

MURRAY
CITY COUNCIL

Council Meeting December 4, 2012



MURRAY
CITY COUNCIL

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, December 4, 2012, at the Murray City Center, 5025 South State Street, Murray, Utah.

4:00 p.m. **Municipal Building Authority:** To be held in the Conference Room #107

1. **Approval of Minutes – October 16, 2012**
2. **Adjournment**

4:01 p.m. **Committee of the Whole:** To be held in the Conference Room #107

3. **Approval of Minutes**
 - 3.1 None scheduled
4. **Business Items**
 - 4.1 Employee of the Month Recognition – Brett Hales (10 minutes)
 - 4.2 Lowest Responsive Responsible Bidder – Dave Nicponski (30 minutes)
 - 4.3 Business License Fee Study Review – Tim Tingey (45 minutes)
 - 4.4 Comprehensive Annual Financial Report – Justin Zollinger (45 minutes)
5. **Announcements**
6. **Adjournment**

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

7. **Opening Ceremonies**
 - 7.1 Pledge of Allegiance
 - 7.2 Approval of Minutes
 - 7.2.1 None scheduled.
 - 7.3 Special Recognition
 - 7.3.1 None scheduled.
8. **Citizen Comments** (Comments are limited to 3 minutes unless otherwise approved by the Council.)

9. Consent Agenda

9.1 None scheduled.

10. Public Hearings

10.1 None scheduled.

11. Unfinished Business

11.1 None scheduled.

12. New Business

12.1 Consider a resolution acknowledging completion and receipt of the independent audit for fiscal year 2011-2012 and order that notice be published pursuant to Section 10-6-152 of the Utah Code. (Justin Zollinger presenting.)

12.2 Consider an ordinance repealing Sections 2.46.110 and 2.46.120 and enacting Chapter 2.47 of the Murray City Municipal Code relating to the Murray City Ethics Commission. (Frank Nakamura presenting.)

13. Mayor

13.1 Report

13.2 Questions of the Mayor

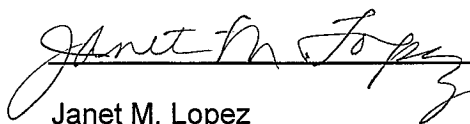
14. Adjournment

NOTICE

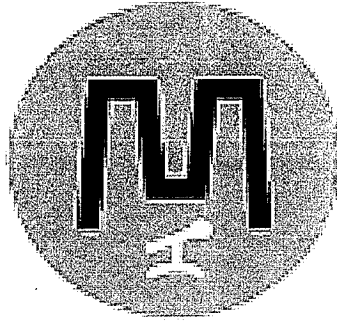
SPECIAL ACCOMMODATIONS FOR THE HEARING OR VISUALLY IMPAIRED WILL BE MADE UPON A REQUEST TO THE OFFICE OF THE MURRAY CITY RECORDER (801-264-2660). WE WOULD APPRECIATE NOTIFICATION TWO WORKING DAYS PRIOR TO THE MEETING. TDD NUMBER IS 801-270-2425 or call Relay Utah at #711.

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, November 30, 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>.

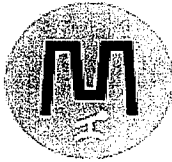


Janet M. Lopez
Council Administrator
Murray City Municipal Council



MURRAY
CITY COUNCIL

Municipal Building Authority



MURRAY
CITY COUNCIL

DRAFT

**MUNICIPAL BUILDING AUTHORITY OF MURRAY CITY, UTAH
BOARD OF TRUSTEES**

The Board of Trustees of the Municipal Building Authority of Murray City, Utah, met on Tuesday, October 16, 2012, in the Council Chambers at the Murray City Center, 5025 South State Street, Murray, Utah.

Those in attendance were Jared A. Shaver, President/ Trustee; Darren V. Stam, Vice President/Trustee; Dave Nicponski and Brett A. Hales. Mr. Brass, Treasurer/Trustee was excused.

Others in attendance were Daniel Snarr, Mayor; Janet M. Lopez, Council Administrator; Frank Nakamura, City Attorney; Jennifer Kennedy, City Recorder, Jan Wells, Mayor's office, and citizens.

The meeting was called to order at 6:14 p.m. by President Shaver, who welcomed those in attendance.

1. Approval of Minutes

1.1 Meeting held January 3, 2012

President Shaver called for action on the minutes from the Municipal Building Authority meeting held on January 3, 2012. Mr. Stam moved approval and it was seconded by Mr. Hales. A voice vote was taken and passed 4-0.

2. New Business

2.1 Consider adoption of the 2013 Annual Meeting Schedule of the Municipal Building Authority.

Mr. Shaver asked for questions, notations or a motion on the schedule. Mr. Stam moved approval. Mr. Hales seconded.

Call vote recorded by Ms. Lopez:

Mr. Hales - Aye
Mr. Nicponski - Aye
Mr. Stam - Aye
Mr. Shaver - Aye

Motion carried 4-0.

2.2 Election of Municipal Building Authority Board of Trustees for the year 2013.

Mr. Nakamura confirmed that the Trustees are to be City Council Members only and that would be rectified this year.

Mr. Stam nominated Council Members Dave Nicponski, Darren Stam, Jim Brass, Jared Shaver and Brett Hales. The motion was seconded by Mr. Nicponski.

Call vote recorded by Ms. Lopez:

Mr. Hales - Aye
Mr. Nicponski - Aye
Mr. Stam - Aye
Mr. Shaver - Aye

Motion carried 4-0.

**2.3 Election of Municipal Building Authority Officers for the year 2013.
(President, Vice President, Secretary, Treasurer.)**

Mr. Hales nominated Darren Stam as President, the motion was seconded by Dave Nicponski.

Mr. Stam nominated Brett Hales as Vice-President; Mr. Nicponski seconded.

Mr. Stam nominated Dave Nicponski as Secretary; Mr. Hales seconded.

Mr. Hales nominated Jim Brass as Treasurer; Mr. Stam seconded.

Call vote recorded by Ms. Lopez:

Mr. Hales - Aye
Mr. Nicponski - Aye
Mr. Stam - Aye
Mr. Shaver - Aye

Motion carried 4-0.

2.4 Consider a resolution of the Municipal Building Authority of Murray City adopting its Budget for Fiscal Year beginning July 1, 2012 and ending June 30, 2013.

Mr. Stam moved approval of the Municipal Building Authority of Murray City Budget for Fiscal Year beginning July 1, 2012 and ending June 30, 2013. Mr. Hales seconded the motion. Mr. Stam mentioned that this amount of money should be considered carefully the next year.

Call vote recorded by Ms. Lopez:

Mr. Hales - Aye
Mr. Nicponski - Aye
Mr. Stam - Aye
Mr. Shaver - Aye

Motion carried 4-0.

2.5 Discussion relating to the function of the Municipal Building Authority (MBA).

Mr. Shaver commented that Ms. Lopez had sent some information relating to the Municipal Building Authority including the Utah State statute as to what creates it. He said that as a City considering the possibility of building a city hall, this is one of the issues that could come before the Municipal Building Authority to assist in doing that. It was discussed that the Council would form that committee under the Municipal Building Authority. It was later decided in the next Committee of the Whole that the City Hall committee would be formed under the Council and that Darren Stam and Jim Brass would serve as representatives from the Council along with several members from the City administration and staff. Darren added that Jared Shaver would serve as an alternate.

Mr. Shaver mentioned a conversation with Mr. Nakamura as to how public buildings are created or brought about. The MBA gives the Trustees the authority to find architects, to look at designs and plans. That is allowed within the MBA and he said if that is the way we want to do that, then this committee would be functioning in the way it is supposed to. Otherwise, there is a tendency to do it as a Council and not use the MBA forum.

The MBA can bond although it happens more difficultly because banks and financial institutions look at the MBA with concern because it is not an entity that can raise sales taxes or property taxes to create the payment for the bond. The only way to pay for a bond is through a lease. As an example, though not currently the situation, had the Council decided to build the Park Center under the MBA the City would have rented or leased that building from the MBA, which would have then paid the bond. This is merely articulation as to how that is done, Mr. Shaver explained.

He believes that the MBA should function in this capacity, particularly because the City is looking at a project that it wants to build. In discussion with members of the City Hall Committee, they are making progress toward architectural drawings and land decisions are coming to the forefront. He feels this is something the Trustees of the MBA should do as a part of the function of the MBA.

Mr. Nakamura clarified that the MBA was in fact used for the construction of the Park Center initially. Subsequently, because of interest on the sales tax bonds, it was refinanced.

Mr. Nicponski asked if the New City Hall Committee that is currently functioning reports back to the MBA. Mr. Shaver noted that at the last meeting it was decided to form that committee through the MBA; but then meeting as a Council in the Committee of the Whole it was decided to form it under that committee. It would just be for the purpose of the Council Members to look at the progress. As we get closer, he feels it should go under the Municipal Building Authority to consider plans and architects. This is its purpose.

Mr. Stam informed the group that a meeting was scheduled for the MBA to meet a year from the current time. If the Trustees of the MBA need additional meetings they can be added. Mr. Nakamura confirmed that.

As part of the City Hall Committee with the progress that has been made, Mr. Stam said that he feels the time will come shortly when they will want to make a recommendation to the MBA.

Mr. Stam, as the new Chair for the MBA, will have the authority to call that meeting.

Mr. Nakamura said that in regards to the MBA, everything does not need to roll over to that entity. It is an option for financing but the discussions can continue and once the Council is prepared to use it for bonding, if the Council happens to use it that way, then at that time the MBA should be prepared to enter into a lease with the City and begin construction. The committee and City Council should consider that as one option for financing.

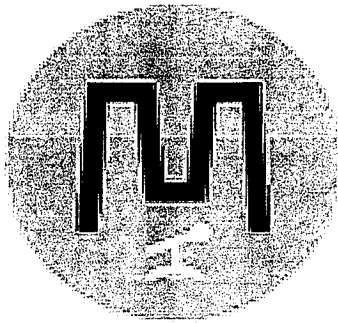
Mr. Stam pointed out, that in light of what was read about the authority of the MBA, when the Committee is to the point of selecting a contractor or architect, it is the authority of the MBA to do that.

Mr. Shaver said that according to Mr. Nakamura the Council has that as an option, not that it should or must go that direction. The New City Hall Committee was formed specifically for looking at a new city hall under the Committee of the Whole. Should the Council get to the point, with a report from that committee, it can be decided to create it under the MBA as a source for bonding. That may depend on the recommendation from the New City Hall Committee according to the land used, construction and financing. Then the Council can decide if it wants to do it under the MBA or continue going forward. Mr. Zollinger and Mr. Nakamura could advise the Council at that time on financing.

Mr. Nakamura feels that the architectural expenses can be funded separately and apart from the bond that would be used for construction of the building. He would not want to move everything into the MBA until the decision was made to go that direction. A lease and security on the bond would be on the building itself. He advises that the Committee go forward with decisions made about utilizing the MBA, leasing from them and with financial advisors recommending that the bond is not too high, then that would be the time to move it into the MBA. He does not want the City to tie its hands by going another direction.

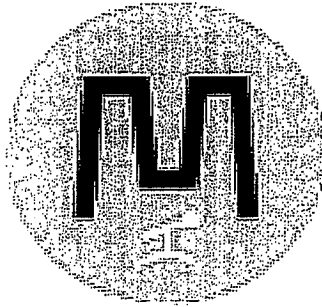
With that clarification, Mr. Shaver adjourned the Municipal Building Authority meeting at 6:28 p.m.

