

**Evanston City Council
Closed Session Minutes
Aldermanic Library
Monday, July 7, 2008**

PRESENT: Aldermen Bernstein, Holmes, Moran, Tisdahl, Rainey,
Hansen, Wollin, Jean-Baptiste

ABSENT: Alderman Wynne

STAFF: Rolanda Russell, Elke Tober-Purze, Richard Eddington

OTHERS PRESENT: Jack Siegel and Iain Johnston

PRESIDING: Mayor Lorraine Morton

START: 05:39 p.m.

Handgun Ban

Mayor Morton called for a vote to go into the data that was before us. Alderman Bernstein made the motion to begin the session and Alderman Wollin seconded. The Mayor called on Elke Purze to make her report first.

Elke Purze: She has two matters coming to the Council (1st) The Gregory incident that occurred two years ago in the Century Theater, where two young gentlemen were arrested. The case goes to court next week, so Iain Johnston was invited to give us a brief overview of how we will be perceived and the Chief is here to answer any questions. The (2nd), Jack Siegel will speak about the new law suit that was filed against the City by the National Rifle Association; she and Mr. Siegel will discuss the matter.

Mr. Siegel asked to go first and the Mayor agreed. He proceeded to give a constitutional history lesson on the Supreme Court's decision on the District of Columbia's gun law. Mr. Siegel spoke about the case of the National Rifle Association of America, Allen L. Miller, Jonathan Blair Garber, and Kevin P. Stanton v. City of Evanston and Lorraine Morton. The case was filed on June 27, 2008, but Evanston has not yet been served.

Mr. Siegel stated the suit was a direct result of the decision of the U.S. Supreme Court of last week in the case of District of Columbia, et al. v. Dick Anthony Heller. The court held unconstitutional the provisions of a District of Columbia Ordinance which, like Evanston's Ordinance, contained a total ban on handguns. The opinion of the Supreme Court found there was a private right subject to limitations and that a total ban such as present in Section 9-8-2 of our ordinance is unconstitutional. Our Section 9-8-2 prevents the possession of handguns in the home, purportedly for self-protection and defense.

This was a five (5) to four (4) decision. It appears clear that a total ban on handguns is unconstitutional without exception for possession in one's home for self-protection.

We as the City Council have these following options available:

1. To repeal Chapter 8, "Weapons."
2. To amend our existing Ordinance to modify the Section challenged by the lawsuit, specifically, Section 9-8-2.
3. To pursue a vigorous defense of the ordinance.
4. To seek the dismissal of the case based on our amendment of the ordinance.

The City of Chicago stated publicly today that it will fight this all the way. There is a constitutional doctrine called an "Incorporation" which includes the first 10 amendments. This would cover protection of all persons involved. There was never an incorporation that would include the second amendment.

Morton Grove has been directed by its lawyers to amend its ordinance. Oak Park will go along with the City of Chicago if it doesn't cost too much money. The City of Chicago is anxious for Evanston to join them in this fight, and wanted to know who they could talk to concerning this matter. Mr. Siegel informed them it was a decision for the City Council to deliberate. The City of Chicago would like for everyone to be on the same page.

Mayor Morton asked Mr. Siegel if he thought that Chicago was doing this as a delay tactic. He said he doubted if any state would try to stay a Supreme Court action.

If we are served then we have 20 days in which to respond. If we waive, then we have 60 days. Chicago wants to consolidate this case. Alderman Bernstein suggested we remove the prohibition, beef up registration, have our own FOID cards, but do not join the City of Chicago and don't keep it on the books. Alderman Moran suggested we amend the ordinance, and do not incorporate, or be able to defend the ordinance we have. It's better to amend then to fight. Alderman Hansen wanted to know if we amended the ordinance, would we have to identify all the specifics like a waiting period, registration period, mentally ill people, no convicted felons could purchase a handgun. What about zoning? (Alderman Wollin). Zoning would not work (Mr. Siegel). What about trigger locks? The guns would also have to be disassembled (Mr. Siegel).

Alderman Jean-Baptiste suggested we create a message of not tolerating handguns in our streets, and to communicate our stand with strongest language possible and restrictions. It must be communicated properly. Alderman Tisdahl would not mind joining Chicago if we did not have to pay any monies. Let's just change the amendment and not spend the taxpayers' money. Alderman Hansen agreed and did not feel positive Chicago would win.

Alderman Holmes wanted to know exactly how much time we have to strengthen our stand and not just jump in with Chicago. Alderman Moran stated if we are to amend the ordinance then it should be all inclusive. If we don't, we could miss a trap door by missing any one of the parts. He suggested that Council not fight or argue the criminal code, because it is a losing battle and symbolically the game is over.

