

LEGAL AND LEGISLATIVE COMMITTEE
November 18, 2008
3:10 P.M.

Councilman Benson, Chairman, called the meeting of the Legal and Legislative Committee to order, with Councilpersons Bennett, Rico, Robinson, Berz, Gaines, Pierce and Councilman-elect Gilbert present. City Attorneys Randall Nelson, Phil Noblett, and Mike McMahan were also present, as was Shirley Crownover, Assistant Clerk to the Council.

Others present included Dennis Malone, Greg Haynes, Gary Hilbert, Dan Johnson, Richard Beeland, Tom Dugan, Steve Leach, Richard Hutsell, Chief Rowe, Mayor Littlefield, John VanWinkle, Daisy Madison, Jerry Stewart and Lee Norris. Jim Templeton joined the meeting later.

Chairman Benson noted that there were a number of items on today's agenda dealing with Volkswagen but that we would hold these until 3:35 P.M. when the Mayor could be present.

SIGNAGE REGULATIONS

Chairman Benson then proceeded with Signage Regulations, asking Richard Hutsell to join the committee at the table. He also acknowledged the presence of members of the Board of Realtors.

Mr. Hutsell provided a handout of the City of Chattanooga Sign Ordinance, noting that each Councilmember had a copy. (This is made a part of this minute material). He went on to say that Councilman Benson called him about a sign issue and a complaint. He noted that our Sign Ordinance is 20 years old in February and had been amended a number of times. The first significant improvement was in 1989. He explained that issues revolved around a variety of type of signs and that he had had phone calls from the Board of Realtors.

He next referred to Page 2 of the Handout that dealt with Types of Exempt Signs, which are signs for sale or lease of property, political, youth groups/youth activities, charities, and community organizations.

Mr. Hutsell noted that Page 3 deals with City Code Section 3-6(b), that stated that no sign permit shall be required for certain on-premise signs, which include signs that advertise the sale or lease of real estate, provided that such signs do not exceed 100 sq. ft. in sign area or which are located within 1,000 ft. of the real estate offered for sale or lease, provided that such signs do not exceed 32 sq. ft. in size. City Code Section 3-94 states that no sign permit is required and may be placed no closer than 10 ft. from the nearest curb or edge of pavement of public right-of-way.

Chairman Benson explained that the original complaint was about a Real Estate sign in one of our round-abouts. He asked if the sign was 10 ft. from the curb or pavement, could it be located in a round-about?

Mr. Hutsell responded that technically it could be put in this area, prompting Chairman Benson to say that round-abouts could be filled up with Real Estate signs. Mr. Hutsell agreed that possibly they could—that this is a huge enforcement issue and are sight distance issues. He mentioned the sheer number of them, stating that they had to prioritize—that if the signs are not a safety issue, they usually leave them alone.

Councilman Pierce asked if he could place a sign on a right-of-way as long as it was 10 ft. from the curb or pavement?

Mr. Hutsell explained that directional signs have to be within 1,000 ft. of what is being advertised. He went on to say that political signs can be placed in the right-of-way, 7 ft. from the edge of pavement; that the main thrust is that the sign is not a viable hazard—if not, then there is no problem. He noted that this was complaint driven and usually political candidates are pretty good about removing signs. He noted, however, that rarely do candidates put up their own signs, and they often do not know where the signs are located.

He went on to say that in 1992, the Code did not specifically recognize youth groups and certain organizations, where the signs were mostly short-term, and his department was directed to set a policy that these signs were permitted if they were not a traffic hazard. He added that this Section needed to be clarified in the Code—that we either needed to give exemptions for them or just not allow them.

Mr. Hutsell then showed an example of an illegal sign that Adm. Leach had brought with him. It was placed at the entrance of Enterprise South and advertised efficiency apartments. He explained that their task was to determine if they were actually Real Estate signs or commercial business signs—that he would say such a sign as this was commercial. He stated that they were doing everything possible to stop this practice because it took a lot of time out of their busy schedule.