Janet M. Lopez
Council Administrator



MURRAY
CITY COUNCIL

Committee of the Whole



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.)
EMPLOYEE OF THE MONTH RECOGNITION

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 December 11, 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.)
\$1,000 per Year

5. **RELATED DOCUMENTS:** (Attach and describe all accompanying exhibits, minutes, maps, plats, etc.)
Included are list of expenses, employees per department, monthly department honoree, recognition submission form.

6. **REQUESTOR:**

Name: Brett Hales

Title: Council Member District 5

Presenter: same

Title: same

Agency: Murray City Council

Phone: 801-718-6666

Date: November 14, 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:

Date:

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

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

Recommendation: _____

9. **NOTES:** If this program is approved by the Council Mr. Hales would like to begin in January of 2013 and carry on throughout the year and subsequent years.

Proposed Expenses for the Employee of the Month Recognition.

Updated 11.14.12

| | | | |
|----------------------------|-----------|---|-------|
| Plaque from Joe's Trophies | one time | | \$125 |
| Monthly name inscribed | \$6 x 12 | = | \$96 |
| Monthly Gift Card | \$50 x 12 | = | \$600 |
| Total Annual Expense | | | \$996 |

We have \$28,577 left in our Consultant Services line item that can be transferred to the Miscellaneous line item account for these expenses on the Employee Recognition.

Employee of the Month Recognition

ADS 2

| | | |
|---------------------|----|-----------|
| Community Dev | 8 | |
| Customer Ser/Treas | 10 | |
| Recorder | 4 | |
| GIS/IT | 10 | |
| Building Inspection | 9 | |
| Total | | 43 |

| | | |
|-----------------|----|-----------|
| Attorney | 9 | |
| Court | 12 | |
| Total | | 21 |

| | | |
|---------------|--|-----------|
| Police | | |
| Total | | 91 |

| | | |
|--------------|--|-----------|
| Fire | | |
| Total | | 62 |

| | | |
|------------------------|---|-----------|
| Library | 9 | |
| Human Resources | 4 | |
| Finance | 5 | |
| Total | | 18 |

| | | |
|------------------------|----|-----------|
| Public Services | | |
| Streets | 34 | |
| Fleet | 4 | |
| Water | 16 | |
| Waste Water | 8 | |
| Storm Water | 7 | |
| Subtotal | | 69 |

| | | |
|-----------------|----|------------|
| Parks & Rec | 33 | |
| Golf Course | 8 | |
| Subtotal | | 41 |
| Total | | 110 |

| | | |
|--------------|--|-----------|
| Power | | |
| Total | | 52 |

EMPLOYEE OF THE MONTH RECOGNITION

PLEASE SUBMIT YOUR HONOREE TO THE COUNCIL OFFICE BY THE FIRST OF THE MONTH LISTED.

2013

| MONTH | DEPARTMENT |
|-----------|---|
| January | Administrative & Dev Services – Tim Tingey |
| February | Police – Pete Fondaco |
| March | Fire – Gil Rodriguez |
| April | Public Services – Doug Hill |
| May | Power – Blaine Haacke |
| June | Attorney & Courts – Frank Nakamura |
| July | Library, HR & Finance – Please coordinate |
| August | ADS – Tim Tingey (or could do MCEA instead) |
| September | Police – Pete Fondaco |
| October | Fire – Gil Rodriguez |
| November | Public Services – Doug Hill |
| December | Power – Blaine Haacke |

EMPLOYEE OF THE MONTH RECOGNITION

DEPARTMENT:

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NAME:

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DIVISION AND JOB TITLE:

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YEARS OF SERVICE:

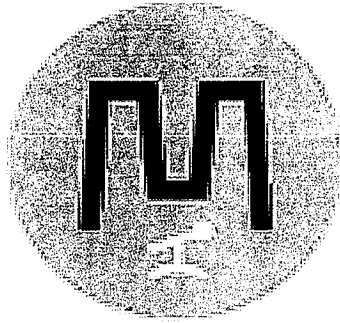
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REASON FOR RECOGNITION:

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COUNCIL USE:

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| MONTH/YEAR HONORED |
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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.)

LOWEST RESPONSIVE RESPONSIBLE BIDDER DISCUSSION

2. **KEY PERFORMANCE AREA:** (Please explain how request relates to Strategic Plan Key Performance Areas.)
Well maintained, planned and protected infrastructure and assets.

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

☐ Council Meeting OR ☒ Committee of the Whole

☒ Date requested December 4, 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.)

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

Two proposed ordinances prepared by the Attorney's Office are included.

6. **REQUESTOR:**

Name: Dave Nicponski

Title: City Council Member

Presenter: Same

Title: Same

Agency: Murray City Council

Phone: 801-913-3283

Date: November 21, 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:

Date:

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

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

Recommendation: _____

9. **NOTES:** Dale Cox, AFL-CIO, will be present to answer questions during the discussion.



February 24, 2012



ATTORNEY-CLIENT COMMUNICATION

MEMORANDUM

TO: Murray City Council

FROM: Frank M. Nakamura, City Attorney 
G.L. Critchfield, Deputy City Attorney 

Cc: Daniel C. Snarr, Mayor
Jan Wells, Chief of Staff

DATE: October 16, 2012

RE: Proposed Ordinance Relating to "Lowest Responsive Responsible Bidder" Criteria

Background

Following a Council Initiative Workshop (CIW), you requested us to draft a proposed ordinance¹ to require private contractors who bid competitively on building improvement or public works projects to have and maintain certain business practices.² The ordinance requires the City to evaluate these business practices. Two other cities in the State of Utah have imposed the same requirements listed in the proposed ordinance.³

Discussion

The City is legally obligated to award contracts in a way that best utilizes taxpayer dollars. In projects where the City undertakes either building improvements or public works construction, and where the estimated cost will exceed a defined "bid limit", the City is required to award the contract through competitive bidding. The "lowest responsive responsible bidder" is to be awarded the contract.⁴ State law includes in its definition of "lowest responsive responsible bidder" the following factors (*italics and underlines added*) that must be evaluated:

¹ The ordinance is attached to this Memorandum.

² These business practices include that a bidder (1) offers health insurance to its employees and their dependents, (2) has a drug and alcohol testing policy, (3) recruits veterans, (4) provides job training for its employees, (5) has a safety program and (6) maintains a non-discrimination policy.

³ Taylorsville imposes these by executive order and Salt Lake City by ordinance. We are unaware of any other cities in Utah who have added the same requirements. This ordinance would presumably, therefore, make the City the third Utah municipality to adopt these requirements.

⁴ Utah Code Ann. § 11-39-103.

(10) "Lowest responsive responsible bidder" means a prime contractor who:

- (b) is the lowest bidder that satisfies the local entity's criteria relating to financial strength, past performance, integrity, reliability, and other factors that the local entity uses to assess the ability of a bidder to perform fully and in good faith the contract requirements;⁵

State law does not impose the added requirements of the proposed ordinance. What state law does require is that the City use criteria to evaluate each bidder "relating to financial strength, past performance, integrity, reliability, and other factors that the local entity uses to assess the ability of a bidder to perform fully and in good faith the contract requirements."⁶ Several of the criterion seem straightforward, namely, financial strength, past performance, integrity, and reliability. What is not clear is what "other criteria" the City may use to evaluate bids.

SUFFICIENT CONNECTION BETWEEN NEW FACTORS AND ABILITY TO PERFORM

The proposed ordinance introduces a new set of additional factors for City contracts. Although the federal government imposes similar requirements when federal funds are used, we are not aware of a time when the City has imposed these requirements on private contractors when City funds are used.

Undoubtedly it is important for the City to ensure that City projects are timely and properly constructed. It is likewise important to use taxpayer funds wisely and in accordance with state law. And although it is commendable for employers to have and maintain all of the additional factors found in the proposed ordinance, the Council must decide whether there is sufficient connection between the additional factors and a

⁵ The full definition of "lowest responsive responsible bidder" is found at Utah Code Ann. § 11-39-101(10).

(10) "Lowest responsive responsible bidder" means a prime contractor who:

- (a) has submitted a bid in compliance with the invitation to bid and within the requirements of the plans and specifications for the building improvement or public works project;
- (b) is the lowest bidder that satisfies the local entity's criteria relating to financial strength, past performance, integrity, reliability, and other factors that the local entity uses to assess the ability of a bidder to perform fully and in good faith the contract requirements;
- (c) has furnished a bid bond or equivalent in money as a condition to the award of a prime contract; and
- (d) furnishes a payment and performance bond as required by law.

⁶ See Utah Code Ann. § 11-39-101(10)(b).

contractor's ability to perform.⁷ Several additional questions must also be addressed. When the City enacts legislation, it must show a nexus (connection) between the enacted mandate and a legitimate governmental interest. In procurement, the City's governmental interest is to ensure that the contracted work is performed timely, fully and of the highest quality. There is a question as to whether the added factors, although commendable, promote the City's governmental interest.

PREEMPTION

The additional criteria are nationwide concerns. Does the City have the authority to carve out a small geographical area (the City limits) in which to impose these criteria or is the City preempted by the federal government? For example, the Affordable Health Care Act imposes upon certain employers the duty to offer health care coverage. Does the Affordable Health Care Act preempt the City from requiring bidders to offer health care coverage to their employees?

Also, are the new factors likewise preempted by the State? State law does not require the additional factors found in the proposed ordinance. The City will have to determine whether it has the authority to impose the added factors when state laws do not include these factors.

MEETING THE CRITERIA

Will the added factors eliminate small contractor businesses who may be inclined not to bid on projects? It would seem that large contractors will more likely comply with the added criteria. Could this make a difference in the competitive bidding process and outcome?

ENFORCEMENT

If the proposed ordinance is adopted, the City is faced with the question of how to enforce the ordinance. How far must the City investigate to determine whether a contractor is implementing its health insurance offer? What if the City determines half way through the project that the drug and alcohol testing policy, veterans recruitment, training or safety programs are not as strict as the City ordinance requires? And how would the City discover this? There are several enforcement issues raised by the new factors.

As you evaluate the proposed ordinance feel free to contact our office with any questions.

⁷ Clearly, the criteria specifically enumerated in state law are aimed at a contractor's ability to perform. See Utah Code Ann. § 11-39-101(10)(a)-(d).

ORDINANCE NO. _____

AN ORDINANCE ENACTING SECTION 3.10.205 OF THE MURRAY CITY MUNICIPAL CODE RELATING TO EVALUATING THE LOWEST RESPONSIVE RESPONSIBLE BIDDER FOR BUILDING IMPROVEMENT AND PUBLIC WORKS PROJECTS.

BE IT ORDAINED BY THE MURRAY CITY MUNICIPAL COUNCIL AS FOLLOWS:

Section 1. Purpose. The purpose of this Ordinance is to enact Section 3.10.205 of the Murray City Municipal Code relating to evaluating the lowest responsive responsible bidder for building improvement and public works projects.

Section 2. Enactment. Section 3.10.205 of the Murray City Municipal Code is hereby enacted to read as follows:

3.10.205: BUILDING IMPROVEMENT AND PUBLIC WORKS PROJECTS

- A. Findings: Pursuant to Utah Code Ann. § 11-39-101, *et seq.*, a local entity intending to undertake an entity funded building improvement or public works project must request bids if the estimated cost of the project exceeds a defined amount known as the "bid limit." If the local entity determines to proceed with the building improvement or public works project, then the local entity must enter into a contract for the completion of the building improvement or public works project with the lowest responsive responsible bidder. In order to assist in the determination of the lowest responsive responsible bidder the local entity may establish criteria relating to financial strength, past performance, integrity, reliability, and other factors to assess the ability of the bidder to perform fully and in good faith the contract requirements. The Council finds adoption of this ordinance reasonably furthers the health, safety, and general welfare of the citizens of the City.
- B. Purpose: The purpose of this ordinance is to protect the health, safety and welfare of the City and its inhabitants by establishing criteria to assist the City in assessing the ability of bidders to perform fully and in good faith contract requirements relating to building improvement or public works projects.

