

**LEGAL AND LEGISLATIVE AND SAFETY COMMITTEE**  
**JANUARY 10, 2011**  
**3:00 P.M.**

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

Others present included Dan Johnson, Judge Paty, Dennis Malone, Dallas Rucker, Steve Leach, Lee Norris, Jerry Stewart, Gary Hilbert, Richard Beeland, Greg Haynes, Boyd Patterson, Danny Thornton, Jim Templeton, Tony Sammons, Judge Bean, Dickie Hutsell, Dave Crockett, Donna Kelley, Vickie Haley, Chief Parker, Tony Boyd, Chief Dodd, Mayor Littlefield, and John Van Winkle. Chief Kennedy, Madeline Green and Jenny Lowery joined the meeting later.

Chairman Murphy expressed appreciation for Chief Dodd's presence and the way his department put themselves in "Harm's Way". He then noted that the Ordinance we would be discussing today was an amendment to the City Code that establishes the Office of Administrative Hearing Officer. Mayor Littlefield and Judges Paty and Bean were in the audience to speak to this issue. Chairman Murphy first called on Attorney McMahan.

Mr. McMahan explained the "nuts and bolts" of this issue, mentioning a new State Statute 654.1001 that creates an Administrative Hearing Officer. Pursuant to State Law they are allowed to hear certain kinds of violations of Municipal Ordinances. Mr. McMahan stated that he would read a litany of these violations, which mostly included the Department of Neighborhood Services and also Public Works' areas, including building codes, plumbing codes, electrical codes, gas codes, mechanical codes, energy codes, and property maintenance codes—a lot of technical codes involved. Most of the violations deal with building and residential codes, which is the focus of the Administrative Hearing Officer. He described this as being a somewhat "backwards procedure", noting that there would be designated qualifications. First, this position would require a licensed attorney and secondly, once we have the basics drawn up in regards to violations, this person would review the cases and could enforce penalties up to \$500.00; however the penalty could be excused; that would follow State procedures and there could be no communication and there would be pre-hearing conferences. The Administrative Hearing Officer would be appointed by the Council and would be required to take training courses and maintain continuing hours on that. The City has to draw up the charges and the Administrative Hearing Officer hears the case and serves violations and fines. An appeal would not be to Chancery Court but to the Tennessee Court of Appeals. This would only be used in more egregious cases in the perspective of Mr. McMahan.

Mayor Littlefield stated that this concept has some history; that it goes back quite a long ways when City Court heard State cases in an attempt to maintain the integrity of neighborhoods;

that Mayor Kelley instigated the Better Housing Commission, which is now Neighborhood Services; that we had a Board to decide which cases would go to City Court—cases such as our environmental cases—that oftentimes abandoned vehicles and overgrown lots get lost in the mix; that we had looked at ways to remedy this; that the Environmental Court in Memphis is doing a great thing, and it takes these kind of cases out of the City Court docket. Mayor Littlefield went on to talk about Judge Williams creating the Environmental Court and stated that he took to this task in a rather “colorful” way and did good work. He related a case example. He stated that he did not want to offend City Court but that they had limitations in the Constitution of the State of Tennessee; that the courts were limited to a \$50.00 fine; that there had been an ongoing Council effort to amend the Constitutional limit; that we had learned that it is not a good idea to put a numerical amount in—that \$50.00 can be very insignificant. He explained that it is a lengthy process to amend such matters; that the last time we tried, it was on the back of the ballot, and such an effort would rarely get enough votes because people view it as just another fee grab; that this \$50.00 limit needs to be raised to put teeth back into City Court. He reiterated that he was not criticizing City Court but that it had diminishing power and in dealing with environmental cases, the \$50.00 limit is less of a deterrent.

He mentioned that some communities have adopted the Administrative Hearing officer already and asked Attorney McMahan if he had had the time to check into this further. Attorney McMahan stated that he had not had the time, but he knew that East Ridge had adopted this. Mayor Littlefield went on to say that the Tennessee Municipal League is interested in this—that it is a way to put the “bite” back into resolving these issues; that City Court has less and less of an influence to wield power (stating that this was not a criticism of City Court) and that he did not see any way to change this; that Councilwoman Scott had asked about increasing the fine limit. He again noted that environmental cases in Memphis had been taken out of the court system and that this is one avenue we can go because changing the Constitution cannot be done quickly and easily. Mayor Littlefield mentioned the court room that we have across the street that could hear such cases, and we would not have to bother City Court and clutter up their docket—that we could take out the “thorny” issues. He stated that he recommended this, even though it will be tested; that it is a tool that has a history of maintaining neighborhood integrity.

