

## LEGAL AND LEGISLATIVE COMMITTEE/SAFETY

MAY 10, 2011

3:50 P.M.

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

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

Chairman Murphy noted that some of Councilman Benson's constituents had come to us today; that we had a lot of things to discuss and one was tornado sirens; that Chief Parker and Chief Dodd were present and also Don Allen from the County. Chairman Murphy related something that he had heard concerning what New York City was doing with their 911 Program and alerting all telephones; however the Mayor had noted that they could have 12,000 guests in Manhattan, whose telephone numbers they would not have, who would need also to be notified. He stated that technology worked in new and wondrous ways; that with our mesh network, we are at the front of the pack; that the day would soon be here when Chief Parker's crews would have a picture of fire before they reached the scene and would know what equipment was needed. He called on Chief Parker.

Chief Parker stated that he would like to introduce Don Allen, who would talk about 911 and telephones and texting; that we were taking baby steps, mentioning "The Next Generation" upgrade with cell phones, stating that this was really in the beginning phases; that New York City is ahead of us, and we are not set up in Tennessee to do this with cell phones, mentioning Code Red. He called on Don Allen.

**Don Allen, Safety Director of the County,** stated that the County sent their salutations and love! He began by talking about Reverse 911 that was produced six years ago on the heels of the Sept. 11<sup>th</sup>, 2001 attack on our country; that there were limitations to this, and it was never intended for tornadoes; that there is a data base of numbers to call, and the current data base is of land lines—that this trend is going away and being replaced with cell phones. We have no list for cell phones. He stated that the success rate is 30% to 35%. Another problem is that a tornado warning is for a County and not a City; that we had had 14 tornado warnings since October and zero tornadoes. He went on to say that 911 is paying for an ad campaign for 12 months that urges people to sign up for "Alert in Hamilton County" and 21,000 people have signed up. He stated that he had been informed today by the FCC about a created "PLAN"; that this system does what New York is doing and is available for free with those having cell phones; that the date for this is April 2012; that some cell phone vendors might have this sooner. He stated that this could be used for tornado warnings, noting that we had one at 6:05 P.M. that went until 10:35 P.M. on the 27<sup>th</sup>. He stated that meetings were being held, and people in the meetings did nothing.

Mr. Allen continued, stating that he had been asked to say something about sirens; that sirens were developed originally in the Midwest many years ago; that the system has spread; that Nashville used the system and is getting ready to replace it with an outdoor warning system. He stated that the best bang for the buck is radio to alert folks—that tornadoes are a short duration.

Chairman Murphy stated that his query was that Mr. Allen and others sat in the Emergency Center where they could watch the Doppler Weather, wanting to know how this would be different from a situation where a CSX rail car overturned—that his constituents could be notified of a rail yard mishap. He stated that the National Weather Service is county-wide, giving warnings, and he knew that Mr. Allen and others were not “blind”. Mr. Allen explained that this is a composite that is not official; that they talked to dozens of people, and there were a lot of prior warnings; that there were not a lot of people who did not know about the tornadoes on April 27<sup>th</sup>. He stated that what he was concerned about was a tornado at 2:30 A.M.; that the Lord willing, we will never experience again what happened on April 27<sup>th</sup>—that he thought there were more than 12 tornadoes in Hamilton County.

Chairman Murphy asked him what the answer was for a 2:30 a.m. tornado? Mr. Allen stated using a “Noah” Alert Radio that costs about \$22; that they had been promoting this for years in Tennessee. Chairman Murphy agreed that a Noah Radio would go off with weather alerts—that he had one of those, mentioning 14 false alarms—that the solution was no different.

Councilman Gilbert talked about cell phones, noting that in snow storms cell phones are often shut down. He asked if the answer was using Noah Radio.

Mr. Allen stated that councilpersons had bragged on Public Works; that he would like to brag on the Chattanooga Police and Fire Departments and also the County—that they did a fantastic job. He thanked Mayor Littlefield, personally for the City’s effect. He stated that there is no easy answer—that government can’t be all things to all people, and you can’t throw money at this problem. He mentioned that text messaging was used and the word got out. He again stated that 2:30 in the morning is a tough call—that people can’t hear sirens if their television is on or their air conditioning; that it is a big problem with no easy answer.

Councilman Benson stated that he would endorse the Noah Radio, mentioning the tornado in Hamilton Mills in the mid ‘90’s; that he kept this Radio in his bedroom. He then asked Mr. Allen about the rumor of a dog that was picked up in a funnel one place and let down somewhere further off. Mr. Allen stated that was a “new” one to him—that there were a lot of rumors, but he did not think that one was true.