- C. Definitions: For purposes of this section the following definitions shall apply:

BID LIMIT: means

- (1) for a building improvement:
 - (a) for the year 2003, \$40,000; and
 - (b) for each year after 2003, the amount of the bid limit for the previous year, plus an amount calculated by multiplying the amount of the bid limit for the previous year by the lesser of 3% or the actual percent change in the Consumer Price Index during the previous calendar year; and
- (2) for a public works project:
 - (a) for the year 2003, \$125,000; and
 - (b) for each year after 2003, the amount of the bid limit for the previous year, plus an amount calculated by multiplying the amount of the bid limit for the previous year by the lesser of 3% or the actual percent change in the Consumer Price Index during the previous calendar year.

CONTRACTOR: a person or entity who is or may be awarded a construction contract for a building improvement or a public works project.

COVERED EMPLOYEE: an individual who provides part-time or full-time services directly related to a design or construction contract for a contractor or subcontractor, including but not limited to an individual in a safety sensitive position such as a design position responsible for the safety of a building improvement or public works project.

DRUG AND ALCOHOL TESTING POLICY: A policy under which a contractor or subcontractor tests a covered individual to establish, maintain, or enforce a prohibition of:

1. The manufacture, distribution, dispensing, possession, or use of drugs or alcohol, except the medically prescribed possession and use of a drug, and
2. The impairment of judgment or physical abilities due to the use of drugs or alcohol.

HEALTH BENEFIT PLAN: An insurance policy that provides health care coverage, including major medical expenses, or that is offered as a substitute for hospital or medical expense insurance, such as a hospital confinement indemnity or limited benefit plan. A health benefit plan does not include an insurance policy that provides benefits solely for accidents, dental, income replacement, long-term care, a Medicare supplement, a specific disease, vision, or a short-term limited duration where it is offered and marketed as a supplement health insurance.

LOWEST REPONSIVE RESPONSIBLE BIDDER: A prime contractor who:

1. Has submitted a bid in compliance with an invitation to bid and within the requirements of the plans and specifications for a building improvement or public works project;
2. Is the lowest bidder that satisfies the requirements of this chapter relating to financial strength, past performance, integrity, reliability, and other factors used to assess the ability of a bidder to perform fully and in good faith the contract requirements;
3. Has furnished a bid bond or equivalent money as a condition to the award of a prime contract; and
4. Furnishes a payment and performance bond as required by law.

QUALIFIED HEALTH INSURANCE COVERAGE: At the time a contract is entered into or renewed:

1. A health benefit plan (not including dental coverage) and employer contribution level with a combined actuarial value at least equivalent to the combined actuarial value of the benchmark plan determined by the Children's Health Insurance Program under § 26-40-106(2)(a), Utah Code Annotated, as amended or its successor, and a contribution level of fifty percent (50%) of the premiums for the employee and the dependents of the employee who reside or work in the State under which:
 - a. The employer pays at least fifty percent (50%) of the premium for the employee and the dependents of the employee; and

- b. For purposes of calculating actuarial equivalency under this provision, rather than benchmark plan deductibles and the benchmark plan out-of-pocket maximum based on income levels:
 - (i) The annual deductible is one thousand dollars (\$1,000) per individual and three thousand dollars (\$3,000) per family; and
 - (ii) The annual out-of-pocket maximum is three thousand dollars (\$3,000) per individual and nine thousand dollars (\$9,000) per family; or
- 2. A federally qualified, high deductible health plan (not including dental coverage) that at a minimum has a deductible which is either:
 - a. The lowest deductible permitted for a federally qualified, high-deductible plan; or
 - b. A deductible that is higher than the lowest deductible permitted for a federally qualified, high-deductible plan, but includes an employer contribution to a health savings account in a dollar amount at least equal to the dollar amount difference between the lowest deductible permitted for a federally qualified, high-deductible plan and the deductible for an employer-offered federal qualified, high-deductible plan; and
 - (i) Has an out-of-pocket maximum that does not exceed three (3) times the amount of the annual deductible; and
 - (ii) The employer pays sixty percent (60%) of the premium for the employee and the dependents of the employee who work or reside in the State of Utah.

RANDOM TESTING: Periodic examination of a covered employee, selected on the basis of chance, for drugs and alcohol in accordance with a drug and alcohol testing policy.

SUBCONTRACTOR: Any person or entity who may be awarded a contract with contractor or another subcontractor to provide services or labor for the construction of a building improvement or public works project. "Subcontractor" includes a trade, contractor, or specialty

contractor but does not include a supplier who provides only materials, equipment, or supplies to a contractor or subcontractor.

VETERAN: An individual who:

1. Has served on active duty in the armed forces of the United States for more than one hundred eighty (180) consecutive days, or
2. Was a member of a reserve component who served in a campaign or expedition for which a campaign medal has been authorized and who has been separated or retired under honorable conditions, or
3. Any individual incurring an actual service-related injury or disability in the line of duty, whether or not the person completed one hundred eighty (180) consecutive days of active duty.

D. Pursuant to § 11-39-101 *et seq.*, Utah Code Annotated, or its successor:

1. If the City intends to undertake a building improvement or public works project paid for by the City, and
 - a. The estimated cost of the project exceeds the bid limit (as defined therein); and
 - b. The city elects to proceed with the project;
2. Then the City shall enter into a contract for the completion of the project with the lowest responsive responsible bidder.

- E. 1. In determining the lowest responsive responsible bidder for any project exceeding the bid limit, as determined by a city engineer's estimate, the procurement official shall evaluate the following factors to determine whether the contractor and every subcontractor, if any, has demonstrated to the City's satisfaction that they have and will maintain:
- a. An offer of qualified health insurance available to a contractor's and subcontractor's covered employees and the employee's dependents.
 - b. A drug and alcohol testing policy during the period of the contract that applies to all covered employees employed or hired by the contractor or any

subcontractor and require covered employees to submit to random testing under the drug and alcohol testing policy;

- c. A program to actively recruit and/or employ veterans;
 - d. A job training program, such as, by way of example and not limitation, a federal, state, and/or city recognized job training program;
 - e. A safety program; and
 - f. A formal policy of non-discrimination as required by federal, state, and local law.
2. A bidder who has and will maintain an offer of qualified health insurance, as set forth in Subsection E.1.a. whose bid is not more than ten percent (10%) higher than another bidder for the same project who does not have such insurance, shall be deemed the more responsive bidder.
3. A contractor and any subcontractor who cannot demonstrate compliance with the factors in Subsections E.1.b. to E.1.f. shall be deemed nonresponsive and shall be disqualified.

Section 3. Effective date. This Ordinance shall take effect upon first publication.

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

MURRAY CITY MUNICIPAL COUNCIL

James A. Brass, Chair

ATTEST:

Carol Heales
City Recorder

Transmitted to the Office of the Mayor of Murray City on this _____ day
of _____, 2012.

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



MURRAY CITY CORPORATION
CITY ATTORNEY'S OFFICE

801-264-2640 FAX 801-264-2641

ATTORNEY-CLIENT COMMUNICATION

MEMORANDUM

TO: Murray City Council

FROM: Frank M. Nakamura, City Attorney
G.L. Critchfield, Deputy City Attorney

Cc: Daniel C. Snarr, Mayor
Jan Wells, Chief of Staff

DATE: November 2, 2012

RE: Follow Up to October 16, 2012 Memorandum: Proposed Ordinance
Relating to "Lowest Responsive Responsible Bidder" Criteria

BACKGROUND

In a Memorandum to the Council, dated October 16, 2012, we presented an amendment to the City's procurement rules.¹ The amendment imposed additional requirements on private contractors who bid on certain construction contracts.² Specifically, contractors would be required to have and maintain certain business practices ("City criteria").³ A bidder who did not have most of those practices would not be able to compete in the bid.

We have attached a second proposed ordinance which includes the additional criteria but does not make them mandatory to bid. Instead, they are applied to bids as "preferences."⁴ The lowest bidder with the most preferences would be awarded the contract.

¹ This amendment was prompted by the Council following a Council Initiative Workshop.

² These contracts involve building improvement or public works projects that are city funded and whose estimated costs exceed the statutorily-defined "bid limit." (See UCA § 11-39-101 *et. seq.*)

³ Those practices include (1) offering health insurance to employees and their dependents, (2) having a drug and alcohol testing policy, (3) recruiting veterans, (4) providing job training for employees, (5) having a safety program and (6) maintaining a non-discrimination policy.

⁴ This second proposed ordinance is attached as Exhibit A. For your convenience we have attached the first proposed ordinance as Exhibit B for your comparison. As we mentioned in the October 16, 2012 Memorandum, the first proposed ordinance was patterned after a Taylorsville City executive order and a Salt Lake City ordinance. The second retains much of the first ordinance, but includes the "preference" aspect of a Salt Lake County policy and ordinance.

DISCUSSION

By way of reminder, state law requires competitive bidding in construction contracts. In order to ensure that the City obtain good quality at the lowest price, the state has imposed the requirement that the winning bid be not just the "lowest" bid but the lowest "responsible" bid.⁵ The "responsibility" requirement is to ensure that a bidder is capable of performing the contract.

The additional City criteria are substantially different than the State's existing criteria. Existing criteria address whether the bidder is capable of performing. The City criteria ask whether the bidder is socially responsible. Social responsibility is not addressed by the State. Consequently, the issues raised in the first memorandum remain even when applied as preferences. The questions of (1) proper connection (or nexus) between the added criteria and ability to perform, (2) preemption, (3) ability to meet the criteria (does this unlawfully restrict competition), and (4) enforcement, all discussed in the October 16, 2012 memorandum, must still be answered.

A legal challenge⁶ would most likely come from a losing bidder who meets all of the State criteria (i.e., the bidder is capable of performing the contract) but fails to meet all City criteria. This would be especially true if the losing bidder had previously performed similar contracts for the City or for other Utah cities.

Perhaps the most critical point in surviving a legal challenge to the added City criteria, whether they be applied as mandatory or as preferences, is to determine *before* they are enacted, whether there is data that could support constitutionally legitimate governmental interests. This data should be gathered and analyzed *before* enacting the criteria. Using data, the Council can then carefully determine whether the City criteria produce either (1) savings in the long run, which justify a higher up-front expenditure of public funds, or (2) a break-even point, or something very close to it, which may be used to attempt to justify the public policy choice of spending city funds using the City criteria.

As you consider the questions raised by the City criteria, we encourage your questions and comments.

⁵ The term is "lowest responsive responsible bid." "Responsiveness" refers to the bid, itself. "Responsible" refers to the bidder and addresses the capability of a bidder to perform the contract.

⁶ An objection could come from the legislature in the form of new legislation or from a lawsuit filed against the City.

EXHIBIT A

ORDINANCE NO. _____

AN ORDINANCE AMENDING SECTION 3.10.370 OF THE MURRAY CITY MUNICIPAL CODE RELATING TO EVALUATING THE LOWEST RESPONSIVE RESPONSIBLE BIDDER FOR BUILDING IMPROVEMENT AND PUBLIC WORKS PROJECTS.

