

MURRAY
CITY COUNCIL

Council Meeting May 1, 2012



NOTICE OF MEETING
MURRAY CITY MUNICIPAL COUNCIL

PUBLIC NOTICE IS HEREBY GIVEN that there will be a meeting of the Murray City Municipal Council on Tuesday, May 1, 2012, at the Murray City Center, 5025 South State Street, Murray, Utah.

5:45 p.m. **Committee of the Whole:** To be held in the Conference Room #107

1. **Approval of Minutes**

1.1 Committee of the Whole – April 3, 2012

2. **Business Items**

2.1 Salt Lake County Mental Health Presentation (5 minutes)

2.2 “Project Citizen” Recycling Presentation – Starlyn Knockos and Murray Debate Students (15 minutes)

2.3 Open and Public Meeting Training – Frank Nakamura (20 minutes)

3. **Announcements**

4. **Adjournment**

6:30 p.m. **Council Meeting:** To be held in the Council Chambers

5. **Opening Ceremonies**

5.1 Pledge of Allegiance

5.2 Approval of Minutes

5.2.1 April 3, 2012

5.3 Special Recognition

5.3.1 Consider a Joint Resolution of Mayor Daniel C. Snarr and the Murray City Municipal Council recognizing and supporting May 2012 as Building Safety Month – “An International Celebration of Safe and Sensible Structures.” (Gilbert Gonzales presenting.)

6. **Citizen Comments** (Comments are limited to 3 minutes unless otherwise approved by the Council.)

7. **Consent Agenda**

7.1 None scheduled.

8. **Public Hearings**

8.1 Approximately 6:30 p.m.

8.1.1 Staff and sponsor presentations, and public comment prior to Council action on the following matter:

Consider an ordinance amending the Fiscal Year 2011 – 2012 City Budget. (Justin Zollinger presenting.)

8.1.2 Council consideration of the above matter.

9. **Unfinished Business**

9.1 None scheduled.

10. **New Business**

10.1 Consider a resolution approving the City Vehicle and Equipment Replacement Policy. (Jan Wells and Doug Hill presenting.)

10.2 Consider a resolution acknowledging receipt of the Fiscal Year 2012 – 2013 Tentative Budget from the Mayor and the Budget Officer, and referring the Mayor's Tentative Budget for review and consideration to the Budget and Finance Committee of the Murray City Municipal Council. (Mayor Snarr presenting.)

11. **Mayor**

11.1 Report

11.2 Questions of the Mayor

12. **Adjournment**

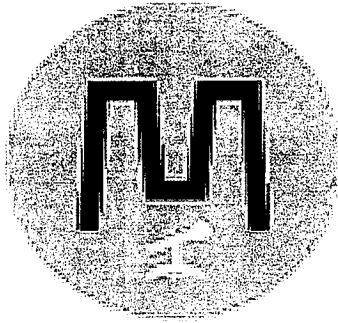
NOTICE

SPECIAL ACCOMMODATIONS FOR THE HEARING OR VISUALLY IMPAIRED WILL BE MADE UPON A REQUEST TO THE OFFICE OF THE MURRAY CITY RECORDER (801-264-2660). WE WOULD APPRECIATE NOTIFICATION TWO WORKING DAYS PRIOR TO THE MEETING. TDD NUMBER IS 801-270-2425 or call Relay Utah at #711.

Council Members may participate in the meeting via telephonic communication. If a Council Member does participate via telephonic communication, the Council Member will be on speaker phone. The speaker phone will be amplified so that the other Council Members and all other persons present in the Council Chambers will be able to hear all discussions.

On Friday, April 27, 2012, at 9:00 a.m., a copy of the foregoing notice was posted in conspicuous view in the front foyer of the Murray City Center, Murray, Utah. Copies of this notice were provided for the news media in the Office of the City Recorder and also sent to them by facsimile copy. A copy of this notice was posted on Murray City's internet website www.murray.utah.gov and the state noticing website at <http://pmn.utah.gov>

Janet M. Lopez
Office Administrator
Murray City Municipal Council



MURRAY
CITY COUNCIL

Committee of the Whole

Committee of the Whole Minutes



MURRAY
CITY COUNCIL

DRAFT

MURRAY CITY MUNICIPAL COUNCIL COMMITTEE OF THE WHOLE

The Murray City Municipal Council met as a Committee of the Whole on Tuesday, April 3, 2012, in the Murray City Center, Conference Room #107, 5025 South State Street, Murray Utah.

Members in Attendance:

Dave Nicponski
Darren V. Stam
Jared A. Shaver
Brett A. Hales

Council Member
Council Member
Council Vice Chair
Council Member

Members Absent:

Jim Brass

Council Chair

Others in Attendance:

Angela Price	CDBG Coordinator	Dan Snarr	Mayor
Janet M. Lopez	Council Office	Jan Wells	Mayor's COS
Frank Nakamura	City Attorney	George Katz	Citizen
Tim Tingey	ADS Director	Sally Hoffelmeyer Katz	Citizen
Louis Fazio	Citizen	Justin Zollinger	Finance Director
Peri Kinder	Valley Journals	Alison Smith	NeighborWorks

Vice Chair Shaver called the Committee of the Whole meeting to order at 6:00 p.m. and welcomed those in attendance. He mentioned that a quorum was present; although, Mr. Brass was excused and Mr. Nicponski would arrive shortly.

Minutes

Mr. Shaver asked for corrections or action on the minutes from the Committee of the Whole meeting held on February 21, 2012. Mr. Hales moved approval as written. Mr. Stam seconded the motion, which was approved 3-0.

Mr. Shaver asked for action on the minutes from the Committee of the Whole meeting on March 6, 2012. Mr. Stam moved approval and Mr. Hales seconded the motion. Motion passed 3-0.

Business Item #1:

**2012-2013 Community Development Block Grant
Recommendations – Tim Tingey and Angela Price**

Mr. Tingey explained that the process for Community Development Block Grant (CDBG) funds had been partially completed. A committee was created to go through the applications and form recommendations. This meeting would present those recommendations prior to the Public Hearing that was scheduled to be held on April 17, 2012. At that meeting the Council would make a decision whether to accept the recommendations or modify them. Ms. Price would outline the recommendations and justification behind them.

Mr. Shaver mentioned the reduction in funding that the City has experienced over the past three years. He confirmed that the process remains the same in that the federal government appropriates the funding, the county makes recommendations on where that goes and the City takes their portion. Mr. Tingey concurred stating that Housing and Urban Development (HUD) allocates so much funding for this program, the county and the state receives funding in various entitlement communities. The county allocates a portion for cities and Murray goes through the public process required by HUD.

Mr. Shaver noted that there is a lot of reporting for that, as well. Mr. Tingey confirmed a significant amount of reporting is required. Fortunately, the county does much of the reporting for Murray City; however, there is still a lot of work at the city level.

Ms. Price reviewed the City process and gave the Council an opportunity to see the numbers before the public hearing. She proceeded to provide some background for the applications that the Council Members would read prior to the public hearing.

She thanked the Mayor and Ms. Wells for devoting six hours of their time to help with the interviews of all the applicants along with Chad Wilkinson and herself. The funding recommendations actually come from that committee, called the CDBG Advisory Committee.

The substantial funding reductions that Murray experienced were acknowledged by Ms. Price. Requested funding was over \$405,000 and about \$230,000 in reductions were taken. There was \$19,500 in funds that could be reallocated. Total current funding available was \$156,000. Part of that, \$18,100, was additional funding the county gave Murray due to the large reduction in money. Gross funds for Murray to allocate were \$175,600. Ms. Price reviewed the recommendations for each agency.

NeighborWorks – The recommendation was \$43,000 for property acquisition. That will go toward acquisition, rehabilitation, loans and program delivery.

Mr. Shaver asked for an explanation of the reallocated funds. Ms. Price explained that those are funds from housing rehab money that expired from a previous program year. Part of it went to the Community Development Corporation and NeighborWorks in previous City ordinances in November and February. This is the remainder of that money. Mr. Tingey added that there is a two year contract period and if funds have not been spent during that time, they must be reallocated. Ms. Price emphasized that because of the huge reduction from HUD she was looking for any money that could be allocated to the various agencies. She remarked that part of those funds were administration dollars from previous years that were unused. It was a cushion in her salary because there was a delay when she was hired versus the funding that was budgeted. Normally, she explained, if money was left over from a particular agency, then she would attempt to grant it back to them; however, these dollars were collected randomly.

Community Development Corporation of Utah - \$34,500 was awarded to the CDC for the down payment assistance program. They have done amazing work in Murray and the staff is excited to continue that program. The CDC also applied for money for a new program called the

“Green and Healthy Homes Initiative.” This is a partnership with the county. The committee chose not to fund this because NeighborWorks also participates in this certification program and that would be a duplication of services.

Habitat for Humanity – This is the first year that they have requested funding from the City and the committee wanted to give them a little to see what they could do here in Murray. The funding is for a new program they are starting, not the program most people are familiar with where they buy land and have volunteers build a house. This is a neighborhood revitalization initiative that will help the lowest of low income individuals. Habitat is able to stretch their dollars because of their “re-store” where they can get windows, kitchen cabinets and different items for free. This is a test to see how they do in Murray.

Mr. Shaver asked if this is for homeowners and Ms. Price confirmed that it is for owner occupied properties.

ASSIST & Valley Services – ASSIST has been funded at \$18,000 and Ms. Price mentioned that Valley Services has been given \$9,000. ASSIST has been funded for many years and they do emergency home repair. Valley Services is a new program in partnership with the county. They offer emergency home repair for elderly individuals, as well. One must be 65 or older and the repairs are provided on a grant basis, not a loan. They will take care of minor leaky faucets, electrical or plumbing issues. ASSIST does more large scale projects, such as ramps. The money has been stretched between the two services to see what they can do in Murray. Some projects have already been done under the county contract, however, that will be expiring.

Mr. Shaver asked if this money would be dedicated specifically in Murray, even though both agencies work outside of Murray, as well. Ms. Price confirmed that it would.

Columbus Community Center - This is the property on Jones Court and they do amazing work in Murray providing those residents with work in the City.

Boys and Girls Club – The money provided will fund the playground upgrade and American Disability Act (ADA) upgrades including automatic door openers for three doors and a chair lift. This will help provide as much access to the facility as possible; they do have a staff person in a wheelchair that will be able to access the upstairs offices.

House of Hope – The committee did not recommend funding for this agency this year, due to budget cuts and the number of Murray residents served. They are not located in Murray and did not meet City priorities.

Mr. Hales asked if everyone else with recommended funding is located in Murray. Ms. Price stated that they are either located in Murray or serve a lot of Murray residents.

Volunteers of America – This was a difficult decision because the committee would have liked to participate in the expansion of the adult detox center, however, it is not located in Murray and cuts had to be made. Unfortunately, this was one program that suffered.

Dave Nicponski joined the meeting in progress at 6:12 p.m.

The Road Home – The bathrooms in this facility are absolutely in shambles, Ms. Price noted. They staff several Murray residents and have a substantial amount of individuals who call Murray home or list it as their last address.

Murray Program Delivery – This money goes toward Ms. Price's salary, training and program administration.

Mr. Tingey added that regarding the two agencies not being funded, the evaluation criteria were not met even though Murray people may utilize these programs. When looking at this amount of dollars it is necessary to prioritize. The priorities, as outlined previously, relate to housing, location in Murray and filling immediate critical need. All the programs are very important, although they did not meet the threshold of main concern.

Mr. Hales asked if these were the only applications received, because he was under the impression that many were received in the past. Ms. Price pointed out that these are only hard costs and the soft costs requests go to the county. These are about standard for the hard costs. There is a Murray representative that sits on the county selection committee, not a staff member, but a Murray resident. Soft costs go toward services and personnel. Hard costs are brick and mortar projects.

Ms Price explained that the hard cost (roof or bathroom projects) applications come directly to her. Housing applications go to the county and then are forwarded on to the municipalities. When you review the applications you will see the Murray one and also the county one.

Mr. Nicponski stated that this is very impressive. He observed that 105 Murray residents use the services of Volunteers of America. Ms. Price said that typically Murray funds that organization and they have a women and children's facility in Murray that is usually funded. This year the committee had to focus on the housing and critical needs. Cuts had to be made.

Mr. Shaver pointed out that Murray residents are still served there by services that are soft costs and this is the hard costs choice. The county will still give them help for services.

Ms. Price said that when the committee meets with the organizations they asked what the priorities are for the agency to remain up and running. The Volunteers of America are also funding to foundations and every city and county along the Wasatch Front. Their facility will continue to operate and serve Murray residents even though the City is not able to fund this project. She added that this particular project was not funded in the previous year either. Parts of their needs were funded such as the heat tape.

Mr. Shaver asked Ms. Price to address what information the Council would receive from her. Ms. Price said there would be an Excel sheet and because many of them are using iPads, it has been a challenge to put the materials together in a format they could preview. She created an Adobe package, which has a file for each application and then one for supplemental information. That will have the Excel sheet with three tabs at the bottom for history; it has the summary; and the Council letter with the resolutions for allocations, reallocations and the public hearing notice.

Mr. Shaver inquired about the reminder of the process after this meeting. Ms. Price responded that on April 17 the public hearing will take place. She will not go over these numbers again; however, each applicant will have the recommendation letter and an opportunity to speak during the hearing. Then the resolutions will be voted upon, first the reallocations, followed by the current year allocations.

Mr. Shaver acknowledged that each person who was not recommended and those that were recommended for funding would have a chance to stand up, as well as, others who would like to make a comment on what the Council is doing may speak.

Mr. Hales asked if the three not funded would have major questions or would others come too. Ms. Price said that usually everyone will come forward to speak and usually every year there are reductions and projects that do not get funded. It is a grueling process for the committee to decide who to fund. They are all really great projects so it is difficult to spread the funding. The priorities set with the Council are the basis for decisions made.

Mayor Snarr said there is nothing for the Heritage Center. Ms. Price reported that they did not request funds this year because they have received \$90,000 over the past two years.

Mr. Shaver said that he feels some people may come and comment even though they were not funded this year because they may want the Council to keep them in mind for the following year due to the two-year cycle. He noted that it has never been bitter or disagreeable. The public hearing gives the Council a chance to see who the agencies are and listen to them talk about their organization and the things they are doing; he said he really looks forward to this public hearing each year.

Ms. Price added that Volunteers of America and House of Hope were both funded in the past couple of years. Each year the committee tries to make it as fair as possible.

Mr. Nicponski noticed that some of the organizations are involved with multiple cities. He asked if Ms. Price works with her counterparts at the other cities at all. She said it depends on the programs and pointed out that Murray is unique and NeighborWorks, specifically, is exclusive to Murray. The down payment assistance program is specific to Murray. Other cities have down payment programs. ASSIST applies to the county and other cities. Some money goes to CDBG designated areas, of which Murray has none.

Mr. Tingey pointed out that the application asks what other cities they are requesting funds from. Ms. Price said the Council will be able to see this question and also how many Murray residents are served. It is interesting to see who they serve. The Family Support Center serves a high number of Murray residents.

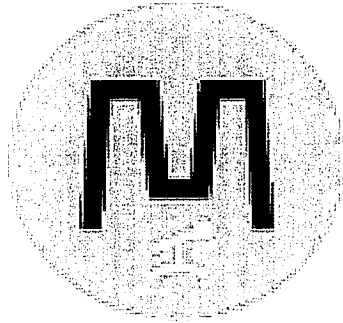
Mr. Stam stated that he appreciates the efforts Ms. Price has made over the past couple of years in refining the process and making it easier for the Council members.

Mr. Shaver declared that there were no announcements.

Mr. Nicponski mentioned a couple of things. Mr. Shaver asked if they were on the agenda. Mr. Nicponski wants them on the next agenda. Mr. Shaver said that because they were not on this agenda, they need to be handled differently. He needs to talk with Mr. Wagstaff about them to get them on an agenda, but because they are not here they cannot be discussed at this time.

Mr. Shaver adjourned the meeting at 6:27 p.m.

Janet M. Lopez
Council Office Administrator



MURRAY
CITY COUNCIL

Discussion Item #1

Murray City Municipal Council

Request for Council Action

INSTRUCTIONS: The City Council considers new business items in Council meeting. All new business items for the Council must be submitted to the Council office, Room, 112, no later than 5:00 p.m. on the Wednesday two weeks before the Council meeting in which they are to be considered. This form must accompany all such business items. If you need additional space for any item below, attach additional pages with corresponding number and label.

1. **TITLE:** (Similar wording will be used on the Council meeting agenda.)

SALT LAKE COUNTY MENTAL HEALTH PRESENTATION

2. **KEY PERFORMANCE AREA:** (Please explain how request relates to Strategic Plan Key Performance Areas.)

SAFE AND HEALTHY NEIGHBORHOODS

3. **MEETING, DATE & ACTION:** (Check all that apply)

☐ Council Meeting OR ☒ Committee of the Whole

☒ Date requested MAY 1, 2012

☒ Discussion Only

☐ Ordinance (attach copy)

Has the Attorney reviewed the attached copy? _____

☐ Resolution (attach copy)

Has the Attorney reviewed the attached copy? _____

☐ Public Hearing (attach copy of legal notice)

Has the Attorney reviewed the attached copy? _____

☐ Appeal (explain) _____

☐ Other (explain) _____

4. **FUNDING:** (Explain budget impact of proposal, including amount and source of funds.)

N/A

5. **RELATED DOCUMENTS:** (Attach and describe all accompanying exhibits, minutes, maps, plats, etc.)

N/A

6. **REQUESTOR:**

Name: Jim Brass

Title: Council Chair

Presenter: SL Co Mental Health

Title:

Agency:

Phone:

Date: April 19, 2012

Time:

7. **APPROVALS:** (If submitted by City personnel, the following signatures indicate, the proposal has been reviewed and approved by Department Director, all preparatory steps have been completed, and the item is ready for Council action)

Department Director:

Date:

Mayor: N/A

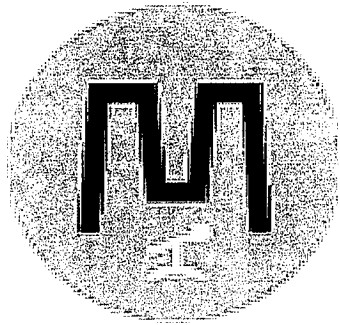
Date:

8. **COUNCIL STAFF:** (For Council use only)

Number of pages: _____ Received by: _____ Date: _____ Time: _____

Recommendation: _____

9. **NOTES:**



MURRAY
CITY COUNCIL

Discussion Item #2

Murray City Municipal Council

Request for Council Action

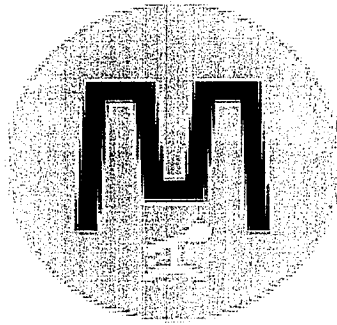
INSTRUCTIONS: The City Council considers new business items in Council meeting. All new business items for the Council must be submitted to the Council office, Room, 112, no later than 5:00 p.m. on the Wednesday two weeks before the Council meeting in which they are to be considered. This form must accompany all such business items. If you need additional space for any item below, attach additional pages with corresponding number and label.

