

LEGAL, LEGISLATIVE AND SAFETY COMMITTEE
AUGUST 7, 2012
3:45 P.M.

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

Others present included Patrick Bobo, Danny Thornton, Johnny Feagans, Dan Johnson, Donna Kelley, Madeline Green, Ron Swafford, Richard Beeland, John Bridger, Steve Leach, Chief Kennedy, Sgt. Smeltzer, Larry Zehnder and Daisy Madison. Mayor Littlefield joined the meeting later.

VEHICLES FOR HIRE DRIVERS

Chairman Murphy asked Attorney Bobo to come forward for this discussion. Mr. Bobo stated that the Transportation Board met this past week and discussed a temporary medical exception; that there are three levels of financial responsibility, including insurance, for those with taxi permits; that the only exemption is if the vehicle is inoperable. He mentioned an operator who could not operate his vehicle because of a liver transplant; that if this Ordinance was passed it would be a good tool to allow for a driver who is not able to drive to have a burden lifted. This would just be lifting the insurance requirement and all other fees would still apply.

Councilwoman Scott referred to Section (c) (1) that speaks to the Transportation Inspector granting the driver a Temporary Medical Exception from the financial responsibility requirements; that in no event shall the Temporary Medical Exception exceed six months; that the driver would remain responsible for payment of other fees. She wanted to know if this was contradictory with another section? She mentioned another sentence that referred to the exception remaining in effect, which seemed to her to be superfluous. She felt the last section could be deleted without changing the meaning. She felt that (1) and (4) contradicted (2).

Mr. Bobo stated that he would have to read the Ordinance again—that the last sentence in (3) read that if the driver is unable to provide proof of financial responsibility and the appropriate medical certifications at that time, action may be taken to suspend and/or revoke the driver's permit. He stated that this Ordinance would give the Board teeth after six months.

Councilwoman Scott wanted to know what (c) (2) does differently—*“During such period that the Temporary Medical Exception is in effect, the driver shall be prohibited from operating a vehicle for hire pursuant to this Chapter”*. Mr. Bobo responded that this section says that you won't operate a vehicle under the Temporary Medical Exception because you would not have insurance and would be a danger to the public.

BRIGHT COLORED FIREARMS

Chairman Murphy asked Chief Kennedy to come forward. Chief Kennedy stated that Sgt. Smeltzer was here to answer questions—that Sgt. Smeltzer teaches at the Academy and is a member of the SWAT Team and can impart good information. Chairman Murphy asked if he was familiar with these handguns and the types of problems? Sgt. Smeltzer recognized the problem of deciding whether a firearm is real or a toy; that some guns are made to look like toys and are very colorful; that a child could get hold of one, thinking it was a toy.

Chairman Murphy asked if a lot of decisions had to be made in a split second? Sgt. Smeltzer agreed that decisions were split-second and from a training perspective, they have to treat any gun as if it were real—that some were bright colored with cartoon characters. Chairman Murphy asked if these guns became commonplace, would they have to change their training? Sgt. Smeltzer responded “yes”—that it would impact training and public safety concerns as well.

Councilman Gilbert stated that he understood it put police in jeopardy if they had to hesitate to see whether it was a real gun or not; that we need to stay away from guns that look like toys; that hesitation can cost lives; that he agreed with Chairman Murphy.

Councilwoman Scott stated that obviously all had seen photographs of the guns locally, and she would think they would be in other States, too. She wanted to know how realistic it is that we could enforce legislation for toy guns and real guns—that the safety of all included police officers assuming that it is a gun; otherwise, how is it possible to make it better?

Chairman Murphy stated that we are trying to make it better with this Resolution that asked that the Bureau of Alcohol, Tobacco, Firearms and Explosives expedite rulemaking regarding the use of bright-colored firearms.

Attorney McMahan added that this Bureau passes restrictions concerning manufacturing of these types of weapons; that it goes up the chain of command.