PREAMBLE

Pursuant to Utah Code Ann. § 11-39-101, *et seq.*, when the City intends to undertake, and pay for, a building improvement or public works project, the City must request bids if the estimated cost of the project exceeds a defined amount known as the "bid limit." If the City determines to proceed with the building improvement or public works project, then the City must enter into a contract for the completion of the building improvement or public works project with the lowest responsive responsible bidder. In order to assist in the determination of the lowest responsive responsible bidder the City may establish criteria relating to financial strength, past performance, integrity, reliability, and other factors to assess the ability of the bidder to perform fully and in good faith the contract requirements. The City desires to establish certain criteria, in addition to existing criteria, in order to encourage responsible business practices and social responsibility. A public hearing has been held concerning these additional criteria pursuant to public notice provided according to law. The Council finds adoption of this ordinance reasonably furthers the health, safety, and general welfare of the citizens of the City by encouraging responsible business practices and in assisting the City in determining the lowest responsive and responsible bidder.

BE IT ORDAINED BY THE MURRAY CITY MUNICIPAL COUNCIL AS FOLLOWS:

Section 1. Purpose. The purpose of this Ordinance is to amend Section 3.10.370 of the Murray City Municipal Code relating to evaluating the lowest responsive responsible bidder for building improvement and public works projects.

Section 2. Amendment. Section 3.10.370 of the Murray City Municipal Code shall be amended to read as follows:

3.10.370: COST ESTIMATE FOR BUILDING IMPROVEMENTS AND PUBLIC WORKS PROJECTS:

- A. Definitions: For purposes of this section the following definitions shall apply:

BID LIMIT: has the same meaning as in Section 3.10.030.

CONTRACTOR: a person or entity who is or may be awarded a construction contract for a building improvement or a public works project.

COVERED EMPLOYEE: an individual who provides part-time or full-time services directly related to a design or construction contract for a contractor or subcontractor, including but not limited to an individual in a safety sensitive position such as a design position responsible for the safety of a building improvement or public works project.

DRUG AND ALCOHOL TESTING POLICY: A policy under which a contractor or subcontractor tests a covered individual to establish, maintain, or enforce a prohibition of:

1. The manufacture, distribution, dispensing, possession, or use of drugs or alcohol, except the medically prescribed possession and use of a drug, and
2. The impairment of judgment or physical abilities due to the use of drugs or alcohol.

HEALTH BENEFIT PLAN: An insurance policy that provides health care coverage, including major medical expenses, or that is offered as a substitute for hospital or medical expense insurance, such as a hospital confinement indemnity or limited benefit plan. A health benefit plan does not include an insurance policy that provides benefits solely for accidents, dental, income replacement, long-term care, a Medicare supplement, a specific disease, vision, or a short-term limited duration where it is offered and marketed as a supplement health insurance.

LOWEST REPONSIVE RESPONSIBLE BIDDER: has the same meaning as in Section 3.10.030.

QUALIFIED HEALTH INSURANCE COVERAGE: At the time a contract is entered into or renewed:

1. A health benefit plan (not including dental coverage) and employer contribution level with a combined actuarial value at least equivalent to the combined actuarial value of the benchmark plan determined by the Children's Health Insurance Program under § 26-40-106(2)(a), Utah Code Annotated, as amended or its successor, and a contribution level of fifty percent (50%) of the premiums for the employee

and the dependents of the employee who reside or work in the State under which:

- a. The employer pays at least fifty percent (50%) of the premium for the employee and the dependents of the employee; and
 - b. For purposes of calculating actuarial equivalency under this provision, rather than benchmark plan deductibles and the benchmark plan out-of-pocket maximum based on income levels:
 - (i) The annual deductible is one thousand dollars (\$1,000) per individual and three thousand dollars (\$3,000) per family; and
 - (ii) The annual out-of-pocket maximum is three thousand dollars (\$3,000) per individual and nine thousand dollars (\$9,000) per family; or
2. A federally qualified, high deductible health plan (not including dental coverage) that at a minimum has a deductible which is either:
- a. The lowest deductible permitted for a federally qualified, high-deductible plan; or
 - b. A deductible that is higher than the lowest deductible permitted for a federally qualified, high-deductible plan, but includes an employer contribution to a health savings account in a dollar amount at least equal to the dollar amount difference between the lowest deductible permitted for a federally qualified, high-deductible plan and the deductible for an employer-offered federal qualified, high-deductible plan; and
 - (i) Has an out-of-pocket maximum that does not exceed three (3) times the amount of the annual deductible; and
 - (ii) The employer pays sixty percent (60%) of the premium for the employee and the dependents of the employee who work or reside in the State of Utah.

RANDOM TESTING: Periodic examination of a covered employee, selected on the basis of chance, for drugs and alcohol in accordance with a drug and alcohol testing policy.

SUBCONTRACTOR: Any person or entity who may be awarded a contract with contractor or another subcontractor to provide services or labor for the construction of a building improvement or public works project. "Subcontractor" includes a trade, contractor, or specialty contractor but does not include a supplier who provides only materials, equipment, or supplies to a contractor or subcontractor.

VETERAN: An individual who:

1. Has served on active duty in the armed forces of the United States for more than one hundred eighty (180) consecutive days, or
2. Was a member of a reserve component who served in a campaign or expedition for which a campaign medal has been authorized and who has been separated or retired under honorable conditions, or
3. Any individual incurring an actual service-related injury or disability in the line of duty, whether or not the person completed one hundred eighty (180) consecutive days of active duty.

AB. Cost Estimate Required: The purchasing agent, or designee, shall require any city department intending to undertake a building improvement or public works project to prepare:

1. Plans and specifications for the building improvement or public works project; and
2. An estimate of the cost of the building improvement or public works project.

BC. When Bid Limit Exceeded: If the cost estimate required under paragraph B of this section exceeds the bid limit specified in subsection 3.10.030D of this chapter, the purchasing agent, or designee, shall require the building improvement or public works project to be procured according to the requirements of Utah Code Annotated section 11-39-102~~3~~, as amended.

D. Where Project is Paid for by City: Where the project will be paid for by the City, the procurement official shall determine the lowest responsive

responsible bidder by applying, in addition to the criteria in Section 3.10.200, a preference system to determine whether the contractor and every subcontractor, if any, has demonstrated to the City's satisfaction that they have and will maintain:

1. An offer of qualified health insurance available to a contractor's and subcontractor's covered employees and the employee's dependents.
 2. A drug and alcohol testing policy during the period of the contract that applies to all covered employees employed or hired by the contractor or any subcontractor and require covered employees to submit to random testing under the drug and alcohol testing policy;
 3. A program to actively recruit and/or employ veterans;
 4. A job training program, such as, by way of example and not limitation, a federal, state, and/or city recognized job training program;
 5. A safety program; and
 6. A formal policy of non-discrimination as required by federal, state, and local law.
- E. Applying Preference System: The procurement official shall apply the Preference System under subsection 3.10.370(D) by making an award to the responsive and responsible bidder that qualifies for the most Preferences, if the qualifying bidder's bid is equal to or less than 104% of the lowest responsive and responsible bid or within \$50,000, whichever value is less. If multiple vendors qualify for the same number of Preferences, the award shall be made to the lowest responsive and responsible bid among them.

Section 3. Effective date. This Ordinance shall take effect upon first publication.

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

MURRAY CITY MUNICIPAL COUNCIL

James A. Brass, Chair

ATTEST:

Carol Heales
City Recorder

Transmitted to the Office of the Mayor of Murray City on this _____ day
of _____, 2012.

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

EXHIBIT B

ORDINANCE NO. _____

AN ORDINANCE ENACTING SECTION 3.10.205 OF THE MURRAY CITY MUNICIPAL CODE RELATING TO EVALUATING THE LOWEST RESPONSIVE RESPONSIBLE BIDDER FOR BUILDING IMPROVEMENT AND PUBLIC WORKS PROJECTS.

BE IT ORDAINED BY THE MURRAY CITY MUNICIPAL COUNCIL AS FOLLOWS:

Section 1. Purpose. The purpose of this Ordinance is to enact Section 3.10.205 of the Murray City Municipal Code relating to evaluating the lowest responsive responsible bidder for building improvement and public works projects.

Section 2. Enactment. Section 3.10.205 of the Murray City Municipal Code is hereby enacted to read as follows:

3.10.205: BUILDING IMPROVEMENT AND PUBLIC WORKS PROJECTS

- A. Findings: Pursuant to Utah Code Ann. § 11-39-101, *et seq.*, a local entity intending to undertake an entity funded building improvement or public works project must request bids if the estimated cost of the project exceeds a defined amount known as the "bid limit." If the local entity determines to proceed with the building improvement or public works project, then the local entity must enter into a contract for the completion of the building improvement or public works project with the lowest responsive responsible bidder. In order to assist in the determination of the lowest responsive responsible bidder the local entity may establish criteria relating to financial strength, past performance, integrity, reliability, and other factors to assess the ability of the bidder to perform fully and in good faith the contract requirements. The Council finds adoption of this ordinance reasonably furthers the health, safety, and general welfare of the citizens of the City.
- B. Purpose: The purpose of this ordinance is to protect the health, safety and welfare of the City and its inhabitants by establishing criteria to assist the City in assessing the ability of bidders to perform fully and in good faith contract requirements relating to building improvement or public works projects.

- C. Definitions: For purposes of this section the following definitions shall apply:

BID LIMIT: means

- (1) for a building improvement:
 - (a) for the year 2003, \$40,000; and
 - (b) for each year after 2003, the amount of the bid limit for the previous year, plus an amount calculated by multiplying the amount of the bid limit for the previous year by the lesser of 3% or the actual percent change in the Consumer Price Index during the previous calendar year; and
- (2) for a public works project:
 - (a) for the year 2003, \$125,000; and
 - (b) for each year after 2003, the amount of the bid limit for the previous year, plus an amount calculated by multiplying the amount of the bid limit for the previous year by the lesser of 3% or the actual percent change in the Consumer Price Index during the previous calendar year.

CONTRACTOR: a person or entity who is or may be awarded a construction contract for a building improvement or a public works project.

COVERED EMPLOYEE: an individual who provides part-time or full-time services directly related to a design or construction contract for a contractor or subcontractor, including but not limited to an individual in a safety sensitive position such as a design position responsible for the safety of a building improvement or public works project.

DRUG AND ALCOHOL TESTING POLICY: A policy under which a contractor or subcontractor tests a covered individual to establish, maintain, or enforce a prohibition of:

1. The manufacture, distribution, dispensing, possession, or use of drugs or alcohol, except the medically prescribed possession and use of a drug, and
2. The impairment of judgment or physical abilities due to the use of drugs or alcohol.

HEALTH BENEFIT PLAN: An insurance policy that provides health care coverage, including major medical expenses, or that is offered as a substitute for hospital or medical expense insurance, such as a hospital confinement indemnity or limited benefit plan. A health benefit plan does not include an insurance policy that provides benefits solely for accidents, dental, income replacement, long-term care, a Medicare supplement, a specific disease, vision, or a short-term limited duration where it is offered and marketed as a supplement health insurance.

LOWEST REPONSIVE RESPONSIBLE BIDDER: A prime contractor who:

1. Has submitted a bid in compliance with an invitation to bid and within the requirements of the plans and specifications for a building improvement or public works project;
2. Is the lowest bidder that satisfies the requirements of this chapter relating to financial strength, past performance, integrity, reliability, and other factors used to assess the ability of a bidder to perform fully and in good faith the contract requirements;
3. Has furnished a bid bond or equivalent money as a condition to the award of a prime contract; and
4. Furnishes a payment and performance bond as required by law.