-
1. **TITLE:** (Similar wording will be used on the Council meeting agenda.)
**"PROJECT CITIZEN" MURRAY HIGH SCHOOL SPEECH AND DEBATE CLASS
PRESENTATION ON RECYCLING**
-
2. **KEY PERFORMANCE AREA:** (Please explain how request relates to Strategic Plan Key Performance Areas.)
**ENGAGED AND INFORMED RESIDENTS: STUDENTS TAKING OWNERSHIP IN IMPROVING
THE COMMUNITY AND SERVING AS ACTIVE PARTNERS.**
-
3. **MEETING, DATE & ACTION:** (Check all that apply)
☐ Council Meeting OR ☒ Committee of the Whole
☒ Date requested MAY 1, 2012
☒ Discussion Only 15 MINUTES
☐ Ordinance (attach copy)
Has the Attorney reviewed the attached copy? _____
☐ Resolution (attach copy)
Has the Attorney reviewed the attached copy? _____
☐ Public Hearing (attach copy of legal notice)
Has the Attorney reviewed the attached copy? _____
☐ Appeal (explain) _____
☐ Other (explain) _____
-
4. **FUNDING:** (Explain budget impact of proposal, including amount and source of funds.)
-
5. **RELATED DOCUMENTS:** (Attach and describe all accompanying exhibits, minutes, maps, plats, etc.)

STUDENTS WILL BRING VISUAL AIDS AND PRESENT WAYS TO IMPROVE RECYCLING EFFORTS IN THE CITY.
-
6. **REQUESTOR:**
Name: Starlyn Knockos Title: Murray High School Speech & Debate Coach
Presenter: Murray HS Students Title:
Agency: Phone:
Date: April 25, 2012 Time:
-
7. **APPROVALS:** (If submitted by City personnel, the following signatures indicate, the proposal has been reviewed and approved by Department Director, all preparatory steps have been completed, and the item is ready for Council action)

Department Director: Mike Wagstaff Date: April 25, 2012

Mayor: N/A Date:
-
8. **COUNCIL STAFF:** (For Council use only)
Number of pages: _____ Received by: _____ Date: _____ Time: _____
Recommendation: _____
-
9. **NOTES:**



MURRAY
CITY COUNCIL

Discussion Item #3

Murray City Municipal Council

Request for Council Action

INSTRUCTIONS: The City Council considers new business items in Council meeting. All new business items for the Council must be submitted to the Council office, Room, 112, no later than 5:00 p.m. on the Wednesday two weeks before the Council meeting in which they are to be considered. This form must accompany all such business items. If you need additional space for any item below, attach additional pages with corresponding number and label.

1. **TITLE:** (Similar wording will be used on the Council meeting agenda.)

OPEN AND PUBLIC MEETING TRAINING

2. **KEY PERFORMANCE AREA:** (Please explain how request relates to Strategic Plan Key Performance Areas.)

3. **MEETING, DATE & ACTION:** (Check all that apply)

☐ Council Meeting OR ☒ Committee of the Whole

☐ Date requested

☒ Discussion Only

☐ Ordinance (attach copy)

Has the Attorney reviewed the attached copy? ☐

☐ Resolution (attach copy)

Has the Attorney reviewed the attached copy? ☐

☐ Public Hearing (attach copy of legal notice)

Has the Attorney reviewed the attached copy? ☐

☐ Appeal (explain) _____

☐ Other (explain) _____

4. **FUNDING:** (Explain budget impact of proposal, including amount and source of funds.)

N/A

5. **RELATED DOCUMENTS:** (Attach and describe all accompanying exhibits, minutes, maps, plats, etc.)

6. **REQUESTOR:**

Name: MIKE WAGSTAFF
Presenter: FRANK NAKAMURA
Agency:
Date: April 19, 2012

Title: COUNCIL EXECUTIVE DIRECTOR
Title: CITY ATTORNEY
Phone:
Time:

7. **APPROVALS:** (If submitted by City personnel, the following signatures indicate, the proposal has been reviewed and approved by Department Director, all preparatory steps have been completed, and the item is ready for Council action)

Department Director:

Date:

Mayor: N/A

Date:

8. **COUNCIL STAFF:** (For Council use only)

Number of pages: _____ Received by: _____ Date: _____ Time: _____

Recommendation: _____

9. **NOTES:**

OPEN AND PUBLIC MEETINGS TRAINING

A. UTAH OPEN AND PUBLIC MEETINGS ACT

1. Attached is a copy of the Utah Open and Public Meetings Act (the "Act") Title 52, Chapter 4, Part 4 of the Utah Code.
2. Under Section 52-4-104 of the Act, "public bodies" covered by the Act must be provided annual training.
3. The Taxing Entity Committee is a public body subject to the Act. You are created by statute. Section 17C-1-402 of the Utah Code states that you are governed by Title 52, Chapter 4, Open and Public Meetings Act. You are involved in the expenditures of tax revenue.
4. Stated Purpose of the Act:
 - a. You are to take your actions openly and deliberate openly.
 - b. You err on the side of public openness.
 - c. When in doubt, meetings are open.

B. ACT COVERS "MEETINGS"

1. A meeting means the convening of a public body with a quorum present.
2. Meetings include work sessions and site visits.
3. Meetings can be convened or conducted by means of a conference using electronic communications.
4. Meetings do not include chance or social meetings.
 - a. Meeting is a broad definition. The Act is intended to cover all gatherings of public bodies. Chance or social meetings are construed narrowly and are not defined.

C. NOTICE

1. For each meeting you must give at least 24-hour notice of the meeting date, time, location and agenda.
2. The notice must be posted in the City's principal offices, provided to at least one newspaper of general circulation within the City or a local correspondent and published on the Utah Public Notice Website.

3. There are specific and narrow rules to call an emergency meeting with best notice possible.

D. AGENDA

It is not enough to give notice. The agenda that is required for each public meeting must also provide enough detail to notify the public as to the topics to be discussed and the decisions that may be made. You should not discuss matters that have not been specified on the agenda. At the discretion of the Chair, matters brought up by the public in a meeting may be discussed but no action may be taken on the matter.

E. CLOSED MEETINGS

1. Meetings are open unless they are closed for only the reasons provided in the Act.
2. Before you close a meeting, you must follow the notice requirements, which includes an agenda identifying the subject matter and that the Council may take action to close the meeting. During the open meeting, the reason or reasons for holding a closed meeting need to be discussed. A vote by name of each member of the public body voting against or for the closed meeting must also be in the open meeting.
3. In order to close a meeting a quorum must be present and two-thirds of the members must vote for a closed meeting.
4. There needs to be a record of the closed portion of the meeting and detailed written minutes may be kept that disclose the contents of the closed portion of the meeting. The minutes are non-public records.
5. A closed meeting may be held only for the following reasons:
 - a. Discussion of the character, professional competence, or physical or mental health of an individual. This does not mean simply personnel matters.
 - b. Strategy sessions to discuss pending or reasonably imminent litigation. This does not mean just litigation.
 - c. Strategy sessions to discuss the purchase, exchange, or lease of real property.
 - d. Strategy sessions to discuss the sale of real property.
 - e. Discussion regarding the deployment of security personnel, devices, or systems.
 - f. Investigative proceedings regarding allegations of criminal misconduct.

6. If there is a closed meeting on same day as a regularly-scheduled meeting, the meeting must be held at the same location as the regularly-scheduled meeting with limited exception.

F. MINUTES

1. Written minutes must be kept of all meetings including closed meetings.
2. Minutes are public and are available to the public within a reasonable time after the meeting. Draft minutes are public when they are made available to members of the public body.
3. All open meetings must also be recorded. The public has the right to record a meeting.
4. Closed meetings are also recorded.
5. Limited exception to recording closed meeting:
 - a. Meetings in which the competence or physical or mental health of an individual is discussed or deployment of security devices.
 - b. An affidavit affirming the purpose is needed.
6. Tapes of Open meetings are public.

G. PENALTIES

It is a Class B Misdemeanor to knowingly and intentionally violate the Act.

H. ELECTRONIC COMMUNICATIONS THAT SUBVERT TRANSPARENCY AND ACCOUNTABILITY.

- a. The challenge is to identify where civic social networks and other electronic communications such as e-mails, texting, tweets, blog posts, and Facebook subvert the Open meetings laws.
- b. Attached is a law review article that raises the different issues. The law does not specifically address this new public square.

52-4-101. Title.

This chapter is known as the "Open and Public Meetings Act."

52-4-102. Declaration of public policy.

(1) The Legislature finds and declares that the state, its agencies and political subdivisions, exist to aid in the conduct of the people's business.

(2) It is the intent of the Legislature that the state, its agencies, and its political subdivisions:

- (a) take their actions openly; and
- (b) conduct their deliberations openly.

52-4-103. Definitions.

As used in this chapter:

(1) "Anchor location" means the physical location from which:

- (a) an electronic meeting originates; or
- (b) the participants are connected.

(2) "Convening" means the calling of a meeting of a public body by a person authorized to do so for the express purpose of discussing or acting upon a subject over which that public body has jurisdiction or advisory power.

(3) "Electronic meeting" means a public meeting convened or conducted by means of a conference using electronic communications.

(4) "Electronic message" means a communication transmitted electronically, including:

- (a) electronic mail;
- (b) instant messaging;
- (c) electronic chat;
- (d) text messaging as defined in Section 76-4-401; or
- (e) any other method that conveys a message or facilitates communication electronically.

(5) (a) "Meeting" means the convening of a public body, with a quorum present, including a workshop or an executive session whether the meeting is held in person or by means of electronic communications, for the purpose of discussing, receiving comments from the public about, or acting upon a matter over which the public body has jurisdiction or advisory power.

(b) "Meeting" does not mean:

- (i) a chance meeting;
- (ii) a social meeting;
- (iii) the convening of a public body that has both legislative and executive responsibilities where no public funds are appropriated for expenditure during the time the public body is convened and:

(A) the public body is convened solely for the discussion or implementation of administrative or operational matters for which no formal action by the public body is required; or

(B) the public body is convened solely for the discussion or implementation of administrative or operational matters that would not come before the public body for discussion or action; or

(iv) a meeting of the State Tax Commission to consider a confidential tax matter in accordance with Section 59-1-405.

(6) "Monitor" means to hear or observe, live, by audio or video equipment, all of the public statements of each member of the public body who is participating in a meeting.

(7) "Participate" means the ability to communicate with all of the members of a public body, either verbally or electronically, so that each member of the public body can hear or observe the communication.

(8) (a) "Public body" means any administrative, advisory, executive, or legislative body of the state or its political subdivisions that:

- (i) is created by the Utah Constitution, statute, rule, ordinance, or resolution;
- (ii) consists of two or more persons;
- (iii) expends, disburses, or is supported in whole or in part by tax revenue; and
- (iv) is vested with the authority to make decisions regarding the public's business.

(b) "Public body" does not include a:

- (i) political party, political group, or political caucus; or
- (ii) conference committee, rules committee, or sifting committee of the Legislature.

(9) "Public statement" means a statement made in the ordinary course of business of the public body with the intent that all other members of the public body receive it.

(10) (a) "Quorum" means a simple majority of the membership of a public body, unless otherwise defined by applicable law.

(b) "Quorum" does not include a meeting of two elected officials by themselves when no action, either formal or informal, is taken on a subject over which these elected officials have advisory power.

(11) "Recording" means an audio, or an audio and video, record of the proceedings of a meeting that can be used to review the proceedings of the meeting.

(12) "Transmit" means to send, convey, or communicate an electronic message by electronic means.

52-4-104. Training.

The presiding officer of the public body shall ensure that the members of the public body are provided with annual training on the requirements of this chapter.

52-4-201. Meetings open to the public -- Exceptions.

(1) A meeting is open to the public unless closed under Sections 52-4-204, 52-4-205, and 52-4-206.

(2) (a) A meeting that is open to the public includes a workshop or an executive session of a public body in which a quorum is present, unless closed in accordance with this chapter.

(b) A workshop or an executive session of a public body in which a quorum is present that is held on the same day as a regularly scheduled public meeting of the public body may only be held at the location where the public body is holding the regularly scheduled public meeting unless:

(i) the workshop or executive session is held at the location where the public body holds its regularly scheduled public meetings but, for that day, the regularly scheduled public meeting is being held at different location;

(ii) any of the meetings held on the same day is a site visit or a traveling tour and, in

accordance with this chapter, public notice is given;

(iii) the workshop or executive session is an electronic meeting conducted according to the requirements of Section 52-4-207; or

(iv) it is not practicable to conduct the workshop or executive session at the regular location of the public body's open meetings due to an emergency or extraordinary circumstances.

52-4-202. Public notice of meetings -- Emergency meetings.

(1) A public body shall give not less than 24 hours public notice of each meeting including the meeting:

- (a) agenda;
- (b) date;
- (c) time; and
- (d) place.

(2) (a) In addition to the requirements under Subsection (1), a public body which holds regular meetings that are scheduled in advance over the course of a year shall give public notice at least once each year of its annual meeting schedule as provided in this section.

(b) The public notice under Subsection (2)(a) shall specify the date, time, and place of the scheduled meetings.

(3) (a) Public notice shall be satisfied by:

(i) posting written notice:

(A) at the principal office of the public body, or if no principal office exists, at the building where the meeting is to be held; and

(B) beginning October 1, 2008 and except as provided in Subsection (3)(b), on the Utah Public Notice Website created under Section 63F-1-701; and

(ii) providing notice to:

(A) at least one newspaper of general circulation within the geographic jurisdiction of the public body; or

(B) a local media correspondent.

(b) A public body of a municipality under Title 10, Utah Municipal Code, a local district under Title 17B, Limited Purpose Local Government Entities - Local Districts, or a special service district under Title 17D, Chapter 1, Special Service District Act, is encouraged, but not required, to post written notice on the Utah Public Notice Website, if the municipality or district has a current annual budget of less than \$1 million.

(c) A public body is in compliance with the provisions of Subsection (3)(a)(ii) by providing notice to a newspaper or local media correspondent under the provisions of Subsection 63F-1-701(4)(d).

(4) A public body is encouraged to develop and use additional electronic means to provide notice of its meetings under Subsection (3).

(5) (a) The notice requirement of Subsection (1) may be disregarded if:

(i) because of unforeseen circumstances it is necessary for a public body to hold an emergency meeting to consider matters of an emergency or urgent nature; and

(ii) the public body gives the best notice practicable of:

(A) the time and place of the emergency meeting; and

(B) the topics to be considered at the emergency meeting.

(b) An emergency meeting of a public body may not be held unless:

- (i) an attempt has been made to notify all the members of the public body; and
- (ii) a majority of the members of the public body approve the meeting.

(6) (a) A public notice that is required to include an agenda under Subsection (1) shall provide reasonable specificity to notify the public as to the topics to be considered at the meeting. Each topic shall be listed under an agenda item on the meeting agenda.

(b) Subject to the provisions of Subsection (6)(c), and at the discretion of the presiding member of the public body, a topic raised by the public may be discussed during an open meeting, even if the topic raised by the public was not included in the agenda or advance public notice for the meeting.

(c) Except as provided in Subsection (5), relating to emergency meetings, a public body may not take final action on a topic in an open meeting unless the topic is:

- (i) listed under an agenda item as required by Subsection (6)(a); and
- (ii) included with the advance public notice required by this section.

52-4-203. Written minutes of open meetings -- Public records -- Recording of meetings.

(1) Except as provided under Subsection (7), written minutes and a recording shall be kept of all open meetings.

(2) Written minutes of an open meeting shall include:

- (a) the date, time, and place of the meeting;
- (b) the names of members present and absent;
- (c) the substance of all matters proposed, discussed, or decided by the public body which may include a summary of comments made by members of the public body;
- (d) a record, by individual member, of each vote taken by the public body;
- (e) the name of each person who:
 - (i) is not a member of the public body; and
 - (ii) after being recognized by the presiding member of the public body, provided testimony or comments to the public body;
- (f) the substance, in brief, of the testimony or comments provided by the public under Subsection (2)(e); and
- (g) any other information that is a record of the proceedings of the meeting that any member requests be entered in the minutes or recording.

(3) A recording of an open meeting shall:

- (a) be a complete and unedited record of all open portions of the meeting from the commencement of the meeting through adjournment of the meeting; and
 - (b) be properly labeled or identified with the date, time, and place of the meeting.
- (4) The written minutes and recording of an open meeting are public records under Title 63G, Chapter 2, Government Records Access and Management Act, as follows:

(a) Written minutes that have been prepared in a form awaiting only formal approval by the public body are a public record.

(b) Written minutes shall be available to the public within a reasonable time after the end of the meeting.

(c) Written minutes that are made available to the public before approval by the public body under Subsection (4)(d) shall be clearly identified as "awaiting formal approval" or "unapproved" or with some other appropriate notice that the written minutes are subject to change until formally approved.

(d) A public body shall establish and implement procedures for the public body's approval of the written minutes of each meeting.

(e) Written minutes are the official record of action taken at the meeting.

(f) A recording of an open meeting shall be available to the public for listening within three business days after the end of the meeting.

(5) All or any part of an open meeting may be independently recorded by any person in attendance if the recording does not interfere with the conduct of the meeting.

(6) The written minutes or recording of an open meeting that are required to be retained permanently shall be maintained in or converted to a format that meets long-term records storage requirements.

(7) Notwithstanding Subsection (1), a recording is not required to be kept of:

(a) an open meeting that is a site visit or a traveling tour, if no vote or action is taken by the public body; or

(b) an open meeting of a local district under Title 17B, Limited Purpose Local Government Entities - Local Districts, or special service district under Title 17D, Chapter 1, Special Service District Act, if the district's annual budgeted expenditures for all funds, excluding capital expenditures and debt service, are \$50,000 or less.

52-4-204. Closed meeting held upon vote of members -- Business -- Reasons for meeting recorded.

(1) A closed meeting may be held if:

(a) (i) a quorum is present;

(ii) the meeting is an open meeting for which notice has been given under Section 52-4-202; and

(iii) (A) two-thirds of the members of the public body present at the open meeting vote to approve closing the meeting;

(B) for a meeting that is required to be closed under Section 52-4-205, if a majority of the members of the public body present at an open meeting vote to approve closing the meeting; or

(C) for an ethics committee of the Legislature that is conducting an open meeting for the purpose of reviewing an ethics complaint, a majority of the members present vote to approve closing the meeting for the purpose of seeking or obtaining legal advice on legal, evidentiary, or procedural matters, or for conducting deliberations to reach a decision on the complaint; or

(b) for the Independent Legislative Ethics Commission, the closed meeting is convened for the purpose of conducting business relating to the receipt or review of an ethics complaint, provided that public notice of the closed meeting is given under Section 52-4-202, with the agenda for the meeting stating that the meeting will be closed for the purpose of "conducting business relating to the receipt or review of ethics complaints".

(2) A closed meeting is not allowed unless each matter discussed in the closed meeting is permitted under Section 52-4-205.

(3) An ordinance, resolution, rule, regulation, contract, or appointment may not be approved at a closed meeting.

(4) The following information shall be publicly announced and entered on the minutes of the open meeting at which the closed meeting was approved:

(a) the reason or reasons for holding the closed meeting;

(b) the location where the closed meeting will be held; and

(c) the vote by name, of each member of the public body, either for or against the motion to

hold the closed meeting.

(5) Except as provided in Subsection 52-4-205(2), nothing in this chapter shall be construed to require any meeting to be closed to the public.

52-4-205. Purposes of closed meetings.