Councilwoman Scott asked if the guns that are already here will be grandfathered in and then later how would we know the difference? Chairman Murphy responded that we are considering a rule-making on this topic and asking them to do it expeditiously; that right now the guns are fairly rare, but we will see more and more and are trying to prevent the problem.

Chief Kennedy noted that every day they have to make split second decision concerning whether a weapon is a real gun; that real guns are taken and tipped in orange; that some would take fake guns and tip them in orange—that anything at all that the Council can do to assist them, they would be all for it.

Councilman Rico stated that he thought gun manufacturers were trying to promote something that ladies will buy—nice colored guns—that this would be something a lady would want—something nice looking. Councilman Murphy added “and to make money”.

Councilman Benson stated that the ATF is looking at this nationally; that a toddler is vulnerable in the house; that we need to move on this in good faith, at the Police Department’s recommendation.

TERM LIMITS AND CHANGE IN ELECTION DATE

Chairman Murphy stated that we would now take up Term Limits and moving the date of the election; that this had already been discussed in committee prior to this.

Councilman Rico added that we had discussed this, and there was not much interest in term limits.

Councilwoman Scott stated that she would like to talk about the election date first. She passed out a calendar for current cycle for elections; that in 2012 in November there will be the upcoming Presidential election and in 2013 we will have the first city election in March, with the run-off being April 14th, which will cover the Mayor and City Council. She went on to say that in 2014, we will have the Governor’s race and in 2016 another city election. She was proposing a request for the 2013 election that we move the city election to coincide with the primary in August and then election in November and pair it with the 2016 Presidential election. She noted that the benefits would be that the Presidential election would increase city election turnout, and there would be a higher participation; that only 18% voted in the last Chattanooga city race; that in March we have cold, wind, and rain, which does not encourage citizens to vote, especially elderly people; that August and November have better voting weather. She went on to say that this change would pair all of Hamilton County, with the exception of Collegedale. She stated that she would suggest this in all of the early voting areas, since they are already in use for the federal and county races, and we would not have to fund those voting areas in March and April. This change would decrease the total number of election campaign cycles, causing sign clutter and phone calls for Chattanooga citizens. This would eliminate the conflict caused by the City Council trying to campaign during the election time in March, and the run-off comes along the same time as tax returns are due. The next election would be for a term, minus 8 months—it would be shortened by 8 months.

The second thing she would like on the referendum would be term limits, which would encourage new candidates to participate and would level the playing field against incumbents with name recognition; this would return the legislative government branch to the citizens to legislate.

She stated that her purpose was two-fold—to change the election date to pair with the presidential election and to give citizens other candidates to vote for.

Chairman Murphy thanked Councilwoman Scott and started to move on with the agenda. Councilwoman Scott stated that she was hoping for some discussion.

Councilwoman Ladd also indicated an interest in some discussion. She stated that she appreciated Councilwoman Scott forwarding these comments; that she was more convinced—that sometimes we have an outstanding person who is doing a terrific job, and we would hate to see them “rolled” off the Council (jokingly, she said she was talking about Councilman Rico); others, “we can’t wait to see them go”! She noted that Councilpersons have a “shelf life” and it is up to the district when they need to make a change. She stated that she could back up term limits at 12 years rather than 8 and was fine with changing the voting time.

Councilman McGary stated that he was definitely in support of a having a future committee meeting for public input so that citizens could voice their concern regarding term limits.

Attorney McMahan stated that he had heard Councilwoman Ladd say that she supported Councilwoman Scott’s idea to move the election time to the August-November cycle and two councilmembers can put something on the agenda; that because of the first week in September timeframe for the ballot, this needed to be taken up immediately.

Councilwoman Scott stated “so I guess I am asking that this be done”—that two people were sponsoring this.

Councilman Rico stated that he had no problem with changing the date of the election.

Councilwoman Scott asked for a consensus on term limits, with Chairman Murphy responding that he thought the discussion revealed what the Council wanted to do.