QUALIFIED HEALTH INSURANCE COVERAGE: At the time a contract is entered into or renewed:

1. A health benefit plan (not including dental coverage) and employer contribution level with a combined actuarial value at least equivalent to the combined actuarial value of the benchmark plan determined by the Children's Health Insurance Program under § 26-40-106(2)(a), Utah Code Annotated, as amended or its successor, and a contribution level of fifty percent (50%) of the premiums for the employee and the dependents of the employee who reside or work in the State under which:

- a. The employer pays at least fifty percent (50%) of the premium for the employee and the dependents of the employee; and

- b. For purposes of calculating actuarial equivalency under this provision, rather than benchmark plan deductibles and the benchmark plan out-of-pocket maximum based on income levels:
 - (i) The annual deductible is one thousand dollars (\$1,000) per individual and three thousand dollars (\$3,000) per family; and
 - (ii) The annual out-of-pocket maximum is three thousand dollars (\$3,000) per individual and nine thousand dollars (\$9,000) per family; or
- 2. A federally qualified, high deductible health plan (not including dental coverage) that at a minimum has a deductible which is either:
 - a. The lowest deductible permitted for a federally qualified, high-deductible plan; or
 - b. A deductible that is higher than the lowest deductible permitted for a federally qualified, high-deductible plan, but includes an employer contribution to a health savings account in a dollar amount at least equal to the dollar amount difference between the lowest deductible permitted for a federally qualified, high-deductible plan and the deductible for an employer-offered federal qualified, high-deductible plan; and
 - (i) Has an out-of-pocket maximum that does not exceed three (3) times the amount of the annual deductible; and
 - (ii) The employer pays sixty percent (60%) of the premium for the employee and the dependents of the employee who work or reside in the State of Utah.

RANDOM TESTING: Periodic examination of a covered employee, selected on the basis of chance, for drugs and alcohol in accordance with a drug and alcohol testing policy.

SUBCONTRACTOR: Any person or entity who may be awarded a contract with contractor or another subcontractor to provide services or labor for the construction of a building improvement or public works project. "Subcontractor" includes a trade, contractor, or specialty

contractor but does not include a supplier who provides only materials, equipment, or supplies to a contractor or subcontractor.

VETERAN: An individual who:

1. Has served on active duty in the armed forces of the United States for more than one hundred eighty (180) consecutive days, or
2. Was a member of a reserve component who served in a campaign or expedition for which a campaign medal has been authorized and who has been separated or retired under honorable conditions, or
3. Any individual incurring an actual service-related injury or disability in the line of duty, whether or not the person completed one hundred eighty (180) consecutive days of active duty.

D. Pursuant to § 11-39-101 *et seq.*, Utah Code Annotated, or its successor:

1. If the City intends to undertake a building improvement or public works project paid for by the City, and
 - a. The estimated cost of the project exceeds the bid limit (as defined therein); and
 - b. The city elects to proceed with the project;
2. Then the City shall enter into a contract for the completion of the project with the lowest responsive responsible bidder.

E. 1. In determining the lowest responsive responsible bidder for any project exceeding the bid limit, as determined by a city engineer's estimate, the procurement official shall evaluate the following factors to determine whether the contractor and every subcontractor, if any, has demonstrated to the City's satisfaction that they have and will maintain:

- a. An offer of qualified health insurance available to a contractor's and subcontractor's covered employees and the employee's dependents.
- b. A drug and alcohol testing policy during the period of the contract that applies to all covered employees employed or hired by the contractor or any

subcontractor and require covered employees to submit to random testing under the drug and alcohol testing policy;

- c. A program to actively recruit and/or employ veterans;
 - d. A job training program, such as, by way of example and not limitation, a federal, state, and/or city recognized job training program;
 - e. A safety program; and
 - f. A formal policy of non-discrimination as required by federal, state, and local law.
- 2. A bidder who has and will maintain an offer of qualified health insurance, as set forth in Subsection E.1.a. whose bid is not more than ten percent (10%) higher than another bidder for the same project who does not have such insurance, shall be deemed the more responsive bidder.
 - 3. A contractor and any subcontractor who cannot demonstrate compliance with the factors in Subsections E.1.b. to E.1.f. shall be deemed nonresponsive and shall be disqualified.

Section 3. Effective date. This Ordinance shall take effect upon first publication.

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

MURRAY CITY MUNICIPAL COUNCIL

James A. Brass, Chair

ATTEST:

Carol Heales
City Recorder

Transmitted to the Office of the Mayor of Murray City on this _____ day
of _____, 2012.

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



Janet M. Lopez
Council Administrator
801-264-2622

MEMORANDUM

TO: Council Members
FROM: Jan Lopez
DATE: November 30, 2012
REGARDING: **Lowest Responsive Responsible Bidder (LRRB)**

On October 23, 2012 I contacted Pat Kimbro, Executive Assistant to the City Administrator, 801-955-2009, of Taylorsville to inquire about the LRRB Executive Order. She had the following feedback to my questions:

The criterion for the LRRB is included when RFPs are sent out by Taylorsville City.

Have there been any issues or questions regarding the stipulations in the LRRB?

Pat said there had not been any issues or questions regarding the requirements.

Is it a burden to check the qualifications of contractors?

Taylorsville City does not check the contractors to ensure that they meet the criteria. It is assumed that they do, if they respond to the RFP.

Have the minimum criteria eliminated contractors the city used in the past?

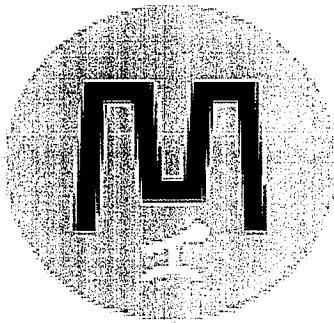
She is not aware that the requirements had eliminated any former contractors.

Had the LRRB raised the cost of projects bid out?

Pat did not feel it had cost the City more on any bids.

Were there any other positive or negative comments on the requirements?

None



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.)

Business License Fee Study Review

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

Welcoming and Thriving Business Climate

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

☐ Council Meeting OR ☒ Committee of the Whole

☒ Date requested 12/4/2012

☒ 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.)

See attached memo

6. REQUESTOR:

Name: Tim Tingey

Title: Director of Administrative and Development Services

Presenter: Same

Title:

Agency: _____

Phone: (801) 264-2680

Date: 11/20/2012

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: [Signature] Date: 11/20/2012

Mayor: [Signature] Date: 11/20/2012

8. COUNCIL STAFF: (For Council use only)

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

Recommendation: _____

9. NOTES:



MURRAY CITY CORPORATION
ADMINISTRATIVE &
DEVELOPMENT SERVICES

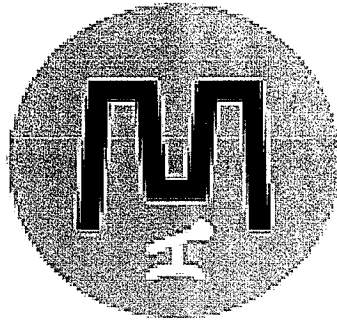
B. Tim Tingey, Director

Building Division
Community & Economic Development
Geographic Information Systems

Information Technology
Recorder Division
Treasurer Division

TO: **Murray City Council**
FROM: **Tim Tingey, Director of Administrative and Development Services**
DATE: **November 20, 2012**
SUBJECT: **Business License Fee Study Review**

Representatives from Lewis, Young, Robertson & Burningham will be present, along with Administrative and Development Services Department staff, to present findings of the recently completed business license fee study.



MURRAY
CITY COUNCIL

Discussion Item #4

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.)

Comprehensive Annual Financial Report Presentation

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 **12/4/2012**

☐ 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) The presentation will be given by Justin and Hansen, Bradshaw, Malmrose & Erickson for 45 minutes

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.)

Memo

6. **REQUESTOR:**

Name: Justin Zollinger

Presenter: Justin Zollinger & Auditors

Agency: Murray City

Date: 10/29/2012

Title: Finance Director

Title: Finance Director

Phone: 801-264-2669

Time: 5:00 PM

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: 10/29/2012

Mayor:



Date: 10/29/2012

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

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

Recommendation: _____

9. **NOTES:**



MURRAY CITY CORPORATION
FINANCE DEPARTMENT

Daniel C Snarr, Mayor
Justin Zollinger, Finance Director
801-264-2669 FAX 801-264-2517

Memo:

To: Murray City Council and Mayor
From: Justin Zollinger, Finance Director
Date: November 20, 2012
Re: Acceptance of Completed FY2011-2012 Audit

The City's outside auditor, Hansen, Bradshaw, Malmrose & Erickson, has completed the independent audit for fiscal year 2011-2012 financial statement. They will present the findings of the audit during the December 4th 2012 Committee of the Whole meeting. I am suggesting that this audit be formally accepted as part of the Council Meeting on that same evening. This acknowledges to the public that the City has complied with Utah State Law by completing an annual audit performed by an outside accounting firm. Attached is the resolution that has been prepared by the City Attorney to formalize the process.

If there are any questions, please call me.

Cc: Jan Wells
Frank Nakamura



MURRAY CITY CORPORATION
FINANCE & ADMINISTRATION

Memo:

To: Frank Nakamura, City Attorney

From: Justin Zöllinger, Finance Director

Date: October 19, 2012

Subject: Yearend Financial Statement Resolutions

As you know the City has prepared its fiscal year 2012 financial statements and had them audited by our independent auditors. The finance department would like to present the financial statements to the City Council on December 4, 2012. This letter is to request the City attorney prepare a resolution to be presented to council for this council meeting. This resolution provides evidence that the City comply with state law.

Adjournment

Council Meeting

6:30 p.m.

Call to Order

Opening Ceremonies:

Pledge of Allegiance

Citizen Comments

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

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 TO ACKNOWLEDGE COMPLETION AND RECEIPT OF THE INDEPENDENT AUDIT FOR FISCAL YEAR 2011-2012 AND ORDER THAT NOTICE BE PUBLISHED PURSUANT TO SECTION 10-6-152 OF THE UTAH CODE.

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 December 4th 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.)
Memos

6. REQUESTOR:

Name: Justin Zollinger

Presenter: Justin Zollinger

Agency: Murray City Corp.

Date: November 20th 2012

Title: Finance Director

Title: Finance Director

Phone: 801-264-2669

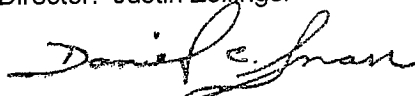
Time:

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: November 20th 2012

Mayor:



Date: November 20th 2012

8. COUNCIL STAFF: (For Council use only)

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

Recommendation: _____

9. NOTES:



MURRAY CITY CORPORATION
FINANCE DEPARTMENT

Daniel C Snarr, Mayor
Justin Zollinger, Finance Director
801-264-2669 FAX 801-264-2517

Memo:

To: Murray City Council and Mayor
From: Justin Zollinger, Finance Director
Date: November 20, 2012
Re: Acceptance of Completed FY2011-2012 Audit

The City's outside auditor, Hansen, Bradshaw, Malmrose & Erickson, has completed the independent audit for fiscal year 2011-2012 financial statement. They will present the findings of the audit during the December 4th 2012 Committee of the Whole meeting. I am suggesting that this audit be formally accepted as part of the Council Meeting on that same evening. This acknowledges to the public that the City has complied with Utah State Law by completing an annual audit performed by an outside accounting firm. Attached is the resolution that has been prepared by the City Attorney to formalize the process.

If there are any questions, please call me.

Cc: Jan Wells
Frank Nakamura



MURRAY CITY CORPORATION
FINANCE & ADMINISTRATION

Memo:

To: Frank Nakamura, City Attorney

From: Justin Zollinger, Finance Director

Date: October 19, 2012

Subject: Yearend Financial Statement Resolutions

As you know the City has prepared its fiscal year 2012 financial statements and had them audited by our independent auditors. The finance department would like to present the financial statements to the City Council on December 4, 2012. This letter is to request the City attorney prepare a resolution to be presented to council for this council meeting. This resolution provides evidence that the City comply with state law.

