



## MURRAY CITY MUNICIPAL COUNCIL COMMITTEE OF THE WHOLE

The Murray City Municipal Council met as a Committee of the Whole on Tuesday, February 3rd, 2015, in the Murray City Center, Conference Room #107, 5025 South State Street, Murray Utah.

### Council Members in Attendance:

Blair Camp, Chair	Council Member, District #2
Diane Turner, Vice-Chair	Council Member, District #4
Dave Nicponski	Council Member, District #1
Jim Brass	Council Member, District #3
Brett Hales	Council Member, District #5

### Others in Attendance:

Ted Eyre	Mayor	Janet Towers	Exec. Asst. to the Mayor
Janet M. Lopez	Council Administrator	Justin Zollinger	Finance Director
Jennifer Kennedy	Recorder	Frank Nakamura	Attorney
Jan Wells	Chief Administrative Officer	Kellie Challburg	Council Office
Jennifer Brass	Resident		

Chairman Camp called the Committee of the Whole meeting to order and welcomed those in attendance.

### Approval of Minutes

Chairman Camp asked for approval on the minutes from January 6, 2015. Mr. Hales moved approval. Mr. Nicponski seconded the motion. All were in favor.

### Business Item #1

### Open & Public Meetings Act Annual Training- Frank Nakamura

Chairman Camp invited Mr. Nakamura to speak on the Open & Public Meetings Act.

Mr. Nakamura stated that this is a required annual training. He noted that he appreciates the compliance with this law by the Council. There have been no issues with compliance by the current Council. He stated that other jurisdictions aren't as careful as Murray City

is, and he appreciates their efforts. He added that some of this information is repeated from the training last year, and they have probably heard it also in their various trainings.

Mr. Nakamura said he often deals with attorneys for the newspaper agencies, the media, and the professional journal societies. These agencies often work closely with GRAMA (Government Records Access and Management Act) requests and transparency laws. They said that Murray City is one of the cities that does business out in the open and is very transparent. The Records office responds to GRAMA requests in the same way, very transparent and complies timely with the requests.

He noted that there are grey areas in the Open & Public Meetings Act, but the purpose of the statute is to do business publicly. He stated that also includes the perception of doing business out in the public. He said that if it appears that council members are huddling and discussing something in private, either before or after a public meeting, it could give the perception of not doing business in the open. Murray City is very good at doing business openly, but always needs to be concerned with perceptions also.

Mr. Nakamura stated that the Open & Public Meetings Act has not yet caught up with social media. The ability to text others has been a problem in meetings in other jurisdictions. For example, someone in the audience could be texting a council member during a meeting. He stated that Murray City does not do that, but that is one area of concern for other jurisdictions.

He stated another part of the statute is the consequence of non-compliance. He said the result may not be a lawsuit, but that isn't the issue. The issue is credibility, integrity and trust. Murray complies with the rule of law for purposes of maintaining public trust. He said he has had an easy job as the City Attorney advising the Council because it has never been an issue or question. He said in his tenure with the City, there have only been two or three closed meetings, which all dealt with real estate transactions.

Mr. Brass asked a question about texting in particular. For example, in a Central Valley Water meeting, if the manager is in the audience, and handles the daily matters that are being discussed, it is probably best not to clarify matters with him via text. Mr. Nakamura replied that was correct and it would be best to ask him questions openly. He said that becomes part of the open discussion and isn't a problem. He said although the law doesn't address texting yet, it undermines the purpose of the law. He said he is in favor of the law, and believes that business needs to be done out in the open.

He stated that everyone is familiar with the notice requirements. He stated that Ms. Kennedy and Ms. Lopez take care of the noticing and there have never been any issues with compliance. He stated that public hearings and agendas must be noticed, posted and sent to the media. Murray City meets the notice timeline requirements. He has at times, turned back budget amendments or other items that did not timely meet the notice requirements.

The purpose of an agenda is to inform the public as to what the City is doing, he stated. Some other jurisdictions put out a general agenda that doesn't specifically disclose what is going on. If a person cannot discern what the topic is from an agenda, it isn't consistent with the law. He said the City has not had any issues with the agendas.

Mr. Nicponski asked what the deadline was for publicly noticing agendas, etc. Mr. Nakamura replied that the requirement was 24 hours. Murray City usually gives a week notice. On rare occasion, the City has used the 24 hour requirement, but that has been in emergency situations. He hasn't ever experienced anything less than 24 hour notice while with Murray City.

Mr. Nakamura stated that the current Council has been really good about staying on topic on the agenda items. He noted that in the past, there were some times when the Council strayed off the subject matter. He stated that he got the Council back on subject but it made the situation uncomfortable. He said he appreciates that the Council stays on the agenda item.

Electronic communications haven't been used often. It could be done, with the current rule requiring at least three members of the Council to be physically present.

