



MURRAY CITY MUNICIPAL COUNCIL COMMITTEE OF THE WHOLE

The Murray City Municipal Council met as a Committee of the Whole on Tuesday, November 20, 2012, in the Murray City Center, Conference Room #107, 5025 South State Street, Murray Utah.

Members in Attendance:

Jim Brass	Council Chair
Dave Nicponski	Council Member
Darren V. Stam	Council Member
Jared A. Shaver	Council Vice Chair
Brett A. Hales	Council Member

Others in Attendance:

Dan Snarr	Mayor	Tim Tingey	ADS Director
Janet M. Lopez	Council Office	Jan Wells	Mayor's COS
Frank Nakamura	City Attorney	Doug Hill	Public Service Director
Justin Zollinger	Finance	Jennifer Kennedy	Recorder
Trae Stokes	Public Services	Nina Ogden	Student
Mike Johnson	Citizen	Dave Kasteler	Citizen
Jennifer Brass	Citizen	James Nielsen	Citizen
Marta Nielsen	Citizen		

Chairman Brass called the Committee of the Whole meeting to order at 4:30 p.m. and welcomed those in attendance.

Minutes

There were no scheduled minutes to be approved.

Business Item #1

Murray City Ethics Commission – Frank Nakamura

Mr. Nakamura presented a proposed ordinance that would be scheduled for the agenda on December 4th. The Utah State Legislature passed Senate bill 180 this year and created the State Ethics Commission. The State Ethics Commission's responsibility is to review violations or complaints regarding these state statutes. These statutes have been in place for a long time,

and cities have been operating by those laws. All cities are subject to the Municipal Ethics Act, the State Ethics act, and also one that deals with the County.

As part of that legislation, the City can establish a City, or Regional Ethics Commission. If there are complaints against Murray elected officials it could go to the established City Commission. If there is not one established, complaints will go to the state.

Mr. Shaver asked if an ethics commission is established would it be for local municipal officials only. Mr. Nakamura said the City's jurisdiction would be our elected officials.

Mr. Nakamura said that after reviewing this, it was decided that it would be better if a local commission was established; with local residents reviewing these complaints. Mr. Nakamura's experience is that if these issues go to the State level, they just get blown up, and it is better to deal with them here at a local level.

Mr. Nakamura said that he was not clear on when the commission finds a violation, what the authority would be for sanctions. The Commission could not remove an elected official without certain processes. The removal of the official would have to be done by the electorate.

Mr. Nakamura believes that the Ethics Commission finds the violations and makes recommendations. If it is a City employee in violation, the Mayor would ultimately decide the discipline. If it is an elected official, it would be referred to the District Attorney (D.A.).

Mr. Nicponski asked if the state statute spelled out the disciplinary action. Mr. Nakamura said that it does not.

Mayor Snarr asked if Murray created its own commission, would it define the disciplinary actions. Mr. Nakamura said the City can only do sanctions as defined under the law, which isn't clear. Even a judicial process would be difficult. It is a matter of public reprimand with elected officials. It is different with an employee, and volunteers of boards and commissions; the Mayor has the authority to make the decision. Mr. Nakamura isn't sure what the end result would be, beyond recommendations and public reprimands. The statutes talk about a judicial removal process, but that is hard to do without very specific standards.

Mr. Shaver brought up an example of a local Mayor that was reprimanded by the City Council for inappropriate activities. City officials slapped his hand, but nothing went beyond that. Mr. Shaver asked what the reporting is, and to whom do they report. Does the issue go to a judge, the Mayor, or the State, he asked. If it goes to the State, then it ends up right back in the state's hands anyway.

Mr. Hales commented on that same Mayor in question, and asked if he could have been voted out.

Mr. Nakamura said the statute does provide for a judicial removal process, and that would go to the D.A. This ordinance that he is proposing, still allows issues to go to the D.A.'s office if the ethical violations are also criminal in nature.

Mr. Nakamura said that he has had one time where the issue went to the D.A.'s office, and they suggested that the Municipal Ethics Act was broad, and they would have a hard time prosecuting criminally.

This change is a result of a case in Provo, where there was an issue with a Councilmember, and they would have liked to have a commission to review that. A commission was established and the Legislature thought there should be a State one in place also.

Mr. Nakamura recommended that the City create their own commission to handle any ethical complaints or violations. Mr. Nakamura believes that the City should handle the issues that are here within the City, and the State commission isn't a good default provision.