RESOLUTION _____

ACKNOWLEDGE COMPLETION AND RECEIPT OF THE
INDEPENDENT AUDIT FOR FISCAL YEAR 2011-2012 AND ORDER
THAT NOTICE BE PUBLISHED PURSUANT TO SECTION 10-6-152
OF THE UTAH CODE.

WHEREAS, sections 10-6-151, 51-2a-201 and 51-2a-202 of the Utah Code require the City to have, at least annually, an independent audit of its accounts by a certified public accountant; and

WHEREAS, pursuant to section 10-6-152 of the Utah Code, within ten (10) days following receipt of the independent audit, the City is required to publish notice advising the public that the audit is complete and available for inspection; and

WHEREAS, the City retained Hansen, Bradshaw, Malmrose and Erickson, certified public accountants, to do an independent audit of the City's accounts for fiscal year 2011-2012; and

WHEREAS, Hansen, Bradshaw, Malmrose and Erickson has completed the independent audit of the City's accounts for fiscal year 2011-2012; and

WHEREAS, Hansen, Bradshaw, Malmrose and Erickson has presented the independent audit to the Mayor and Murray City Municipal Council; and

WHEREAS, the Murray City Municipal Council wants to acknowledge receipt of the completed audit and order that notice be published pursuant to section 10-6-152 of the Utah Code.

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

It hereby acknowledges that the independent audit of the City's accounts for fiscal year 2011-2012 has been completed by Hansen, Bradshaw, Malmrose and Erickson and submitted to the Murray City Municipal Council. As required by section 10-6-152 of the Utah Code, the City Recorder is directed to publish notice, advising the public that the independent audit is complete and available for inspection.

PASSED AND APPROVED this 4th day of December, 2012.

MURRAY CITY MUNICIPAL COUNCIL

James A Brass, Chair

ATTEST:

Jennifer Kennedy, City Recorder

New Business 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.)

CONSIDER AN ORDINANCE REPEALING SECTIONS 2.46.110 AND 2.46.120 AND ENACTING CHAPTER 2.47 OF THE MURRAY CITY MUNICIPAL CODE RELATING TO THE MURRAY CITY ETHICS COMMISSION.

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 **DECEMBER 4TH 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.)

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

MEMO AND ORDINANCE

6. REQUESTOR:

Name: Frank Nakamura

Title: City Attorney

Presenter: Frank Nakamura

Title: City Attorney

Agency: Murray City Corp.

Phone: 801-264-2640

Date: November 20th 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: Frank Nakamura

Date: November 20th 2012

Mayor: 

Date: November 20th 2012

8. COUNCIL STAFF: (For Council use only)

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

Recommendation: _____

9. NOTES:

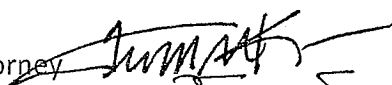



MURRAY CITY CORPORATION
CITY ATTORNEY'S OFFICE

Daniel C. Snarr, Mayor
Frank M. Nakamura, City Attorney
TEL 801-264-2640 FAX 801-264-2641

ATTORNEY-CLIENT COMMUNICATION

MEMORANDUM

TO: Murray City Municipal Council
CC: Daniel C. Snarr, Mayor
FROM: Frank Nakamura, City Attorney 
Briant Farnsworth, Senior City Attorney 
DATE: October 16, 2012
RE: Proposed Creation of Murray City Municipal Ethics Commission

Attached for your review and consideration is a proposed ordinance establishing a City Ethics Commission. In 2012, the Utah State Legislature enacted SB 180 that establishes a States Ethics Commission to review complaints against elected officials alleging violations of the State Ethics Code – Title 10, Chapter 3 of the Utah Code. It also gave cities the option to create their own ethics commission to review such complaints rather than having the States Ethics Commission handle them.

It is unfortunate that the State has determined that it needed to become involved in mandating the creation of ethics commissions. SB 180 creates a system wherein cities are mandated with either creating their own ethics commission or deferring complaints against its elected officials to a state ethics commission

After reviewing the options, the City administration believes it would be in the best interests of the City to create its own ethics commission. The commission would be made up of members appointed by the Mayor with advice and consent of the City Council. The City's elected officials would be able to determine the qualifications of the commission members and designate the terms of appointments, rather than relying on whatever system the State ultimately conceives.

The City, by creating its own ethics commission, resolves a number of potential concerns. The ethics investigations would be kept at a local level, where the greatest interest resides. Members of the commission would be required to be City residents who actually have an interest in the community. The Mayor, with the advice and consent of the Council, would appoint members of the commission. Because the elected officials would be involved in selecting the commission members, it would increase the likelihood of the elected officials honoring and giving legitimacy to the commission's findings.

SB 180 went into effect on September 1, 2012. Thus far, the State has not established an ethics commission. The Administration believes the City needs to move quickly to implement an ethics commission on a local level. Should the City not create its own ethics commission, it would by default be subject to the State Ethics Commission that will eventually be set up.

- No authority for the City exists to remove or sanction an elected official other than through an election.
- A finding that there was an ethical violation of an elected official would be forwarded to the District Attorney for review. The commission has no power to impose punishments on its own.
- The Commission also reviews ethics complaints against City employees. Commission recommendations are referred, for action, to the Mayor or City Council if the employee is employed in the City Council office.
- Detailed explanations of the procedures the Commission is to use when investigating ethics complaints.

We would like to discuss the proposed ordinance at your convenience in Committee of the Whole before it is considered for action at a duly notice Council meeting. Please contact our office should you have any questions or concerns. Thank you.

ORDINANCE NO. _____

AN ORDINANCE REPEALING SECTIONS 2.46.110 AND 2.46.120 AND ENACTING CHAPTER 2.47 OF THE MURRAY CITY MUNICIPAL CODE RELATING TO THE MURRAY CITY ETHICS COMMISSION.

In 2012 the Utah State Legislature passed Senate Bill 180 (SB180), establishing a State Ethics Commission, to review complaints against elected political subdivision officers alleging violations of the Municipal Officers' and Employees Ethics Act, Title 10, Chapter 3, Part 13 of the Utah Code ("the State Ethics Code").

SB180, however, also allows political subdivisions to establish their own ethics review commissions. If the City establishes its own ethics commission, ethic complaints against the City officers and employees alleging violations of the State Ethics Code would be subject to review by the City's Ethics Commission and not by the State's Ethics Commission.

The Murray City Municipal Council believes that it is in the best interest of the City to have a City Ethics Commission to preserve local control over City matters. Under the City's process, an ethics commission of five (5) Members would be appointed by the Mayor with the advice and consent of the City Council. This City Ethics Commission would review and investigate complaints alleging violations by elected City officials, appointees and employees of: Chapter 2.46 of the Murray City Municipal Code, Ethics and Standards of Conduct ("City Ethics Code") and the State Ethics Code. This allows the City's elected, appointed officials and employees to have such complaints reviewed by citizens in the City.

The authority of the City to impose sanctions against elected officials, based on findings of the City's Ethics Commission, including removing an elected official, is limited, pursuant to state statute. Sanctions or discipline against City employees based upon a finding of the City's Ethics Commission can be taken in accordance with the City's personnel policies and procedures.

While the Council believes it is best to have local citizens reviewing complaints against elected City officials, it also knows that the ultimate review is up to the voters in the City. As stated in State v. Jones, 407 P.2d 571 (Utah 1965), "it is of course desirable for everyone, especially public officials, to conform to the law [and rules of ethics] in all respects, and in fact to live exemplary lives. But . . . public offices must be staffed with people beset with human frailties and we must deal with them as such. . . [There is a] principle, fundamental in our democracy, that the privilege of choosing and electing public officials, and repudiating them if and when they so desire, belongs exclusively to

the people; and that neither the courts nor any other authority [including ethics review commissions] should be hasty to encroach upon that right.”

SB 180 also enacted Title 11, Chapter 49 of the Utah Code providing a process for review of ethics complaints by the State Ethics Commission. The City Council wants to pattern the process of review by the City Ethics Commission after the process provided in Title 11, Chapter 49 of the Utah Code.

The City Council wants a City Ethics Commission to ensure that allegations of ethics violations are handled on a City level not a State level.

THEREFORE, BE IT ENACTED BY THE MURRAY CITY MUNICIPAL COUNCIL:

Section 1. Purpose. The purpose of this section is to repeal sections 2.46.110 and 2.46.120, and to enact chapter 2.47 of the Murray City Municipal Code relating to the Murray City Municipal Ethics Commission.

Section 2.

A. Sections 2.46.110 and 2.46.120 of the Murray City Municipal Code are hereby repealed as follows:

2.46.110: COMPLAINTS CHARGING VIOLATIONS; HEARING PROCEDURE: REPEALED

2.46.120: APPEALS FROM THE MAYOR'S DECISION: REPEALED

B. Chapter 2.47 of the Murray City Municipal Code shall be established and read as follows:

2.47.010 COMMISSION ESTABLISHED; PURPOSE; COMPOSITION; APPOINTMENT; TERM

- A. The Murray City Ethics Commission (the “Commission”) is hereby established under authority of section 10-3-1311 (2012), Utah Code Annotated, Municipal Officers’ and Employees’ Ethics Act.
- B. The purpose of the Commission is to review, hold hearings, deliberate and make official findings and recommendations regarding complaints against City Officers and Employees for alleged violations of Murray City Municipal Code chapter 2.46, Ethics and Standards of Conduct (“City Ethics Code”) and Title 10 Chapter 3 Part 13, Utah Code Annotated, Municipal Officers’ and Employees’ Ethics Act (“State Ethics Code”).

- C. Members of the Commission ("Member(s)") must be City residents, and have lived in the City for at least three years. The Commission is composed of five at large Members, all of whom are appointed by the Mayor with the advice and consent of the City Council, based upon their competency and fitness for the appointment.
- D. Terms. Members serve terms of (3) three years. Members may not serve more than (2) two full consecutive terms. Vacancies occurring through expiration of terms of appointment, death, disability, resignation or removal by the Mayor, if applicable, will be filled by appointment of the Mayor with the advice and consent of the City Council. A Member may resign from the Commission by giving written notice of the resignation to the Mayor. For purposes of this section, an appointment to fill the unexpired term of a vacating Member is not considered a full term.
- E. Initial Terms of Commission. When appointing the initial Members upon formation of the Commission, one Member will be appointed for a one-year term; two Members will be appointed for a two-year term; and two Members will be appointed for a three-year term; such that at least one new Member may be appointed each year. For purposes of this section, the initial one-year term and two-year term, respectively, are considered full terms.
- F. Removal.
1. The Mayor may remove a Member at any time for any reason so long as the Mayor is not the subject of review by the Commission.
 2. The Mayor must remove a Member if:
 - a. the Member is convicted of, or enters a guilty plea to; or enters a plea of no contest or a plea in abeyance to any criminal violation, other than a minor traffic violation;
 - b. the Member is found to have committed an ethical violation by the State Political Subdivision Ethics Review Commission; or
 - c. the Member fails to remain a resident of the City.
- G. Recusal. If a Member is accused of wrongdoing in a complaint, or if a Member determines that the Member has a conflict of interest in relation to a complaint, the Member will be temporarily recused and a temporary Member will be appointed by the Mayor, with the advice and consent of the City Council, to serve in the recused Member's place for the limited purpose of reviewing that complaint for which the recusal was implemented. The recusal will not affect the recused Member's service on the Commission for other complaints that may be concurrently before the Commission.
- H. Compensation. Members may not receive compensation or benefits for the Member's service; except that a Member may receive per diem and expenses incurred in the performance of the Member's official duties at the rates established by the City Finance Department.
- I. Commission Chair.
1. Within 30 calendar days following the appointment of all five initial Members of the Commission by the Mayor, with the

consent of the City Council, the Members are directed to convene a meeting to elect, by majority vote, a Commission Chair ("Chair") and Vice Chair. Members must thereafter convene a meeting each January to elect, by majority vote, a Chair and Vice Chair. A Member may not serve as Chair for more than two consecutive years.