He stated that the Council and the City employees are well versed in the Open & Public Meetings Act and follow it closely. The City has a good staff also that notices information very accurately and timely. He said the information is always posted on the Utah Public Notice website and has never been a problem.

He mentioned social meetings, such as the League meetings, where all five members would be in attendance. He said that is fine, but to always remember the purpose of the law is to show transparency in all decisions that are made affecting ordinances and City business. A social meeting is just a social meeting, he added.

Mr. Nicponski asked if the Mayor is included in the count of three council members. Mr. Nakamura said he was not, it would just be three council members together that would necessitate noticing. He said under Utah law, it requires three votes to make any decision, present or not, and the definition of a quorum is three council members. He said he would appreciate it if even meetings involving two council members were used in a limited way.

Mr. Nakamura reiterated that State law mandates this annual training, but the Council and staff are well versed on the subject. He said other jurisdictions close meetings to discuss personnel issues, but the law is very specific as to closing the meeting only to discuss the competency, well-being or mental health of an individual. He said that Salt Lake County litigated a case that went to the Supreme Court regarding closing meetings for litigation reasons. He said there are many topics that could fall under possible litigation topics, and that was not the purpose of the closed meeting act. It was to discuss imminent litigation or a specific case or strategy.

Ms. Turner said she is aware of Councils that have banished members. Mr. Nakamura replied that he doesn't know how a Council could do that. He said the Constitution and the laws indicate what can be done to a council member is up to the electorate. Mr. Nicponski asked if they meant that council members were "iced out." Ms. Turner replied that she had heard of council members being asked to leave the room. Mr. Nakamura said that results in the disenfranchisement of a total group or district. He said that issue is being debated in the current Legislature. Ms. Turner asked if that was part of the Open & Public Meetings Act. He replied that it was probably a separate statute. He added that Ms. Wells may have more information on that in her upcoming Legislative update.

Mr. Nicponski commented that the Mayor had a recent public meeting and three council members showed up to attend. He asked what the rule of law was on that occasion. Mr. Nakamura said the council members weren't there to make any decisions. In retrospect, there might have been some discussion about noticing the meeting. He said that he was also at the meeting and was aware that the meeting was being conducted by Mr. Zollinger regarding a decision to be made by the Mayor. He said possibly under slightly different circumstances, he would have said it needed to be on an agenda. Mr. Brass commented that technically he never entered the same room as the others.

Ms. Turner said she finds it interesting that they take it very seriously that three of them should not be together, and it appears to be construed narrowly and not really defined. She asked how people are held accountable. Mr. Nakamura replied that the consequence isn't really known but it is more of a commitment to the law and transparency for the citizens. Adherence to the law gives credibility and that is a good thing, noted Mr. Nakamura.

Mayor Eyre asked if the Council wants to get together for a retreat to discuss a specific item, does that need to be on an agenda, and therefore, make it open to the public. Mr. Nakamura replied that was correct. He said for example, if the Council was in St. George for ULCT (Utah League of Cities & Towns), and decided to have a separate meeting, it would need to be agendaed. He added that there are interesting laws regarding changing the site or location of a previously scheduled meeting. There are specific requirements for noticing a change in the location of the meeting. He said a Council retreat must be noticed and the public could possibly attend the meeting.

Mr. Camp commented that it appears that the biggest grey area continues to be social media. Mr. Nakamura replied that was correct because the statute hasn't caught up yet. He said it also exists in GRAMA matters, and he sees it in daily litigation. There are rules that are unclear about dealing with the new technology. Mr. Nicponski asked about emails. Mr. Nakamura replied that emails are very difficult.

Mr. Camp thanked Mr. Nakamura for his presentation.

### **Announcements**

Ms. Lopez said that there are binders for each council member in the office to take home and review the mid-year budget. The Finance Department has worked hard in putting together the information. The Budget meeting is Tuesday, February 10<sup>th</sup>, 2015 at 8:30 am. The decision was made to only include the larger departments in the meeting, so it will end right after lunch. Mr. Brass added that all department heads are invited to attend the lunch.

Ms. Lopez announced that she would be out of town from February 11<sup>th</sup>- February 16<sup>th</sup>. Kellie would be working longer hours those days, from 9:00 until 3:00 or 3:30.

A retreat is scheduled on February 17<sup>th</sup>. It will be off-site, and the major topic of discussion is the New City Hall. She would get them a packet of information before the retreat. Mr. Nicponski asked where the retreat would be held. Ms. Lopez replied at the Village III Condominium Clubhouse at 12:00.

Mr. Brass noted that the General Plan Steering Committee met earlier that day. They have a website, [www.planmurray.com](http://www.planmurray.com). He stated that the website looks very good and there is a section for comments and ideas. There are already a lot of comments, especially regarding bike lanes.

Mr. Camp adjourned the meeting.

Council Office Administrator II  
Kellie Challburg