Chairman Murphy stated that with mesh networking, we have capabilities that were not happening before; that now fire trucks can take a photo of a wreck and send it on to those in route and all will have cameras on their phones; that this will get us to a point of operation where one can stay in a safe place and take a picture of a wreck.

Mr. Allen noted that this would be included in “New Generation 911”—photos and videos—that we were not there yet, and this was above him; that there is a Board that is taking lead on technology in Nashville.

Chairman Murphy stated that we have better technology than anyone else in the State, and he could see no reason why we can’t develop a protocol, questioning why we had to wait on Nashville since we are already ahead of them.

Mr. Allen responded that what we do has to be compatible with Nashville.

Councilwoman Scott asked Mr. Keil to tell the Council about compatibility capability.

Mr. Keil stated that we were 99% compatible; that our end is ready; that it would be very odd for the State not to use what is standard; that all 911 has to roll out at the same time. He added that we were working on flooding situations with sensory devices—that technology was being rolled out; that a county-wide tornado is a tough thing; that when we get “PLAN” in place, computers can contact them—that it is not technology that is in the way but the data base.

Mr. Allen stated that if there were no other questions, he would like to relate to constituents that have been affected by the storm that 211 United Way is processing requests; that they have a lot of resources and are doing a great job.

Chairman Murphy added that also the City of Chattanooga has a Furniture Bank Warehouse.

Councilman Scott stated that she had received calls from people in her community who wanted to help people in their community. She stated that they were wary of donating money. She wanted to know if there was a master list? Mr. Allen responded that for labor and money, 211 is the coordinator.

### **BILLBOARDS**

Attorney McMahan outlined what he thought was the best way to handle this situation, explaining that Public Works issued a sign permit on East Brainerd Rd. at Gunbarrel; that after the permit was issued, they found out that the Billboard company was going to install a bigger sign, and Public Works issued a Stop Work Order. The Billboard company then filed a suit against the City, and he would suggest that we should settle this. He stated that the best way was to hear from the Billboard company and then hear from the people against this.

**Gary Patrick, Attorney for Fairway Billboard Co.,** spoke to the issue of the sign at the corner of East Brainerd Rd. and Gunbarrel Rd. He stated that they got a permit to do this in December and then over a month later, a Stop Work Order was issued, stating that they would not be

allowed to do this; that Fairway had ordered the larger sign; that it was a digital sign and was in the warehouse. Their total expense was \$180,000. He explained that in addition, before you can get a permit you have to have a lease for the sign, making the damage well in excess of \$200,000, not including the lost revenue. He stated that after they got the Stop Work Order, they appealed to the Board of Sign Appeals and only two members voted against Fairway; that the other members abstained, and there was no decision. He stated that they then filed suit asking Chancery Court to allow them to build this sign; that they relied upon their initial permit; that the permit was issued and subsequently, a Stop Work Order was issued; that they hated and regretted what had happened, but "it is what it is". He explained that what they had agreed to do with the City was not to ask for any other such sign to be increased in size.

Chairman Murphy noted that Attorney Patrick had spoken for four and one-half minutes. He noted that Attorney Patrick had referred to a previous case and asked him the name of the case. Mr. Patrick stated that it was "Needham versus the Beer Board of Blount County"; that the case was in 1983—that such cases were not unusual. Chairman Murphy asked if this court case allowed the profits or just the expenses incurred? Mr. Patrick stated that this was not addressed in this case.

Councilman Benson asked Attorney Patrick, who represented Fairway, if he was aware that a deal was made to open Highway 153 with the understanding that East Brainerd Rd. and a portion of Hixson would be considered a Scenic Corridor. Mr. Patrick stated that he was not aware of this at this particular time. Councilman Benson went on to say that the industry was very active in the "swap" to get the Scenic Corridor, and it was well known by the billboard industry. He stated that he wondered if this action was pre-meditated, and they knew this was a loophole; that they were asking to do wrong here but not anywhere else. Attorney Patrick stated that in talking with his client, this was not pre-meditated.

Councilwoman Berz asked Attorney Patrick to go over the timeline—that it "breezed" by her.