2. A Vice Chair is authorized to fulfill any of the Chair's duties found in this chapter should the Chair at any time be unavailable to fulfill his duties, is absent from any meeting where there is otherwise a quorum, or the position of the Chair becomes vacant for any other reason. If the position of Chair becomes vacant for any reason, the Vice Chair shall fulfill the duties of the Chair until the next election of a Chair and Vice Chair in the yearly January meeting.

2.47.020 DEFINITIONS

- A. "Actual Knowledge" means direct and clear knowledge, usually personal or firsthand knowledge, as distinguished from constructive or common knowledge. It is knowledge of such a reliable character that it would lead a reasonable person to believe the information was fully trustworthy.
- B. "City Employee" means any employee of the City who is employed on a full or part-time basis by the City, including all appointed employees, and career service employees who are subject to the City and State Ethics Codes. City Employee does not include City Officials, as defined herein, seasonal workers, City volunteers, independent contractors or the Murray City Municipal Justice Court Judge.
- C. "City Ethics Code" means Chapter 2.46 of the Murray City Municipal Code, Ethics and Standards of Conduct.
- D. "City Official" means any official of the City, either elected to office or appointed to a City board, panel or commission, who is subject to the City and State Ethics Codes.
- E. "Commission" means the Murray City Ethics Commission, established in this Chapter.
- F. "Complainant" means a person who files a complaint in accordance with this Chapter.
- G. "Conflict of Interest" means a real or seeming incompatibility between one's private interests, especially financial or political interests, and one's public duties.

H. "Contact Complainant" means the person listed in the complaint identified as the contact to receive notices and findings from the Commission.

I. "Dismiss with Prejudice" means that a complaint or allegation is dismissed and cannot be re-filed with the Commission.

J. "Dismiss without Prejudice" means that a complaint or allegation is dismissed, usually for procedural reasons, but allows the Complainants to re-file a complaint or allegation with the Commission.

K. "Ethics Violation" means a violation of any provision of the City or State Ethics Codes.

L. "Frivolous" means lacking reasonable foundation, basis or merit; not reasonably serious or purposeful; done mainly to harass, extort or annoy; intending to cause unwarranted harm to the reputation of another or to cause the unwarranted expenditure of public funds.

M. "Impracticability" means a fact or circumstance that excuses a party from performing an act, because it would cause unreasonable difficulty.

N. "Legal Justification" means a lawful or sufficient reason for one's acts or omissions; capable of being excusable or defensible.

O. "Party" is a generic term that means either the Complainants or Respondent. "Parties" means both the Complainants and Respondent.

P. "Quorum" means the minimum number of Members who must be present for the Commission to transact business or take a vote. For purposes of this Chapter, four (4) Members constitute a quorum.

Q. "Recusal; Recuse" means the removal of oneself as a decision-maker in a particular matter, usually due to a conflict of interest.

R. "Respondent" means a person who files a response to a complaint in accordance with this chapter.

S. "Shall" means the individual or group directed thereby is required to perform the indicated action; has a duty to perform.

T. "State Ethics Code" means Title 10 Chapter 3 Part 13 of the Utah Code, Municipal Officers' and Employees' Ethics Act.

2.47.030 MEETINGS – STAFF

A. Purpose. The Commission meets for the purpose of reviewing ethics complaints against City Officials or Employees and holding hearings, deliberating complaints, making findings and issuing recommendations based upon their findings, when called to meet at the discretion of the Chair, except as otherwise provided in this Chapter.

B. To hold a meeting in which any official action or vote may be taken, a quorum must be present. Four (4) Members of the Commission must be present to constitute a quorum.

C. A meeting held by the Commission is subject to Title 52, Chapter 4, Utah Open and Public Meetings Act, unless otherwise provided.

D. Members must attend a yearly training meeting on ethics and the Rules of Evidence to be presented by the City Attorney's Office.

E.1. The City Attorney's Office staff will assist the Commission in the performance of the Commission's official duties. The City Attorney or the City Attorney's designee will attend Commission meetings to assist with legal, procedural or evidentiary matters and to ensure compliance with the Utah Open and Public Meetings Act.

2. a. Other than situations governed by section 2.47.230 below, should the City Attorney determine that the City Attorney's Office has an actual or perceived conflict with any particular investigation or matter before the Commission, the City Attorney's Office shall recuse itself from the matter, and the Commission is authorized to hire outside legal counsel; however, costs for such legal counsel may not exceed an amount budgeted for this purpose by the City Council in its yearly budgeting process.

b. Regardless of whether the City Attorney recuses the City Attorney's Office, the Commission may decide to hire outside legal counsel to give it legal advice for any particular matter, subject to the budget authorized by the City Council in its yearly budgeting process.

c. Notwithstanding subsections 2a and 2b above, staff support not related to legal advice may continue to be provided to the Commission by the City Attorney's Office.

2.47.040 COMPLAINTS AGAINST ETHICS COMMISSION MEMBERS

In accordance with section 10-3-1311(3), Utah Code Annotated, any complainant alleging a violation of the City or State Ethics Code by a Member must file such complaint with and subject to the rules, regulations and procedures of the State Political Subdivisions Ethics Review Commission, established under Title 11 Chapter 49, Utah Code Annotated.

2.47.050 AUTHORITY TO REVIEW COMPLAINT – GROUNDS FOR COMPLAINT – LIMITATIONS ON FILINGS

A. Subject to the requirements of this Chapter, and Section 10-3-1311 of the Utah Code, the Commission is authorized to review an ethics complaint against a City Official or Employee if the complaint alleges:

1. An ethics violation of the City or State Ethics Code by a City Official or Employee alleged to have occurred after the enactment of this ordinance and while the City Official was serving in office or the City Employee was employed by the City. In no case shall a complaint be accepted in which the alleged violations occurred over four (4) years prior to the filing of the complaint;

2. A complaint described in subsection A1 above must be filed in accordance with time limit provisions, if any, of the applicable part or Chapter in the State or City Ethics Code and this Chapter.

B. A complaint may not contain an allegation if that allegation and the general facts and circumstances supporting that allegation have been previously reviewed by the Commission, unless:

1. the allegation was previously reviewed and dismissed by the Commission under sections 2.47.100 or 2.47.130 of this Chapter;

2. the allegation is accompanied by material facts or circumstances supporting the allegation that were not raised or pled to the Commission in the original complaint; and

3. the allegation and the general facts and circumstances supporting that allegation have only been reviewed by the Commission in accordance with section 2.47.130 of this Chapter on one previous occasion.

C. If an allegation in the complaint does not comply with the requirements under this section, the allegation must be summarily dismissed with prejudice by the Commission.

2.47.060 GENERAL POWERS – JURISDICTION

A. The Commission has jurisdiction over complaints against a City Official or Employee alleging violation of the State Ethics Code or the City's Ethic Code. The States Ethics Commission has no jurisdiction of these ethics complaints.

B. The Commission must dismiss an ethics complaint if the Respondent resigns or is terminated from City employment.

C. If a Respondent has been charged with a criminal violation, and an ethics complaint asserts an ethics violation in addition to the criminal violation, the Commission may review and hear the complaint related to the alleged ethics violation.

2.47.070 CHAIR AS PRESIDING OFFICER

A. Except as expressly provided otherwise in this Chapter, the Chair of the Commission is vested with the power to direct the Commission during meetings authorized by this Chapter.

B. Unless expressly prohibited from doing so under this Chapter, the Commission may overrule a decision of the Chair through the following motion procedure:

1. if a Member objects to a decision of the Chair in any meeting or hearing, that Member may appeal the decision by stating:
 - a. "I appeal the decision of the Chair"; and
 - b. stating the basis for the objection.
2. A motion described under subsection B1 is non-debatable.
3. The Chair shall immediately direct a roll call vote to determine if the Commission supports the decision of the Chair.
4. A majority vote of the Commission is necessary to overrule the decision of the Chair.

C. The Chair may set time limitations on any part of a meeting or hearing authorized by this Chapter.

2.47.080 ETHICS COMPLAINTS – WHO MAY FILE – FORM

A.1. The following may file an ethics complaint, subject to the requirements of this Chapter, against a City Official or Employee:

- a. two or more registered voters who reside within the City;
- b. two or more registered voters who pay a fee or tax to the City; or
- c. one or more registered voters who reside within the City and one or more registered voters who pay a fee or tax to the City.

2. A person described in section A.1 above may not file an ethics complaint unless at least one person described therein has actual knowledge of the facts and circumstances supporting the alleged ethics violation.

3. A Complainant may file an ethics complaint only against an individual who, on the date that the complaint is filed, is serving as a City Official or Employee. The complaint may only be for violations of the City or State Ethics Code alleged to have been committed while the City Official or Employee was serving or employed by the City.

B.1. a. A Complainant must file the ethics complaint with the City Recorder's Office and remit a nonrefundable \$25.00 administrative filing fee.

b. the City Recorder's Office is required to forward the complaint to the Chair of the Commission and the City Attorney's Office no later than two (2) business days after the date on which the complaint is filed.

B.2. An individual may not file a complaint against a City Official during the 60 calendar days immediately preceding:

- a. a regular primary election, if the accused City Official is a candidate in the primary election; or
- b. a regular general election in which the City Official is a candidate, unless the City Official is unopposed in the election.

C. A Complainant must ensure that each complaint filed under this section is in writing and contains the following information:

1. the name and position of the City Official or Employee alleged to be in violation;
2. the name, address and telephone number of each individual Complainant who is filing the complaint;
3. the name, address and telephone number of the Complainant designated to receive notices as the Contact Complainant;
4. a description of each alleged ethics violation of the City or State Ethics Code;
5. include for each alleged ethics violation:
 - a. a reference to the section of the City or State Ethics Code alleged to have been violated;
 - b. the name of the Complainant who has actual knowledge of the facts and circumstances supporting each allegation; and
 - c. with reasonable specificity, the facts and circumstances supporting each allegation, which may be provided by either:
 1. copies of official records or documentary evidence; or
 2. one or more affidavits that include the information required in subsection D, below.
6. a list of the witnesses that a Complainant wants to have called, including for each witness:
 - a. the name, address and, if available, one or more telephone numbers of the witness;
 - b. a brief summary of the testimony to be provided by the witness; and
 - c. a specific description of any documents or evidence a Complainant wants the witness to produce.
7. a statement that each Complainant:
 - a. has reviewed the allegations contained in the complaint and the sworn statements and documents attached to the complaint;
 - b. believes that the complaint is submitted in good faith and not for any improper purpose such as for the purpose of harassing the Respondent, causing unwarranted harm to the Respondent's reputation, or causing unnecessary expenditure of public funds; and

c. believes the allegations contained in the complaint to be true and accurate.

8. the signature of each Complainant.

D. An affidavit described in subsection C.4.c.2 above must include:

1. the name, address, and telephone number of the signer of the affidavit;
2. a statement that the signer has actual knowledge of the facts and circumstances alleged in the affidavit;
3. the facts and circumstances testified by the signer;
4. a statement that the affidavit is believed to be true and correct and that false statements are subject to penalties of perjury; and
5. the signature of the signer.

