

LEGAL AND LEGISLATIVE COMMITTEE

June 9, 2009

3:30 P.M.

Councilman Murphy, Chairman, called the meeting of the Legal and Legislative Committee to order, with Councilmen Benson, Rico, Scott, Robinson, McGary and Ladd present. City Attorneys Michael McMahan, Phil Noblett, Crystal Freiberg, and Patrick Bobo were also present, as was Shirley Crownover, Assistant Clerk to the Council.

Others present included Sandra Gober, Barry Bennett, Dennis Malone, Jerry Stewart, Jim Templeton, Lee Norris, Dan Johnson, Daisy Madison, Greg Haynes, Gary Hilbert, Chief Williams, Chief Cooper, Danny Thornton, Solomon Hatch, Steve Leach, Chief Haney, Richard Beeland, and Chief Parker. Justin Holland joined the meeting later.

Chairman Murphy stated that he had a Police Dept. employee and a Parks and Recreation employee, whom he had borrowed for a demonstration; that he did not think everyone knew what 1,000 ft. looked like; that a vehicle would be stopping at 250 ft. intervals; that the Council would not be engaging in discussion when we are outside so no record would have to be kept. He noted that the Parks and Recreation employee had a nice stereo system, which he would play at the noise limit, asking Chief Williams how loud he could get?

Chief Williams stated 85 decibels—probably two times this loud.

Chairman Murphy stated that everyone would move outside to see what 1000 feet looks like and also what it sounds like.

Before going outside, Chief Cooper questioned who was pushing this Resolution? He asked if all thought it was Councilwoman Berz or the Police Dept.? He noted that everyone had gone to all this trouble, and it was not a matter that the Police Dept. had brought up; that this dealt with new clubs and did not do a lot of good for the clubs we already have; that it did not change the existing problems, and it did not help the Police Dept.

Councilwoman Robinson asked how we could deal with the grandfather clause? Attorney McMahan stated all we could do was to tighten up the Noise Ordinance.

Councilman Benson noted that there were people here from the area that was being impacted.

Chairman Murphy shared his thinking, stating that he used to live next to a commercial entity—a plumbing supply store—that if this had been converted to a night club, he would really have been “up in arms”. He stated that he did not think this situation would withstand a legal challenge; that the purpose for going outside was to show the Council what 1000 ft. looked like and so that we would have a factual basis—that this was a fact finding mission.

Chief Cooper stated that he just wanted to voice his concern—that there was an issue of whether the Police Dept. was pushing this, and he would recommend withdrawing this if anyone felt it was the Police Dept.

Chairman Murphy stated that we had two employees who were being paid, and we needed to step outside.

Before going outside, Councilman Benson verified that from the Police Department’s viewpoint, this could be withdrawn.

(At this point, everyone stepped outside for the demonstration).

When the meeting resumed inside, Chairman Murphy questioned if this was in violation of the Noise Ordinance? He noted that the point of the demonstration was dealing with the property line distance to a residential zone and 1000 ft. was a long ways away. He stated that he just wanted to show the Council what it looked like and also what it sounded like. Councilman Benson noted that this was portal to portal.

Chairman Murphy stated that he did not think this Ordinance was ready to be voted on, and the person who initiated this was not here; that the City needed to consider the size of the establishment. He stated that he felt this should be withdrawn from the agenda, and the motion could be made at tonight’s meeting. He went on to say that he would suggest putting this off for a month; that we need to talk to folks who represent Sports Bars of an average size and interview the Fire Chief as to what problems clubs of this size encounter. He stated that he thought the bigger issue was security.

Councilman Rico stated that he did not think the problem was clubs down that far, but the problem is cars that are parked around—that it is not the noise from the club but cars that surround it and are blasting out the sound.

Attorney McMahan noted that 3:00 in the afternoon the noise is a lot different than when you hear it at 3:00 in the morning, when everything else is quiet.

Councilwoman Robinson stated that if we could not do it this way, then we needed to try something that **will** work; that when these clubs exceed an acceptable use of our Police Force by creating a disturbance week after week and night after night, then we need to put a limit on this; that it is a nuisance and if the police are called out there (x) number of times, then we need to shut them down—that it is as simple as that when they are making life miserable for everyone else.