He then showed a picture of a Sight Distance Triangle and went over some of the solutions for Illegal Signs—Installing “Post No Signs” notices in appropriate locations throughout the City (This is not recommended due to cost & maintenance; Amending Chapter 3 of the City Code to reflect current signage/advertising needs; Prohibiting signs from being placed in any median, traffic island, traffic circle/roundabout or divided roadway; Allowing for signs to be placed within the prohibited area to be removed without notice; and adding specific language and/or conditions to allow, restrict or prohibit Youth or Charity type signs. He noted that some areas are inappropriate for political, real estate, or charitable signs, and the Traffic Engineer can put up “Post No Signs” signs.

Mr. Hutsell stated that he and John VanWinkle had discussed this today with Councilman Benson; that political and real estate signs are a problem on medians, traffic islands and roundabouts, and it was not cost effective to place "Post No Signs" everywhere. He stated that he would like the Council's approval to prohibit all signs in medians, traffic islands, and roundabouts.

Chairman Benson noted that this would just entail amending the present code.

Mr. VanWinkle noted that the 7 ft. from the curb should actually be the side of the road; that he did not think this was the intent and could create a hazard and clutter.

Chairman Benson verified that both Mr. Hutsell and Mr. VanWinkle were recommending that signage in roundabouts, traffic islands, and medians be prohibited.

Councilwoman Bennett stated that in trying to educate the public, they needed to see examples of appropriate signage and not just what was not appropriate.

Mr. Hutsell noted that we wanted to prohibit political signs in traffic islands.

Chairman Benson stated that we were trying to accomplish this before the March elections.

Councilwoman Robinson stated that it needed to be in place right after the first of the year, when politicians start putting up signs.

Councilman Rico agreed that we needed to do this as quickly as we can.

Councilwoman Berz asked how old our Sign Ordinance was and was told that it would be 20 years old in February. She questioned if the whole Sign Ordinance should not be reviewed—that she was not in favor of a band-aid approach; that she thought we should take a look at the Sign Ordinance and bring it into the 21st Century; that what we were talking about was good things, but she questioned if the whole thing should not be reviewed.

Mr. Hutsell explained that the Ordinance had been reviewed and amended a lot; that we spent several years with it in the mid 1980's; that businesses have changed and a complete review was made and that these changes were minor and that he and John VanWinkle had done research on this. He noted that they would also be bringing an amendment concerning LED signs—that electric signs were a part of the Industry, and we want to make sure that they are safe and appropriate; that they could bring this amendment forth at the same time if the Council saw fit.

Mr. VanWinkle agreed that they were taking an active look at the Ordinance; both these type of signs and LED's; that under the current Ordinance they have to be approved by the Traffic Engineer, and they had created guidelines and had been working with Phil Noblett. He stated that he did not think we had to re-do the whole Sign Ordinance but just had to keep it up-to-date. At this point he presented a hand-out "Light Emitting Diode (LED) Advertising Sign Requirements, which is made a part of this minute material.

Chairman Benson summarized that we would be excluding signs from medians and that they had been working with Phil Noblett on this; that they were also working on an amendment concerning LED signs to adjust them to our needs today. He questioned if LED's needed to be brought back from the City Attorney for review?

Councilwoman Berz stated that the public has to have notice before we make any changes, and they need an opportunity to speak.

Mr. VanWinkle stated that we were alerting the public right now.

Councilwoman Berz stated that she thought people in the Sign Industry would like to be heard—that we need input from the people who will be affected.

Chairman Benson contended that the public would know when this issue will be taken up in two different readings.

Councilwoman Berz still felt that the public should speak from the front-end.

Mr. Hutsell pointed out that representatives of the Board of Realtors are present today and also the politicians who will be dealing with political signs; that all they would do is create a draft, and if the Council wanted to move forward, then fine.

Chris Exum of the Board of Realtors was present and stated that they just wanted to be good community people and have their voices heard.

Chairman Benson noted that the Mayor was still not present and proceeded with the next item on the agenda.

BRAKE NOISE

Mr. VanWinkle stated that Phil Noblett had drafted an Ordinance concerning this.

Attorney Noblett stated that Attorney Nelson had a copy of this; that this issue was brought to the Council about three weeks ago; that our Ordinance reflects State Law which requires mufflers, and the City Ordinance can be enforced by the Traffic Engineer, and he can post signage in appropriate areas; that the Traffic Engineer can do a Study and review and post signs.

Councilwoman Bennett stated that this problem had arisen in her district and that Mr. Surber was here today—that she hoped something could be put in place.