- (1) A closed meeting described under Section 52-4-204 may only be held for:
- (a) discussion of the character, professional competence, or physical or mental health of an individual;
 - (b) strategy sessions to discuss collective bargaining;
 - (c) strategy sessions to discuss pending or reasonably imminent litigation;
 - (d) strategy sessions to discuss the purchase, exchange, or lease of real property, including any form of a water right or water shares, if public discussion of the transaction would:
 - (i) disclose the appraisal or estimated value of the property under consideration; or
 - (ii) prevent the public body from completing the transaction on the best possible terms;
 - (e) strategy sessions to discuss the sale of real property, including any form of a water right or water shares, if:
 - (i) public discussion of the transaction would:
 - (A) disclose the appraisal or estimated value of the property under consideration; or
 - (B) prevent the public body from completing the transaction on the best possible terms;
 - (ii) the public body previously gave public notice that the property would be offered for sale; and
 - (iii) the terms of the sale are publicly disclosed before the public body approves the sale;
 - (f) discussion regarding deployment of security personnel, devices, or systems;
 - (g) investigative proceedings regarding allegations of criminal misconduct;
 - (h) as relates to the Independent Legislative Ethics Commission, conducting business relating to the receipt or review of ethics complaints;
 - (i) as relates to an ethics committee of the Legislature, a purpose permitted under Subsection 52-4-204(1)(a)(iii)(B);
 - (j) as relates to a county legislative body, discussing commercial information as defined in Section 59-1-404;
 - (k) as relates to the Alcoholic Beverage Control Commission issuing a retail license under Title 32B, Alcoholic Beverage Control Act, after receiving public input in a public meeting in support or opposition to the commission issuing the retail license, discussing one or more of the following factors in a closed meeting:
 - (i) a factor the commission is required to consider under Section 32B-5-203 or that is specified in the relevant part under Chapter 6, Specific Retail License Act, for the type of retail license at issue;
 - (ii) the availability of a retail license under a quota;
 - (iii) the length of time the applicant has waited for a retail license;
 - (iv) an opening date for the applicant;
 - (v) whether the applicant is a seasonal business;
 - (vi) whether the location of the applicant has been previously licensed or is a new location;
 - (vii) whether the application involves a change of ownership of an existing location;
 - (viii) whether the applicant holds other alcohol licenses at any location;
 - (ix) whether the applicant has a violation history or a pending violation;
 - (x) projected alcohol sales for the applicant as it relates to the extent to which the retail

license will be used;

(xi) whether the applicant is a small or entrepreneurial business that would benefit the community in which it would be located;

(xii) the nature of entertainment the applicant proposes; or

(xiii) public input in support or opposition to granting the retail license;

(l) as relates to the Utah Higher Education Assistance Authority and its appointed board of directors, discussing fiduciary or commercial information as defined in Section 53B-12-102; or

(m) a purpose for which a meeting is required to be closed under Subsection (2).

(2) The following meetings shall be closed:

(a) a meeting of the Health and Human Services Interim Committee to review a fatality review report described in Subsection 62A-16-301(1)(a), and the responses to the report described in Subsections 62A-16-301(2) and (4); and

(b) a meeting of the Child Welfare Legislative Oversight Panel to:

(i) review a fatality review report described in Subsection 62A-16-301(1)(a), and the responses to the report described in Subsections 62A-16-301(2) and (4); or

(ii) review and discuss an individual case, as described in Subsection 62A-4a-207(5).

(3) A public body may not interview a person applying to fill an elected position in a closed meeting.

52-4-206. Record of closed meetings.

(1) Except as provided under Subsection (6), if a public body closes a meeting under Subsection 52-4-205(1), the public body:

(a) shall make a recording of the closed portion of the meeting; and

(b) may keep detailed written minutes that disclose the content of the closed portion of the meeting.

(2) A recording of a closed meeting shall be complete and unedited from the commencement of the closed meeting through adjournment of the closed meeting.

(3) The recording and any minutes of a closed meeting shall include:

(a) the date, time, and place of the meeting;

(b) the names of members present and absent; and

(c) the names of all others present except where the disclosure would infringe on the confidentiality necessary to fulfill the original purpose of closing the meeting.

(4) Minutes or recordings of a closed meeting that are required to be retained permanently shall be maintained in or converted to a format that meets long-term records storage requirements.

(5) Both a recording and written minutes of closed meetings are protected records under Title 63G, Chapter 2, Government Records Access and Management Act, except that the records may be disclosed under a court order only as provided under Section 52-4-304.

(6) If a public body closes a meeting exclusively for the purposes described under Subsection 52-4-205(1)(a), (1)(f), or (2):

(a) the person presiding shall sign a sworn statement affirming that the sole purpose for closing the meeting was to discuss the purposes described under Subsection 52-4-205(1)(a), (1)(f), or (2); and

(b) the provisions of Subsection (1) of this section do not apply.

52-4-207. Electronic meetings -- Authorization -- Requirements.

(1) Except as otherwise provided for a charter school in Section 52-4-209, a public body may convene and conduct an electronic meeting in accordance with this section.

(2) (a) A public body may not hold an electronic meeting unless the public body has adopted a resolution, rule, or ordinance governing the use of electronic meetings.

(b) The resolution, rule, or ordinance may:

(i) prohibit or limit electronic meetings based on budget, public policy, or logistical considerations;

(ii) require a quorum of the public body to:

(A) be present at a single anchor location for the meeting; and

(B) vote to approve establishment of an electronic meeting in order to include other members of the public body through an electronic connection;

(iii) require a request for an electronic meeting to be made by a member of a public body up to three days prior to the meeting to allow for arrangements to be made for the electronic meeting;

(iv) restrict the number of separate connections for members of the public body that are allowed for an electronic meeting based on available equipment capability; or

(v) establish other procedures, limitations, or conditions governing electronic meetings not in conflict with this section.

(3) A public body that convenes or conducts an electronic meeting shall:

(a) give public notice of the meeting:

(i) in accordance with Section 52-4-202; and

(ii) post written notice at the anchor location;

(b) in addition to giving public notice required by Subsection (3)(a), provide:

(i) notice of the electronic meeting to the members of the public body at least 24 hours before the meeting so that they may participate in and be counted as present for all purposes, including the determination that a quorum is present; and

(ii) a description of how the members will be connected to the electronic meeting;

(c) establish one or more anchor locations for the public meeting, at least one of which is in the building and political subdivision where the public body would normally meet if they were not holding an electronic meeting;

(d) provide space and facilities at the anchor location so that interested persons and the public may attend and monitor the open portions of the meeting; and

(e) if comments from the public will be accepted during the electronic meeting, provide space and facilities at the anchor location so that interested persons and the public may attend, monitor, and participate in the open portions of the meeting.

(4) Compliance with the provisions of this section by a public body constitutes full and complete compliance by the public body with the corresponding provisions of Sections 52-4-201 and 52-4-202.

52-4-208. Chance or social meetings.

(1) This chapter does not apply to any chance meeting or a social meeting.

(2) A chance meeting or social meeting may not be used to circumvent the provisions of this chapter

52-4-209. Electronic meetings for charter schools -- Pilot program.

(1) As used in this section, "charter school" means a school created under Title 53A, Chapter 1a, Part 5, The Utah Charter Schools Act.

(2) The Electronic Meetings for Charter Schools Pilot Program is created to pilot the development and implementation of electronic meetings for charter schools.

(3) Beginning May 10, 2011, and ending May 8, 2012, a charter school may convene and conduct an electronic meeting in accordance with this section.

(4) A charter school that conducts an electronic meeting under this section shall:

(a) give public notice of the electronic meeting:

(i) in accordance with Section 52-4-202; and

(ii) by posting written notice at the anchor location as required under Section 52-4-207;

(b) in addition to giving public notice required by Subsection (4)(a), provide:

(i) notice of the electronic meeting to the members of the charter school board at least 24 hours before the meeting so that they may participate in and be counted as present for all purposes, including the determination that a quorum is present;

(ii) a description of how the members will be connected to the electronic meeting; and

(iii) a start and end time for the meeting, which shall be no longer than 24 hours; and

(c) provide space, facilities, and technology in the building where the charter school board would normally meet if they were not holding an electronic meeting so the public may attend, monitor, and participate in the meeting during regular business hours.

(5) A charter school conducting an electronic meeting under this section may not close a meeting as otherwise allowed under this part.

(6) Written minutes and a recording shall be kept of an electronic meeting conducted as required in Section 52-4-203.

(7) Written minutes are the official record of action taken at an electronic meeting as required in Section 52-4-203.

(8) Compliance with the provisions of this section by a charter school constitutes full and complete compliance by the public body with the corresponding provisions of Sections 52-4-201 and 52-4-202.

(9) A charter school that conducts an electronic meeting under this section shall report to the Public Utilities and Technology Interim Committee by October 1, 2011, as to the effectiveness of conducting business via electronic meetings under this section.

52-4-210. Electronic message transmissions.

Nothing in this chapter shall be construed to restrict a member of a public body from transmitting an electronic message to other members of the public body at a time when the public body is not convened in an open meeting.

52-4-301. Disruption of meetings.

This chapter does not prohibit the removal of any person from a meeting, if the person willfully disrupts the meeting to the extent that orderly conduct is seriously compromised.

52-4-302. Suit to void final action -- Limitation -- Exceptions.

(1) (a) Any final action taken in violation of Section 52-4-201, 52-4-202, or 52-4-207 is voidable by a court of competent jurisdiction.

(b) A court may not void a final action taken by a public body for failure to comply with the posting written notice requirements under Subsection 52-4-202(3)(a)(i)(B) if:

(i) the posting is made for a meeting that is held before April 1, 2009; or

(ii) (A) the public body otherwise complies with the provisions of Section 52-4-202; and

(B) the failure was a result of unforeseen Internet hosting or communication technology failure.

(2) Except as provided under Subsection (3), a suit to void final action shall be commenced within 90 days after the date of the action.

(3) A suit to void final action concerning the issuance of bonds, notes, or other evidences of indebtedness shall be commenced within 30 days after the date of the action.

52-4-303. Enforcement of chapter -- Suit to compel compliance.

(1) The attorney general and county attorneys of the state shall enforce this chapter.

(2) The attorney general shall, on at least a yearly basis, provide notice to all public bodies that are subject to this chapter of any material changes to the requirements for the conduct of meetings under this chapter.

(3) A person denied any right under this chapter may commence suit in a court of competent jurisdiction to:

(a) compel compliance with or enjoin violations of this chapter; or

(b) determine the chapter's applicability to discussions or decisions of a public body.

(4) The court may award reasonable attorney fees and court costs to a successful plaintiff

52-4-304. Action challenging closed meeting.

(1) Notwithstanding the procedure established under Subsection 63G-2-202(7), in any action brought under the authority of this chapter to challenge the legality of a closed meeting held by a public body, the court shall:

(a) review the recording or written minutes of the closed meeting in camera; and

(b) decide the legality of the closed meeting.

(2) (a) If the judge determines that the public body did not violate Section 52-4-204, 52-4-205, or 52-4-206 regarding closed meetings, the judge shall dismiss the case without disclosing or revealing any information from the recording or minutes of the closed meeting.

(b) If the judge determines that the public body violated Section 52-4-204, 52-4-205, or 52-4-206 regarding closed meetings, the judge shall publicly disclose or reveal from the recording or minutes of the closed meeting all information about the portion of the meeting that was illegally closed.

52-4-305. Criminal penalty for closed meeting violation.

In addition to any other penalty under this chapter, a member of a public body who knowingly or intentionally violates or who knowingly or intentionally abets or advises a violation of any of the closed meeting provisions of this chapter is guilty of a class B misdemeanor.



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SOCIAL NETWORKING AND THE LAW: ARTICLE: Your Mayor, Your "Friend": Public Officials, Social Networking, and the Unmapped New Public Square

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LEXISNEXIS SUMMARY:

... The use of online social networks by local public officials has drawn the ire of local governments, some of whom have gone so far as to bar public officials from social networks for fear of violating campaign finance, open meeting, freedom of information, and government ethics laws. ... This not only contradicts the desire for control that can only come with registration, but also rules out the majority of popular social networking sites, such as Facebook, MySpace, or Twitter. ... Civic social networking is not just another tool to which the existing laws may apply, like email or text messaging; rather, it is an environment that has an impact on the behavior of the actors surrounding it. ... Similarly, constituents engaged in civic social networks experience low-threshold group formation and organizational tools, as well as a certain incentive for acquiring information and sharing it with other users. ... Prohibitions or certain limits on the use of civic social networks - that is, ejecting public officials from the new public square - would result in less public deliberation, fewer publicly accessible records, and elimination of valuable tools to hold public officials accountable for their actions. ... Civic social networks cannot, of course, eliminate the many ways that public officials can hide actions or statements (for example, in a private conversation), but to the extent that communications in the network are available to the public, the opportunity for constituents to investigate officials' actions and statements is greatly improved.

TEXT:

[*95]

Introduction

Your City Councilmember wants to connect with you. She wants to hear from you, speak to you, allow you to get to know her, and get to know you. She wants to learn your concerns and interests, and discuss policy, politics, and issues

big and small. It is fair to say that she wants to develop a relationship with you - one in which you share family photos, thoughts about movies and the weather, and, of course, your views on issues that will come before the City Council. In short, she wants to be friends. But some local governments say she cannot - at least not on Facebook.

It turns out that there are friends, and there are "friends." The use of online social networks by local public officials has drawn the ire of local governments, some of whom have gone so far as to bar public officials from social networks for fear of violating campaign finance, open meeting, freedom of information, and government ethics laws. These objections overlook the unique nature of civic social networks as an emerging political institution, characterized by a high degree of transparency and intense public pressure for accountability. The nature of this new institution renders the alarmist reaction overblown. Civic social networks are the new public square, and local governments should embrace them as [*96] consistent with the goals of open government and ethics laws.

This Article seeks to describe this emerging institutional environment, and by doing so help change the ways that policymakers apply open government and ethics rules to civic social networks. Part One identifies the ways local public officials and their constituents are using social networks. Part Two discusses the attempts by some local governments to eliminate or limit that use. Part Three uses public choice theory and rational choice institutionalism to assess the tools and behaviors that have given us the emerging institution of civic social networks - an institution characterized by high demand for transparency and accountability. Part Four argues that the nature of the institution described in Part Three demonstrates that the threatened enforcement of open government and ethics laws would have a perverse effect - reducing transparency and accountability while exposing public officials to greater moral hazard. The Article concludes with recommendations for open government and ethics statutes (or the enforcement thereof) that would allow officials to engage their constituents in the new public square of civic social networks.

I. Welcome to the New Public Square

Local public officials are stampeding to use online social networks. It should come as no surprise that people whose lives are organized around constituent contact are adopting new tools that let them reach large numbers of people at little cost. But this scramble goes far beyond the use of formal, government-created websites with press releases, updates, and photos; today, it seems that there is hardly a mayor or city councilmember in a major American city without a Facebook page, a Twitter account, and a blog. n1 Major policy [*97] announcements are made by tweet and entire town hall meetings happen in chat rooms. n2 But most interestingly, local public officials have started using social networking in order to connect with their constituents, creating a three-way information flow: from official to constituent; from constituent to official; and among constituents, but in the context of the public official's network. n3

This Part seeks to describe the use of online social networks by public officials - civic social networks. It develops the contrast between the network use envisioned by the network enthusiasts and the local governments tasked with enforcing open meeting, freedom of information, campaign finance, and ethics laws, some of whom propose prohibiting or limiting civic social network.

A. Civic Social Networks: Optimists, Visionaries, and the Promise of the New Public Square

Enthusiasts envision the Internet as the great [*98] democratizer - a place with free commerce in opinions and ideas, where everyone is welcome, and where people gather to hear announcements, to protest, or to celebrate. In this optimistic conception, civic social networks are each community's new public square. n4

A physical public square is a common feature in a community; in a city like Washington, D.C., it might be the National Mall, and in a smaller town, it might be the village square or the steps of city hall. Just as the physical public square is many things - the locus of the distribution of official information, part tribune and part question time, a place to exchange information and news (and, yes, gossip, innuendo, and misinformation), and a place where one is exposed to new information - the new public square of civic social networks lets anyone in. Public officials in the physical public square may communicate with constituents or with each other, but such communication occurs in full public

view where it may be interrupted, corrected, or seconded by an observing public; just as in the new public square of civic social networks.

Social network sites have developed characteristics distinct from the Internet at large. Danah Boyd and Nicole Ellison define social network sites as "web-based services that allow individuals to (1) construct a public or semi-public profile within a bounded system, (2) articulate a list of other users with whom they share a connection, and (3) view and traverse their list of connections and those made by others within the system." n5 The elegance of this definition lies in the corresponding three types of social interactions that social networks enable: the creation of an online identity; the establishment of relationships between users; and the development of layered communities defined by the lists of [*99] connections each user establishes. n6

The importance of these three types of interactions is the story of the commercial Internet for the last ten years. But they are equally important to politics and governance. n7 Public officials craft an online identity in order to provide certain information or convey a certain brand or persona; constituents do the same thing, although their primary target audience in creating their online identity is more likely to be other constituents, rather than the public official. Public officials and constituents establish relationships among each other, and the communities defined by lists of those relationships have both direct communicative value (the ability to send and receive content to/from the list) and secondary communicative value (the ability to convey the size, content, level, and type of activity of a network). n8

At heart is a recognition that, as Justice Kennedy wrote, "Minds are not changed in streets and parks as they once were. To an increasing degree, the more significant interchanges of ideas and shaping of public consciousness occur in mass and electronic media." n9 This is borne out by empirical evidence suggesting that online discourse has, in some ways, replaced the old public square. n10 Thus, it is up to the states and [*100] municipalities to conclude that, as Cass Sunstein puts it, "a free society requires a right of access to areas where many people meet." n11

B. The Realists: Online Political Communication Ranges from Discourse to Dysfunction

Civic social networks, one should not be surprised to notice, do not look like an Athenian polis with Wi-Fi. But local public officials and their constituents are flocking to social networking tools, n12 and even government agencies that recently resisted have succumbed. n13 The most popular tools appear to be Facebook, n14 Twitter, n15 and blogs n16 (some hosted by a third-party [*101] service like Blogger, and some hosted directly from government servers).

To be sure, many posts from public officials read like very brief press releases: merely a pronouncement with little genuine interaction between the official and the public. n17 But not all of them. In the snowstorm of 2010, Newark, New Jersey Mayor Cory Booker famously responded to a tweet requesting help removing snow by showing up with shovel in hand and volunteers in tow. n18 Booker, a mayor of a city with less than 300,000 residents, has more than 1,000,000 followers on Twitter. n19 The New York City Council's Twitter account includes links to social networking posts by various councilmembers and other City agencies and general news. n20 [*102] Houston Mayor Annise Parker's Facebook page includes comment threads by constituents on subjects before the City, and some replies by Mayor Parker (or her staff). n21

In addition to specific city officials, some cities' agencies or departments have aggressively adopted social media. The City of Chicago lists 33 different social media accounts for its agencies - not including any for City public officials other than the mayor. n22 In some cases, social media chases the officials rather than the other way around. For example, British activist volunteer group MySociety created websites, including TheyWorkForYou and FixMyStreet that, like open source maps, mashup government data with user-generated input to connect constituents with problems, information, or interests to each other and to public officials. n23

So even if idealists hoping that social networks would enable a high-minded process of deliberative democracy are likely to be disappointed - after all, study after study has demonstrated that online discourse is factually unreliable, consists of opinion rather than objective information, creates "echo chambers" in which people only talk to or hear from

those who already agree with them, and therefore reinforce polarization in politics n24 - social networks have successfully enabled low-threshold civic engagement by citizens and public officials. As of 2010, a study showed that nearly one-third (31 [*103] percent) of online adults use online platforms such as blogs, social networking sites, email, online video, or text messaging to get government information, and 13 percent of Internet users read a government agency or official's blog. n25 Taken together, nearly a quarter of Internet users have posted comments or interacted with others online around government policies or public issues. n26 Civic social networks, like them or not, are the new public square.

II. Ejecting Public Officials from the New Public Square

The rapid adoption of social networking tools by public officials has left some local governments somewhat shell-shocked. For those tasked with enforcing open meeting, freedom of information, ethics, and campaign finance laws, social networks are not so much a great new venue for deliberative democracy, but more like new tools with which public officials can misbehave. In many cases, local governments have proposed restrictions that, for all intents and purposes, ban public officials from using social networks in their official capacity. n27

A. What is Government's Role in Regulating Public Officials' Presence in the New Public Square?

Policymakers have approached questions about public officials' use of social networks in a manner consistent with their institutional role. The question, for them, is whether the activity occurring on social networks may violate existing law, and if so, how best to stop and/or punish it. n28 Because social [*104] networks are, for the most part, third-party applications, their features, format, and rules are not directly controlled by the public officials or government agencies that use them. n29 Consequently, any restrictions on use of social media by public officials can only be enforced by monitoring and enforcement, under threat of some penalty, rather than through design modifications or access limitations.