Mayor Morton interjected if we could bring the discussions to a close, because we have a consensus of what we will do so we can move on to the other business on the agenda. Alderman Bernstein did not want to spend time fighting the law, because it is the law like it or not. Alderman Rainey asked what would be the least offense of handling a handgun and do we have a strategy to defend publicly. Should we do it quietly, do everything we need to do to make us constitutional pass it without any flourishes, or do we make a big deal about?

Mr. Siegel stated it was the Council's decision, but his judgment was we are reluctantly reacting to what is now the law of the land. We are trying to make the best effort we can to achieve our efforts towards gun balance and this is our objective.

Mayor Morton summarized by saying we would consider either amending the ordinance or drafting a new ordinance that will include all we need to make the change constitutional.

After all discussion and ideas were expressed, it was decided that the Law Department would amend the ordinance to be compliant with the Supreme Court's decision.

Litigation

Lawyer Iain Johnston spoke on the coming trial: Gregory v. City of Evanston a sports card case that is pending before Judge St. Eve, who has been very busy and the reason the trial has been pushed back for so long. The trial is set for Tuesday, July 15, plaintiffs: Patricia Gregory, her son Barrett; her niece (unnamed); Shaquill Green and his father, Ronald Green. The defendants are: Officer Tom Koch, Sgt. Angela Hearts-Glass, Det. Larry Davis and Det. Tracy Williams. Alderman Moran asked who is the plaintiffs' lawyer. The response was he goes by the name of Bill Foutris, officially Basileious Foutris, actually has the same residence. He does a lot of plaintiff civil rights type work and works out of the Manheim Building. He worked for PI firms and other organizations and finally opened his own office. There were 24 counts against each defendant at the time of filing. Through motion practice and negotiations, those were whittled down to a more manageable count. Essentially, there is only one count against Larry Davis, which is intentional infliction of severe emotional distress; two counts against Tracy Williams and Angela Hearts-Glass, intentional infliction of severe emotional distress and interference with familial relations. Tom Koch has a claim of intentional infliction of severe emotional distress, equal protection claim, false arrest claim under fourth amendment and a battery claim under state law. The battery claim was the tight handcuffs and obviously grabbing him and pulling him to the car. If he didn't have probable cause to arrest, then he was not authorized to do that.

Alderman Bernstein asked was there any proof of manifestations of the infliction of emotional distress. Mr. Johnston responded it is an interesting question. Generally they need to show some kind of cost for the manifestation. Neither Ronald nor Shaquill Green had seen a psychiatrist or psychologist. Patricia Green (the mother) said she had spoken to Bishop Moody, a pastor in Evanston. Bishop Moody stated he never counseled her at all. The person who has the most evidence of manifestations is Barrett, who actually has a growth in the back of the brain that causes dizziness and swelling. He claims he saw Dr. Hunter a leading child psychiatrist numerous times. Dr. Hunter said he had never seen Barrett and there were no notes of any kind filed. A week after the arrest, Barrett went to his primary care physician for his wellness maintenance exam. The doctor went through all of the normal questions concerning Barrett's

health and he gave negative answers to all. The doctor also performed a wrist examination with no indication of damage to the wrist; no scarring, no bleeding and no complaints. Alderman Moran asked were there any medical records on the wrist. The answer was no. The doctor's medical records showed all joints normal. The plaintiffs also claimed they took photographs of the wrist to keep track of the damages, but curiously the photos didn't show up.

There were multiple opinions that this case was bogus. The Mayor interjected, "in the interest of time what do you want us to decide?" Mr. Johnston didn't think there is anything Council could do. He was only asked to come and present what we are doing and where we are at this time. He also stated that they have a third-party witness (Jerome Williams), who was a friend of a friend and said there were no white teenagers or children in the area. So that would knock out the equal protection claim. There is a very serious allegation that Larry Davis used the "N" word to the children, which he admittedly denies ever using. That wasn't in the complaint.

Brad said in his deposition for the first time while in the room that Larry poked him in the head, hit him on the forehead and his head went back and hit the wall. None of this was in the complaint or the NAACP document. Alderman Moran and others stated Brad made things up.

Alderman Holmes stated they had been with the incident from the beginning and this was the first time they had ever heard of this third-party witness. She also wanted clarification on some of the statements concerning the events of the night, including the viewing of the tape from the camera on the street. Alderman Jean-Baptiste stated in the initial report Shaquill did ask to be arrested too, but did they have to arrest him just because he said arrest me too. They could have just given him a ride to the police station.

Alderman Hansen's concern was, that although it sounds like we (the City) should win this case, what if we don't? Alderman Moran stated he has a proposed answer, "Too bad." If they win this case it would be worth it to me to contest, and I would make sure that they do everything they have to in order to get the \$ 60,000.

