

LEGAL AND LEGISLATIVE AND SAFETY COMMITTEE
MARCH 6, 2012
3:30 P.M.

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

Others present included Donna Kelley, Madeline Green, Valerie Malueg, Dan Johnson, Dave Crockett, Johnny Feagans, Patrick Bobo, Larry Zehnder, Chief Dodd, Chief Adams, and John Bridger.

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

FIRE DEPARTMENT CONTRACT

Chairman Murphy called on Chief Chris Adams to go over a contract that the City has with Signal Mountain in regards to fire hydrants. He explained that two problems were being solved, with a fee of \$5.78 per one thousand gallons. There were no questions.

“INJURY ON DUTY PROGRAM”

Chairman Murphy called on Donna Kelley. Ms. Kelley noted where we had left off on this amendment of the City Code; that this was really a clean-up effort. She noted that some of the Council had questions and following the meeting when this was discussed, there was an informational session, which she felt was successful, and there was no opposition to the recommended changes; that this provides additional benefits for injured workers; that the Council had received edits in the Ordinance from the City Attorney’s office—edits discussed in the Council committee meeting and also the informational session. She stated that if the Council wished, we could go over this in more detail as to the history and why—that she was available for questions.

Councilman Benson indicated that he was not clear on one point—would an employee go to an Administrative Law Judge or the Council for an appeal? Attorney McMahan explained that an ALJ would be made available—that they had indicated they would do this under contract with the city.

Ms. Kelley added that there is a special provision that when it exceeds \$10,000, the case will be brought to the Council for approval.

Councilwoman Berz stated that several councilpersons attended the educational session and went through this, along with a number of stakeholders and everything was discussed and all were satisfied; that there seemed to be consensus across the board. She asked in essence what was being changed? Ms. Kelley responded that it was the clarifications that were offered in the meeting. . . Councilwoman Berz responded that she had no idea what Ms. Kelley had just said. Ms. Kelley stated that she thought there were two “wills” that were changed to “shalls”. Councilwoman Berz thought that there were a couple of “mays” that were changed. She asked Ms. Kelley if all the changes that were talked about had been made, and Ms. Kelley responded “I think so”.

Valerie Malueg summarized the items to be changed, noting that two “shalls” were changed to “mays”, and the additional change in the event the settlement goes over \$10,000, the City Council will follow the Tennessee Workmens’ Schedule, but they would not have to be bound by it, but it could be nothing less than that. Councilwoman Berz asked if the stakeholders were okay with these changes, and Ms. Malueg noted that e-mails had been sent to representatives, and there were no comments or changes. Councilwoman Berz asked if all was good and was told “yes”.

RECORDS RETENTION MANUAL

Chairman Murphy next went to **Resolution (f)** on next week’s agenda that adopts the current records retention manual approved by the Municipal Technical Advisory Service as the official records retention schedule of the City of Chattanooga. He called on Attorney Phil Noblett. Mr. Noblett mentioned the 2002 Records Manual for Municipal Government, stating that there had been two revisions since then; that in 2009, we received more information regarding electronic records. He mentioned the time spent in their office with requests from the public for records; that a Records Manager is being considered at this point in time. He stated that we were adopting what MTAS had adopted and created for the State.

LAWSUIT/DART PROPERTIES, LLC/4260 SAILMAKER CIRCLE

Chairman Murphy called on Attorney Bobo to go over **Resolution (a)** on tonight’s agenda that authorizes the City Attorney to join with the Windward Pointe Homeowners’ Association in filing a lawsuit against Dart Properties, LLC regarding a continuing public and private nuisance at the property located at 4260 Sailmaker Circle. Attorney Bobo noted that this was in Councilwoman Ladd’s district and concerned a drainage pipe that was crushed and causing water to back up and was creating a swamp; that a trench had been dug into the manhole, which sent water across the road and was destroying the infrastructure. This is a violation of the Water Control Act and a violation of our City Ordinance, and the Code dictates that this is a public nuisance, and they wanted to go to court and declare this a public nuisance, and they were asking for an injunction to have this done. He noted that the Windward Pointe Homeowners’ Association people were here today.