It is fair to say that public officials cannot be counted upon to govern themselves, n30 especially when a significant portion of the improper use of social networks may be inadvertent, and therefore unlikely to be checked internally. But as with other government regulation of the Internet, there is broad disagreement about the specific role of government and civic social networks. n31

Local lawmakers and agencies with the responsibility to enforce applicable laws have just begun to grapple with the [*105] problems they see. The first reactions range from outright hostility to any civic social networks to conservative counsel to enthusiastic embrace. n32 As one open-government advocate put it, "[government prohibition on social network use] does exhibit a trend we're seeing - leaders see social media as opening the door for risk. But social media and improving online technology is only going to make government more accessible. It is a challenge but it is a challenge that's necessary for governments to meet." n33

The challenge for local governments is to identify where civic social networks extend, rather than subvert, valid public goals like transparency and accountability. Thus, although social networks "are occurring without government intervention ... there remains scope for government to nurture them and especially to facilitate solutions to specific problems that participants have not as yet been able to solve themselves." n34 And as local governments identify problems and facilitate solutions, they must recognize that social networks are a form of engagement that citizens take seriously as a part of their political expression. n35 So far, however, those governments have reacted in precisely the opposite way.

B. Ejecting Public Officials from the New Public Square

This is not the first time that a new technology has emerged, forcing policymakers to assess its impact or threat. In the case of social media, agencies have sounded the alarm, in particular, over actual or potential violation of freedom of information laws, open meetings laws, government ethics rules, and campaign finance regulations. Because few (if any)

laws deal specifically with social networks, policymakers have had [*106] to extrapolate from existing law, with mixed results. n36

Policymakers have employed two different approaches. Under the first approach, an agency has faced a specific allegation that a use of civic social networks violates existing law and the agency has then determined whether the existing law applies to the use of social networks. Under the second approach, a policymaking or enforcing agency has raised a general alarm about the potential for mischief, and handed down a series of rules intended to prevent violations. The results have been varied, as demonstrated by the following examples: (1) the City of Redondo Beach was advised to avoid all use of social networks for any purposes; n37 (2) the City of Seattle was advised to adopt regulations that would bar City Councilmembers from "friending" each other on social networks, for fear of allowing inadvertent online meetings in violation of the Open Public Meetings Act, and bar any links that would lead to third-party content that is commercial (like advertisements) or political (like a comment from a constituent in support of a campaign); n38 (3) Attorneys for a Florida municipal planning board told the board that, as a general matter, it should not have a social network profile "under any circumstances"; n39 (4) Attorneys for a collection of Washington [*107] cities advised city councilmembers to avoid posting any content regarding policy or city-related issues; n40 and (5) counsel for the City of Fort Lauderdale discouraged any City participation on Facebook or "any similar interactive communication technology." n41

Agencies, counsel, and public officials have grappled with at least three types of potential statutory violations that they believe apply to communications among public officials and constituents using social networks.

1. Freedom of Information or Public Records Acts

Skeptics point out that public officials' use of social network sites can create public records that are inaccessible to many members of the public in their original location, and may not be retained or cataloged in the same way as email or written correspondence. Those concerns are well justified. Consider the following scenario: Councilmember Jones posts on Twitter that he opposes Mayor Smith's plan to combat street crime: "I stand against @MayorSmith's faulty, punitive #brokenwindows plan. Let's make our streets #safeforeveryone!" The post would be published online n42 and anyone who had a Twitter account who had signed up to follow Councilmember Jones would instantly receive the message (as would anyone signed up to follow Mayor Smith and anyone searching for the hashtags #brokenwindows or #safeforeveryone). In addition, those who do not have Twitter accounts may view the post for a certain period of time, but would not receive a notification when it was posted.

This raises two questions: First, is Councilmember Jones's [*108] tweet a public record? And second, if so, how would it be found, retained, and produced by the City in response to a public records or Freedom of Information Act request?

All fifty states have public records statutes, many modeled after the Federal Freedom of Information Act (FOIA). n43 These laws were a cornerstone of the "sunshine laws" movement that began in the 1950s and flourished in the post-Watergate era, opening government records to public access on the theory that sunshine is the best disinfectant n44 - that is, public scrutiny exposes, and therefore hampers or remedies, corruption.

Briefly, these statutes require the government to provide public records upon request (with certain enumerated exceptions). Public records are generally defined as any writing or other record containing information relating to the conduct of government prepared, owned, used, or retained by any part of the government. n45

The key legal questions are well-settled; a public official's writings, regardless whether they are on a government website or not, are public records, so long as the post is pertinent to city business. n46 The harder question, then, is not the legal but the practical one: how best can the government retain a record of officials' posts on social media so that they can be produced upon request under FOIA?

Seen as a collection of written exchanges, the retention and [*109] production of social network posts is not conceptually difficult - they are not distinguishable from email. "An ordinary email is nothing more than a piece of written correspondence transmitted through an efficient and inexpensive means.... The public's interest in overseeing the workings of local government is protected in the same way that it is for all other types of written correspondence - the public may review such correspondence by making a records request under the open records provision of state law." n47

A trickier problem arises due to the lack of permanency of social network posts. Consider this scenario: A port commissioner criticizes a city councilmember's policy proposal in a post on Facebook; the other councilmember responds by posting something on the port commissioner's Facebook page. For some reason (perhaps the commissioner regrets his tone, or decides that this disagreement need not be public, or realizes he was wrong), he removes the original Facebook post, and deletes the response posted by the city councilmember. n48

Now, it may be good for the tone of public discourse, and maybe even for policy, for these officials to be able to turn back the clock to the moment before they hit the "post" or "share" button. But the law is clear that both the original post and the response are public records, and it is certainly in the public interest for voters to have access to the writings of their elected officials on policy matters.

Difficult as these questions are, they are essentially technical problems. The right retention tools can ensure that all of these writings, wise and unwise, are available for production in response to FOIA requests. Inexpensive solutions exist that would allow a public official (or her staff) save a weekly log of Facebook, Twitter, and blog posts. n49

[*110]

2. Open public meetings

A knottier problem arises under open meeting statutes. Because public officials can read each others' tweets, blog posts, and Facebook updates in real time and respond to them instantaneously, they may engage in communication that is more similar to a meeting than it is to ordinary correspondence. Consider a slight twist on the hypothetical Twitter post above: City Councilmember Jones posts his opposition to the mayor's public safety policy on Facebook. Among two dozen reader comments are the following: Councilmember Nguyen clicks the "like" button on the post - signaling to all readers that he agrees with Councilmember Jones; Councilmember Diaz comments on the post that she thinks the mayor's policy does not go far enough; Councilmember Rogers writes that he disagrees with Councilmember Jones but is open to persuasion; and Councilmember O'Connor links to Councilmember Jones's post on her own Facebook page and comments that the entire question is moot because the public safety budget is strapped. n50 Did a city council meeting just take place on Facebook?

Open meeting statutes have existed in every state and the District of Columbia for over thirty years. n51 These laws require that most meetings of city or county councils, as well as government-authorized boards and commissions, be held with notice to and access for the public. The laws can have quite powerful enforcement mechanisms; commonly, the remedies for violation include individual penalties for the officials, municipal liability for any costs and fees, and reversal of the government action that was the subject of the meeting. n52

[*111] Open meeting statutes are universally interpreted to cover not only in-person, face-to-face meetings but also so-called "serial" meetings and meetings at which communication is done in writing or by telephone. n53 More recently, comparable communication by email - when it is interactive, deliberative, or decisionary in nature, occurs close in time and involves a quorum of the relevant government body - has been held to violate open meeting laws. n54

While few, if any, court decisions apply open meeting laws to social networking, local governments see social networks as a particular risk because their structure is designed to facilitate casual interaction. For example, posts from "friends" or contacts automatically appear on an official's profile and it takes only a single click to interact with the

author. Thus, if open meeting laws were applied to civic social networks, a "meeting" could occur without any single official intending it. After all, these sites were developed, in part, to create virtual space in which users could "meet" with a minimum of effort. n55

The first state supreme court to address the applicability of open meeting laws to email focused its analysis on whether the email exchange had "indicia of simultaneity" that indicate government deliberation occurring in real time, but virtual space. n56 Some other courts do not appear to find significant the [*112] differences between written communication and in-person deliberations. n57 Generally, however, state courts agree that electronic communications like conference calls and email exchanges can constitute a meeting under certain circumstances. n58

In some significant ways, an exchange between officials on a civic social network such as Facebook or Twitter is different from an email exchange. For example, an exchange in the comments to a blog post on Facebook or Twitter is available for anyone to see or join at any time, although there may not be a "feasible way for any and all interested members of the public to 'attend' an email communication." n59 In fact, the transparency of the exchange and its openness to public participation is arguably as great or greater than most traditional public meetings. And, as a general matter, the overlapping purposes of FOIA laws (ensuring that government records, including correspondence, is available to the public) and open meetings laws (ensuring that deliberation is public and that constituents can engage in the deliberation) are fully accomplished in the social networking context in a way that they are not in an email exchange, which must be requested formally to be [*113] received. n60

Under the current interpretations of open public meeting statutes, exchanges like the hypothetical above would almost certainly be prohibited. But rather than seek an alternative interpretation of the law, or even merely train members to avoid a violation, social media skeptics are throwing the baby out with the bathwater. The City of Seattle, for example, is considering a policy that would "strongly discourage[]" city Councilmembers from "friending" each other at all - a solution akin to preventing email exchanges or telephone calls between members. n61 Other governments are advising officials to stay off social networks altogether. n62

3. Misuse of Public Resources and Political Content

Policymakers are particularly concerned about the potential for government links to social network sites that contain political, non-government, or advertising content. Although social network sites are not owned by the government, if the government's website has a direct link to the social network, then government resources can be interpreted as supporting the content of the social network site. This creates a risk of the illegal use of government resources. n63

[*114] Consider this scenario: Mayor Smith has an official web page at his city's main website. On that page, there is a sidebar encouraging readers to follow the mayor on his blog, Twitter, Facebook, and Flickr, with links to those sites. n64

For the purpose of our analysis, assume that the mayor's blog, Twitter feed, Facebook page, and Flickr account are not managed using government funds but by the mayor himself or a volunteer. Further, assume that the blog is on Blogger or a similar third-party site. May the mayor endorse a candidate for office on his Twitter feed? May he post a photo of himself at a political rally on Flickr? These examples seem pretty straightforward; he may not, because doing so would result in city resources directly linking to campaign content posted by a city official. n65

But civic social networks, by design, invite participation from the public, not just dispatches from officials, and are supported by advertising revenues. If the main city website includes direct links to the mayor's Facebook page, is it permissible for the Facebook page to feature commercial advertisements? What if a constituent posted a campaign-related message on the mayor's Facebook page, or tagged the mayor in a campaign-related Twitter post or photo on Flickr?

State laws universally bar the use of government resources to support a private individual or enterprise, or a

political campaign. n66 Because government websites are maintained with public funds, a link from a government website to a social network site can run afoul of this prohibition - depending on the content of the social network site. n67

[*115] Local governments raise a number of serious concerns. Consider the following scenarios: (A) A city's official web page includes links to Facebook pages maintained by public officials or city agencies. Facebook, as a private company, is enjoying the benefit of any user traffic driven to its site; (B) a city's official web page includes links to a blog or Facebook page maintained by a public official or city agency. The blog or Facebook page includes commercial advertising, and therefore is promoting certain businesses; and (C) A city councilmember's official web page includes a link to his or her Facebook page. The councilmember is fastidious about avoiding posting any campaign-related content on that site. But, without the consent of the councilmember, Facebook displays political ads for various candidates along the right margin of the page, and constituents of the councilmember post material on the page promoting certain candidates. n68 For each of these scenarios, does the city's link constitute an improper use of government resources?

Policymakers and enforcers tend to view scenarios A and B as allowable for any or all of three reasons: (1) any support of the social network site or advertiser is de minimis; (2) any support is unintentional; and (3) any support is a byproduct of an allowable government activity or a government purpose (in this case, the purpose would be public outreach and communication). From a practical standpoint, this makes good sense - after all, if a government link to a corporate website or a website containing advertising was prohibited, then a county could never link to an online newspaper article.

Scenario C, however, is problematic because support of a political campaign can never be a permissible government [*116] purpose. n69 The difficulty of this scenario lies in the notion that the political content can appear on the public official's social network site without being posted or approved by the public official. Moreover, depending on the social network's specific features, the public official may not even be able to remove the material from the social network.

Regulators indicate that their preferred solution would require public officials to moderate the content on their social network pages to prevent political content from appearing. This assumes, first, that the public official has some control over the content - which he may not - and second, imposes on the public official the need to police the social network site for inappropriate material. The analogy used by some regulators was summarized by the executive director of the Seattle Ethics and Elections Commission:

Just as it would violate the Elections Code for a City officer or employee to authorize a campaign rally in a City conference room, so too would it violate the elections Code if a City officer or employee permitted the public to hold a virtual campaign rally in the comments thread on a blog accessible from a City site. In both cases, City resources are being used for unlawful purposes, which the City official has authorized. n70

Thus, a public official would be prohibited from using any civic social network that could allow other users to post political material.

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C. Why the Solutions Offered by Local Governments Do not Work

Ill-crafted approaches offered by policymakers and enforcers, such as barring social network use at all, prohibiting councilmembers from "friending" each other, or holding public officials responsible for third-party content, result in impractical solutions. Regulators have addressed social networks by applying existing law to a possible problem, and

attempting to extrapolate a solution based on previous applications of the law to email, conference calls, and conference rooms in government buildings.

The result of such extrapolations has been a contradictory collection of rules attempting to patch specific problems. For example, the U.S. Senate Internet Services Usage Rules and Policies permit Senators to maintain a third-party website - such as a blog or Facebook page - but only one that does not permit "personal, promotional, commercial or partisan political/campaign-related content or links to an Office-maintained website or channel." n71 Thus, a senator cannot maintain a social network site with personal information and it cannot link back to his or her official Senate website. Such a policy, in an attempt to avoid possible conflicts with existing rules, establishes new rules that are certain to be ignored; it takes seconds to find a senator's Facebook page featuring promotional, commercial, and personal content or with links to an office-maintained website. n72

Local governments' solutions are also often internally inconsistent. For example, Seattle's draft policy encourages city councilmembers to use social media that can record the identity of a commenter and restrict users' ability to comment, most often done by requiring registration (i.e., Blogger/Google's [*118] registration requirement). Yet the policy, mere lines later, states that, "sites requiring membership or subscription should be avoided." n73 This not only contradicts the desire for control that can only come with registration, but also rules out the majority of popular social networking sites, such as Facebook, MySpace, or Twitter.

Fundamentally, the failure of open meeting and campaign laws to address social networks stems from these local laws' approach: they deal with social networks as if they are only a tool with which officials act in ways similar to the tools available in 1976. Consequently, it is a mistake to assume that our existing rules will apply to social networks with a couple of tweaks. Scenario C described above (dealing with the regulation of third-party content) demonstrates that the existing rules fail to address much of the most problematic, and hardest to police, behavior. I suggest that the challenge is not to develop micro-rules that would prevent this behavior, but instead to step back and take a close look at the behavioral norms and pressures that are developing around this institution, and see what it is we are dealing with.

The failure of policymakers to develop guidelines that make sense for civic social networks is not surprising since it is impossible to predict the specific shape of social networks or how they will interact with public officials in the future. As Jerry Mashaw put it, "we do not really have much information about how to design institutions that take the taste-shaping aspects of public action seriously. We know very little about how institutional taste shaping works." n74 Nevertheless, if we are to understand the opportunities and risks that social networks offer public officials and their constituents, we have to understand the environment that has led to their extremely rapid adoption and the patterns of behavior that have developed around their use. As I argue in Part III, these behaviors have become so pronounced that they have begun to take the shape of a new unstructured institution - not an [*119] organization, but rather a set of interrelated strategic behaviors that, in turn, affects the behavior around it.

III. Social Networks Are a New Institutional Environment

Social networking by public officials and their constituents has exploded in the last four years, n75 but the most astonishing aspect of civic social network is not their rapid adoption, usefulness, or ability to facilitate different kinds of communication. The most striking aspect of this phenomenon is that the behaviors on all sides of the communication matrix - that is, among both officials and constituents - already have recognizable patterns and norms of such consistency that they constitute an emerging unstructured institution. This Part argues that policymakers must understand the characteristics of this institution if they are to regulate public officials' use of social networks.

A. Social Networking as a Public Choice and Rational Choice Institutionalism Topic

An analysis of the pressures on and behavior of public officials and their constituents demonstrates that social networks are more than simply new venues in which public officials and their constituents act. Rather, social networks have a distinct social logic driven by the self-interested behavior of users. n76

Although there are many ways to examine political behavior, social networking is especially appropriate for the use of public choice theory and rational choice institutionalism; the environment involves a very large number of low-threshold but distinct decisions, and each of these decisions indicates an [*120] expression of specific desires on behalf of the user. When a public official or a constituent decides to begin, continue, or expand the use of online social networking - whether to sign in, to send a message, to post information, or to organize a group - the decisions involve individual calculations about the use of time, attention, and communication. And because the specific sites and tools employed today are certain to change quickly and dramatically, it is important to apply tools of analysis that do not take as a constant any feature of this environment other than the aggregated preferences and decisions of the users.

Consequently, this Part applies tools from public choice theory and rational choice institutionalism n77 to assess the incentives, costs, and emerging institutional characteristics driving the behavior of public officials and their constituents when using social networks. Public choice theory takes some well-deserved criticism for its assumption of purely rational and selfish behavior; Professor Mashaw demonstrates (with devastating effectiveness) the frequent inability of public choice to explain even common political behavior. n78 By applying these [*121] tools, I do not suggest that they are the only way to look at this problem, or that they explain everything. But public choice does identify and explain a number of the more interesting features of the use of social networks by public officials, and the deficiencies and potential of policymakers' efforts to regulate it. n79

The most basic assumptions of public choice theory are that the relevant actors have an identifiable set of preferences or tastes, that they behave so as to maximize the attainment of those preferences, and that they do so strategically. n80 In this case, the key actors are public officials and their constituents, both of whom use (or are interested in using) social networks. The actors share some of the same incentives in their behavior, and are divergent in others. But primary among those shared are what Professor Grimmelmann refers to as the "social imperatives" of "identity, relationships, and community." n81 It is those "imperatives" and the underlying logic of social networks that makes them important to understand for policymakers seeking to regulate public officials' conduct. As Grimmelmann notes, "we cannot and should not beat these social urges out of people; we cannot and should not stop people from acting on them... . New technologies matter when they change the dynamics of how people do things together; the challenge for technology law is always to adapt itself to these changing dynamics." n82

Even with those "social imperatives," any individual's decision to use social networking faces questions familiar to [*122] public choice. Rational choice institutionalists see politics as a set of collective action dilemmas, or situations in which a group of individuals trying to maximize their own desired outcome are likely, through their aggregated individual action, to produce an outcome that is collectively less than optimal. The question then is framed as how institutions are created or governed that affect the collective action problem (whether by overcoming it, changing the type of problem, or exacerbating it). In our example - online social networking - the questions are: how and why did online social networks arise in the political context? Why do people find them useful? And what does their growth say about the wisdom of restrictions on their use by public officials?

The best way to understand how social networks function in conjunction with public officials is to understand the behavior of the two types of actors in the relationship: public officials and their constituents.