Chairman Murphy noted that early in this term we agreed that we had a gentleman repairing cars in a neighborhood, and we agreed to take steps to sue him in Chancery Court, and this problem went away. He added that slum lords were happy to just pay the \$50.00. He questioned if this would be at the discretion of the Neighborhood Code Inspector?

Mayor Littlefield responded that commonsense would rule—that it would just be egregious cases; that City Court had been handling these a long time, and we need teeth back in this process; that taking these cases to a different court is problematic; that we need more of a cut and dried process, and we would start with long-standing chronic cases.

At this point, Chairman Murphy recognized the presence of Commissioner Greg Beck.

Judge Sherry Paty mentioned a few issues she had with the Ordinance and increasing the fine from \$50.00 to \$500.00, stating that their fines were imposed by law and that they did enforce the cases before them concerning the Building Code; that the majority of cases did not fit into the type of cases that had been mentioned; that there is a \$50.00 fine and court costs. She mentioned that many outstanding costs had not been recovered or any attempt made to recover these costs. She stated that her concern was that this would be a duplication of services; that an Administrative Hearing Officer would be a cost to the City, and this person would have to have a staff and technical equipment, which they had in place already; that this would be an additional cost to the City that the City may not be able to recover. She stated that this would serve a limited purpose because they did not get many of these type cases anyway. She stated that she also had a problem with increasing the fine to \$500.00 because this would be challenged and was a constitutional issue; that in some instances there would be no court costs imposed and there could be no fine at all; that the City would be incurring expense and not be able to collect anything in the long run. She stated that she and Judge Bean were elected and paid to hear such cases, and this would be a duplication—that many people who had cases before them could not pay \$50.00, let alone \$500.00—that if they could correct them, they would; that this would impose a financial hardship in trying to maintain a \$500.00 fine and would not correct the problem but only exacerbate it; that this is a cost the City might want to look at.

Councilwoman Berz stated that she had two comments. She wanted to know if the \$50.00 fine could be a cumulative fine? Judge Paty stated that there could be multiple violations and every day could be counted a violation; that generally the Inspectors do not do this—that it would have to be very egregious. Councilwoman Berz asked if it were the duty of the Inspectors to bring these cases to Court and if \$500.00 could be fined based on ten days? Judge Paty stated that it could be \$50.00 plus court costs each day if this was requested by the inspector. Councilwoman Berz noted that it had been said that the City was not collecting what is fined now. Judge Paty responded that they imposed the fines but do not collect them; that the number in outstanding fines could be in the thousands; that liens can be placed on property and that generally when fines are not collected, they are turned over for collection. Councilwoman Berz noted that there were two variables that were not in the Court's control—the issue of fining at a higher level and once this level is determined, someone else collects it. Judge Paty stated that the Inspector makes the determination as to how many times a person is fined for a violation; that once they rendered judgment, they did not have anything to do with collection.

Judge Bean stated that there were administrative costs, too. He thanked the Council for having them present. He mentioned Judge Williams' Environmental Court where he fined \$250 up to \$500, and the case was reversed—that there could not be more than a \$50.00 fine. He stated that this Statute would be challenged, and he did not know if it would stand; that they tried to raise the limit from \$50.00 and the voters rejected it; that this is an attempt to get legislation in through the back door; that a \$500.00 limit is a constitutional issue, and the high courts might go along with this, mentioning how the Hall's Income Tax had evolved to businesses, stating that this might stand the test; that Attorney McMahan knew this—that the Tennessee Municipal League thought that it would be very difficult to pass this Statute. He stated that he had been looking at the present debates, and the issue is jobs—that small businesses are getting "snuffed" out due to State and municipal regulations. He urged to not "snuff" out small businesses; that by regulating fines, you can destroy, and the power to fine can destroy. He noted that the Administrative Hearing Officer would not be elected but would be appointed by the Mayor—that the present Mayor is okay but one never knows what kind of Mayor we might have in the future—that we might get someone who will impose higher and higher fines. Chairman Murphy corrected that the Administrative Hearing Officer would be appointed by the Council, prompting Judge Bean to say that the present Council won't always be here either; that he thought this position would be appointed by the Mayor. He stated that he and Judge Paty were elected and don't adhere to what the Council nor the Mayor says; that at times it is tough and they imposed administrative costs when needed; that we need to take into consideration the people who are paying taxes and city changes to the law, and people who can't afford this—that it is property rights versus regulation. He stated that he and Judge Paty were able to do the job, but it was up to the Council to decide about an Administrative Hearing Officer.