Mayor Snarr talked about the case in Cedar Hills where the Council asked the Mayor to step down because of ethical improprieties, even though they didn't have an ethical commission.

In this ordinance, Mr. Nakamura has taken the procedural elements of the state law, and moved it to this Ethics Commission. It has been patterned after the State Commission, so it is credible, and acknowledged by others that it has the jurisdiction over these matters. It is very detailed, in terms of reporting and process.

Mr. Shaver asked if this meets the State criteria if it were to be adopted. Mr. Nakamura said that it does.

Mr. Stam asked if there would be changes once the State creates their own commission. The State will possibly make changes, and so we would need to also, if we are patterning our commission after the State commission, he said

Mr. Nakamura said the statute defines what the commission does and the criteria for its members. Much of the standards that are defined are more of a constitutional and legal matter. The officials are elected by the people, so how far can administrative personnel go to make any changes, he questioned.

Mr. Stam asked if a commission is put together by the people, even though they may be the ones that voted to put the official in place, won't they have the power to remove an official.

Mr. Shaver said there have been instances where an official had been convicted of a crime, but still hold the office while they are going through the court process. They can hold the office until a recall election has been done.

Mr. Nakamura said the concern is that if the City doesn't have a commission in place, and the default mode takes place, the issue goes to the State Commission. As time goes on, some of these issues may have to be refined, as to what kind of sanctions can take place.

Mayor Snarr asked if the State commission reviews complaints about the legislators. Mr. Nicponski said the Legislature polices themselves, and they have a committee. He isn't sure if the Ethics Commission supercedes the Legislative Committee.

Mr. Stam asked if the public meeting becomes closed, if a complaint is filed, Mr. Nakamura said that the City doesn't want frivolous or vindictive complaints to be aired publicly before they have any merit. There are summary reviews of these before they are passed on to the commission to make sure they have merit. Mr. Stam asked where the reports go at the end of year. Mr. Nakamura said they go to the elected officials, not to the state. They also are not reported if they are found to be without merit.

Mr. Nicponski commented on the high quality of the Murray citizens that would be on the commission, and said they are trustworthy.

Business Item #2

Public Streets Standards Discussion- Tim Tingey

Mr. Tingey refers to this issue that was brought to a Council Initiative Workshop in August. There are a number of different options for infill subdivision. The Mayor and staff met and discussed the different options and scenarios. Mr. Hill, Mr. Stokes, Mr. Nakamura, Mr. Critchfield, and Mr. Wilkinson attended. Staff focused on two areas:

1. Street standards: In the City's current subdivision ordinance, if a property is being developed there is a requirement for a minimum of 49 feet of public right of way into that subdivision. The 49 feet includes a 25 foot paved area, curb and gutter, sidewalk, planter strip which roughly totals the 49 feet. For properties that are less than 2 acres, there is the option for single family infill under City ordinance. That ordinance states that you still have to have a 25 foot paved area and 5 feet of curb and gutter; the planter strip and sidewalks can be eliminated if there is an internal pedestrian connection that is part of that development and approved by the Planning Commission. There are options within the single family infill to reduce setbacks and modifications on a turnaround that can reduce the size of the right of way, as well as the turnaround area.

The public services department gave input regarding the width of streets because they deal with a variety of issues, including snow removal, street sweeping and the implications of those.

In the Fireclay area, there is a street called Gilbride that has a paved street area of 22 feet, this was allowed as part of the master transportation plan in the area. They are grid streets which give more opportunity to move snow without going into a turnaround to come out. In addition to that, it is unique because the right of way width isn't less, just the street width. The right of way width is quite wide. There are sidewalks that are very wide due to it being a pedestrian oriented area. That is a circumstance where we have gone down to 22 feet, he said. Public Services have concerns with reducing that amount because if you are looking at a turnaround in a residential street the 22 feet width still has issues with the heavy equipment that goes in there.

In addition to that, if there was a proposal to reduce that width, there would be an elimination of public parking on the street. That poses concerns as well for residents of that area. There is reluctance from public services to look at a reduction in the street standards. They feel like the 25 feet of paved area is adequate for our heavy equipment.

Mr. Shaver asked if there is a turnaround where the streets are 22 feet. Mr. Tingey confirmed that there is not. That is only allowed on the grid system, with no turnarounds.