Mr. Surber spoke, stating that he lived at 813 Signal Mountain Road and the problem he was having was with concrete trucks, which were basically empty—that they were using their engine brakes and were just 24 ft. from his front door; that he was an ex-truck driver and every City he had been in had Brake Laws; that signs were posted showing the maximum fine; that there were signs such as this in Trenton, Georgia. The trucks in his area were running 24 hours a day, five days a week; that he had been up around 3:35 a.m. since March. He questioned why wording was not placed on signs saying “Use of Brakes is Prohibited”? He went on to say that an officer came out to his house and informed him that until signs stating “Use of Engine Brakes are Prohibited” nothing could be done—that the signs needed to be re-worded to say “Engine Brakes” or else the Judges would just throw them out because the type of brakes were not indicated. He added that he had written letters to Councilwoman Bennett and that an Officer Vaughn had called him about this; that she sat in front of his house and everyone was going from 55 mph to 60 mph in a 45 mph zone. He added that when school buses put out their “Stop” signs, everyone is supposed to stop, but they don’t.

Chairman Benson stated that Mr. Surber had stated his case well—that he even looked sleepy.

Mr. Surber stated that he had to go to the doctor and get sleeping medicine and also anxiety medicine; that they needed some cameras out there like they have in Red Bank.

Chairman Benson explained to Mr. Surber that the City can only fine them \$50.00, with Attorney Nelson substantiating that the maximum fine is \$50.00.

Mr. Surber asked why Trenton could impose a \$250.00 fine? He was told that that was the State of Georgia.

Councilwoman Bennett asked if traffic violations were not sometimes fined a different amount?

Mr. VanWinkle added that the way State Law is written, we can use signs; that he had asked about this and because we have Home Rule, we can put our own local signs up to accommodate this problem—that it is not just Signal Mtn. Road but anywhere this problem exists.

Attorney Noblett stated that this would hopefully get us where we want to be; that decibels would have to be used to determine loud mufflers; that we can authorize the Traffic Engineer to put up signs to say that engine brakes are not allowed; however the fine remains at only \$50.00.

Councilman Pierce questioned if we had to use decibels, stating that this would not work. Mr. Surber added that if a truck were moving, someone would have to be driving by the side of them—that they should not be using these brakes in the City anyway. Attorney Noblett pointed out that we have hills in the City, where brakes are sometimes needed. Mr. Surber stated that there were no hills where he lived, and trucks were moving through there too quickly—that he had binoculars that he watched them with.

Councilwoman Bennett stated that our Traffic Engineer had responded quickly to this matter; that it seems simple, but it is not; that she appreciated the work the City Attorney had done on this and something may be required at other levels.

Chairman Benson questioned if we had really accomplished anything.

Mr. Surber added that Councilman Rico looked like he had lost a few nights' sleep, too; that this was a real nuisance and the problem gets worse; that he had written letters to the truck companies.

SUBDIVISION REGULATIONS

Chairman Benson stated that they were trying to work out something that all can live with and would come back later with this. He again noted that the Mayor was not present, and we would continue with the next issue.

CARTA ORDINANCE

There is an Ordinance on next week's agenda appropriating from the Capital Projects Fund to the Chattanooga Area Regional Transit Authority (CARTA) an amount not to exceed \$984,5920.00 to be used for the North Shore Garage and capital need of CARTA and authorizing an agreement with CARTA to reimburse the City an amount not to exceed \$479,288 over a term of ten (10) years at an interest rate of 4%.

Mr. Tom Dugan was present, with a handout of the CARTA Capital Program—FY 09, which is made a part of this minute material.

This concerns the Shuttlepark North Shore (Garage), and Mr. Dugan noted that during Mayor Corker's administration we put a deck in, and they were working with ways to secure funding. The remainder to be funded is \$646,592. Federal Funding amounts to \$725,000; Developer Participation is \$600,000; and the City of Chattanooga Bond is \$3,312,000. He stated that \$479,288 would be the City of Chattanooga Loan to CARTA, which is "soft" cost and will be absorbed by CARTA; however they need this money until the garage is built and operating because until then they won't have any funds—that they were asking the City for a loan. He went on to explain that their request of \$338,000 did not get funded in the City of Chattanooga Capital Program. He went on to say that they had four new buses coming in and needed a new roof and a mid-size vehicle and the \$338,000 would bring in a match. Mr. Dugan explained that they had a previous loan with the City in 1992 under Mayor Roberts of \$375,000 and had only paid off \$125,000 of this; that he wanted to get all of this formalized and would pay the total loan of \$854,288 in ten years with an interest rate of 4% as soon as the garage is closed on; that the monthly payment to the City would be \$8,650.00.

