

LEGAL AND LEGISLATIVE COMMITTEE

August 20, 2002

3:00 P.M.

The meeting of the Legal and Legislative Committee was called to order by Councilman Benson, Chairman, with Councilmen Hakeem, Page, Robinson and Littlefield present. Councilmen Lively and Taylor joined the meeting later. City Attorneys Randall Nelson and Doug Cox, Management Analyst Randy Burns, and Shirley Crownover, Assistant Clerk to the Council, were also present.

Others present included Shelley Parker, with Mike Compton, Jerry Green, Don Young, Adm. Boney, Beverly Johnson, and Adm. McDonald joining the meeting later.

CONSUMPTION OF ALCOHOLIC BEVERAGES AND BEER IN PUBLIC

Chairman Benson turned the meeting over to Shelley Parker to go over a proposed Ordinance. Mr. Parker explained that this dealt with beer in certain places and had been drafted by Attorney Doug Cox, and they had added a paragraph on the second page (a copy of which is made a part of this minute material). He explained that this prohibited the consumption of alcoholic beverages or beer in public places and also open containers. It allows private owners to post signs saying "*no beer on these premises*".

The first full paragraph on Page 2 refers to Teen Social Clubs and the requirement that they shall post signs in visible locations prohibiting consumption of beer and alcoholic beverages on the premises.

The last paragraph states that this shall not prohibit the sale or consumption of beer or alcoholic beverages permitted pursuant to a temporary beer permit issued by the Beer Board of the City or pursuant to a special occasion license issued by the Tennessee Alcoholic Beverage Commission. Events such as Riverbend and Nightfall would not be prohibited; however they would have to go through the proper process.

Councilman Littlefield explained that one reason this would be allowed at permitted events is because you have more police present.

Councilwoman Robinson stated that she wanted to make sure that we have a fully operational Beer Board in place; that all of the Council needs to "step up to the bat" and each needs to have someone present at the meetings and accounted for. Attorney Cox, Attorney for the Beer Board, noted that we have eight members at this time.

Chairman Benson stated that the Council was supposed to be provided with attendance records of the Board members.

Councilman Page asked Mr. Parker to highlight specific changes in the Ordinance. Mr. Parker explained that this primarily has to do with beer—that with these changes we are really going after beer.

Councilwoman Robinson asked about enforcement. Mr. Parker responded that if the police see it, they will enforce the law and there will be a \$50.00 fine unless the State Constitution allows more.

Councilman Page stated that he failed to see the difference between alcohol and beer. Mr. Parker explained that right now people are permitted to drink beer on the sidewalks, and this will make it illegal.

Councilwoman Robinson asked about restaurants with beer outside. Mr. Parker assured her that this would be fine. Councilwoman Robinson went on to say that she was not sure about the plans for enforcement; that we have havens of violators and questioned how we would deal with this. She wanted to know where the “teeth” were. Mr. Parker explained that it would be up to the officers on the street to enforce this, and they would be told what is illegal; that if they see it happening, they can issue a citation; that we have a police precinct downtown, and we know where the drinking is now and where it is going on; that enforcement will be issuing a citation.

Attorney Nelson asked about private parking lots, where it would be an offense to drink on and questioned if it would also be an offense for the owner to allow his parking lot “to be drunk upon”; that this could be effective if the owner is in violation and has to go before the Beer Board, and we can sanction him far exceeding the \$50.00.

Councilman Littlefield stated that we could strengthen this a little bit; that we have teen clubs in Brainerd, and this is a big problem; that the drinking takes place on the parking lot; that we would require that Teen Clubs post signs on parking lots. Attorney Nelson added that they have no beer license to begin with. Attorney Cox added that if there is drinking outside a residence or in a parking area that they will be subject to disciplinary action by the Beer Board.

Mr. Parker stated that we may need to re-word the notice; that it just talks about consumption; that we can reword the notice at the top of Page 2 to include prohibition of open containers.

Chairman Benson noted that Republic Parking Lot is privately owned and would have to post a notice, but de facto it is public.

Councilman Littlefield noted that there are a lot of parking lots where the owners complain; that Republic and the Mountain City Club Parking lots can post a sign in their parking lots and police can cite violators.

Councilman Page asked for verification concerning private parking lots. Mr. Parker explained that the owner can post a sign and if there are violations, they can be cited. Councilman Page asked if this was at the discretion of the owner. Mr. Parker stated that would be true, unless it was a Teen Club, and they are required to post a sign.

Chairman Benson asked about wine glasses at Pops in the Park—if these people could be arrested. Mr. Parker explained that they would not be arrested, just cited; however this event could have a license for this.

Councilwoman Robinson asked about the amount of the fine and was told it was \$50.00 max by Mr. Parker. Councilman Littlefield added that a Constitutional change and a Charter change could be voted on in November.