Attorney Patrick stated that they went to the Sign Department in November of 2010 and received two permits—one to take the old sign down on December 3<sup>rd</sup> and one to construct the new sign, which was issued December 8<sup>th</sup> and then the Stop Work Order was issued January 18<sup>th</sup> of 2011. She asked Attorney Patrick if when they applied, if they had knowledge that this was a Scenic Corridor? Attorney Patrick responded that he thought they knew this was a Scenic Corridor, but they were just enlarging the sign; that this precedent had happened on Cummings Highway—that they had a small sign and went to a bigger one, and it had also happened on Broad Street. Councilwoman Berz asked about the precedent involving the smaller sign to the bigger one. Attorney Patrick stated that it was identical to what we have in this situation. She asked about getting the Stop Work Order. Mr. Patrick stated that he had done minor work for Fairway; that the other signs that were enlarged were not Fairway signs. Councilwoman Berz asked if he had been involved in Scenic Corridors in other areas and as a result, he was not aware about the East Brainerd Rd. location and that it, in fact, was a Scenic Corridor? Attorney

Patrick explained that he was not involved in the application; that he assumed that the company was aware. She asked him if they thought they would just go ahead and “give it a shot”? Attorney Patrick stated that there is a State Statute that allows this and also a City of Chattanooga Ordinance concerning how to measure a sign; that they actually did qualify for a larger sign already; that this was clearly not something done underhanded at all; that Fairway truly felt that they were entitled.

Councilwoman Ladd stated that she would like to address Public Works. She wanted to know what happened that caused us to issue a permit?

Councilwoman Scott asked about the \$180,000 cost of the sign going up. She asked if there was no other alternative place to use this sign? Attorney Patrick responded that there were a few spots, but none they needed; that the income would not come close, and it would be a complete waste.

Mr. Hutsell asked Councilwoman Ladd if she wanted him to explain the process? She responded “not the process”—just the glitch. He stated that one of his inspectors in the office had issued the permit—that they recommended several hundred signs, and there is a section in State Law that applies to this, and they had reviewed this many, many times. He mentioned three ranges of signs—small, medium and large—8 sheet, 30 sheet, and super. He stated that it had been their position to stay within the range; that in this particular case, four permits were issued at exactly the same time; that based on his research, Fairway came in and asked to demolish a 6 x 12 sign and applied for a 12 x 25 at this particular location; that on January the 18<sup>th</sup> his inspector called him and said that he had made a mistake and a Stop Work Order was issued, and they contacted Fairway. He added that the State Code was amended and does allow billboards to increase except for municipalities under Home Rule; that the mistake was made and a Stop Work Order issued, and this was taken to the Sign Appeals Board, who has no jurisdiction, and it was a “no” vote and then this suit was filed.

Councilman Benson stated that he was at the Sign Appeals Board meeting, and he did not think it was a “no” vote. He asked if the Scenic Corridor did not mean anything anymore?

Chairman Murphy noted that the State Law did not apply within Home Rule.

Mr. Hutsell stated that in a Scenic Corridor, you cannot expand the size. Councilman Benson asked if they rebuilt the sign, could they enlarge the size and was told “no” by Mr. Hutsell.

**John Crawford** spoke in opposition. He stated that this corner had caused controversy for years and years; that they had to fight to keep their area from becoming “Signboard City”; that we were losing the Scenic City status that this city was known for. He stated that these people knew what they were doing, and they needed some help and were depending on the Council.

**Roger Meyer** spoke next. He stated that he was a member of “Friends of East Brainerd”; that when the person said it was a beautiful sign, it was not—that billboards trashed a community! He stated that he did not trust Fairway at all and had called them into account before; that a Sign Inspector screamed at him. He stated that he could not believe that something like this has happened—that Fairway went ahead anyway; that it was intentional and would happen again and again; that he knew the Sign Industry had money and can change things by lobbying. He stated that if this sign went in, they would try to boycott this company and revenues would go “zilch”. He stated that Fairway’s business “stinks”!

Attorney Patrick apologized to Dr. Meyer, stating that this was certainly not intentional. He stated that he would like to address one other thing—the use of the sign somewhere else—that they could use it but did not need it anywhere else; that they had done their best to resolve this issue, and he really did believe that it was best for his client and the City to resolve this; that they would not do this again; that he honestly did believe that the Tennessee Supreme Court would allow for damages; that it is a law in the State of Tennessee. He used as an example for not using the sign elsewhere a case where a wife wants one type car and the husband buys another car and his car is not needed because the wife wants the other one.

Mr. Meyer asked to speak to these comments and was told “no”. Chairman Murphy stated that the City Attorney would confer with each councilmember as to the legal issues involved.

Mr. Meyer did state that what Fairway had was a “fleet” of cars and it was not a husband and wife situation. Chairman Murphy stated that this Council was aware enough to understand the point that Councilwoman Scott made.

The meeting was adjourned at 4:40 P.M.