B. Why Do Public Officials Want to Use Social Networks?

Social scientists who examine social networking by public officials sometimes view the dynamic between the government and the public as a relationship between supply of information (by public officials) and demand (by constituents). n83 Although that framework may help describe certain ways that the government and public interact on the Internet, it bears little resemblance to the social networking environment, which features much more give-and-take on both sides. In fact, an analysis of social network sites that fails to recognize the demand by officials of others in the network will miss the ways that officials' behavior helps solve many of the collective action problems that may otherwise stymie widespread use by the public. Consequently, this subsection assesses values and tastes that prompt public officials to use social networks; the specific behavior in which those values and tastes are [*123] manifested;

the forces that their behavior brings to bear on other users of social networks; and the ways that behavior of public officials is restrained (by themselves or other factors).

1. Why Do Public Officials Use Social Networks?

Public choice theory traditionally takes a very dim view of the motivations of public officials. Generally, elected officials are portrayed as valuing re-election above all else; for appointed officials, the expansion of budget and power is paramount. n84

Debunking, explaining, and expanding this view of the motivations of public officials has been a minor industry for decades. The upshot of this research, both theoretical and empirical, has been that re-election, budget, and power are all important goals of public officials, but that such a view oversimplifies a very complex and layered collection of values. For example, in his books *Congressmen in Committees* and *Home Style*, Richard Fenno, Jr. highlighted as additional goals the desire for reputation among other elected officials, the hope of election to higher office, and the accomplishment of stated legislative goals (in the abstract), and the notion of a legacy. n85

Surely it is not difficult to identify behavior of public officials that appears to satisfy these goals, whether cynical or laudably civic in nature. But what specifically does a public official value that might prompt him or her to use social networks and affect how he or she might use them?

Most obviously, officials value the ability to distribute information to a large number of people. There are specific qualities or types of mass communication that carry greater value; for example, public officials value in particular the ability to send a desired message; the ability to send it to a [*124] specific group of people (supporters, persuadable voters, people in a particular geographic area); and the ability to get the recipients to actually read/view/hear the message. Closely related is the effectiveness of the message - in other words, the ability to get the recipient to act in the manner intended.

All of the above examples, however, deal only with outbound connections, or the broadcast from the public official to constituents. But public officials value more than merely outbound messages, no matter how targeted and effective; they also value inbound connections. An inbound connection or communication is valued at several levels. First, it has value for the information that the content conveys - for example support or opposition on a particular issue, or substantive information about a matter that may come before the official for a decision. Second, it has value for the information conveyed by the sender's identity; public officials want to know who, specifically, is in contact with their office and why. Third, the inbound connection may have secondary power that the receipt of such messages gives the public official (that is, a public official may value the ability to claim he has received a number of inquiries or communications on a subject). Fourth, the connection may be valuable because of the opinion or information it delivers. And fifth, the inbound connection carries significance as an indicator of a much stronger relationship between the constituent and the public official.

In addition, public officials value highly their reputation or public image and the ability to control that public image. Among the aspects of image that a public official may value are the appearances of sincerity, deliberation, principle, and interest or concern in any individual problem or issue. To the extent that a public official can fine-tune his or her reputation or public image, he or she will value the tools that allow it.

From a public choice perspective, a public official's behavior should demonstrate that he or she also wants to fulfill all of these goals, values, and desires, to the extent possible, without a minimum of effort or expense - and, if at all possible, shifting any effort or expense onto someone else. n86 In other [*125] words, to the extent that the public official can obtain her goals without having to give up anything, all the better. Thus, we should expect to see public officials use social networks only to the extent that: (a) they can free ride on others' efforts, thus avoiding a collective action problem; (b) they can capture the fruits of others' labor, therefore making any remaining effort or expenditure lesser than the projected benefit; or (c) the remaining potential benefits still outweigh the costs of full individual efforts.

2. How Do Public Officials Use Social Networks?

To a significant degree, the private sector has invested in the software infrastructure that greatly lowers the threshold for public officials (or anyone) to use social networking. Companies like Facebook, Twitter, News Corp. (owner of MySpace), and Google (owner of Blogger) have made available social networking software at no or very low cost and established business models that benefit primarily from large numbers of users (generally, advertising). These two factors - the establishment multiple social networking platforms and the existence of a large number of people to connect to on those platforms - remove two of the most obvious investment problems for public officials (who could not individually create the software and would have no use for social networks if they were not already populated).

The wide spectrum of possible social networking activity for public officials shows the various ways that officials have confronted the remaining collective action problems. This section aims to describe specifically how public officials are using social networks in relation to their desires and values, described above.

[*126] First, public officials have adopted social networks for outbound connections and communications - by which one transmits information in a one-way manner to constituents. The lowest-threshold options for this type of communication are the establishment of a "profile" with information about oneself and outward-directed posts viewable by either other network members or the public at large.

More specifically, public officials use the "profile" portion of social networking sites to craft a public image more textured than possible in most traditional media. The mere act of establishing a Facebook page, a blog, or a Twitter account sends a message suggesting modernity, openness, and a willingness to surrender some amount of privacy to viewers. Identity is also conveyed by frequency and content of posts; a public official can convey a hardworking image of a ubiquitous or omnipresent public servant, for example, by posting about her geographic location.

Outbound connections featuring only material that could be found elsewhere are the lowest-threshold social network communications and have many similarities to bulk emails or mass mailings. Correspondingly, they are not valued highly by other users. More complex are the combinations of outbound and inbound connections that really distinguish social media from traditional junk mail. As described above, public officials attach significant value to inbound connections. The reason is easy to identify - it is that an outbound connection includes information about identity, but an inbound connection suggests the existence of a relationship. Most commonly, public officials use inbound connections to establish relationships with constituents, and carry on those relationships in an exchange of comments and posts on the public official's profile (whether on Facebook, Twitter, or a blog). Although it is clear that the dialogue between public officials and constituents establishes and strengthens relationships, public officials have been reluctant to incorporate online discourse into their formal decision-making process. n87

[*127] In addition, public officials appear interested in using social networks to inform and motivate constituents around specific issues - in other words, to generate the sense of community that draws value from the cross-constituent relationships.

As a general matter, public officials benefit from the concentration (or concentrated availability) of information about and generated by constituents that appears in social networks. n88 In this way, public officials capture rents from the concentration of individuals volunteering information about themselves. But the capture is non-exclusive; public officials merely enjoy to an unusual degree this information as a public good. And once the structure has been established, individual users sign up without incremental cost, and each additional user adds value to the network at large (value accruing to both the elected official and the other users - the elected official gets information from more sources and distributes more information to more sources, while the individual user enjoys a larger community of like-minded individuals). n89

3. Dynamics Driven by Public Officials Using Social Networks

The interests and activities of public officials on social networks creates certain dynamics that affect other users within the system. For example, public officials are bound to have more inbound than outbound connections, placing a strain on the officials' attention and driving her to use higher-efficiency tools to maintain an online presence. In addition, many of the benefits of social networks (such as access to [*128] others' personal information or access to their attention) are concentrated in public officials in much the same way they are concentrated in other "nodes."

The activity patterns of public officials also create incentives for other users. A public official who encourages constituents to interact (whether by explicitly asking them to or implicitly, by engaging with them when they do) is expressing a demand that often provokes its own supply. Similarly, a public official who cultivates a large collection of constituents online may create a community of easily organized users who may overcome other collective action problems.

In this way, public officials who initiate the use of social networks are "political entrepreneurs" or leaders that offer their constituencies an opportunity to overcome collective action problems by engaging in the civic social network. n90 These dynamics encourage a pattern of behavior in which, in Shepsle's words, "particular individuals may make unusually large contributions of time and energy and financial and (especially) logistical resources not (only) because they care passionately about the group's objective but (also) because they see an opportunity to parlay this investment into something personally (read: selectively) rewarding." n91

C. Why Do Constituents Interact with Public Officials in Civic Social Networks?

Public officials use online social networks simply because constituents use them; without the ability to interact with voters, the networks are useless. But why do constituents use social networks to interact with public officials? The motivations of users in general has been studied and described at length elsewhere, and surely is the subject of intense, around-the-clock advertising research. n92 But do people take [*129] time away from playing Farmville, tagging photos, watching piano-playing-cat videos, and stalking former significant others to read and respond to a tweet from their city councilmember? We know that they do n93 - but why?

The question is both theoretical and empirical. The theoretical question is a familiar collective action problem - the story of rational voter apathy, or the notion that low-level political participation like voting or emailing an elected official is a fundamentally irrational behavior. This story is an old one. It goes like this:

If a citizen took the time to calculate the odds that her vote would make the difference in any given election, she would find that the possible benefit of having his or her views expressed by the victor is far outweighed by the inconvenience of voting. And if that citizen then took into account the possibility that the elected official would, in fact, express the citizen's preferences, and that the individual legislator's vote on that matter would also make the difference in the legislature's action, then the citizen's calculation of possible benefit would be further reduced. n94

The same reasoning applies to other low-threshold political activities, such as writing a letter to elected officials or participating in a rally - or connecting with public officials on civic social networks. In nearly all cases, the probability that an individual will have influence on actual policy is so small that it cannot be justified by the individual effort required to participate politically. Further exacerbating the situation is the tendency of rational voters to free ride on the efforts of others: if two voters want the same policy, each would do best to let the other do the work of getting the policy adopted. n95 At the same [*130] time that public choice theory posits that rational voters will refrain from low-threshold, low-reward political activity, it predicts that constituents (or groups or corporations) will seek to capture benefits created by others, especially where benefits can be concentrated and costs distributed.

The rational choice argument against political participation is worth repeating here not because it describes what we observe in the real world; rather, it is helpful because the differences between the rational model and the real world tell us significant things about how the real world works and how it can be governed. In the context of social networks, why do people participate?

1. What Do Constituents Value When They Engage Public Officials on Social Networks?

As with public officials, *supra*, this section first asks what constituents value - essentially, what are they looking for when they consider "friending" their mayor? n96 The environment a constituent encounters when considering the use of civic social networks, however, is quite different. Unlike public officials, most users of social networks were not prompted to join them in order to communicate about politics or policy, and therefore their social networking experience includes public officials as a part, but not the most important part, of their experience. This section, then, focuses only on those aspects of constituents' social networking that concern interaction between public officials and their networks.

a. Identity and Expression

The first step in joining a social network is the creation of an online profile, but a constituent's identity in the network goes beyond basic personal information to include everything the user does on the network. Users create and manage their online identity as a means of expressing opinions, exercising [*131] influence, and distributing information.

The aspect of identity and expression that bears on civic social networks is the fundamentally narcissistic behavior of constituents - that is, the portion of the user's activity that appears entirely self-absorbed or self-interested (in a way that would make any public choice theorist proud). A self-interested user will value anything that allows her to craft her identity specifically and increases the power of her individual voice relative to others. What makes this interesting from a public choice perspective is that this narcissism creates public goods because certain self-expressive (or self-indulgent) behaviors have an identifiable connection to civic engagement: the exercise of speech, self-governance, and associational liberty. Papacharissi, drawing upon Inglehart and Welzel, wrote of a "civically motivated narcissism," based on the idea that "self-expression values are connected to the desire to control one's environment, a stronger desire for autonomy, and the need to question authority" and that "self-expression values are not uncivic." n97 Consequently, the exercise of purely self-interested or narcissistic behavior can create public goods.

b. Relationships

Second, constituents greatly value the creation of relationships, both with public officials and with other users. The act of adding someone as a contact (or friend, or followee) can have layers of significance: it can mean that the two users are actually friends; that they are merely acquaintances; that one is a "connector" or hub to many other users; a potential business contact; or a fan or supporter.

Relationships have value, as well, because of their reciprocal nature. As Grimmelmann points out, "people reciprocate because it helps them solve collective-action problems, because participation in a gift culture demands that [*132] gifts be returned or passed along, because it's disrespectful to spurn social advances, because there's a natural psychological instinct to mirror what one's conversational partner is doing, and because we learn how to conduct ourselves by imitating others." n98

The creation of a relationship with a public official is significant in distinct ways. It indicates an increase in expressive power or voice, it also feeds the vanity or ego of the user. In addition, it increases the perceived status of the individual over those who do not share the same relationship. In the context of such user-official connections, a user will value authenticity, attention, responses, the prestige that comes with a personal relationship, and real or perceived influence.

Empirical research indicates that the connections on civic social networks are not purely online or "virtual"; rather, they tend to continue, further develop, or deepen a relationship from offline. n99

c. Community

Third, constituents value the community that arises from the creation of relationships in civic social networks. For the purposes of this analysis, the most salient characteristic of community as developed by civic social networks is that they reduce the costs of organizing among individuals in the network to the vanishing point. n100 The opportunity to create affinity or advocacy groups with hardly any identifiable costs has led to an explosion of lasting and temporary groups. Although there is evidence that those participating in political activities online are no different than those doing so offline, the [*133] availability of impulsive or casual group formation is quite different than what can take place offline. n101

Communities are particularly easy to develop in this environment because the indicia of commonality that can prompt organization and grouping - politics, government, or public affairs - is much stronger in the subgroup of people using civic social networks than in the population at large. n102 And the ease of group formation and organization, together with the incentives for joining civic social networks, snowball the benefits for joining the network for each new user, reinforcing the "comedy of the commons" n103 scenario. Any given individual has incentive to increase his voice, gain attention, and strengthen networks and community by creating an online community.

d. Information

Constituents also use civic social networks for one purpose distinct from voice, relationships, or community, but one that feeds into all three: constituents value the availability and acquisition of information. Much of this information stems from the other aspects of social networking - the awareness of who is in Councilmember Jones's network, or what issues are significant to another constituent. And the somewhat voyeuristic aspect of this access to information about civic social networks arises from the desire for transparency and accountability of public processes.

A few aspects of this are worth emphasizing: the nature of information, when openly accessible, as a public good; the need to filter or prioritize content in the event of information overload; and the value of information for the twin public goals [*134] of transparency and accountability.

Significantly, access to information is not a secretive or private benefit in the context of civic social networks; because a connection between two users must include a certain level of access to information posted by each user, information is integrated into every relationship in the network. Users may value being the first to discover or post information, but the value comes from the distribution of the information, not from possessing it to the exclusion of others. In this way, the things that public choice theorists might consider costs (becoming informed about public issues, organizing groups) are actually benefits that citizens enjoy when they act politically, and things that public choice theorists might consider valuable only if managed as a private good or rent, in fact, gain value when treated as a public good. n104

The access to information, however, has a downside in its ubiquity; civic social networks simply contain too much information for users to process. But the nature of the network also creates value because it can prioritize, filter, or contextualize the information. In other words, civic social networks, by allowing users to see what is popular within their network, help users mediate, sort, or personalize what is otherwise an information overload. n105

The type of information present on civic social networks reveals a second downside, as well. As Feezell et al. noted, Facebook encourages political participation but does not appear to improve political knowledge: "Our content analysis indicates that political Facebook group users often do not share much new information and the information they do share tends to be somewhat inaccurate, incoherent, or not very well supported with evidence. As a forum for people to easily engage and share their opinions, online groups are beneficial; however as a forum [*135] to learn new political information online groups are ineffective due in part to low quality wall discussion." n106

Regardless of the attempts to measure accuracy of political knowledge, the availability of information on social networks is valued highly by constituents for its role in accountability and transparency. The information a user gleans from observing a public official's activity in the civic social network helps the constituent understand the official's

behavior. In turn, the information helps the user vote and make other political decisions accordingly. n107

The desire for information, and the drive to share it with others on one's network, is closely related to the other values expressed by constituents - identity, relationships, and community. But, as discussed in part IV, *infra*, it has a significant independent impact on the shape of the emerging institution of civic social networks. n108

2. Dynamics Driven by Constituent Behavior in Civic Social Networks.

The values and activity patterns of constituents in civic social networks create pressures and demands on other actors in the networks. For example, the low costs or barriers to group formation help overcome standard collective action obstacles to cooperation, but also render group formation so easy that the resulting organizations often have little impact as aggregators; they have much greater impact as distributors.

Most prominently, the presence of millions of constituents [*136] (and potential voters) on social networks, and the interest or willingness of a substantial subset of those constituents to engage with public officials online, creates a very strong incentive for public officials to join the networks.

Once the official is in the network, however, the behavior of constituents puts severe demands on public officials. The ease with which constituents or organizations may access a public official's attention using a social network leads to a very high demand on the public official's attention and time; consequently, officials themselves will seek to offer authenticity and relationship-strengthening interaction only at a level that is worth the time and effort. This behavior, in turn, reduces the value of the interaction; just as public officials discount the value of form emails, constituents discount the value of inauthentic or impersonal communications by public officials. n109

In addition, the desire of constituents for transparency, information, and accountability can put severe demands on public officials and agencies that either cannot or would prefer not to put all communications and documents online for use by the network. Constituents will value highly all disclosure. Indeed, they will resist efforts by public officials to shield information from public view.

The use of civic social networks by constituents creates a strong temptation for public officials to use the networks for campaign activity as well. Constituents may not recognize the distinction between official activity and political activity, but, as discussed in section III.B.3, *supra*, the distinction is critical for the prevention of corruption. There is no internal check on such activity - neither public officials nor constituents will punish or disincentivize campaign activity using a social network account connected to a government link - and therefore such behavior can only be prevented or punished by external enforcement.

[*137]

D. Social Networks Represent an Emerging Institutional Environment

The rapid development of civic social networks belies the existence of strong patterns of behavior by both constituents and public officials in those networks. Those patterns, in turn, demonstrate ways that civil social networks reinforce and channel certain behaviors. n110 Although the exact features and brand names of social networks are bound to change, their effect on interactions among constituents and public officials is here to stay. The ways that civil social networks and behaviors interact indicates that the networks are not just a tool, like email or the telephone, but instead resemble an unstructured institution like the press or lobbyists. n111

1. What is an Unstructured Institution?

Public choice theory has developed at least two major ways to think about institutions (often discussed under the subject "rational choice institutionalism"). Under the first, institutions are the set of rules and regulations constraining individuals', groups', and firms' activities; the focus of inquiry is how players choose to act under certain rules. n112

The second view does not assume the institutions as a given at all - instead, the rules are agreed upon by the players themselves and can be changed based on their pressures, preferences, and biases. n113 The first [*138] view describes a more specific, formal, structured institution, like a government agency, a nonprofit organization, or a body of law. The second view describes a conceptual, unstructured institution, such as the press or the aggregated efforts of advocacy organizations. n114

Unstructured institutions are not established in any formal sense; they emerge when parties' behavior is affected or channeled by others' behavior and the demands and pressures that the behavior creates. Under this theory, institutions are changeable sets of norms that all or most people involved agree upon; there are no rules per se, but actors behave as if there are because they act strategically in response to their expectations of others' behavior and other factors in the environment. When expectations of behavior become particularly clear and become less temporary, then this behavior starts to look like an institution. This sort of institution is a sort of equilibrium of behavior which, although subject to change, is an identifiable pattern. n115

2. Why is Civic Social Networking an Unstructured Institution, and Why Should it Matter?

The behavior patterns and pressures discussed in sections III.B and III.C indicate that civic social networks constitute an emerging unstructured institution because they describe not [*139] just the use of a new communication tool, but a set of strategic behaviors and pressures. Those behaviors and pressures are critical to understand for local governments attempting to regulate public officials' use of civic social networks.