2. Flag lot subdivisions: The City will allow a flag lot with a drive back to a secondary lot with the current ordinance. A private drive is allowed back to that second lot.

Looking at a double flag lot causes more issues than just the private street one. Now, there are three individuals that have to deal with relationship issues, issues of utilities, blocked driveways. Also, in the second flag lot, the house isn't really even connected to a public street. Right now, there is a driveway width to a flaglot that connects into a public street. A person could go from their double flag lot through a person's property and then another person's property potentially out to the public right of way. This causes dilemmas and concerns, and potential contention issues.

A fairly large neighborhood in the community is a watchdog on this issue. They have contacted our office and have concerns because they have a number of deep lots that could be considered flag lots. This neighborhood has possibly 15 to 20 lots that would feed into a small street. The City has concerns with a double flag lot also.

After these meetings, there are several opportunities. First, is to develop a flaglot, which is a secondary lot with a private drive. Second, to develop a single family infill with more than two lots, with a 30 foot right of way area, providing there is an internal pedestrian connection. Those are looked at on a case by case basis, and the City is comfortable with the current standards. The Public Services department is not willing to recommend reducing the width of the right of way. Administration doesn't have any additional proposals to bring through the Planning Commission process.

If an individual owner wants to come forward with a proposal to reduce the width, that would be an option, but most likely would not get a positive recommendation from staff.

There is a section in the ordinance that allows modifications to occur in the subdivision ordinance to allow for a private street on a two lot subdivision. This has been discussed, and a modification cannot eliminate a public street requirement to a private one. This is not debatable, and related to standards.

Mr. Shaver asked for a definition of the internal walk. Mr. Tingey answered that a sidewalk that connected to another street could be eliminated if there is an internal sidewalk that could connect to a park, or other areas. He gave an example of Winchester Overlook. There are townhomes there and two subdivisions with an internal pedestrian connection that connects them, and then goes to a public right of way. That is an example of not having to have the curb, gutter, and sidewalk connecting to the street from one subdivision.

Mr. Niponski asked for a clarification in the width standards. Mr. Tingey confirmed that it is 25 feet for the road, 5 feet for curb and gutter, which includes both sides. Sidewalk and planter strips would equal approximately another 19 feet, including both sides.

Mr. Brass mentioned that you need a hard edge for the road, or the edge breaks down.

Business item #3

Landscape Ordinance Amendments-Tim Tingey

The City has had discussions about significant changes to the landscape ordinances, especially commercial. The Planning Commission gave a recommendation that staff is comfortable with.

The City has had a couple of recent issues, involving planter strips. Planter strips are the portion of the right of way next to the sidewalk. The current requirement is that the planter strips

be landscaped with trees. Any new subdivision is required to have the landscaping in the planter strips.

Mr. Shaver asked if this was an adjustment to the planter strip comprised of grass. Mr. Tingey said the current requirement is for grass and street trees in the landscaping of the strip. The Planning Commission evaluated the planter strip portion and wanted to clarify what is and isn't allowed. For example, asphalt, concrete, thorn bearing plants, continued planting of ground cover and shrubs which exceed 18 inches in height, retaining walls, fences, boulders, gravel, rocks, steps and similar structures are not allowed in planted strips. There is an allowance for 25 percent to be concrete or something similar to provide for a pedestrian connection.

The Power department has concerns with the ongoing maintenance of these strips with the street trees in them. It requires a lot of work throughout the City that they are currently doing. Mr. Brass mentioned that the Power Department maintains park trees and the street trees, all public trees, with a limited number of arborists.

Mr. Tingey said there are a lot of individuals that have filled in their planter strips with concrete and rocks, primarily for maintenance purposes.

When the City does street projects and work in the right of way, residents want the City to fill their strip back in with what they had prior, whether it is rocks or concrete. Mr. Hales clarified that if the code states there needs to be landscaping, would we require that, he asked. Some of these residents are elderly and we would have to enforce on these issues. Mr. Brass said the issues are that we could have between 10 and 20 percent of our properties not meeting this ordinance. Mr. Shaver asked about a grace period for enforcement.

Mr. Tingey would like to bring the commercial element portion of the landscaping ordinance before the Council, and separate the planter strip issue. The City would like to understand how the citizens feel about planter strips, and are looking at a survey for the residents.

