman Berz indicated that she had no problem with this but just wanted the Council to know that they had the wrong copy. Attorney Noblett noted that the revised copy has ten conditions.

Councilman McGary stated that he realized it was easier to re-write the Law rather than exceptions. He asked if based on the current code, if we were looking at these Special Exceptions as the order of the day and we would be seeing more of these coming? Attorney Noblett explained that we were trying to protect the adjoining property owners; that lots of folks create adverse effects on adjacent property owners; that we were trying to deal with this on the front end with site plans and review by RPA in order to avoid problems. Councilman McGary noted that first our Ordinance was too tight and now questioned if it would be too loose and if these Special Exceptions Permits would be the order of the day? Attorney Noblett agreed that there was some leniency in this new Ordinance but that the Council has the ultimate authority.

Councilwoman Robinson asked if Misty Dawn Powell would be holding the beer license and if we were aware if she had applied previously or had had any violations by the Beer Board? Officer Collins responded that she had not been issued another license for another location; that she had applied in March but did not open; that she was not in violation and had no prior Beer Permit. Councilwoman Robinson asked about the protocol and if these things would be checked out, such as they had never been cited? Officer Collins stated that the Beer Board gets

this information. Councilwoman Robinson stated that she thought the Council should be briefed on this.

Councilman Gilbert stated that there was one in his district that was coming up; that a person had asked for a restaurant, but she would have events like things for Masons and there could be singing and alcohol involved. He wanted to know if this would make her a nightclub? Attorney Noblett responded that just an occasional event would not turn her into a nightclub.

**Brian Shults** noted that other departments other than RPA were involved in these recommendations.

Councilwoman Berz asked if there were some problems with the applicant with the Beer Board, does the Council find out? Officer Collins stated that they do a local background check, and if there was any felony, they would be disqualified—that prior arrests were not felonies, and they could get a beer license.

Attorney Noblett went on to say that the Misty Dawn Powell case was adjacent to the airport, and there were a number of conditions; that there was a site plan of the interior; that there was a separate operator, and the operator says that they will comply; that this will be in its final form by next week. Councilwoman Berz noted that all of these requirements must be met before they are allowed to open.

The third Resolution (i) was for Joel Seiner for a nightclub/restaurant located at 5425 Highway 153, Suite 100B. The club's name is "Fanatics", and it is not open yet; they have reduced the buffer as it is adjacent to R-4 and R-1—that is a cemetery; there will be no outdoor dining adjacent to the residential zone.

Councilwoman Robinson asked if these nightclubs had to have security on site? Attorney Noblett responded that this one has security, but it is not a condition in the Ordinance. Councilwoman Robinson mentioned the incident in the Brainerd area where there was cruising, yelling, and shootings. She asked if they had to come back to us if there were problems? Attorney Noblett responded that the Council could impose conditions or revoke the permit.

Councilman Benson noted that all Special Exception Permits usually go through the Planning Commission meeting, and the Council sees their recommendations. Mr. Hutsell explained that that process could take 90 days, and they felt the process should be shorter; that they usually involved particular councilmembers, and these councilmembers would be notified to give them an idea, and they would be able to reduce the time down to 30 days—that they were trying to reduce the time period. Councilman Benson stated that if they went through the Planning Commission that notification would be given to the public. Mr. Shults stated that all property owners were notified within a 250' radius.



Councilwoman Scott asked since they were not going through the Planning Commission if there would still be a sign posted? Mr. Hutsell stated that they had discussed this and if it were the Council's pleasure, they could do this. Councilwoman Scott stated that it was certainly "her pleasure". Councilpersons Robinson and Benson echoed this.

The meeting was adjourned at 4:30 P.M.