Not all the "rules" of civic social networking are provided by the public officials and constituents; of course, the structure and the features of the software itself establish constraints on behavior. n116 But the existence of such third-party rules does not limit the voluntariness or strategic nature of the parties' activity. This is especially true given the many different social networking options available. n117

The recognition of the institutional nature of civic social networks is not just an exercise in labeling, but rather has significant implications for policymakers seeking to regulate public officials' use of those networks. Civic social networking is not just another tool to which the existing laws may apply, like email or text messaging; rather, it is an environment that has an impact on the behavior of the actors surrounding it. n118

The interdependent strategic behaviors of public officials and constituents in civic social networks guarantee, for example, that there will always be a strong incentive for a public official to join social networks, but that such an incentive will lag behind constituent adoption of the social network site unless the public official takes on the burden of the political entrepreneur. Similarly, there will be strong incentives for public officials to engage in some actual [*140] interactive behavior on the social network site, lest constituents ignore the public official the same way they ignore junk mail and unsolicited bulk email (spam). To the extent public officials engage in interactive communication, the overwhelming incentive is for the public official to display the communication to other users so that the maximum exposure is achieved for the spent effort. Similarly, constituents engaged in civic social networks experience low-threshold group formation and organizational tools, as well as a certain incentive for acquiring information and sharing it with other users. Constituents can frame their civic social network as any portion (or no portion) of their overall social network according to their preferences.

Institutions behave differently than mere tools because these bargains or strategic behaviors by public officials and constituents tend to funnel activity in certain directions. In the case of civic social networks, it indicates that transparency and accountability will be highly incentivized.

IV. Transparency and Accountability in the New Public Square

A. Civic Social Networks Foster Transparency and Accountability

Our idealized notion of "the public sphere" conceives of public discourse as a deliberative, rational conversation that contributes to public policy and the practical structure necessary to carry it out. Habermas famously envisioned the public sphere as an arena where people collectively form public opinion in an environment without the interference of the government or the economy. n119 Despite the high hopes of some early Internet enthusiasts that the web would realize Habermas's vision of universal access and pure discourse, the web's record on elevating or deepening discourse is decidedly [*141] mixed. n120

But if the Internet (including civic social networks) has not produced a more reasoned and balanced public debate, then consider a narrower and more limited claim: civic social networks, by bringing public officials and constituents into an open public square, foster government transparency and accountability. n121

The metaphor of civic social networks as the "new public square" does not aim for the loft of the public sphere; it makes no claim to heighten discourse. Rather, its defining feature is open space in full view of the public for anyone who wants it. If one chooses to enter the public square, one consciously exposes oneself to anything else there - music, speech, governance, politics. And in particular, those public officials who enter the public square do so with much at stake: reputation, familiarity, ridicule, and re-election. By entering the public square, whether to stand on a soapbox and preach or sit on a bench and listen, a public official is engaging in her job, which under even a jaded vision of informed democracy involves some combination of transparency and accountability. In civic social networks, public officials hear from and speak to constituents in full view of the online world. Constituents can deliver information, opinions, support, and opposition to those officials, and constituents can interact with each other, forming groups to advance shared interests. The ease with which communications from and interactions with public officials are available to the public demonstrates that, in this environment, the contours of the institution itself make FOIA requests obsolete, and includes constituents in the deliberative process at a much deeper level than notice of or attendance at a formal meeting would.

The access to information and the tools to hold officials accountable is not an accident. The description of the institutional environment, *supra* at sections III.A through [*142] III.D, indicates that public officials will be under constant pressure for more disclosure, more information, and more attention to constituents and groups. The advantages of group formation will easily outweigh the obstacles and the incentives for public sharing of information and announcements are high.

B. Ejecting Public Officials from the New Public Square Reduces Transparency and Accountability

It is particularly perverse, then, that objections to public officials' use of civic social networks are based on the fear of violating open meeting and public records laws. Prohibitions or certain limits on the use of civic social networks - that is, ejecting public officials from the new public square - would result in less public deliberation, fewer publicly accessible records, and elimination of valuable tools to hold public officials accountable for their actions.

As discussed in Part II, open meeting, public records, and misuse of government resource laws exist in every state, and with good reason. The statutes work on two levels. Their immediate goals are to make information about what the government does and considers accessible, and to ensure that government funds are not misused. n122 But those immediate [*143] goals also advance other important aims; making information accessible is important, but the information only takes on meaning when it is used to hold public officials accountable, or to prevent a monopoly on inside information that would give some citizens an exclusive advantage over others. Similarly, the restrictions on the use of government resources for private or political gain have, at one level, a fiscally prudent purpose (that is, barring spending that does not advance a legitimate purpose of government). However, the more important consideration is preventing an environment where a private corporation or a campaign can enjoy a limited benefit to the exclusion of others.

Civic social networks advance all of these primary and secondary goals. Communications that would go unrecorded outside of the new public square (such as a face-to-face discussion or a telephone conversation) are not only documented but instantly accessible to the public when they occur in a civic social network. Attempts to get a public

official's attention to hold her accountable are easily accessible, and the threshold expense to organize a group of constituents is virtually zero. In short, civic social networks substantially improve public access to deliberative discussion and the records created by it. n123

Importantly, the use of civic social networks by public officials also helps reduce moral hazard associated with hidden action. This hazard appears where a strategic agent - the public official - may take action that isn't observable by the principal - the constituency. n124 Civic social networks cannot, of course, eliminate the many ways that public officials can hide actions or statements (for example, in a private conversation), but to the extent that communications in the network are available to the public, the opportunity for constituents to investigate officials' actions and statements is greatly improved.

[*144]

C. Local Governments Need to Adapt

Where an attempt to apply existing laws to a new institutional environment would run counter to the purposes of those laws, local policymakers should adapt. It is beyond the scope of this Article to prescribe specific adaptations - and I expect that it may take some experimentation for local governments to arrive at a comprehensive solution, if there is one - but the general outlines of a near-term adaptation are clear.

First, local governments can solve the practical problems associated with public records statutes. Retention and storage of Facebook and Twitter feeds, for example, are no more complicated than saving screen shots, web page images, or even printing out a paper copy on a routine schedule. Inexpensive or free software solutions already exist for most such applications.

Second, policymakers should adopt interpretations of Open Meetings statutes (or amend the statutes themselves) to make clear what aspects of written communication constitute a "meeting." The twin purposes of open meeting and public record statutes overlap significantly and raise interesting questions about when the availability of records is sufficient, and when actual presence at an exchange of those records is necessary. The doctrinal question - resolved by the Virginia court by a close analysis of the immediacy of the exchange of emails - also involves what we mean by "deliberation" and what types of government action trigger meeting requirements. But policymakers should ensure that when city councilmembers interact with each other or the public in full view of a civic social network, but no votes are taken or collective decisions are made, the purposes of the open meeting statutes are fulfilled to a greater extent than they would be if that interaction was barred.

Third, local governments should recognize that, to the extent public officials allow government resources to connect to constituent posts (or third-party advertising), the content of [*145] that posting and advertising constitutes a limited public forum and is not imputed to the government. n125 As civic social networks are the new public square, the mere presence of public officials in the square should not impute authorship of all third-party content in the square to the government any more than signs on the sidewalk or constituent letters received and retained by agencies are imputed to the government. Certainly minimal standards of civility can be enforced, as in any limited public forum, but forbidding third-party political content is neither wise nor practical - and barring public officials from civic social networks where such content is possible would have the effect of ejecting them from the public square.

Conclusion

A revolution is underway, and it is changing the ways that constituents and their public officials interact. It is not just a change in the tools used - from the letter to the email - but it is a change in the methods and incentives and costs that underlie that interaction in a more fundamental way. Just as the sunshine laws evolved with the ability of government to retain and produce information, those laws must again evolve to permit public officials and constituents to engage in the new public square of civic social networks.

Adjournment

Council Meeting

6:30 p.m.

Call to Order

Opening Ceremonies:

Pledge of Allegiance

Council Minutes

Murray City Municipal Council Chambers Murray City, Utah

DRAFT

The Municipal Council of Murray City, Utah, met on Tuesday, the 3rd day of April, 2012 at 6:30 p.m., for a meeting held in the Murray City Council Chambers, 5025 South State Street, Murray, Utah.

Roll Call consisted of the following:

Jim Brass,	Council Chair -Excused
Brett Hales,	Council Member
Darren Stam,	Council Member - Conducted
Jared Shaver,	Council Member
Dave Nicponski,	Council Member

Others who attended:

Dan Snarr,	Mayor
Jan Wells,	Chief of Staff
Jennifer Kennedy,	City Recorder
Frank Nakamura,	City Attorney
Pete Fondaco,	Police Chief
Craig Burnett,	Assistant Police Chief
Tim Tingey,	Administrative & Developmental Services
Doug Hill,	Public Services Director
Gil Rodriguez,	Fire Chief
Justin Zollinger,	Finance Director
Dan Barr,	Library Director
Chad Wilkinson,	Division Manager
Kevin Potter,	Deputy Chief, Fire
Mike Fernandez,	Murray Police
Tom Henry,	Murray Exchange Club
Scott Baker,	Murray Exchange Club
Sheri Van Bibber,	Murray Exchange Club
Scouts	
Citizens	

5. OPENING CEREMONIES

5.1 Pledge of Allegiance – Ethan Smith, Scout

5.2 Approval of Minutes for March 06, 2012

Call vote taken, all ayes.

5.3 Special Recognition

Consider a Joint Resolution of the Mayor and Municipal Council of Murray City, Utah in support of the Murray Exchange Club Recognizing and Declaring April 2012 as National Child Abuse Prevention Month.

Mayor Snarr read the Resolution in its entirety.

Mr. Shaver made a motion to adopt the Resolution.

Mr. Hales 2nd the motion.

Call vote recorded by Jennifer Kennedy.

 A Mr. Shaver

 A Mr. Hales

 A Mr. Nicponski

 A Mr. Stam

Motion passed 4-0

Mayor Snarr said that the Exchange Club does an excellent job within the city, and he is proud that we have this excellent organization to promote great causes, making people aware of this challenge that, not only our city, but cities throughout the country face. They are all good, humble servants that volunteer their time, and they do an excellent job when we host the 4th of July celebration and parade-handing out flags to make people more keenly aware of this challenge. The good news is that there has been a 20% reduction in the number of child abuses cases; they have made everyone so aware of this problem that there has been a spike in reporting child abuse, but now there are many resources available to address this, which has helped to bring those numbers down. Making people aware of programs to assist people when they become angry or upset with their children, having financial problems and such, has helped people to become aware that there are resources out there to help them.

Mayor Snarr added that efforts are being made, there are great programs, and they are thrilled that the city has such great people to support them.

Tom Henry, Murray Exchange Club, introduced Jay Bollwinkle, last year's president, along with several other hard-working members of the Exchange Club.

Mr. Henry said that they are all very proud to be a part of the Murray community and they work all year around to collect money that goes to the Murray Women's Shelter and Youth Shelters; all of the proceeds that they had for the Haunted Trail have also gone to these efforts as well. Mr. Henry thanked the Mayor, the Council, the members and the residents of the city that have helped to make this happen.

Mayor Snarr also acknowledged Sherri Van Bibber who has been a real advocate for Murray City for these special programs; she has great help who all help each other, which makes our community so special.

Mr. Shaver added that the fun thing for this is to see who participates; there are great citizens involved in this. There are three members who contribute in multiple areas of the City, so it is nice to see that web go through many areas, not just a single focus and he is sure that they do great work and they are very grateful for all that they do.

6. CITIZEN COMMENTS (Comments are limited to 3 minutes unless otherwise approved by the Council.)

Louis Fazio, 4276 S. Main Street, Murray, Utah

Mr. Fazio presented an idea relating to emergency preparedness for the City; he would like to establish a registry for people with disabilities and/or unique needs. In the case of an emergency, he would like the city to be aware of that person who may need assistance: this would be an opt in or opt out situation. It could encompass a fire issue or other emergency that would require assistance. He himself would benefit from this due to the hardware around him, but it would also benefit others in our community.

The Council will meet with Mr. Fazio and others to discuss this idea further; it is an excellent suggestion.

Citizen comment closed

7. CONSENT AGENDA

- 7.1 Consider confirmation of the Mayor's appointment of Vicky Mackay to the Murray Planning and Zoning Commission, representing District 4 for a term to expire January 15, 2015.**

Mr. Shaver made a motion to approve the appointment.
Mr. Hales 2nd the motion.

Call vote recorded by Jennifer Kennedy.

A Mr. Shaver
A Mr. Hales
A Mr. Nicponski
A Mr. Stam

Motion passed 4-0

Mr. Stam thanked Ms. Mackay for her willingness to serve, adding that volunteers such as her help the city immensely and that their service is very much appreciated.

8. PUBLIC HEARINGS (Continued from March 20, 2012)

Staff and sponsor presentations and public comment prior to Council action on the following matter:

- 8.1 Consider an Ordinance adjusting Murray City Municipal Council District Boundaries.**

Staff presentation: Jennifer Kennedy, City Recorder

Ms. Kennedy stated that Utah Code requires that within six months after the Legislature finishes their redistricting process, the City is required to do the same. They have looked at all five of the Council Districts and have transferred 1,287 people from District #1 to District #3; 662 people from District #4 to District #5; and 30 from District #3 to District #4 to clean up the little area in the middle. Ms. Kennedy said that they feel that these changes are fairly minimal and is recommending that the Council approves the proposal.

Public hearing opened for public comment.

None given.

Public comment closed.

Council consideration of the above matter:

Mr. Hales made a motion to adopt the Ordinance.
Mr. Nicponski 2nd the motion.

Call vote recorded by Jennifer Kennedy.

A Mr. Shaver
A Mr. Hales
A Mr. Nicponski
A Mr. Stam

Motion passed 4-0

Staff and sponsor presentations and public comment prior to Council action on the following matter:

8.2 Consider an Ordinance adjusting Murray City School Board District Boundaries.

Staff presentation: Jennifer Kennedy, City Recorder

Ms. Kennedy stated that the Utah Code also states that whenever a school district is contained entirely within a municipality, it is the municipality's job to divide the school district into local school board boundaries. Murray School District currently has five school board precincts and in order to keep voting precincts together and to save the school board money on their elections, we had to shift a bit more. The proposed shifts will keep the voting districts more together; the school board has received this proposal and had no objections and so they are asking for approval on these changes.

Public hearing opened for public comment.

None given.

Public comment closed.

Council consideration of the above matter:

Mr. Shaver made a motion to adopt the Ordinance.
Mr. Hales 2nd the motion.

Call vote recorded by Jennifer Kennedy.

A Mr. Shaver
A Mr. Hales
A Mr. Nicponski
A Mr. Stam

Motion passed 4-0

9. **UNFINISHED BUSINESS**

None scheduled

10. **NEW BUSINESS**

- 10.1 Consider a resolution a Resolution approving the City's Information Technology Plan.

Staff presentation: Tim Tingey, Administrative and Developmental Services.

Mr. Tingey stated that this proposal relates to the IT Strategic Plan; back in July 2011, the City finished a process which involved a consultant from Azmuth Consulting that went through this process where we had input on a new IT Strategic Plan. It is basically a road map for the City's future technology needs and services and also outlines how we will move forward in our decision making process and investments in a variety of other things.

Mr. Tingey said that there are a number of goals and objectives related to the plan which are outlined, and there is a road map that we will be working towards in all of our investment and our work. We have started to implement some of these things that have been suggested: we do have an IT Governance Committee, we have worked on policies and procedures and are in the process of working through standards; we are excited about this process and the future investments that we will be working towards to really promote efficiency within the city and to enhance services to our citizens and residents. They are recommending approval of this Resolution.

Mr. Hales made a motion to adopt the Resolution.
Mr. Shaver 2nd the motion.

Call vote recorded by Jennifer Kennedy.

 A Mr. Shaver
 A Mr. Hales
 A Mr. Nicponski
 A Mr. Stam

Motion passed 4-0

11. **MAYOR**

11.1 **Mayor's Report**

Mayor Snarr said that he had a discussion with the Miller Group regarding their plans to continue development on their automobile dealerships in the city; they are planning to submit the plans for the new Lexus dealership sometime next week. The challenge is that it will be on the property where the current used car dealership is located; they do have that property under contract where the old hotel and other business are. They are debating on whether or not to get the area cleaned up and move the used car dealership- they would have to build a new building-but their timeline requires that the new Lexus dealership open by December of this year. They don't have near the work to be done on the site of the Lexus dealership vs. the Toyota dealership, which is good thing for them, but that is their objective-to get that Lexus dealership up and operational by December. They do not yet know whether or not they will continue to have that used car dealership in Murray, although it has been a good revenue source for them. They spent a lot of money renovating it for basically 18 month's worth of life, but they wanted it to look attractive for Murray, and they want to stick to their commitment of defining Murray as the empire for the Miller Group.

Mayor Snarr also spoke with BMW: the contractor assured them that the building will be completed by April 20, 2011; other than the fact that some windows that haven't stayed in as they were supposed to, which they are waiting for the new ones to arrive, they are wrapping up the inside and it should be completed on time.

Mayor Snarr added that there is a lot of excitement down there around that area and also mentioned that the color scheme around Fireclay is also growing on people. He said that they had a little bit of a problem refinancing that five acre rehab facility, but they are working on getting that wrapped up and the financing back on track so that they can start that project as well. We should be very bullish on what is going on in Murray because a lot of investment is being made in our community.

Mayor Snarr said that there will be a public hearing next week on an apartment complex, and on the 19th there will be a Planning and Zoning meeting regarding the site plan for the Marriott Hotel. If anyone wants to participate or look at that, they are welcome to come. It will not be as high as originally planned-he has stretched it out to the west to take up some of that land where the Zuppa's would have been.

11.2 Questions of the Mayor

Mr. Shaver said that Murdock's are doing a lot of work on the old Honda building, getting ready to move in.

Mayor Snarr agreed, saying that is Murdock Hyundai and they are gung-ho on that; they are very excited to come and be a part of Murray City. That is a pretty pricey renovation that they are making since they have to brand it the way that Hyundai wants it to be. The original building was never branded that way, it was a Volkswagen dealership before and now they have the ability to come in and define it the way that Hyundai wants all of their dealerships to be defined.

Mayor Snarr added that they are also renovating the Infinity dealership, making some nice enhancements to their facility.

Mr. Shaver asked if the Mayor knew when they estimate to have that dealership done.

Mayor Snarr said they were expecting some time in May. The brickwork should be done in another week and a half for the new drive up facility and the staging, the building itself will be branded and still have the service area to the back. It is the way that Hyundai likes to lay them out. There were some landscaping elements that they had to enhance around the perimeter; they have also acquired another house that borders Hanauer Street to the west, so slowly but surely they are acquiring properties. Miller acquired a few as well-they need more space. When this other house became available, they acquired that and will continue on with the vinyl fencing and then move the block wall since they have to have separation between the residential and commercial areas. They would like to buy the eight-plex on the corner if it becomes available and define the entire area. Some houses are in disrepair and if somebody restored them, like NeighborWorks, it would make sense for the dealership to buy it. Most of the area is defined by Hanauer as the separation between commercial on the east side and residential on the west; it is exciting to see how fast they have moved on that.

12. ADJOURNMENT

Special Recognition #1

Murray City Municipal Council

Request for Council Action

INSTRUCTIONS: The City Council considers new business items each Tuesday in Council meeting. All new business items for the Council must be submitted to the Council office, Room, 107, no later than 5:00 p.m. on the Tuesday one week before the Council meeting in which they are to be considered. This form must accompany all such business items. If you need additional space for any item below, attach additional pages.