Councilman Hakeem stated that he was not a proponent of beer, alcohol or any of that; however some people might ask if this is being targeted so that the average person walking down the street with a can of beer can be fined \$50.00 now and up to whatever it might be in the future. He questioned if this was a form of profiling; that some people can go to restaurants and clubs but there is a segment of people who can't do that; that they don't dress that well and already have a burden and questioned if this would be an added burden to them.

Chairman Benson stated that this was not profiling; that Pops in the Park had a way to get around this and people could drink wine with a temporary permit; that downtown Miller Park, where there is a gathering for the hungry, could also get a permit.

Councilman Page stated that he was struggling in trying to see this; that he did not want public drunkenness and drinking while driving but questioned if we were getting into legislating morals; that he had a hard time seeing the difference between a beer and a coke sometimes.

Mrs. Darlene Brown spoke next. She stated that there was a difference with Pops in the Park—that there are restrooms there, and it is policed; that what they were concerned with was people urinating on the streets and not cleaning it up; that in central downtown they were drinking and urinating. She stated she was not saying drinking was wrong, and she thought we did have an open container law; that when they see someone loitering and drinking, and they call the Police that they come; that she is in favor of having an open container law.

A lady affiliated with Dayle May Jewelry downtown spoke next. She stated that she saw this every day; that she had a dog, which she took out in the morning and afternoon, and it struck her that Chattanooga was a wonderful city that was trying to clean up the filth on the streets, which was unbelievable with the urine and feces. She questioned where we were going; that it bothered her as she owned and was doing business downtown; that some of her customers had been grabbed by street people and were frightened, and they needed to get help cleaning this up; that they were fighting everything—parking and street people. She stated that she did not lack compassion; that we can either clean up Chattanooga or just let the inner city go—that this is really where we are; that Lovemans and the United Way are downtown; that as a group they are doing their part in cleaning the rest of the city up; that we need to make a choice, and this does not need to go on; that it comes down to what do we want for our city that we are really proud of.

Mr. Bill Sudderth stated that business owners downtown were responsible for physical cleanliness but for some reason in the last several years another thing had happened, which we seem to have no control over; that it is the social behavior of people who don't have respect for your property or their own property; that they don't care about downtown; that he did not know whether this should be addressed by the police, social services or churches; that there was a bit of a double standard as Councilman Hakeem was speaking about; that right now if you go to a beer store and buy something you can consume it; that you can't get something to go in any of the restaurants downtown that sell beer, which enables a double standard; that people who just sell beer are not responsible for restrooms and cleanliness, and this has become a problem; that this is not true of events and festivals; that he hears what Councilman Page is saying about hating to legislate something like this, but the behavior of a lot of people who use downtown will hurt us in creating investments.

Chairman Benson stated that there would be equal application of the law—that a park could get a license.

Councilman Page noted that if you lived downtown and wanted to go see a neighbor, it would be illegal to carry a beer to their dwelling.

Chris Crimmons stated that this was the behavior of the people buying the beer, and they were flagrantly abusing their property, and the police were saying there was nothing that they could do; that people were urinating everywhere like this was a beach front, and the police were saying there was nothing they could do because there was nothing on the books; that for some kind of enforcement, we had to have a starting point, and this was a fundamental building block; that this was really, really important and would give the police the ability to respond when they called.

Councilman Hakeem stated that he was sure we were not the first city to deal with this and asked if we had talked to other cities.

Councilman Littlefield stated that we used to have an open container law, and we relaxed it; that it is not uncommon to have open container laws; that in talking about profiling—that they profile students; that anyone with an open container can be cited or arrested; that he had met with many of the people here and also Judge Williams; that he had called Judge Williams to make sure that he was aware that this was going to be discussed, and he was on his way to Nashville to deal with the \$50.00 limitation but assured him that he was for this; that it was a step in the right direction.

Councilman Hakeem asked if we were looking at not just the downtown area but neighborhoods as well and questioned Attorney Nelson if there was anything we could do for just downtown. Attorney Nelson responded that we probably could; that downtown is where the majority of problems are. Councilman Hakeem agreed that this was something that needed to be dealt with but stated he would rather see a social agency deal with it rather than putting someone in jail. Chairman Benson assured him that no one would be put in jail—that they would just be cited.

Mr. Parker stated that Judge Williams and Bean could come up with alternative remedies and find a way to solve the problem; that he had faith in both of the judges.

Chairman Benson asked if open containers would be illegal in Jack's Alley. Mr. Parker explained that this was private ownership and would be allowed. Chairman Benson noted that it would be permitted at Riverbend.

Bob Brown stated that he would like to address one of Councilman Hakeem's concerns; that he thought this was a practical matter that would solve itself; that he had had conversations with the Chief of Police, and it was clear that we are still substantially understaffed in the Police Dept.; that the Chief and Mayor recognize this; that officers will not take this Ordinance and devote a lot of time crusading against brown bagging; that this just gives them a vehicle to enforce what he saw from his building; that it gives the police a tool; that they will not be mounting a crusade—that he does not see this happening.

Chairman Benson stated that he thought going to the bathroom in public was already illegal. Attorney Nelson agreed that it was but noted that it is over by the time the police get there.