Councilwoman Ladd stated that she had listened to the various discussions, and her feelings had never changed; that she agreed with Judge Paty that this would be a duplication of services; that it is so new that the Mayor and both Judges say that it could be challenged, and she did not want any more court cases. She urged to let others test it; that the only way she could support this would be to allow the current judges to become the Administrative Hearing Officer and not add more staff; that last week the Mayor added to more people, and she was not in favor of adding any more staff; that in order to add on, we need to cut other positions; that we have to pay salary and benefits, and she just did not see this as a viable option; that it could be handled by the existing staff; that there would be office and parking issues, and this was not something she could support at this point, mentioning the positions last week.

Judge Bean noted that the issue of the \$50.00 fine limitation will be back in 2014.

Councilman Gilbert stated that it seems there is a numbers issue; that \$50.00 can be fined for ten days, which would be \$500.00 or more; that what we have currently is good for the people in hard times who are trying their best; that the System needs to look at fining people each day. He stated that what we have currently works without extra salary, staff and benefits.

Mayor Littlefield explained that his intent was not to create a permanent job but this person would be hired on contract, and this was legally possible; that this would be on serious cases where we could not go above the \$50.00 fine now; that these Judges could not impose a \$500 fine. He told of an incident when Councilwoman Berz was a community activist and there was some rental property and a small business person had ignored all efforts, and it ended up in Judge Williams' court; that Judge Williams noticed him (Mayor Littlefield) in the audience and decided to call this case right then, and the person was not present. Judge Williams ordered that someone go to this person's business right now and tell him that Judge Williams requires him present in court, and the person arrived in 45 minutes, and the matter was resolved. Mayor Littlefield stated that we needed to utilize this kind of power; that people ignore neighborhood conditions, and we need the resources to deal with this; that municipal courts can be given the additional power that they need, but he was not optimistic about this, and he failed to see how more power could correct the problem; that whether the Council adopts this measure or not, the problem will not go away; that he was not adding to the Staff; that people in the Finance Dept. could accept the fines; that this is the Council's problem and a neighborhood problem and this solution has been crafted; that if it is challenged, many others will be included, and it will not just be Chattanooga.

Councilman Benson stated that he thought this was an option—just another route to go; that the \$50.00 fine is not solving the problem; that it would be no more than the Council's Administrative Law Judge, and this person would not be on the regular payroll; that there would not be staff and benefits—that this was just another option available other than sending cases to City Court; that this option would be more stringent and would not be a permanent employee.

Mayor Littlefield stated that he knew this room was "sacred" to the Council but that these cases could be heard here.

Councilwoman Scott stated that she had personally asked several members of the State Legislature to put this forth as a referendum and no one had desired to do this; that we all know that the \$50.00 fine is antiquated, and she understood the difficulty in changing the problem; however in reading the Ordinance as proposed, she did not see how it would not be a duplication; that it would be impossible not to have additional staff for record keeping; that she liked the idea of looking at the City Court Judges having a dual role and asked if there would be any legal issues with a dual role; that she thought there would be additional costs, but she wanted to know some estimate of the figures before making a decision; that it would be good to know how many fines in a dollar amount were being collected; that she would like to have this analysis before the Council, just like we did with parking tickets; that she did not have this information today and was not ready to vote on this; that we needed more information before we go forward.

Councilman McGary stated that he was hearing two sides; that an alternative tool put forth by Administration was commendable for repeat offenders, but it had been said that this could be challenged; that his question was hypothetical—that if we pass this role to levy fines, and it is challenged in a court of law and found unconstitutional, what happens?