At this point, Chairman Murphy noted that there were no lights and no questions.

Councilwoman Ladd thanked the City Attorney's Office, noting that this problem had gone on for 3-5 years before she was on the Council, and it is a mess, which one would not believe; that when this overflows across the street it does not go to the river immediately but crosses yards and damages landscapes; that mosquitoes are bad and it is dangerous for children to be around this—that it is a lake! She noted that it was a bad issue that the neighborhood had tolerated, and at this point stated that she wanted to brag on the Homeowners' Association—that they had been persistent in following this and had worked in good faith with the property owners; that this Association was willing to come to the table and pay for their own representative, and they needed our assistance to support this case. She noted that this was a generous offer for this neighborhood association and that they were asking for little from the city; that this situation needed to come to a resolution.

Chairman Murphy stated that he thought this was a "yes" vote from Councilwoman Ladd.

Councilwoman Scott stated that she had read that this drained into the river system. She wanted to know if TDEC had been of assistance? Gary Hilbert responded that they were okay with TDEC. She asked if there was not a silt issue? It was indicated that this was being addressed.

EPA NEGOTIATIONS

Attorney McMahan explained that we had contracted with a law firm out of Atlanta to handle negotiations with the United States EPA with regards to water quality violations at Moccasin Bend; that he was pleased to report that there would be one more meeting in April to finalize negotiations and a fair compromise; that when we hired Attorney Swatzka, the Oracle system was not in place and now Oracle needs the sum of money and also a timeframe. Attorney McMahan stated that we needed to pay this attorney—that the total bill was \$125,000 and another \$25,000 before we finalize this multi-million dollar deal. He stated that we are pleased with his work on this—that Attorney Swatzka is a true professional. He stated that he would bring this up at tonight's council meeting.

On a smaller note, Attorney McMahan explained that we had contracted with Attorney Walter Williams on the Paul Page matter; that he had negotiated a compromise; that we were authorized to go up to \$10,000 for his fee, but his work went over at \$2,500, which was slightly above the \$10,000 limits—around \$11,000, and he needed approval to pay him.

LEGAL REPRESENTATION FOR COUNCILMAN BENSON

Councilman Benson left the room at this time. **Resolution (d)** authorized the City Attorney to retain the law firm of Miller and Martin to represent Councilman Benson in the lawsuit captioned, "*Bassa Issam vs. Jack Benson*". Chairman Murphy called on Attorney McMahan.

Attorney McMahan noted that everyone was well aware that the city was being sued regarding the Gunbarrel Rd. rezoning issue by Bassa Issam and the ANT Group—that this was the rezoning for the I-Hop Restaurant; that the Council voted to deny the rezoning, and the result was that the applicant filed a lawsuit to reverse this action. There is a separate lawsuit against Councilman Benson with the claim that he libeled and slandered Mr. Issam. This lawsuit is against Councilman Benson in a private capacity; that official capacity would be his office's responsibility, but this was out of their scope. He explained that libel and slander is not covered by Tort Liability, and we could not promise to pay for damages in this case. He stated that he was recommending we hire outside counsel, but the city would not pay any damages as a result of this case. He noted that we do not have "Errors and Omissions" to come into play in this decision, but we can provide outside counsel. He stated that he strongly recommended that they be allowed to hire outside counsel because handling this case might place his office in conflict because of the zoning lawsuit.

Councilman Gilbert stated that we as a city council put in a lot of time in working for the city; that at any given time we could say something that we felt was best for our area, and he felt that we should be represented if we say something that others consider wrong; that this is dealing with city business—it is a zoning problem—that it is still city business, and the Council should have this protection.

Attorney McMahan stated that he did believe that Councilman Benson has good and valid defenses.

The meeting was adjourned at 4:00 P.M.