Councilman Rico stated that he was not trying to keep his job—that he did not need this job; that it was hard to get people to be good public servants; that a person had to give up a lot to do this work; that he had been blessed; that it takes time and money and a person has to really believe in what they are doing and want to make a difference in peoples’ lives. He went on to say that it is hard to get good, honest people to run; that there is a learning curve, and it was hard to find dedicated people who want to do this for the right reason; that it was even hard to find people to serve on boards; that he did not think people realized what it took to do this job right; that one had to make a sacrifice for the time spent with family; that it is a fulltime job and if we don’t put all the time in that we can, we are taking from the taxpayer. He reiterated that he did not need this job, but it is a “calling”; that he was against term limits.

Councilman Benson stated that what we do is done throughout the nation; that we change Mayors but need some continuity on the Council with institutional knowledge; that the legislative branch is established by the citizens; that it is a system of checks and balances. He noted in the last election that we had five changes; that when he came on board, he had to look to Yusuf Hakeem for institutional knowledge and also Ron Littlefield; that the public has a choice; that term limits is contrary to what the legislative branch should be.

Councilwoman Scott stated that other people can't vote themselves raises in companies; that this seems to be a conflict of interest and it is; that in her mind it was a conflict of interest for the Council to be the final say for term limits—that the public would not get a chance to vote; that the public should be given a choice to vote on term limits. She asked if she could get any councilmember to join her in putting this on the ballot for an up or down vote on the referendum. She urged to let the people make the choice concerning term limits.

Upon questioning by Councilman Murphy, Attorney McMahan explained that the Council's salary is paired to the Mayor, who is paired with the County Mayor. Councilwoman Scott stated that she did not say we determined our own salary.

ONE-TIME PAY ADJUSTMENT FOR CERTAIN EMPLOYEES

Councilman Gilbert addressed the 3% raise, stating that as he researched this, one of the issues was about finding money; that last year we asked if there were any other funds available and were told "no"; then in October we came up with \$160,000 to pay for the Gang Initiative that was not previously in the Budget. He stated that he thought we might could find money in the Budget for people on the low end; that this would be a one-time 3% raise for those who are "topped" out and taxes and water quality fees have risen. He mentioned some receiving the 3% raise, who had not "topped" out and were already making good money, and some of these others had had nothing in years because of the "top out". He stated that this was not fair to some people; that he knew the amount of money was different but the method should not be different and should be the same for everybody; that these people had gotten nothing in a long time and were at the low end of the pole.

Councilwoman Berz stated that her question was for the City Attorney. She asked if there would be any unilateral consequences of giving a one-time bonus? Attorney McMahan responded that if you adjust to raise for one time and then take it back next year, there could be a morale problem, but it was not a legal problem—that it would be a management problem. Councilwoman Berz stated that a one-time bonus for select people was something to think about. She wanted to know about discriminatory aspects and if this would be taxable? Attorney McMahan responded that it would be taxable and non-discriminatory.

Councilwoman Scott noted that some of the people who are working and “topped” out in their salary range could be some of those who had the oldest record at the City—that it was her understanding that this was how longevity pay was calculated—that the whole process was to reward those people at that end and these individuals for their long time service. She questioned if this was doing two things to accomplish the same goal?

Councilman Benson stated that he would like to see the 3% go to all employees; that he thought this was what was happening and was disappointed, stating “thank goodness” for longevity, which helped the low income. He stated that he was not against this but thought it would be opening up a gate for the Fire and Police employees who are not on the career ladder. He stated that we passed this Budget, and we made a mistake; that he thought we needed to live with it and try to do better next year; that if we opened this up, he questioned where we would stop—that the dam would break; that the Police Dept. has us in court. He wanted to know what this would do to us in our legal stance with the Police?

Attorney McMahan responded that it would take time to resolve the Police lawsuit, maybe close to a year.

Councilman Benson asked if they were supposed to get a career ladder amount, would they receive this now or would it have to be reimbursed? Attorney McMahan responded that the Staff is giving advice about implementing the career ladder.