Attorney McMahan spoke to a \$50.00 fine without a jury trial; that comments had been made about “back doors”; that civil penalties were up to \$7,500 a day; that so far these laws had been upheld by the court, and it may be a “back door” approach. He mentioned when this was drafted using the word “fines” in state law rather than “civil penalty”; that somebody in Tennessee will challenge it, and he could not say what the courts will rule—“civil penalty” or a “fine” (State of Tennessee) could be tested. He stated that as to the other question about our present Judges serving in this capacity, that he had not considered this; that judges can’t hold other remunerative offices; that using someone other than the judges, we would be paying about \$100.00 an hour for this service, and it could take from two to three hours for the average case; that it was not about money making but enforcement.

Councilwoman Robinson stated that she sensed that the best outcome for this discussion centered not on the mechanics such as staff and record keeping, but looking at the problem itself—the enforcement of changes; that she would like to “huddle” up with the judges, the Council and the Mayor to figure out a way and to be “clever” in how we do this and further open the “front” door and not the “back”; that the use of language is important such as the mention between “fine” and “civil penalty”; that she thought everyone should meet around the table.

Mayor Littlefield reiterated that it was not his intent to add staff; that the City Court Clerk’s office is part of administration and could put these cases together; that he was just seeking a stronger tool; that there is a problem across the State with a \$50.00 fine limit, and it had been there a long time and did not look like there would be any change in the future. He stated that he thought City Court was passing away and cases would be taken to other courts.

Councilman Rico stated that he needed his memory refreshed but thought there had to be refunds on overcharges that Judge Williams made. Attorney McMahan agreed that there were refunds for parking violations. Judge Bean added, “also on yellow and red lights”. Attorney McMahan agreed that these were subject to pay back.

Councilwoman Berz stated that irrespective of which way we go, we have a poor track record of collecting fines, and the collection rate has nothing to do with the judges; that we need to come up with a better way to collect money that is due us; that people are in dire straits as has been mentioned before; that the big cases are slum lords who are getting a free ride with just a \$50.00 fine, which they consider just the cost of doing business, and this was not okay. She asked if we do get this Administrative Hearing Officer, would it come in a departmental budget?

Mayor Littlefield responded that he would make this happen; that a \$50.00 fine is easy to ignore; that \$500 is larger and it would be to our benefit to go after these resources—that people would be more fearful of a larger number.

Councilwoman Berz asked the Judges again if they could charge \$50.00 for each day's violation? Judge Paty explained again that it could not be \$500 fine but \$50.00 for each violation—that they were not getting multiple citations. Councilwoman Berz asked if multiple citations had been brought to them. Judge Paty responded that it was not generally done, but it could be.

Chairman Murphy noted the difficulty in writing citations and “dittoing” them every day. Judge Paty agreed about the difficulty of one citation with ten violations. She talked about the problem of Banks and foreclosures, with Chairman Murphy adding that Banks run the risk—that the issue is often being able to find the property owner to issue a citation. Judge Paty agreed that inspectors have a hard time finding owners and tracking down legal owners of property.

Councilwoman Scott stated that she appreciated and empathized with a property owner being able to afford a fine and/or court costs; however when any of these inspectors cite people to city court, we have city employees (inspectors) waiting in court until their case comes up—that the courts go through an order, and the result is people employed by the City sitting there confined in one area; that the cost to cite someone to court is enormous and the \$50.00 fine comes nowhere close to these costs; that everyone that is cited has a wonderful excuse why things have gotten piled up, and with this in mind, we need to make sure we are looking at all options; that we could consider an Administrative Hearing Officer using the same staff and the same system as the City Court is using now. She asked if we were already there? Mayor Littlefield responded “yes”—that he was not creating a staff.

Councilwoman Scott stated that he was talking about using the building across the street and asked him why he would think about going to another location? Mayor Littlefield responded that we could do it right here in this room; that we already have a staff working for us using Neighborhood Services and the City Court Clerk's office; that he did not see this as anything other than a test; that he did not think we had to act today; that it could be passed for further study, but it needs to be acted on in the future because the problem is not going away, and this is one way around the \$50.00 fine limit. He noted that Nashville has a different form of government, but Chattanooga is stuck.