Chairman Murphy asked about a Nuisance Law?

Attorney McMahan responded that if we deal with clubs as a nuisance that they will fight it in Chancery Court. He suggested that this be put in the Beer Ordinance. He noted that we have false alarms. He suggested putting a clause in the Beer Ordinance about nuisances and then we could revoke their beer license. He stated that this might be a workable approach, to which Councilwoman Robinson said “Bingo”!

Councilman Rico stated that he was getting complaints of cars blasting their stereos and rattling peoples’ windows—that the problem was car stereos.

Chief Williams stated that that was strictly noise and hard to enforce.

Chairman Murphy added that it was also a manpower issue—that the police can’t chase after car stereos.

Chief Cooper stated that they got these complaints everyday; that he could hear car stereos in his house but by the time the police responds, they are gone. He stated that the Police Dept. had a priority with calls that they respond to and such calls as these would not get priority—that it is a nuisance and will continue to be a nuisance.

Councilman Benson asked about a noise camera—that he knew that the speed cameras had slowed him down.

Chief Cooper responded that he was not aware of a “noise camera”—that the Police needed something that they could fairly and evenly enforce—that this club is a nuisance because the neighbors call them continuously. He stated that them just responding was not the answer—that they needed to be given some leverage to enforce the laws for those in existence and also those in the future.

Councilman McGary noted that two officers had made the premise that the Police Force was not involved in crafting this. He asked if the Police were not included in crafting this?

Chief Cooper reiterated that they were not the ones who initiated this; that they were asked to some meetings for their input; that Chief Williams was Captain of this area and was directly involved. He emphasized that they had not brought anything to this Council to be approved; that they wanted something to enforce that was fair and equal; that for them to respond continuously to this area was unfair to the rest of the City's citizens.

Councilman McGary asked Chief Cooper if he felt that the Ordinance, as it stands, is not helpful, questioning if he did not think this could be pro-active?

Chief Cooper responded that he thought going through the Beer Board might be better—that just them responding was not making the issue go away. He used as an example the fact that they could move prostitutes but this would not do away with prostitution—that they could enforce that they could not operate at a particular location, but they would not go away—they would just move to another location. He stated that they did not want to put anyone out of business, but would like an effort to respect the rights of others in so far as the law will allow them to enforce. He reiterated that this would not go away.

Councilwoman Robinson stated that she thought we had our assignment; that we needed a new Ordinance that would fairly give the Police the power to respond; that we needed to start “brand new” with something that says every time there is a disturbance and the police have to show up, the business will get a “bad mark”, and when they reach a certain number, we can then do something about it; that this could come through the Beer Board.

Chairman Murphy asked Chief Cooper that after hearing this discussion, he thought of the many, many fire calls where we put a cost on them and asked about a penalty for a number of calls?

Chief Cooper responded that he was not sure he understood the question.

Chief Parker mentioned repeated fire calls at the same location; that they wanted people to call when there was a fire, but they needed to balance this.

Chairman Murphy suggested that we could set this at six or four calls, but when pushing and shoving starts, he would be concerned if management tried to deal with this themselves in order not to have a “recorded” call.

Attorney McMahan noted that they have to report fights.

Chief Cooper noted that it was not the club owner calling but the people around it.

Councilman Benson asked if this could be treated like an ambulance, where people have to pay; that if a neighbor calls about Deep Blue and the Police have to go out there and have a number of service calls to the business, then Deep Blue would have to pay?

Attorney McMahan responded “no” that this could not be done.

Councilman Benson wanted to know what the difference was—with the ambulance and the City?

Chief Cooper responded that they were not in a position to enforce false alarms—that this should really be looked at as a nuisance on the Beer License to facilitate this—that they could not control a nuisance.

At this point, Chairman Murphy allowed Loleta Hammontree to speak.

Ms. Hammontree stated that she and her husband lived on Crestor Circle, which was about 900 ft. from Deep Blue. She stated that she fully supported the idea of Councilwoman Robinson, and she hoped the Council could come up with an enforcement definition so that the club owner can't say it was not his fault but the people who were coming there—that they were his patrons, and the noise is created because they are circling that club and shaking everyone's windows.