Mr. Nicponski asked Mr. Stokes if this issue comes up frequently. Mr. Stokes said that they reconstruct 10 to 12 roads a year, and they all have concrete park strips. The residents want the concrete replaced in the strips. If the City told the residents that they had to put water and landscaping back in the strips, it would be a battle. The unwritten policy is to repair and replace it like it was before, even if it is concrete.

Mr. Shaver asked what the purpose for the grass, landscape requirement was. Is it an aesthetic versus a functional value, he asked. Mr. Brass mentioned that permeability means that it doesn't run off and require cleaning. Mr. Shaver said the Council needs to have a purpose when talking to the residents. Mr. Tingey said it is for aesthetic purposes and run off, eliminating heat issues and giving a place to put utilities. Mayor Snarr said that it is expensive to repair a stamped concrete strip if you have to go in and make a utility repair. Mr. Shaver commented that many times water lines run under the strip. Mr. Wilkinson said the tree portion provide some mitigation for the concrete that is adjacent to it, and provide an offset to the heat, and also clean the air. The planning commission realized that there is work involved with the street trees, but there are benefits from these planter strips landscaped. The planning commission wanted a list of what is not allowed to make it easier to enforce.

Mr. Brass complimented the commercial side of the ordinance, and thought it was a necessary change. He has an area on his street that has so many leaves on it in the fall, and then the snow comes on top of that. His concern is that trees are pretty but have unintended

consequences of disputed maintenance. Last year, there was a wet, heavy snow that broke off many of the tree branches in his area, Mr. Brass said. Mr. Shaver said part of the ordinance addresses fruit trees, and what types of trees are allowed. Mr. Stam said that there will be some people that don't want trees, and if maybe a percentage could have trees, while some did not. The existing ordinance requires trees in the planter strip. Mr. Stam commented about trees that drop items, and also invasive trees that are a problem.

Mr. Tingey asked for time to see what the citizens think. Mr. Stam asked if questions about trees being required in the strip would be in the survey. Mr. Tingey said the survey hasn't been drafted yet. The idea of an open house with the different options to show the residents has been suggested. Mr. Tingey said that if a survey is done correctly, it provides a good understanding of the feeling in the community. Shaping the questions in the survey is a critical part, he said. Mr. Nicponski asked if the survey was contracted out. Mr. Tingey said they haven't decided if the survey will be outsourced, but will show it to the Council before it is distributed. Mr. Brass suggested using photoshop for different examples for the open house.

Business item #4

Residential Beekeeping and Chicken Land Use- Tim Tingey

The City has done some research, benchmarking with other communities on this ordinance. Mr. Wilkinson said the City needs to look at the broader issue, before making any changes to the code. The current General Plan calls for the phasing out of agricultural zoning and uses. The City has areas that allow farm animals of all types, including beekeeping. The City has some non-conforming areas, down on Jefferson Street for example. Some R-1-8 zoned lots were previously agricultural lots that have animals. They are legal, non-conforming uses that are allowed until that use is abandoned. The east side of the City also has some annexed areas where animals have historically been allowed. Mr. Wilkinson said there are complaints to Code enforcement mostly, about chickens. The Code enforcement employee couldn't recall any complaints regarding lots that have been legal, non-conforming lots.

The City also receives requests and complaints about goats, rabbits and pot belly pigs. Mr. Stam asked if a pet rabbit was allowed. Mr. Wilkinson replied that it was, as long as they weren't being raised commercially. Mr. Shaver asked about the distinction between farm animals and a kennel for breeding purposes, and asked if there are kennel complaints also. Mr. Wilkinson said they don't get a lot of complaints about dogs, although there are a maximum number of dogs or cats allowed in the code. Kennels are not allowed in residential zones, only commercial and agricultural.

Mr. Wilkinson pointed out agricultural zoning on the map of the City. The agricultural zones and legal non-conforming lots are areas where a citizen could put chickens and bees without any problems.