Councilman Rico jokingly asked about the collateral? Mr. Dugan responded that the garage was the collateral and the City could deduct off their payment to them.

Councilman Pierce stated that he was in support of CARTA; however he was really leery about this economy and our continuing to spend money like the money would always be there; that times were bad for the whole City, and we need to think about a freeze on our spending; that if it is not a mandated need, then we need to wait awhile. He stated that it was hard for him to support this at this time—just to get a garage on the North Shore.

Mr. Dugan reminded him that they ask for \$338,00 every year and the difference is the loan.

Councilman Pierce questioned the previous loan we made to them and since 1992, they had only paid back \$125,000.

Mr. Dugan stated that this was better collateral—that this is a formal loan, and the other was just a "handshake". Councilman Pierce wanted to know what the difference was between a formal loan and a "handshake"? Mr. Dugan reiterated that this is a loan.

Chairman Benson questioned why it was a necessity? Mr. Dugan responded because they did not have the money to pay for the garage and the garage will be an income producer in the future; that parking is generating net revenue—close to \$800,00 in net revenue.

Councilman Pierce questioned if he could fill the garage, with Mr. Dugan assuring him that they could.

Mayor Littlefield added that we were giving Mr. Dugan the money for a match.

Chairman Benson confirmed that this was a necessity and an investment.

Councilwoman Robinson asked if the parking revenue would offset the shuttle on the North Shore? Mr. Dugan responded that it would make it much more viable; that the North Shore is moving up, and this is part of the overall strategy; that the working people in this area are using the Theater Center or parking in nearby neighborhoods; that often the Theater Center has to use their lot during the day, and the rates in the new garage would be low enough so that the workers could park in the garage. He noted that meter reading had disappeared.

Chairman Benson noted that this would come up next week.

VOLKSWAGEN ISSUES

Alex B. Leath, III, a Birmingham Attorney was present on behalf of Volkswagen. He stated that he was excited to be here and a lot was happening; that this community is blessed to have an auto maker with cash in the bank and moving forward. He commended Mayor Littlefield on the way he contacted the competition, stating he was proud of the Mayor—that this was difficult competition and he and Mayor Ramsey did a wonderful job.

Steve Hiatt was present to address the Volkswagen Group of America Inc. Project Pilot Agreement. He explained that this was a 30-year Pilot and that that Volkswagen would be paying the school tax for 30 years.

Chairman Benson noted that this was a Pilot Agreement in lieu of taxes on property that had never paid any taxes anyway.

Attorney Nelson next went over the Memorandum of Understanding by and between the City, the State of Tennessee, Hamilton County, and the Industrial Development Board of the City of Chattanooga, the Chattanooga Area Chamber of Commerce, Volkswagen Group of America, Inc. and/or agencies of any of the foregoing relative to the Volkswagen Group of America, Inc. Project. Attorney Nelson noted that a lot of work had been done on “faith” in negotiating the Memo of Understanding and all exhibits were not ready; however we are ready to sign off on the Memo of Understanding as we have certain obligations we have been fulfilling such as sewers, firehalls, etc. The County will be an equal partner, and the State is appropriating \$110 million dollars on top of what the City and County are contributing. He added that there were still a couple of terms to touch up, but the Council can study this over the weekend.

Mayor Littlefield added that we just needed to get this on the agenda and see what questions there are.

Attorney Nelson explained that there is also a transfer of property to the Industrial Development Board of the City of Chattanooga; that the City has no legal authority to transfer property to a private enterprise; that the beauty of this is that the Industrial Development Board does have this authority, and it all fits together. The Industrial Development Board will take title and at the end, the Industrial Development Board gives the title to private enterprise. The City will convey the property to the Industrial Development Board of the City of Chattanooga.

Councilwoman Robinson asked if the County would do the same? It was noted that the County did so last Thursday.