Councilman Rico still maintained that the noise was coming from the vehicles.

Ms. Hammontree mentioned a neighbor who is closer than herself, that says when Deep Blue opens their door, the noise is there; that there are fights and drinking in the parking lot, and when the people call, this Club is responsible—that if the club was not there, this would not be occurring.

Councilwoman Robinson stated that we would have Attorney McMahan draft something that would be preliminary. Attorney McMahan confirmed that this would be coming back in a month, stating that he was sure Ms. Freiberg would appreciate a month. Councilwoman Robinson stated that this was a good plan.

Next, Chairman Murphy moved to the Security Ordinance, which he said had been discussed thoroughly; that he was of the opinion that this Ordinance could not be fixed and felt there should be no further discussion.

Councilman Benson asked if he was recommending that this Ordinance be withdrawn? Chairman Murphy responded that he felt the Council should just vote it down.

Councilman McGary asked what originally sparked this? He questioned if we should not take some action on this?

Councilman Rico stated that we already have laws that can handle this, and there is no need to make it more confusing.

Chairman Murphy stated that he thought there were two incidents that sparked this—one was at the Armory, where there was a shooting and then there was another event at the Theater Center and also a shooting at this event. He noted that security needs are widely disparate; that we can't have one-size security that fits all; that this denied spontaneity, and there was a way to address this issue; that we can't have an Ordinance that addresses every irresponsible promoter—that you can't legislate responsibility.

Chief Parker stated that a lot of times the problem is overcrowding, and if the Council was going to consider this as a nuisance, then the Fire Department needed to be included; that there is a way that they could address overcrowding, and he asked that they be included.

Chairman Murphy next went to **Ordinance (c)** that amends the City Code to add definitions for “Garden Center”, “Greenhouse, Commercial”, and “Nursery, Commercial”.

Attorney McMahan stated that this just dealt with various definitions and some have to have Special Permits.

Mr. Haynes stated that these things needed to be defined—that some of the terms are old and are not used anymore, and they were trying to make this clear and put it in the right zones.

Councilman Benson asked if this was dealing with “if you bring it in—it is a commercial zone”; that you can sell it in retail and nursery if you grow it.

Chairman Murphy stated that the rest of the Ordinances are zoning issues, except for (k).

Ordinance (k) amends the City Code relative to garbage and refuse. Councilwoman Scott stated that she had several questions about this. She stated that in the Ordinance it talks about the difference between whose responsibility it is if the trash container is damaged—that if it is damaged by the truck, then it is paid for by the City; that if it is residential abuse or theft, then it is up to the owner or the resident to replace the can, at the owner's expense.

Mr. Norris stated that a person's homeowner's insurance would cover this, with Mr. Holland agreeing that it cost the City a substantial amount of money. Mr. Norris went on to explain that the cans are leased and are not the property of the resident, and if they move, they leave the can—that the cans cost about \$50.00 each.

Councilwoman Scott confirmed that it is a \$50.00 Lease and asked if the Lease was life-time? She also wanted to know how Public Works could determine if the can was damaged by one of their trucks?

Mr. Norris responded that they had had eight years of experience with this and were pretty good at telling if the damage was done by their truck; that if there were burn holes, then you knew that ashes had been put in the cans.

Councilwoman Scott asked about cracks in the cans? Mr. Norris responded that this would be determined based on age—that if the can was just one year old and there were cracks, then it was not the fault of the equipment.

Councilwoman Scott stated that when you get a can—the first one is free; that if a person moves out and takes his can with him and someone else moves in, then does this person have to lease a can, and it will not be free? Mr. Norris responded that unfortunately the next person would have to pay—that if they see that a person has two cans and one is not authorized that they have serial numbers they can check—that they can tell who the can was issued to.

Councilwoman Scott asked Mr. Norris if he really thought that a person would file \$50.00 on their homeowner's insurance? Mr. Norris responded that he did not know, but he knew that this cost us over \$100,000 a year, and we don't have an unlimited amount of money.