Mr. Tingey said they have researched other cities to see what they are doing with bee keeping. Salt Lake City has a maximum allowance of five hives in a side or rear yard if the lot is residential. If the lot is larger than a half-acre, they allow ten hives. The Salt Lake City ordinance isn't real specific, just limiting the hives to a rear or side area of the lot. Cedar Hills allows two colonies per 5,000 square feet of land, not to exceed eight colonies. Herriman requires a 10,000 square foot lot size to have hives. This is similar to other cities. Ivins, primarily focuses on having them in agricultural zones only, on larger lots. South Jordan allows two hives on quarter

to half-acre lots, increasing the amount with the lot size. They don't allow them on single family, 8,000 square feet or smaller lots. Taylorsville allows them on minimum lots of 10,000 square feet or larger. Morgan only allows them in agricultural zones. West Jordan recently adopted their ordinance that states lots less than 20,000 square feet, hives should not be less than five feet of any property line. Hives located between 5 and 15 feet of a property line, should be surrounded by a 6 foot flyaway with fence and dense foliage. Morgan County permits them in mixed use forestry and rural residential districts.

The City needs to look at setback issues and lot size issues when drafting an ordinance. Our ordinance should be similar to Salt Lake City or West Jordan. Mr. Shaver asked if there are certain standards required in maintaining the hive. Mr. Tingey said that there are and the County will assist in enforcing those standards as well. Mr. Tingey said that if we look at setback issues and allow them on lots smaller than 10,000 square feet, the number of hives would need to be limited.

Mr. Wilkinson said that most of the cities are categorized into two different categories on poultry. Cities either do or do not require a conditional use permit. That needs to be considered in allowing poultry. This would provide a public process and also provide additional money that would need to be paid by the applicant, with possible conditional approval.

There are two categories related to the number of animals allowed in a certain zone.

1. Most cities require a minimum acreage requirement, usually around a half acre, but there was no limit on animals if the lot size requirement was met.
2. Some cities took minimum lot size per animal. Kaysville City requires 1600 square feet per bird, with a conditional use permit also.

Some other cities take a combination of these two categories also. Some of the ordinances also apply to goats, geese, pot belly pigs, as well as, other animals. Most of the cities, if not all, require a minimum setback for distances between where the animals are kept from the residence, as well as the neighboring residence. This should be considered in any ordinance. There are also other cities that don't allow them at all. The importance varies from city to city. This is an issue that has strong feelings on either side. The Staff would like to schedule a public open house for the first part of the year to discuss this ordinance. The staff believes that public involvement is important and would like to promote that throughout the city.

Mr. Tingey said the Open House would probably deal with land use issues. It would be advertised as an agricultural use discussion, and planter strips combined. Also, the survey would include questions on all of these topics. Mr. Brass suggested that there would be at least two issues discussed, in two separate locations. The turnout will be different, depending on which side of the City it is in. Also, two meetings would help with the availability of the citizens. Mr. Stam questioned if the timing was too fast. Mr. Tingey said the scheduling is tentative, and could possibly take longer. Mr. Shaver said that the meetings scheduled may not be a problem, and that more time may be needed when drafting the resolution. Mr. Brass said there is a lot of passion in this area, and doesn't appear to have much of a gray area. He has seen a trend to go back to urban farming, and that people are embracing it. Cities are all getting hit with this, and he agrees that the issue shouldn't be rushed. Mr. Wilkinson said they are very comfortable with taking the time it needs. The City has done some background work and research, but needs the public input.

Mr. Brass said that a lot of open houses have been done, and the most successful ones were on property tax increases years ago. That Open House had a great turnout, and it was well advertised. There was also one done on the east side for storm water, and one citizen showed up. The Open House needs to be well known, and advertised. Let friends and neighbors know about the meeting so the City knows what the citizens are thinking and can make the right choice. Mr. Stam added that a 3rd Open House should be considered also if the first two are well attended. Mr. Brass understands why people would like to have their own eggs, for health reasons, but the neighbors rights should be considered also.

Announcements

Ms. Lopez asked to discuss the Council meetings for December. There is a Committee of the Whole, and a Council Meeting on December 4th, and only Committee of the Whole on December 11th. Those are items moving up from Council Initiative Workshop, one being the lowest responsible bidder. Mr. Nicponski was going to check with Dale Cox to see if he was available on December 4th. If he is available, would the Council like to combine the meetings and not have any meetings on December 11th, she asked. Mr. Brass said he would like that if that could be accomplished. Mr. Hales said that Dale Cox could be moved to January also.

Mr. Brass asked Ms. Lopez if the email has been sent out regarding the June 19th meeting. The change would move the meeting from a Thursday to a Wednesday to accommodate the Planning Commission.

Mr. Brass adjourned the meeting at 5:45.

Kellie Challburg
Office Administrator II