Alderman Rainey asked if Aldermen Holmes and Jean-Baptiste were interacting with these people in this case. Both Aldermen Jean-Baptiste and Holmes answered no. These interactions were prior to the lawsuit being filed. Alderman Holmes stated she did not know that there was even a case to deal with. She had tried hard to avoid it ever going to court in the first place. Alderman Moran then offered his final statements to close the discussion. He said without drawing the wrath of Judge Amy St.-Eve, he would withdraw the offer of \$15-\$20,000. Don't settle the case, make them come and fight for what they get. If we violate someone's civil rights, then we'll pay for it as we always do. Iain Johnston stated that the judge's mandated settlement offer had been withdrawn a long time ago.

The Mayor suggested the Council move on since they had a sense of the points of the case, and thanked the Mr. Johnston for sharing with the Council.

Personnel

Interim City Manager Ms. Russell began to report on the vacancies, the Police Department report and the ERI spreadsheet.

Alderman Jean-Baptiste did not understand the ERI sheet with the graphs. Ms. Russell started with the columns. Aldermen Rainey, Bernstein, Jean-Baptiste, Holmes were concerned with Julia Carroll's payments. Column 1, 10-year payout amount annually to each employee who took early retirement. Column 2, difference between the current employee's salary and the new employee hired to replace them. If the position had not been replaced, then it would be the estimated salary to hire someone else (10-year expected savings now), which could change any moment. Column 3, FICA/MED (other savings) these are the actual savings or estimated savings (over a 10-year period) when a new employee is brought on board at a lower salary than the employee who vacated the position. The Health column will only show an amount if the position was eliminated (10 years of savings). The Net cost savings, sometimes there will be a positive amount or a negative one when taking the amount out. The final column was not calculated in the original proposal, this would be the sick and vacation time paid out to the employee (it is a one-time payout). The adjusted net 10-year saving is the amount we'll save, but if we hire new employees at a higher salary the amount will be less, if we hire at a lower salary the amount will be higher. We would save about \$380,000 a year.

Alderman Jean-Baptiste questioned Julia Carroll's \$42,494 payout. Aldermen Holmes, Jean-Baptiste, Rainey, Bernstein, Hansen were all astonished concerning her sick and vacation time. Ms. Russell suggested to reassure the remaining employees that no one will be riffed (RIF) out, but if there are cuts and a position is terminated then there would be open positions that they can move to after retraining. She asked were there any other questions concerning her report.

The Mayor asked about housing loans or moving expenses that the City has given employees. Did the Council approve the loans? Do we have a policy? Interim City Manager - NO. We do not, but other companies use these types of incentives to bring people on board.

Police Chief Eddington reported on the shooting over the weekend and that an arrest was made. They had to pull a covert tactical unit to the neighborhood where a criminal sexual assault home invasion had occurred last weekend. The officers heard an argument breakout. There was a party in the area and conflict between a Four Corner Hustler and a Gangster Disciple. On the way home, the two groups came across each other and a juvenile was wounded by gun-fire who was the intended target of the shooting. Sgt. Moran was able to apprehend the shooter after a lengthy bicycle/foot pursuit. Fortunately, the victim cooperated with the police and identified the shooter. Some uninvolved witnesses came forward and also identified the shooter. The weapon was not recovered and he was charged with aggravated battery and aggravated discharge of a firearm. He is a 17 year old youth and a resident of the City of Chicago.

Alderman Rainey asked where the victim lived. Chief Eddington told her he was an Evanston resident. She also asked was the victim a student in our schools. He answered no, not at the time they investigated, but Officer Fowler will be back and he would question him whether or not the victim is enrolled in school at all.

Alderman Bernstein asked the Chief the status of Robert Mayer. He will negotiate a retirement agreement with him in the morning. A woman came in and said she was improperly touched by Commander Mayer. She had a polygraph, which revealed she was truthful. Chief stated because of this action, he has embarked on the action of having Mayer exit from the organization.

Alderman Rainey praised Bob Mayer and his involvement in the neighborhood as the first bicycle cop. After comments from the Aldermen, Chief Eddington informed the Council that the woman had filed a complaint with the Office of Professional Standards. He also said it is his responsibility to maintain the Code of Conduct for the organization. If he did not put the hammer down for a boss, what would he do when a patrolman walks in with the same allegations? It's one of those internal standard things that is harsh and difficult, but if we compromise there's no way out in the future.

Mayor Morton asked, **“Chief, what is the difference between going through the Office of Professional Standards and someone filing a complaint?”** Chief Eddington stated when you've signed a criminal complaint, then we are going to Skokie and she hasn't done that. It will not go to court if the Chief can negotiate an agreement tomorrow with Commander Mayer.

Alderman Hansen added her accolades for Commander Mayer and his involvement and accurate reporting, which made her and other's jobs easy in the courts. She noted that the Chief had to do what he had to do for the department to keep it from being a liability.

Since there was no more business to discuss the motion to adjourn was presented by Alderman Wollin and seconded by Alderman Holmes. The meeting ended at 7:31 p.m.

**Submitted by:
Rodney Greene,
City Clerk**