Councilman Gilbert stated that in regards to the Fire and Police, this situation was mentioned; that he was speaking of General Services now—that they need some type of relief, and this would not make or break us; that we had said “everybody”; that there are people with less than 8 years who are receiving the 3% with no “top out”; that this would be a one-time deal.

Councilman McGary weighed in on the issue, stating that he knew we needed to be fiscally conservative and need to look at what has been budgeted. He noted that we, as a Council, had voted to appropriate \$250,000 to the Chattanooga History Center, and it was on the agenda because a mistake had been made because of an omission; that what we are talking about now are 56 individuals who have been omitted, and the figure to rectify it would be \$70,000; that we are allocating \$250,000 to the History Center versus \$70,000 for 56 individuals; that to the point, we as a body made a mistake, and we are now trying to rectify it—that it would take \$70,000 to right a mistake; that those who are not topped out are receiving 3%. He mentioned an anomaly, stating that he did not think the facts bore this out; that if it is the will of this Body that he did believe in view of what has happened that this is the most simple and eloquent way to rectify this mistake; that anything else would “muddy” the water, and he thought \$70,000 was worth it.

Councilwoman Ladd stated that she did not make a mistake with her vote and did not feel she needed to do anything to rectify her opposition to the 3% raise and longevity pay; that this Council approved more longevity than previously in a lump sum payment; that to approve this goes against the rules of a compensation plan—it is a violation of the compensation plan; that when someone is “topped” out it is at the end of their value and their job is not worth more than that; that we can’t circumvent the compensation plan and go in there and mess around with it; that this would be above and beyond fair payment and every year we would have a group pleading for fairness; that this would be well out of line; that we needed to stay with our compensation plan or else every year people will be wanting more and more. She went on to say that our taxpayers are losing jobs and trying to stay in business with no consideration like longevity and being “topped” out; that we cannot say that we paid beyond the market value—that this would not be good management; that this might be a compassionate idea but not a good business idea.

Councilman Rico stated that he totally agreed with Councilwoman Ladd; that this is election season and urged councilpersons to not use this as a means of support from special interest groups; that next year we might have to raise taxes and lay people off; that he did not want to raise taxes the last time; that this idea might be a means to help in the election next March.

Councilwoman Scott stated that she thought there would be a legal liability if we do this one time and at another time don’t keep doing it with raises as we did on one pay scale; that we would have to say “no” to the next person.

Attorney McMahan stated that any employee, earning more or less, could say they have been discriminated against and there could be a potential lawsuit; that he did not think this one time would result in a lawsuit, but he could not say there would not be a lawsuit.

In regards to Councilman Rico’s comments, Councilman Gilbert stated that he did not think anyone on this panel would be doing this to win a vote; that he was trying to look out for General Services and thinks everyone should get 3% because the economy had been bad; that next year we could re-negotiate; that it changes every year, and we need to give these people some relief; that someone saying we are doing this for other reasons is wrong.

Councilman McGary still maintained that there was a mistake—that there was no rule saying that anyone “topped” out would not get the 3%—that he would not be supporting this if that were the situation; that this whole body had the understanding that the 3% would be across the board; that the 3% is what we did as a body—across the board for all employees, only to find out that another group of people were excluded; that the conversation has been “how do we rectify this mistake” and the \$70,000 is the most expeditious way to go forward; that other conversations have some merit; that we are not setting a precedent or opening a door.

Councilwoman Scott stated that the Ordinance contained the terminology that those who were “topped” out would be excluded from the very beginning; that we need to pass the Ordinance that was written and what is in the document regardless of whether we have read it or understand it. She stated that this language was there prior to the first discussion, and the only thing that changed in the Ordinance was a few numbers—that this is not a change from the document.

Chairman Murphy asked Mr. Johnson if he wanted to say anything?

Mr. Johnson stated that 95% of what he wanted to say had been covered by Councilwomen Ladd and Scott; that everything is in the Ordinance and nothing has been hidden; that we have a Pay Plan.

On motion of Councilman Gilbert, seconded by Councilman McGary, the minutes of the previous meeting were approved.

This meeting adjourned at 4:45 P.M.