Councilman McGary stated that he was very sympathetic, but his sympathy did not change the fact that we could be on shaky ground in a matter of short time; that we can study this as a body, and he thought it was in our best interest to table this for six months or a year; that we had heard about this issue of collecting fines; that we had been pro-active about the parking issue, and we need to do the same thing with this issue; that it needs to be a pro-active process.

Chairman Murphy stated that we had talked about this previously; that our collection rate is good—in excess of 90%; that there is a lot of volume and a small percentage cannot pay or will not pay; that the Finance Dept. can get with us and show the numbers, but he thought it was in excess of 90%. He thanked everyone for coming in on this issue.

Chairman Murphy moved on with the agenda, asking if there were any concerns regarding **Ordinances (b) and (c)** dealing with annexation?

The next issue was **Resolution (e)** authorizing the Personnel Director to enter into a contract with DBS Corp. to construct a new employee health center on 11<sup>th</sup> Street for an amount not to exceed \$4,157,029.25.

Donna Kelley stated that in the fall, they proceeded with plans for a new health and wellness center, and they now had the results from the architect, and he was with us today, and she was requesting the Council's approval to build the building.

The Architect spoke, stating that he was pleased to be here today to give the Council a briefing. He stated that they had been working for several months and developed a project for the property on 11<sup>th</sup> St.; that they had put this together with the help of the Personnel Dept. and would show how it is located on the site. (There was a problem at this point with the power point presentation, which Mr. Burns attempted to resolve). Chairman Murphy jokingly said that we should have music at this point—that Chairman Ladd could sing. She retorted “that this fat lady can't sing”.

In the interim, Mayor Littlefield related the success story relative to a group of employees who are physically challenged and over-medicated; that we had taken a different route and had focused on wellness rather than sickness, thinking that this would pay off, and it has; that we started slowly and this has been ground-breaking; that private companies have been doing this, but we have had very few community clinics; that many people just think about the exercise facilities, but this goes beyond that; that it is an access to health resources, and we are dealing with unattended to illnesses such as diabetes, cancer and high blood pressure and have been able to save lives. He stated we started this program small; that on Amnicola they are using a triple-wide trailer; that the building we are using here is the old Senior Neighbors' Craft Building that we paid \$52.00 per sq. ft. for; that this building was never intended to be permanent. He went on to say that 70% of our employees are taking advantage of this; that we have increased the pharmacy twice; that the County patterned one after our success; that our intent is to use the savings to move to the next level.

Ms. Kelley gave a history of the “flat line”, stating that this is unheard of; that she came to the Council three years ago about the pharmacy, and the employees had made this successful. She presented figures that showed we were headed in the right direction and that we were a model in government and had a lot of untapped capability. She mentioned the large savings.



By this time, Mr. Burns had the presentation up and running, and the Architect proceeded, stating that they had been working on this for six months. He showed a slide of the site on 11<sup>th</sup> St. and the main entrance in the rear of the facility with P&P Produce to the right. He noted that the overall site is designed to fit the streetscape. He emphasized that this was more than a Fitness Center and that there would be a facility for primary care and occupational health care; that this is full scale planning for city employees with drive-through capability. He again showed the main entrance and waiting rooms and multi-purpose spaces designed to be used for conferences and presentations. He showed slides of the Primary Care Clinic and the Occupational Health Area. He showed the Management Office in the northeast corner of the building with dressing rooms and showers for the fitness facility. He mentioned the use of exterior lighting and natural lighting with 75% day light. He showed the exterior of the building facing 11<sup>th</sup> Street and asked if there were any questions.

Chairman Murphy thanked him and informed the Audience that zoning matters would be taken up at the evening meeting.

Councilman McGary asked Ms. Kelley if this was their cost expectation? She responded "yes". He asked if it were to the tune of \$4 million dollars, and she responded \$4.1 million.

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

Chairman Ladd suggested that we now go to the Budget and Finance Committee meeting and forgo the Agenda Session because we had people who had been waiting a long time, and she thought we could move through the agenda session rather quickly.

This meeting was adjourned at 4:30 P.M.