1. **TITLE:** (State how it is to be listed on the agenda)
CONSIDER A JOINT RESOLUTION OF MAYOR DANIEL C. SNARR AND THE MURRAY CITY MUNICIPAL COUNCIL IN RECOGNIZING AND SUPPORTING MAY 2012 AS BUILDING SAFETY MONTH - "An International Celebration of Safe and Sensible Structures"

2. **ACTION REQUESTED:** (Check all that apply)
☐ Discussion Only
☐ Ordinance (attach copy) Has the Attorney reviewed the attached copy? ☐
☒ Resolution (attach copy) Has the Attorney reviewed the attached copy? ☐
☐ Public Hearing (attach copy of legal notice) Has the Attorney reviewed the attached copy? ☐
☐ Appeal (explain) _____
☒ Other (explain) Special Recognition in Joint Resolution for Building Safety Month

2. **WHEN REQUESTED:** (Explain when action on this proposal is needed by and why)
May 1st 2012

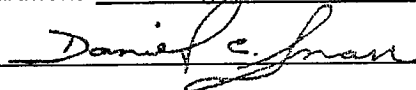
4. **FUNDING:** (Explain budget impact of proposal, including amount and source of funds.)
N/A

5. **RELATED DOCUMENTS:** (Describe all minutes, exhibits, maps, plats, etc., accompanying this proposal and whether or not each is attached)

6. **REQUESTOR:**
Name: Gilbert Gonzales Title: Chief Building Official
Presenter: Gilbert Gonzales Title: Chief Building Official
Agency: Murray City Building Inspections Phone: 801-270-2413
Date: April 18th 2012 Time: _____

7. **APPROVALS:** (If submitted by city personnel, the following signatures are required, and indicate (1) each has reviewed and approved the proposal, (2) all preparatory steps have been completed, and (3) the item is ready for Council action)

Head of Department: Tim Tingey Date: April 18th 2012

Mayor:  Date: April 18th 2012

8. **COUNCIL STAFF:** (For Council use only)
Number of pages _____ Number of copies submitted _____
Received by: _____ Date: _____ Time: _____
Recommendation: _____

9. **NOTES:**

A Joint Resolution
of
Mayor Daniel C. Snarr
And the Murray City Municipal Council
In Recognizing and Supporting
MAY 2012

as
BUILDING SAFETY MONTH
"An International Celebration of Safe and Sensible Structures"

- Whereas,** our City's continuing efforts to address the critical issues of safety, energy efficiency and sustainability in the built environment that effect our citizens, both in everyday life and in times of natural disaster, give us confidence that our structures are safe and sound; and
- Whereas,** our confidence is achieved through the devotion of vigilant guardians - building safety and fire prevention officials, architects, engineers, builders, laborers and others in the construction industry - who work year-round to ensure the safe construction of buildings; and
- Whereas,** these guardians - dedicated members of the International Code Council - develop and implement the highest-quality codes to protect Americans in the buildings where we live, learn, work, worship, play; and
- Whereas,** the International Codes, the most widely adopted building safety, energy and fire prevention codes in the nation, are used by most US cities, counties and states; these modern building codes also include safeguards to protect the public from natural disasters such as hurricanes, snowstorms, tornadoes, wild-land fires and earthquakes; and
- Whereas,** **Building Safety Month** is sponsored by the International Code Council and International Code Council Foundation, to remind the public about the critical role of our communities' largely unknown guardians of public safety - our local code officials - who assure us of safe, efficient and livable agencies; and
- Whereas,** **Building Safety Month: "An International Celebration of Safe and Sensible Structures"** the theme for **Building Safety Month 2012**, encourages all Americans to raise awareness of the importance of building safety; green and sustainable building; pool, spa and hot tub safety; and new technologies in the construction industry. **Building Safety Month 2012**, encourages appropriate steps everyone can take to ensure that the places where we live, learn, work, worship and play are safe and sustainable, and recognizes that countless lives have been saved due to the implementation of safety codes by local and state agencies; and
- Whereas,** each year, in observance of **Building Safety Month**, Americans are asked to consider projects to improve building safety and sustainability at home and in the community, and to acknowledge the essential service provided to all of us by local and state building departments and federal agencies in protecting lives and property; and

NOW, THEREFORE, as Mayor and Murray City Municipal Council, we do hereby resolve to recognize and proclaim the month of

May 2012
as
Building Safety Month
"An International Celebration of Safe and Sensible Structures"

and we support and encourage our citizens to join with us by participating in our special **Building Safety Month** activities held on May 10th 2012 from 10:00 am to 2:00 pm at Lowe's (469 West 4500 South in Murray) and on May 23rd 2012 from 10:00 am to 2:00 pm at Fashion Place Mall (6191 South State Street, Murray).

Passed, Approved and Adopted this 1st day of May 2012.

MURRAY CITY CORPORATION

MURRAY CITY MUNICIPAL COUNCIL

Daniel C. Snarr, Mayor

James A. Brass, Chairman, District 3

Dave Nicponski, District 1

ATTEST:

Darren V. Stam, District 2

Jared A. Shaver, District 4

Jennifer Kennedy, City Recorder

Brett Hales, District 5

Citizen Comments

Limited to three minutes, unless otherwise approved by the Council.

Public Hearing #1

Murray City Municipal Council

Request for Council Action

INSTRUCTIONS: The City Council considers new business items in Council meeting. All new business items for the Council must be submitted to the Council office, Room, 112, no later than 5:00 p.m. on the Wednesday two weeks before the Council meeting in which they are to be considered. This form must accompany all such business items. If you need additional space for any item below, attach additional pages with corresponding number and label.

1. **TITLE:** (Similar wording will be used on the Council meeting agenda.)
CONSIDER AN ORDINANCE AMENDING THE FISCAL YEAR 2011-2012 CITY BUDGET

2. **KEY PERFORMANCE AREA:** (Please explain how request relates to Strategic Plan Key Performance Areas.)
FINANCIAL SUSTAINABILITY

3. **MEETING, DATE & ACTION:** (Check all that apply)

☒ Council Meeting OR ☐ Committee of the Whole

☒ Date requested May 1, 2012

☐ Discussion Only

☒ Ordinance (attach copy)

Has the Attorney reviewed the attached copy? Yes

☐ Resolution (attach copy)

Has the Attorney reviewed the attached copy?

☒ Public Hearing (attach copy of legal notice)

Has the Attorney reviewed the attached copy?

☐ Appeal (explain)

☐ Other (explain)

4. **FUNDING:** (Explain budget impact of proposal, including amount and source of funds.)
SEE ATTACHED MEMOS AND ORDINANCE

5. **RELATED DOCUMENTS:** (Attach and describe all accompanying exhibits, minutes, maps, plats, etc.)
MEMOS FROM JUSTIN ZOLLINGER & DAN BARR

6. **REQUESTOR:**

Name: JUSTIN ZOLLINGER
Presenter: JUSTIN ZOLLINGER
Agency: Murray City Corporation
Date: April 19, 2012

Title: FINANCE DIRECTOR
Title: FINANCE DIRECTOR
Phone: 801-264-2669
Time:

7. **APPROVALS:** (If submitted by City personnel, the following signatures indicate, the proposal has been reviewed and approved by Department Director, all preparatory steps have been completed, and the item is ready for Council action)

Department Director: Justin Zollinger

Date: April 19, 2012

Mayor: 

Date: April 19, 2012

8. **COUNCIL STAFF:** (For Council use only)

Number of pages: Received by: Date: Time:

Recommendation:

9. **NOTES:**

MURRAY CITY CORPORATION

NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN that on May 1, 2012, beginning at 6:30 p.m. of said day in the Council Chambers of the Murray City Center, 5025 South State Street, Murray, Utah, the Murray City Municipal Council will hold and conduct a Public Hearing on and pertaining to the following proposed amendments to the City's 2011-2012 Fiscal Year Budget:

1. Transfer \$3,000,000 from General Fund Reserves to the Capital Projects Fund.
2. Budget Appropriation of \$100,000 from the Retained Risk Reserves.
3. Budget Appropriation of \$10,000 from the Library Fund Restricted Reserves.

The purpose of the hearing is to receive public comment concerning the proposed amendments to the City's 2011-2012 Fiscal Year Budget.

Dated April 5th , 2012.

MURRAY CITY CORPORATION

Jennifer Kennedy, City Recorder

DATE OF PUBLICATION: April 10th, 2012
PH 12-10



MURRAY CITY CORPORATION
FINANCE & ADMINISTRATION

Date: 4/4/2012
To: City Council Members
From: Justin Zollinger, Finance Director
Subject: Budget Opening

This letter is to request a budget opening for a transfer from the General Fund to the Capital Projects Fund in the amount of 3,000,000. This amount will be used to fund fiscal year 2013 governmental CIP projects and maintenance. The budget accounts and amounts are as follows:

010-0000-394.00-00 3,000,000

010-0410-480.92-11 3,000,000

041-0000-392.10-00 3,000,000

041-4101-490.94-00 3,000,000

Last, the Retained Risk Fund needs additional budget for professional services. The budget accounts and amounts are as follows:

062-0000-394.00-00 100,000

062-6201-620.31-10 100,000

If you need any additional information please contact me.


Sincerely,

Justin Zollinger
Finance Director
Murray City



MURRAY
LIBRARY

Take Me There

From: Dan 
To: Justin
Re: Budget Reopen
Date: 3/26/12

The Library would like to transfer \$10,000 of reserve funds from account 23-0000-394.00-00 to expenditure account 23-2301-471.73-10 in the FY 2012 operating budget.

This is to permit the Library to use a portion of the Anna Wood Endowment principle to support the Centennial Legacy Stained Glass Project. Mr. Lew Wood has agreed to this use of endowment funds (see attached agreement amendment).

Please prepare a resolution requesting this transfer for the consideration of the City Council.

Thank you.

cc. Mike Wagstaff, City Council Executive Secretary
Bruce Cutler, Murray Library Board President

AMENDMENT
TO THE 1998 GIFT AGREEMENT BETWEEN MURRAY CITY AND O. LEW WOOD
AND YVONNE E. WOOD ESTABLISHING THE ANNA J. WOOD MEMORIAL
ENDOWMENT FOR THE MURRAY CITY, UTAH PUBLIC LIBRARY

The Parties, Murray City Corporation ("City") and O. Lew Wood and Yvonne E. Wood, ("Donors") entered into a Gift Agreement ("Gift Agreement") establishing the Anna J. Wood Memorial Endowment for the Murray City Library on December 18, 1998. This Amendment shall amend the Gift Agreement to authorize a one-time exception to the conditions of the Gift Agreement for support of the Murray Library Centennial Legacy Project.

RECITALS

WHEREAS, City and Donors have entered into a Gift Agreement establishing the Anna J. Wood Memorial Endowment for the Murray City, Utah Library; and

WHEREAS, the intent of the Gift Agreement is to have the investment earnings generated by the original endowment used to provide additional library media resources for its patrons' use; and

WHEREAS, pursuant to the Gift Agreement, the City has agreed not to expend the principle of the endowment; and

WHEREAS, the City seeks to raise funds for the Murray Library Centennial Legacy Project, including the design, production, and installation of a stained glass window in the Library; and

WHEREAS, the endowment has not generated investment earnings as originally anticipated due to economic circumstances and low interest rates; and

WHEREAS, the Parties agree that pursuant to the terms and conditions below, a one-time exception may be made to the Gift Agreement, allowing partial funds from the endowment to be used for the Murray Library Centennial Legacy Project; and

THEREFORE, the Parties amend the 1998 Gift Agreement as follows:

AGREEMENT

- A. Donors agree that \$10,000.00 of the principle in the Anna J. Wood Memorial Endowment may be used to support the Murray Library Centennial Legacy Project (the "Project"), including the design, production and installation of a stained glass window in the Library, on the conditions that:
1. An additional \$10,000.00 of outside matching funds must be raised before the principle may be used for the Project.
 2. If \$10,000.00 of outside matching funds is raised, \$10,000.00 of the principle of

the endowment may be used for the Project. If the principle of the endowment is reduced by \$10,000.00 for the Project, no further funds may be expended pursuant to the Gift Agreement until the interest earned replenishes the principle to the original endowment amount of \$25,000.00.

B. All other relevant terms of the 1998 Agreement shall govern this Amendment.

DATED this 16 day of March 2012.

MURRAY CITY CORPORATION

O. Lew Wood

Daniel C. Snarr, Mayor

ATTEST:

Yvonne E. Wood

APPROVED AS TO FORM:

ORDINANCE NO. _____

AN ORDINANCE AMENDING THE FISCAL YEAR 2011 - 2012 City Budget

PREAMBLE

On June 21, 2011, the Murray City Municipal Council adopted the City's budget for Fiscal Year 2011 - 2012. It has been proposed that the City amend its Fiscal Year 2011-2012 Budget as follows:

1. Transfer \$3,000,000 from the General Fund Reserves to the Capital Projects Fund.
2. Budget Appropriation of \$100,000 from Retained Risk Reserves.
3. Budget Appropriation of \$10,000 from Library Fund Reserves.

Section 10-6-128 of the Utah Code states that the budget for the City may be amended by the Murray City Municipal Council after considering input from a duly noticed public hearing. Pursuant to proper notice, the Murray City Municipal Council held a public hearing on May 1, 2012 to consider the proposed amendments to the 2011 – 2012 Fiscal Year Budget. After considering public comment, the Murray City Municipal Council wants to amend the 2011 – 2012 Fiscal Year Budget as proposed.

BE IT ENACTED by the Murray City Municipal Council as follows:

Section 1. *Purpose.* The purpose of this Ordinance is to amend the City's 2011 – 2012 Fiscal Year Budget.

Section 2. *Enactment.* The City's 2011 – 2012 Fiscal Year Budget shall be amended as follows:

1. Transfer \$3,000,000 from the General Fund Reserves to the Capital Projects Fund.
2. Budget Appropriation of \$100,000 from Retained Risk Reserves.
3. Budget Appropriation of \$10,000 from the Library Fund Restricted Reserves.

Section 3. *Effective Date.* This Ordinance shall take effect on first publication.

PASSED, APPROVED AND ADOPTED by the Murray City Municipal Council on May 1, 2012.

MURRAY CITY MUNICIPAL COUNCIL

James A. Brass, Chair

ATTEST:

Jennifer Kennedy
City Recorder

MAYOR'S ACTION: Approved

DATED this ____ day of _____, 2012.

Daniel C. Snarr, Mayor

ATTEST:

Jennifer Kennedy, City Recorder

CERTIFICATE OF PUBLICATION

I hereby certify that this Ordinance or a summary hereof was published according to law on the ____ day of _____, 2012.

City Recorder

New Business Item #1

Murray City Municipal Council

Request for Council Action

INSTRUCTIONS: The City Council considers new business items in Council meeting. All new business items for the Council must be submitted to the Council office, Room, 112, no later than 5:00 p.m. on the Wednesday two weeks before the Council meeting in which they are to be considered. This form must accompany all such business items. If you need additional space for any item below, attach additional pages with corresponding number and label.

1. **TITLE:** (Similar wording will be used on the Council meeting agenda.)
CONSIDER A RESOLUTION APPROVING THE CITY VEHICLE AND EQUIPMENT REPLACEMENT POLICY

2. **KEY PERFORMANCE AREA:** (Please explain how request relates to Strategic Plan Key Performance Areas.)
Responsive and Efficient City Services

3. **MEETING, DATE & ACTION:** (Check all that apply)

☒ Council Meeting OR ☐ Committee of the Whole

☒ Date requested **May 1st 2012**

☐ Discussion Only

☐ Ordinance (attach copy)

Has the Attorney reviewed the attached copy? ☐

☒ Resolution (attach copy)

Has the Attorney reviewed the attached copy? YES

☐ Public Hearing (attach copy of legal notice)

Has the Attorney reviewed the attached copy? ☐

☐ Appeal (explain) _____

☐ Other (explain) _____

4. **FUNDING:** (Explain budget impact of proposal, including amount and source of funds.)

5. **RELATED DOCUMENTS:** (Attach and describe all accompanying exhibits, minutes, maps, plats, etc.)

Memo, Vehicle and Equipment Replacement Policy DRAFT, Executive Order 09-01, and the Resolution

6. **REQUESTOR:**

Name: Jan Wells

Presenter: Jan Wells, Doug Hill

Agency: Mayor's Office

Date: April 18th 2012

Title: Chief of Staff

Title: Chief of Staff, Director of Public Services

Phone: 801-264-2621

Time:

7. **APPROVALS:** (If submitted by City personnel, the following signatures indicate, the proposal has been reviewed and approved by Department Director, all preparatory steps have been completed, and the item is ready for Council action)

Department Director: Daniel C. Snarr

Date: April 18th 2012

Mayor: 

Date: April 18th 2012

8. **COUNCIL STAFF:** (For Council use only)

Number of pages: _____ Received by: _____ Date: _____ Time: _____

Recommendation: _____

9. **NOTES:**



MEMO

To: Murray City Council
Executive Director, Mike Wagstaff
From: Jan Wells, Chief of Staff
Date: April 18, 2012
RE: Vehicle Replacement Policy

We are presenting a formal Vehicle Replacement Policy for your consideration as recommended by the Novak Group as part of our Strategic Planning, and specifically as part of the CIP process. In evaluating the requests that were presented to the CIP Committee for Vehicle and Equipment Replacement, this vehicle policy that was compiled by Doug Hill and George Hammer was used. It is well thought out and was compiled from policies gathered from around the region. The CIP Committee appreciated the ability to remove much of the subjectivity when replacement vehicles were discussed.

When the policy was discussed at the Retreat on Monday night, questions were raised about how our employees handle their responsibility for the vehicles. I am attaching an executive order that was passed in January of 2009 that outlines expectations for City used vehicles. This order also laid out a vehicle replacement plan. This effort was headed up by the City Recorder who worked with a committee to review the requests. This portion of the order would be voided with the Vehicle Replacement Policy that would be used by the CIP, if adopted.

I appreciate the work of Doug and George on this new policy and hope you will support it. Thank you for your consideration.

Vehicle and Equipment Replacement Policy

DRAFT

Purpose:

To provide a fiscally responsible vehicle and equipment replacement policy that will guide the City to maximize vehicle utilization.

Policy:

Replacement criteria for City-owned vehicles will depend on one of the following: 1) Meeting the minimum mileage/hours requirement in the Category; 2) The vehicle no longer meets the City needs as justified by the Department; 3) On a point system, attached as Appendix "A", which is based upon:

1. Age
2. Miles/Hour Usage
3. Type of Service
4. Maintenance and Repair Costs (not to include preventative maintenance and accident damages)
5. Condition (body, interior and power train)

Point Range Chart Note: The City may decide to retain a vehicle beyond the stated criteria after evaluation of anticipated usage, repairs and operating costs.

Each vehicle has been placed into a category, as listed below, so a replacement standard can be followed:

Category "A"

This category consists of the City's Car Per-Employee Program which includes; Administrative, Detective, and other vehicles that are assigned to employees (excluding Police Department Patrol Vehicles). Since these vehicles are assigned to an employee, it is expected that they will be better maintained, thus the targeted replacement cycle should not be earlier than 120,000 miles or until the required point range has been met.

Category "B"

This category consists of the Police Department's Patrol vehicles, Fire Department ambulances and all other cars and pickups. These vehicles should not be replaced earlier than 100,000 miles or until the required point range has been met.

Category "C"

This category consists of all trucks, including fire engines, with a Gross Vehicle Weight Rating (GVWR) of 26,000 and above. These vehicles should not be replaced earlier than 100,000 miles or 6,000 operating hours or until the required point range has been met.

Category "D"

This consists of heavy off-road equipment (loaders, backhoes, graders, etc.). These pieces of equipment should not be replaced earlier than 6,000 hours or until the required point range has been met.

Category "E"

This category consists of Street Sweepers that are used daily to serve the public. These vehicles should not be replaced earlier than 5,000 hours or until the required point range has been met.

Category "F"

This category consists of other off-road equipment (tractors, mowers, and other small riding equipment). This equipment should not be replaced earlier than 2500 hours or until the required point range has been met.

Category "G"

This category consists of trailers, pumps, generators and other small equipment. This equipment should be replaced when the total maintenance costs exceed the original purchase price.