Councilman Page stated that he was still struggling with legislating moral behavior.

Mr. Crimmons noted that right now there is nothing they can do; that there is no Ordinance against open containers.

The lady from Dayle May related that when they call the police, one person runs up to the car to talk to them and the rest run away.

Mr. Parker stated that he would add “open container” as a prohibition.

Chairman Benson again asked about restaurants and sidewalk tables and whether this was illegal. Mr. Parker stated “no”; that they would have a permit. Mr. Crimmons added that he thought the Beer Board required a fence around the area.

Councilman Page stated that he was in favor of helping to clean up streets and questioned what other great cities do about this and the open container law.

Councilman Hakeem asked if Mr. Parker could bring to the Council in two or three weeks other cities who are doing this and how they are going about it. Mr. Parker stated that he could do this.

Councilman Littlefield stated that this was not coming to the Council tonight. Mr. Parker reiterated that he would do what Councilman Hakeem is asking. Councilman Littlefield added that open containers in vehicles is a State law and not permitted; that he had plenty of experience with this and people would say we are carrying this too far, and we would probably get some flack from the University, noting however that most college students were not supposed to be 21 years old anyway; that fraternity houses would probably have some problem with this.

Chairman Benson noted that this was the first draft and could be brought back next week at 3:00 P.M.

SOLICITATIONS ON CITY STREETS

Chairman Benson asked the committee to address a letter that he had received from an angry resident in East Brainerd concerning groups who want to collect money. This letter is made a part of the minute material. Chairman Benson stated that this was a problem in his district and also in Hixson; that the police did not have a lot of authority; that he was told if the people stand on the side of the road that they can’t do anything about it; that if they stop traffic then it is illegal. He stated that there was problem at Jenkins and Shallowford with various ball teams asking for money.

Attorney Nelson stated that they were not supposed to get in the right-of-way; that the street is defined as the right-of-way, and the sidewalk is also part of the street.

Chairman Benson stated that they were not enforcing on the side of the street.

Councilman Hakeem noted that newspapers are being sold out in the street; that he was told it was okay when the traffic light is red, but they have to be on the side of the street when the light is green.

Attorney Nelson pointed out that this is not solicitation asking for donations, but they are selling a product.

Chairman Benson asked Attorney Nelson to check into this and bring something back to the committee.

Councilman Lively asked if this meant selling a product on the entire right-of-way. Councilman Littlefield noted that sometimes they are just sitting on the sidewalk.

Councilman Hakeem asked if they could stand on the sidewalk. He asked that if we prohibit solicitations if we could come up with an alternative for them. Attorney Nelson responded that the alternative was trying to protect those driving on public streets; that sometimes this causes cars to have to stop, and this piles up traffic and causes accidents. Councilman Hakeem asked if this had been a problem in Hixson, and Councilman Page responded "no". Councilman Hakeem asked if just because we had congestion in particular areas were we going to punish everyone for what had happened in one area.

Councilman Lively indicated that he thought it was worth it if we just saved one life.

Chairman Benson stated that he had had three calls about this, and the people were really upset. Attorney Nelson added that some of the worst offenders used to be the firefighters.

Councilman Hakeem stated that he was hearing what was being said but questioned about Shriners and other organizations and if there would not be another way of doing this; that he thought we were asking too much and questioned if this could not be discussed in open forum with proponents and those in opposition.

Mr. Parker stated that you can't solicit a car on a public right-of-way; that we already have this law and all we need to do is enforce it. Councilman Littlefield agreed that it had always been illegal. Attorney Nelson added that it would be in how you define solicitation versus selling a product.

Chairman Benson asked Attorney Nelson to report back what the law says.

RECEIPT AND DISTRIBUTION OF ILLEGAL ACTS FUNDS

Mr. Parker went over a Resolution authorizing the receipt of funds pursuant to said chapter, and designating the distribution of said funds. This would allow the city to share in proceeds of illegal acts. **On motion of Councilman Page, seconded by Councilman Lively, this will be recommended to the full Council.**

MUTUAL ASSISTANCE AGREEMENT

Mr. Parker went over a Resolution authorizing the Chief of Police to enter into a Mutual Assistance Agreement for response by law enforcement agencies in Hamilton County, Tennessee. Mr. Parker explained that this piggybacked the one passed in December, and there is no cost involved; that it involves certain practices under State Law; that it would be up to municipalities on whether they could afford to send anyone; that we would dispense what is available and what we can spare; that it will be purely discretionary on the part of the responsible party.

Chairman Benson noted that this would mean we would go into Shepherd Hills if there is life endangerment.

On motion of Councilman Littlefield, seconded by Councilman Lively, this will be recommended to the full Council for approval. Councilman Littlefield noted that this would be on the agenda a week from next.

At this point Attorney Nelson joined the meeting and read the law as it relates to solicitation on the streets. Chairman Benson questioned if it was all right on the side of the street. Mr. Parker stated that they would try to correct this.

The meeting adjourned at 4:00 P.M.