Attorney Nelson went on to explain that the property would be in the name of the Industrial Development Board, and they would lease the property to Volkswagen during a term agreed to—that this is a provision they were still working on; that Volkswagen can take the property at anytime after the business has commenced, but we don't anticipate this being utilized; after the Industrial Development Board hands off the property to Volkswagen it will no longer be tax exempt.

Councilwoman Robinson wanted to know how much of Enterprise South property we are talking about? Adm. Leach responded 1106 acres. Councilwoman Robinson wanted to know if this was the “footprint” of the Volkswagen plant? Mayor Littlefield answered that this was the site being transferred to Volkswagen.

Attorney Nelson added that if they needed to expand, they would come back to us.

Mayor Littlefield noted that we had 1200 acres reserved.

Councilwoman Robinson asked if we had ceded all interest and there were no liens on the property, asking about the Federal Government. Attorney Nelson explained that the Federal Government is not a party to this; that everyone that has an interest is at the table.

Adm. Leach added that the City and County own this property—that we got it from the Federal Government—that there is 1100 acres on this transfer.

Councilwoman Bennett asked concerning the Memo of Understanding, if changes that are made will be brought to the Council next week? Mayor Littlefield stated that the information would be given to the Council digitally on e-mail.

Councilman Pierce stated that he got in touch with Attorney Nelson yesterday and asked him to draw up a small Resolution in accordance with the other Volkswagen Resolutions. He passed this Resolution out for the Council to look at, and it is made a part of this minute material. He stated that it was not binding, but he just wanted the Council to go on record to assure that Volkswagen will be looking at diversity when contracts come about and also diversity in hiring and would ask that the Industrial Development Board arrange a method to assure that this is being monitored and that Volkswagen is abiding by the wishes of the Council.

Councilwoman Bennett stated that in visiting Greenville, she noticed that BMW people were aware of the need for diversity, and we have our policy in place and may not need to reinforce this.

Chairman Benson stated that he would not want such a Resolution to suggest that we don't have faith in Volkswagen.

Attorney Leath stated that this was fine; that Volkswagen would not take this negatively.

Mayor Littlefield stated that this was normal procedure and that Volkswagen had demonstrated that they are seeking diversity.

Councilman Pierce acknowledged that it was already mandatory, but he wanted the Council to go on record as to what we would like to see.

Councilwoman Gaines stated that she had a question for the out-of-town Attorney; that the State had appropriated \$10 million dollars. She wanted to know our total investment? It was noted that the split is 40/20 each. Councilwoman Gaines stated that she was asking a question about the total State Bonds. Her next question was at this point, what is the City and County doing in monitoring the minority contractors on site; that she knew Warren Logan was concerned with this and also the County. She wanted to know if we are monitoring minority participation?

Mayor Littlefield stated that every dirt-moving company in the area is involved. Mr. Norris added that there was one female business. Mayor Littlefield assured that we were scouring the map for additional contractors.

Councilwoman Gaines stated that she had noticed the lack of minority contractors at the Volkswagen site herself; that the City and County should be monitoring this—that we need to know; that she was very interested in this and had been out there several times.

Mayor Littlefield made mention of one of the largest earth-movers in the area, stating that we would have a record of minorities.

Councilwoman Gaines stated that she had noticed the lack of minority contractors and also equipment.

Mayor Littlefield stated that he was impressed with the number of minorities.

Councilwoman Berz stated that Title VI would cover this.

Adm. Leach confirmed that there was minority participation, with Mr. Norris assuring Councilwoman Berz that they were cognizant of Title VI.

Councilwoman Gaines stated that her concerns were with watching this by both the City and County; that it was very important, and she would like to see some numbers.

Lastly, she stated, the Council has voted for funds from the City and County and under Title VI, we would have some control. She asked that we just be faithful and make sure we have teeth in Title VI; that she understood Volkswagen's status but wanted to know where we were.

Mayor Littlefield stated that we are in the phase where we will have more control over these issues; that we have moved the earth, using every available contractor, with 250 people being employed and minority-operated equipment—that we had moved a mountain! He stated that the next phase was vertical, and we could take a breath; that everything had to move quickly, and we will be able to manage—that we wanted this to be flat before winter.

Attorney Nelson explained that the Industrial Development Board has no enforcement mechanisms—that the contracts are with the City and County to do all of the financing; that this is something that the City will be monitoring, along with the County.

The meeting adjourned at 4:25 P.M.