Appendix "A"

Point Range for Replacement Consideration

<u>Point Scale</u>	<u>Condition</u>	<u>Description</u>
17 points and under	Excellent	Do Not Replace
18 to 22 points	Good	Re-evaluate in next year's budget
23 to 27 points	Fair	Qualifies for replacement this year, if budget allows
28 + points	Poor	Needs priority replacement

Replacement Guidelines

<u>Factor</u>	<u>Points</u>	<u>Description</u>
Age	1	Each year of chronological age
Mileage/ Hours	1	Each 10,000 miles or 250 hours
Type of Service	3	Snow removal use
Use	5	Daily emergency vehicle use/ Police and Fire
Maintenance and repair costs	1	Lifetime repair costs are 21% to 40% of replacement cost
	2	Lifetime repair costs are 41% to 60% of replacement cost
	3	Lifetime repair costs are 61% to 80% of replacement cost
	4	Lifetime repair costs are 81% or more than replacement cost
Condition	1	Drive train/ Operating system is experiencing some issues
	3	Drive train/ Operating system is inoperable
	1	Minor imperfections in body and paint
	2	Minor imperfections in body and paint, rusting is occurring
	3	Poor body and paint, rust holes

EXECUTIVE ORDER 09-01

MURRAY CITY VEHICLE POLICIES

BACKGROUND

This policy will outline the various principles and policies associated with all passenger size vehicles used by City Departments to accomplish the business of the City. There are many specialized vehicles purchased for specific tasks that would be exempt from these rules, although those who drive them are asked to take the principles included herein and use them as possible.

The Order will be outlined as follows:

- ◆ Principles for basic care of vehicles
- ◆ Idling policies
- ◆ Principles to lower gas use
- ◆ Take home vehicle policy
- ◆ Vehicle replacement
- ◆ Employee transportation incentives

ORDER

PRINCIPLES FOR VEHICLE CARE

It is our desire to be conscience of the environment as we do our work for the City. As vehicles are driven they should be cared for to help them provide the best possible gas mileage. These routine functions should be taken into consideration each time the vehicle is used.

1. Follow the manufacturer's suggestions to keep the tires properly inflated
- ~~2. Remove debris and cargo daily to keep the weight of the vehicle down~~
3. Keep windows closed when driving to cut down on wind resistance
4. Drive gently by using the accelerator and brakes slowly
5. Limit the warm up time of the engine to 30 seconds
6. Follow the manufacture's recommendation for routine maintenance
7. Track trips and the amount of fuel used
8. Keep the vehicle clean

IDLING VEHICLES

In an effort to cut down on fuel consumption and protect the air from unnecessary pollutants, vehicles should not be left to idle when drivers are not in them and driving. Department Heads will determine if there are exceptions to be made for specific conditions. It is the intent of this order that vehicles be turned off when they will not be moving. This policy is subject to discipline determined

by the Department Head and will be included as part of the employee evaluation processes.

PRINCIPLES TO LOWER GAS USE

There are a variety of common sense principles to decrease the amount of fuel we use in our fleet and the following should be considered when planning work.

1. Plan trips and consolidate as practical
2. Use the smallest vehicle possible to accomplish your task
3. Consolidate the number of vehicles sent to the job site or incident
4. Park in the shade in the summer if possible
5. Clock in prior to starting vehicle

TAKE HOME VEHICLE POLICIES

Take home vehicles are used as follows:

1. Some employees are required as a condition of their job to have access to a vehicle. Two types of conditions exist under this scenario:
 - A. The vehicle is used for travel to and from work and for emergency call out, otherwise it is parked.
 - B. The vehicle is used for travel to and from work and reimbursement is made for restricted personal use. Use of the vehicle for personal use will be deemed as additional compensation.
2. Some vehicles are included as part of the condition of the specific job providing travel to and from work only.
3. Car allowances are provided to some personnel who are required to use their personal vehicle for routine travel on City business as part of their job. Allowances are evaluated as part of the budget process.
4. ~~Mileage reimbursement is used for those who occasionally use personal vehicles for City~~ business and the amount paid per mile is based upon the state mileage reimbursement calculation.

VEHICLE REPLACEMENT POLICIES

VEHICLE/EQUIPMENT REPLACEMENT POLICY

POLICY STATEMENT

It is the intent and policy of the Vehicle Replacement Advisory Committee that the City achieves the maximum return on investment in its fleet of vehicles and equipment. The following are established as minimums only. Departments may be required to operate their vehicles and equipment

past these minimum standards if the Vehicle Replacement Advisory Committee voting members determine the vehicles and equipment to be safe and cost effective to remain in operation. Vehicles and equipment may be identified for disposal before the minimum standards have been met when, the cost of the repairs are determined to be non-cost effective, or if the vehicle or equipment is declared excess to the needs of the City. New vehicle and equipment purchases shall be done through the Fleet Services Department and in accordance to City purchasing policies. All surplus vehicles and equipment shall be disposed of through the Fleet Services Department and by auction as stated in Murray Municipal Code.

VEHICLE/EQUIPMENT REPLACEMENT PROCEDURES

1. Replacement Considerations

A. Vehicles and equipment will be considered for replacement by the Vehicle Replacement Advisory Committee on the basis of prescribed standard criteria as outlined herein.

1. Vehicle/equipment has reached the recommended life cycle where condition and usage have exceeded acceptable standards. Every vehicle should be evaluated individually at 100,000 miles. Vehicles with higher idle times may need to be replaced before 100,000 miles.

*See attached chart for replacement vehicle recommendations Committee may suggest for 2009. They will make new recommendations annually from available models. Departments may request other vehicles if a specific need can be justified.

2. Vehicle/equipment has reached the end of its technological life and a cost efficiency business case exists for replacement.

-
3. ~~Vehicle/equipment does not comply with legislated safety standards and can not be effectively or cost efficiently modified.~~

4. Vehicles must be white in color with the exception of unmarked police and fire vehicles.

5. The type of vehicle/equipment must fit determined use, or otherwise be justified in writing by the department head.

6. Used vehicles shall be evaluated for reassignment where the specific vehicle can be utilized in a different capacity to meet the City's needs.

7. Emergency purchases will be submitted in writing to the Vehicle Replacement Advisory Committee voting members for review and approval by the Mayor.

- B. Vehicles which do not meet the above criteria will not be replaced unless the affected department/division submits a written justification for the exceptions to the Vehicle Replacement Advisory Committee voting members for their review and approval by the mayor.

2. Vehicle/Equipment Replacement Steps

- STEP 1. Departments will send Vehicle Replacement Requests forms to Vehicle Replacement Committee Chair by January 15th.
- STEP2. Fleet Services will generate a Fleet Management System computer report forecast based on mileage and maintenance history.
- STEP 3. Fleet Services will review the forecast and determine one-year retention costs, conditions and usage factors and provide a Fleet Replacement Report to Vehicle Replacement Committee Chair.
- STEP 4. The Department Replacement Requests and Fleet Replacement Report will be reviewed by the Vehicle Replacement Committee voting members and they will provide the Mayor with their recommendations for vehicle replacements.
- STEP 5. Approval by Mayor in conjunction with Operating and Capital budgets.

3. Vehicle Replacement Committee

Chair
City Recorder

Vehicle Advisory Members

Public Services Director, Deputy Public Services Director, Police Chief,
Fire Chief, Finance Director, Power Operations Manager.

Voting Members

Recorder's Office (Procurement) Representative, Finance Department Representative,
Fleet Services Representative.

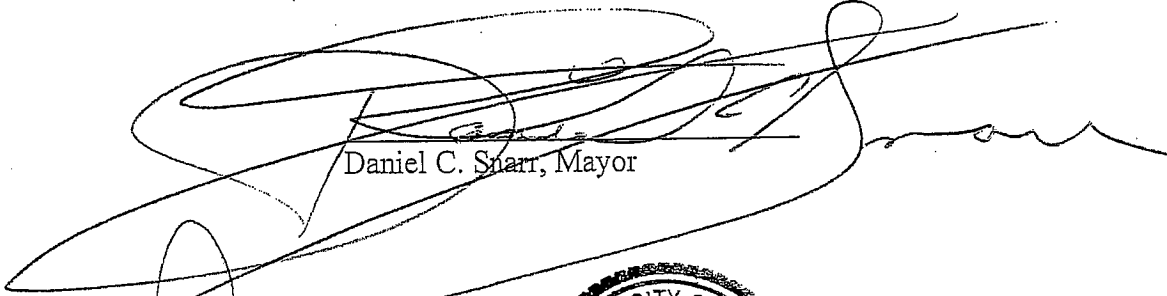
TRANSPORTATION/TRIP REDUCTION INCENTIVE PROGRAM

The purpose of this incentive program is to enhance the City's and the employees commitment to the reduction of both airborne particulates and single use vehicle trips to and from work.

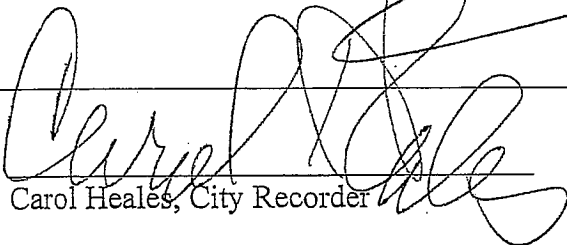
1. All regular full and part-time employees will be eligible and encouraged to participate to receive a quarterly cash incentive for using an alternate means of transportation.
2. Employees complete an alternative transportation log for three consecutive months. Logs are approved and processed by Human Resources.
3. A cash incentive of \$25 will be paid quarterly, if an alternate form of transportation is used for three consecutive months an average of 2 times per week, per month. If an alternate form of transportation is used an average of 3 or more times per week, per month, a \$50 cash incentive can be paid.
4. Alternative transportation methods include walking, biking, carpool, motorcycle, bus, Trax or Frontrunner.
5. Additional clarification on this program is available in the employee handbook.

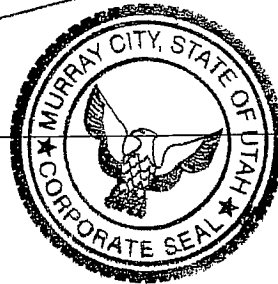
Dated this 9 day of January, 2009.

MURRAY CITY CORPORATION


Daniel C. Snarr, Mayor

ATTEST:


Carol Heales, City Recorder



RESOLUTION NO. _____

A RESOLUTION APPROVING THE CITY VEHICLE AND EQUIPMENT
REPLACEMENT POLICY

WHEREAS, for purposes of good fiscal management and control, the City needs standards to guide the replacement of vehicles and equipment in the City; and

WHEREAS, a proposed "City Vehicle and Equipment Replacement Policy" (the "Policy"), a copy of which is attached, has been prepared to provide those standards; and

WHEREAS, it is the intent of the Policy to provide standards that would guide the City's decision to replace City vehicles and equipment; and

WHEREAS, the Policy would be useful in making decisions regarding the City's Capital Improvement Fund; and

WHEREAS, the City Council has determined that the Policy is in the best interest of the City and wants to approve it.

NOW, THEREFORE, BE IT RESOLVED by the Murray City Municipal Council as follows:

1. The City Vehicle and Equipment Replacement Policy, substantially in the form attached, is hereby approved.
2. The approved City Vehicle and Equipment Replacement Policy shall guide the City's decisions regarding the replacement of City vehicles and equipment.

PASSED, APPROVED AND ADOPTED by the Murray City Municipal Council this 1st day of May, 2012.

MURRAY CITY MUNICIPAL COUNCIL

James A. Brass
Chair

ATTEST:

Jennifer Kennedy
City Recorder

Vehicle and Equipment Replacement Policy

DRAFT

Purpose:

To provide a fiscally responsible vehicle and equipment replacement policy that will guide the City to maximize vehicle utilization.

Policy:

Replacement criteria for City-owned vehicles will depend on one of the following: 1) Meeting the minimum mileage/hours requirement in the Category; 2) The vehicle no longer meets the City needs as justified by the Department; 3) On a point system, attached as Appendix "A", which is based upon:

1. Age
2. Miles/Hour Usage
3. Type of Service
4. Maintenance and Repair Costs (not to include preventative maintenance and accident damages)
5. Condition (body, interior and power train)

Point Range Chart Note: The City may decide to retain a vehicle beyond the stated criteria after evaluation of anticipated usage, repairs and operating costs.

Each vehicle has been placed into a category, as listed below, so a replacement standard can be followed:

Category "A"

This category consists of the City's Car Per-Employee Program which includes; Administrative, Detective, and other vehicles that are assigned to employees (excluding Police Department Patrol Vehicles). Since these vehicles are assigned to an employee, it is expected that they will be better maintained, thus the targeted replacement cycle should not be earlier than 120,000 miles or until the required point range has been met.

Category "B"

This category consists of the Police Department's Patrol vehicles, Fire Department ambulances and all other cars and pickups. These vehicles should not be replaced earlier than 100,000 miles or until the required point range has been met.

Category "C"

This category consists of all trucks, including fire engines, with a Gross Vehicle Weight Rating (GVWR) of 26,000 and above. These vehicles should not be replaced earlier than 100,000 miles or 6,000 operating hours or until the required point range has been met.

Category "D"

This consists of heavy off-road equipment (loaders, backhoes, graders, etc.). These pieces of equipment should not be replaced earlier than 6,000 hours or until the required point range has been met.

Category "E"

This category consists of Street Sweepers that are used daily to serve the public. These vehicles should not be replaced earlier than 5,000 hours or until the required point range has been met.

Category "F"

This category consists of other off-road equipment (tractors, mowers, and other small riding equipment). This equipment should not be replaced earlier than 2500 hours or until the required point range has been met.

Category "G"

This category consists of trailers, pumps, generators and other small equipment. This equipment should be replaced when the total maintenance costs exceed the original purchase price.

Appendix "A"

Point Range for Replacement Consideration

<u>Point Scale</u>	<u>Condition</u>	<u>Description</u>
17 points and under	Excellent	Do Not Replace
18 to 22 points	Good	Re-evaluate in next year's budget
23 to 27 points	Fair	Qualifies for replacement this year, if budget allows
28 + points	Poor	Needs priority replacement

Replacement Guidelines

<u>Factor</u>	<u>Points</u>	<u>Description</u>
Age	1	Each year of chronological age
Mileage/ Hours	1	Each 10,000 miles or 250 hours
Type of Service	3	Snow removal use
Use	5	Daily emergency vehicle use/ Police and Fire
Maintenance and repair costs	1	Lifetime repair costs are 21% to 40% of replacement cost
	2	Lifetime repair costs are 41% to 60% of replacement cost
	3	Lifetime repair costs are 61% to 80% of replacement cost
	4	Lifetime repair costs are 81% or more than replacement cost
Condition	1	Drive train/ Operating system is experiencing some issues
	3	Drive train/ Operating system is inoperable
	1	Minor imperfections in body and paint
	2	Minor imperfections in body and paint, rusting is occurring
	3	Poor body and paint, rust holes

New Business Item #2

Murray City Municipal Council

Request for Council Action

INSTRUCTIONS: The City Council considers new business items each Tuesday in Council meeting. All new business items for the Council must be submitted to the Council office, Room, 107, no later than 5:00 p.m. on the Tuesday one week before the Council meeting in which they are to be considered. This form must accompany all such business items. If you need additional space for any item below, attach additional pages.

1. **TITLE:** (State how it is to be listed on the agenda)
CONSIDER A RESOLUTION ACKNOWLEDGING RECEIPT OF THE FISCAL YEAR 2012 - 2013 TENTATIVE BUDGET FROM THE MAYOR AND THE BUDGET OFFICER, AND REFERRING THE MAYOR'S TENTATIVE BUDGET FOR REVIEW AND CONSIDERATION TO THE BUDGET AND FINANCE COMMITTEE OF THE MURRAY CITY MUNICIPAL COUNCIL.

2. **ACTION REQUESTED:** (Check all that apply)
- ☐ Discussion Only
☐ Ordinance (attach copy)
Has the Attorney reviewed the attached copy? ☐
☒ Resolution (attach copy)
Has the Attorney reviewed the attached copy? YES
☐ Public Hearing (attach copy of legal notice)
Has the Attorney reviewed the attached copy? ☐
☐ Appeal (explain) _____
☒ Other (explain) Mayor will present his tentative Budget for FY 2012-2013 for 10-20 minutes

3. **WHEN REQUESTED:** (Explain when action on this proposal is needed by and why)
May 1st 2012


4. **FUNDING:** (Explain budget impact of proposal, including amount and source of funds.)

5. **RELATED DOCUMENTS:** (Describe all minutes, exhibits, maps, plats, etc., accompanying this proposal and whether or not each is attached)
Memo and Resolution

6. **REQUESTOR:**
- | | |
|--|------------------------|
| Name: <u>Daniel Snarr</u> | Title: <u>Mayor</u> |
| Presenter: <u>Daniel Snarr</u> | Title: <u>Mayor</u> |
| Agency: <u>Mayor's Office and Finance Admin.</u> | Phone: <u>264-2600</u> |
| Date: <u>April 18th 2012</u> | Time: _____ |

7. **APPROVALS:** (If submitted by city personnel, the following signatures are required, and indicate (1) each has reviewed and approved the proposal, (2) all preparatory steps have been completed, and (3) the item is ready for Council action)

Head of Department: Mayor Dan Snarr Date: April 18th 2012

Mayor:  Date: April 18th 2012

8. **COUNCIL STAFF:** (For Council use only)
- Number of pages _____ Number of copies submitted _____
Received by: _____ Date: _____ Time: _____
Recommendation: _____

9. **NOTES:**



MURRAY CITY CORPORATION
OFFICE OF THE MAYOR

Daniel C. Snarr, Mayor

Jan Wells, Chief of Staff

801-264-2600 FAX 801-264-2608

MEMO

To: Murray City Council
Mike Wagstaff, Executive Director
From: Mayor Dan Snarr
Date: April 18, 2012
RE: Budget Address

There have been a variety of changes that have taken place since last year at this time when the budget recommendations were presented. We have had 34 employees retire and leave us. A new Finance Director has come on board. Our Strategic Planning effort has been completed and we are working to put it into place. There are also two new Council members who join us in this process for the first time. Growth is finally beginning again after three long years of recession.

I am excited about the future of our City. While my proposed budget won't fix all our challenges, it is a budget with optimism. I look forward to the opportunity to present the work that has been prepared with the help of our capable staff.

Thank you for your consideration.

RESOLUTION NO. _____

A RESOLUTION ACKNOWLEDGING RECEIPT OF THE FISCAL YEAR 2012 - 2013 TENTATIVE BUDGET FROM THE MAYOR AND THE BUDGET OFFICER, AND REFERRING THE MAYOR'S TENTATIVE BUDGET FOR REVIEW AND CONSIDERATION TO THE BUDGET AND FINANCE COMMITTEE OF THE MURRAY CITY MUNICIPAL COUNCIL.

WHEREAS, Section 10-6-111 of the Utah Code requires that on or before the first regularly scheduled meeting of the governing body in May of the current fiscal year, the Mayor and the City's Budget Officer shall prepare the Mayor's tentative budget for each fund for which a budget is required for the ensuing fiscal year; and

WHEREAS, the Mayor and the City's Budget Officer, Justin Zollinger, submitted the fiscal year 2012 - 2013 Mayor's tentative budget on May 1, 2012, to the Murray City Municipal Council; and

WHEREAS, the Murray City Municipal Council wants to acknowledge receipt of the Mayor's tentative budget and refer it to the Budget and Finance Committee.

NOW, THEREFORE, be it Resolved by the Murray City Municipal Council as follows:

1. It hereby acknowledges receipt of the fiscal year 2012 - 2013 Mayor's tentative budget from the Mayor and the City's Budget Officer, Justin Zollinger, on May 1, 2012.
2. The submitted Mayor's tentative budget is hereby referred to the Budget and Finance Committee of the Murray City Municipal Council for review and consideration.

DATED this 1st day of May, 2012.

MURRAY CITY MUNICIPAL COUNCIL

James A. Brass, Chair

ATTEST:

Jennifer Kennedy, City Recorder

Mayor's Report and Questions

Adjournment