Councilwoman Scott stated that the Council have 311 calls and that she got 10-15 calls a month about lids coming off. Mr. Norris responded that they would repair those. Councilwoman Scott confirmed that the homeowner would not be out any expense. Mr. Norris responded that a lot of things cause this—that they do break. Councilwoman Scott again confirmed that this would not be at the homeowner's expense.

Councilwoman Scott asked about the portion dealing with people interfering with the Director? Attorney Bobo responded that the penalty would be \$50.00 plus court costs.

Councilwoman Robinson stated that these were good questions; that she wanted it restated that homeowners cannot buy their own cans. Mr. Norris confirmed that **only** City cans can be used. Councilwoman Robinson stated that a person was playing games with her, stating that they could buy a can at Lowes for \$25.00.

Councilman Benson asked if “Rocky the Raccoon” could be used to educate people about this—that the cans go with the house. Mr. Norris stated that this was a good idea—that they met with realtors, and they understand this—that if they move away, the can stays.

Councilwoman Scott asked about it being acceptable that people can locally buy their own cans? Mr. Norris responded that he did not want to get into this. Councilwoman Scott stated that the problem was that people have to wait on cans—sometimes for as long as three weeks. Mr. Norris responded that they were working on this.

Mr. Leach asked if people could not just pick up their cans from Public Works? Mr. Norris noted that the problem was having enough cans to meet requirements—that it took money. Councilwoman Scott asked if he was saying we don’t have enough cans because of money? Mr. Norris responded that if the cans are damaged, they would swap out with a used can—that they did get behind, and there could be a three week waiting period.

Councilman McGary asked what people were supposed to do with their garbage during this three week period? Mr. Norris responded that he could not answer this.

Councilman Rico wanted to know how their garbage was being picked up?

Councilwoman Scott questioned us requiring people to use our cans and then we don’t have the cans—that this is a “Catch 22”.

Mr. Norris responded that they would pick up garbage—that he did not have an answer for this question.

Councilwoman Scott still questioned the City having this requirement when we can’t fulfill our part of the bargain; that if it were up to the Council to change this, then she would make the motion to change it and say that we would approve three types of cans—that people could buy them at Lowes or Home Depot.

Mr. Norris stated that we were supposed to get a shipment Friday—that if people don’t have cans, then he personally would pick up the garbage. Mr. Holland stated that they created manual pick-up routes.

Councilman Benson asked someone to capsule what the Council would be voting on tonight, noting that they were saying that people had to have sacks in the cans. Mr. Norris responded that they preferred sacks, but it was not a requirement. Councilman Benson stated that this concerned him—people having to have recycling sacks. He asked if there were any other big things that were changing?

Mr. Holland mentioned listing the number of containers at a property—that they did specify two containers at non-residential locations—that they are limited to two containers; that currently they had a problem with strip malls, where there might be ten units and if each unit had two cans, it would create a nuisance—that in these cases, they should maintain a dumpster.

Councilwoman Scott mentioned no more than seven at multiple dwellings. She mentioned that looking at (2) and (4), it does not distinguish multiples. Mr. Holland responded that four containers at a duplex could cause a real problem; that at a duplex they were calling for one container per unit. Councilwoman Scott asked if four was a multiple? Mr. Holland responded “yes”—that seven or fewer is residential—that no residential is more than eight. Councilwoman Scott stated that she understood the intent but thought the word “multiple” should be added. Mr. Holland stated—“*No more than seven (7) containers shall be serviced at any multiple property receiving residential service.*”

Councilwoman Scott wanted to know how they collected the \$50.00 and if people had to go down and pay this or if it were paid when they delivered the can? Mr. Holland stated that if they delivered the can it was \$60.00 to replace. Councilwoman Scott asked if people were writing checks for this? Mr. Holland stated that they could collect when they delivered the can or people could mail their check or come by their office.

Councilman Rico asked about vacant lots and two garbage cans where there were no residences?

Mr. Leach stated in such a case, they would assume that they were stolen.

Mr. Holland stated that it says per location—that this was spelled out.

Attorney McMahan stated that they would make this slight change (adding multiple) before final reading next week.

The meeting adjourned at 4:15 P.M.