2.47.090 REVIEW OF ETHICS COMPLAINT FOR COMPLIANCE WITH FORM REQUIREMENTS – RETURN OR ACCEPTANCE OF COMPLAINT

A. Within five (5) business days after receipt of an ethics complaint, staff to the Commission, in consultation with the Chair, will examine the complaint to determine if it is in strict compliance with sections 2.47.050 and 2.47.080 of this Chapter, or whether the complaint is obviously frivolous.

B.1. If the Chair, with staff input, determines that the complaint does not comply with sections 2.47.050 or 2.47.080 of this Chapter, the Chair must:

- a. return the complaint to the Contact Complainant with:
 1. a statement detailing the reason for non-compliance of sections 2.47.050 or 2.47.080 of this Chapter; and
 2. a copy of the applicable provisions in this chapter; and
 - b. notify the Mayor and City Council, for informational purposes, that:
 1. a complaint was filed against an unidentified City Official or Employee, but was returned for non-compliance with this Chapter; and
 2. the fact that a complaint was filed and returned must be kept confidential until the Commission submits its annual summary data report.
2. If a complaint is returned for non-compliance with the requirements of this chapter, a Complainant may file another complaint if the new complaint independently meets the requirements of sections 2.47.050 and 2.47.080 of this Chapter, including any requirements for timely filing.

C. If the Chair, with staff input, determines the complaint to be obviously frivolous, the Chair must dismiss the complaint with prejudice and:

1. a. return the complaint to the Contact Complainant with a statement explaining that the complaint has been determined to be obviously frivolous and the reasons for the decision; and
- b. notify the Contact Complainant that:

1. an ethics complaint dismissed for being obviously frivolous cannot be re-filed alleging the same facts and circumstances; and
2. the decision by the Chair to dismiss a complaint for being obviously frivolous is final; and
2. Notify the Mayor's Office and City Council, for informational purposes only, that:
 - a. an ethics complaint was filed against an unidentified City Official or Employee, but was dismissed and returned because it was determined to be obviously frivolous; and
 - b. the fact that a complaint was filed and returned must be kept confidential until the Commission submits its annual summary data report.
3. A complaint will be deemed to be obviously frivolous if, on its face, it lacks foundation, basis or merit and is clearly filed with the intent to harass or annoy, or to cause unwarranted harm to the reputation of Respondent.

D. If the Chair, with staff input, determines that the complaint complies with the requirements of this section, the Chair must:

1. accept the complaint;
2. notify each Member that a complaint has been filed and accepted;
3. notify the Mayor's Office and City Council, for informational purposes, that:
 - a. a complaint has been filed against an unidentified City Official or Employee;
 - b. the identity of the City Official or Employee and the allegations raised in the complaint are confidential pending the Commission's preliminary review of the complaint; and
 - c. the fact that a complaint was filed must be kept confidential until the Commission publicly discloses the existence of the complaint via:
 1. notice of the Commission's Formal Review of a complaint; or
 2. submission of the Commission's annual summary data report as required in section 2.47.260 of this Chapter; and
4. immediately forward the complaint to the City Official or Employee who is the subject of the ethics complaint via personal delivery or a delivery method that provides verification of receipt, together with a copy of this Chapter and notice that the City Official or Employee must file an informal, preliminary response to the complaint within 30 calendar days of the Commission's acceptance of the complaint.

2.47.100 PRELIMINARY REVIEW OF COMPLAINT – NOTICE

- A. 1. By no later than five (5) business days after the day on which a complaint is accepted, the Chair must:
- a. schedule a Preliminary Review Meeting on a date no later than 45 calendar days after the date on which the Chair accepts the complaint;

- b. place the complaint on the agenda for consideration at the Preliminary Review Meeting;
- c. provide a copy of the complaint to the Members; and
- d. provide notice of the date, time and location of the Preliminary Review Meeting:
 - 1. to the Respondent;
 - 2. the Contact Complainant;
 - 3. each Member; and
 - 4. as otherwise required by the Utah Open and Public Meetings

Act.

- e. include in the notice to the Respondent and Complainants that the Preliminary Review Meeting is closed to the public under section 52-4-204, Utah Code Annotated.

- B.
 - 1. At the Preliminary Review Meeting:
 - a. the Members must review each allegation in the ethics complaint;
 - b. review the Respondent's requested response;
 - c. the Commission may not receive testimony, hear a motion from a Party, or admit evidence; and
 - d. the Chair will conduct deliberations in accordance with section C1 below.
 - 2. Upon a motion, the Commission may, by majority vote, exclude Commission staff from all or a portion of the deliberations during the Preliminary Review Meeting.

- C.
 - 1. During deliberations, each Member will, for each allegation, determine:
 - a. whether the facts alleged, if true, would be a violation of the City or State Ethics Code;
 - b. whether the ethics complaint includes an affidavit from a person with actual knowledge of alleged facts described in subsection C1a; and
 - c. whether the ethics complaint is frivolous or solely for a political purpose, such as harassing the Respondent, causing unwarranted harm to the reputation of Respondent or causing unwarranted expenditure of public funds.
 - 2.
 - a. At the conclusion of deliberations in the Preliminary Review Meeting, the Commission must vote on whether to forward a complaint or allegation for a Formal Review.
 - b. A Member must vote to forward an allegation in an ethics complaint for a Formal Review if the Member determines that:
 - 1. an allegation, if true, would be a violation of the City or State Ethics Code;
 - 2. the complaint contains an affidavit with actual knowledge of the allegation under subsection C.2.a; and
 - 3. the allegation is not frivolous or solely for a political purpose, such as harassing the Respondent, causing unwarranted harm to the reputation of Respondent or causing unwarranted expenditure of public funds..

D.1. A verbal roll call vote must be taken on each allegation and each Member's vote must be recorded.

2. The Commission may not forward an allegation for a Formal Review unless 3 of the 5 Members of the Commission vote to forward the allegation.

E.1. An allegation that is not forwarded for a final determination is dismissed.

2. Before the Commission issues an order dismissing a complaint or allegation, the Commission may, upon a majority vote, reconsider and hold a new vote on the complaint or allegation.

3. A motion to reconsider a vote may only be made by a Member who voted that the allegation should not be forwarded for a Formal Review.

F.1. If each allegation stated in a complaint is dismissed in accordance with this section, the Commission must:

a. issue and enter into the record an order that the complaint is dismissed because no allegations were forwarded for a Formal Review;

b. classify all recordings, testimony, evidence, orders, findings and other records directly relating to the Preliminary Review Meetings as private records under section 63G-2-302, Utah Code Annotated;

c. provide notice of the determination, in a manner to be determined by the Chair, to:

1. the Respondent;

2. the Contact Complainant; and

3. subject to subsection F.2, the Mayor's Office and City

Council; and

d. provide notice to each person or entity named in F.1.c that a person who discloses the findings of the Commission in violation of any provision of this Chapter is in contempt of the Commission and is subject to penalties for contempt.

2. The notification to the City Council and Mayor's Office must inform that:

a. an ethics complaint against an unidentified City Official or Employee has been dismissed; and

b. the fact that an ethics complaint was filed must be kept confidential until the Commission publicly discloses the existence of the ethics complaint via submission of the Commission's annual summary data report.

G. If one or more of the allegations stated in an ethics complaint are not dismissed and are forwarded for Formal Review, the Commission must:

1. issue and enter into the record:

a. an order for each allegation that is dismissed, if any, because the allegation was not forwarded for a Formal Review; and

b. an order for a Formal Review of each allegation that is not dismissed;

2. classify all recordings, orders, findings, and other records or documents directly relating to a meeting authorized by this section as private records under section 63G-2-302, Utah Code Annotated;

3. if an allegation stated in an ethics complaint is dismissed in accordance with this subsection, the Commission must:

a. issue and enter into the record an order that the allegation is dismissed in accordance with this section, and was not forwarded for a Formal Review;

b. classify all recordings, testimony, evidence, orders, findings and other records directly relating to the Preliminary Review Meetings as private records under section 63G-2-302, Utah Code Annotated;

c. provide notice of the determination that one or more allegations in a complaint were dismissed to:

1. the Respondent;

2. the Contact Complainant; and

3. for informational purposes, and subject to subsection

F.2. above, the Mayor's Office and City Council; and

d. provide notice to each person or entity named in F.1.c that:

1. a person who discloses the findings of the Commission in violation of any provision of this Chapter is in contempt of the Commission and is subject to penalties for contempt.

2. the Commission will review the remaining allegations in the complaint at a Formal Review Hearing.

H. The notification to the City Council and Mayor's Office must inform that:

1. an ethics complaint against an unidentified City Official or Employee has been dismissed; and/or

2. an allegation against an unidentified City Official was not dismissed and was forwarded for a Formal Review; and

3. the fact that an ethics complaint was filed must be kept confidential until the Commission publicly discloses the existence of the complaint in accordance with the provisions of this Chapter.

I. For an ethics complaint or allegation that is forwarded for Formal Review, the Commission must ensure that, within five (5) business days after the Preliminary Review Meeting, the ethics complaint is redacted to remove references to any allegation that is dismissed under this section.

J. The Chair must ensure that a record of the Preliminary Review Meeting held under this section is kept in accordance with section 2.47.250 of this Chapter.

2.47.110 FORMAL REVIEW HEARING - NOTICE

A. By no later than 10 calendar days after the Preliminary Review Meeting at which an ethics complaint or an allegation in an ethics complaint is accepted for Formal Review, the Chair must:

1. schedule a Formal Review Hearing on a date no later than 45 calendar days after the date on which the Commission votes to forward a complaint for Formal Review;
2. place the complaint on the agenda for consideration at the Formal Review Hearing;
3. provide notice of the date, time and location of the hearing to:
 - a. all Members;
 - b. the Contact Complainant; and
 - c. the Respondent; and
 - d. in accordance with section 52-4-202, Utah Code Annotated;

and

4. provide a copy of the complaint or redacted complaint to each Member.

2.47.120 RESPONSE TO ETHICS COMPLAINT – FILING – FORM

A. the City Official or Employee who is the subject of the ethics complaint scheduled for a Formal Review Hearing shall file a formal response to the ethics complaint no later than 30 calendar days after the day on which the City Official or Employee receives delivery of notice that the Commission decided to forward an ethics complaint or allegation for Formal Review.

B. the Respondent must file the formal written response with the Commission by filing it with the City Attorney's Office, and ensure that it contains the following information:

1. the name, address, and telephone number of the Respondent;
2. for each alleged violation in the ethics complaint:
 - a. each affirmative defense asserted in response to the allegation, including a general description of each affirmative defense and the facts and circumstances supporting the defense to be provided by one or more affidavits, each of which must comply with subsection D;
 - b. the facts and circumstances refuting the allegation, which must be provided by:
 1. copies of official records or documentary evidence; or
 2. one or more affidavits, each of which must comply with subsection D;
3. a list of witnesses that the Respondent wants to have called, including for each witness:
 - a. the name, address and, if available, telephone number of the witness;

- b. a brief summary of the testimony to be provided by the witness; and
- c. a specific description of any documents or evidence the Respondent wants the witness to produce;
- 4. a statement that the Respondent:
 - a. has reviewed the allegations contained in the complaint and the sworn statements and documents attached to the response; and
 - b. believes the contents of the response to be true and accurate; and
- 5. the signature of the Respondent.

C. Promptly after receiving the response, the City Attorney's Office must provide copies of the response to:

- 1. each Member; and
- 2. the Contact Complainant.

D. An affidavit described in subsection B2 must include the following information:

- 1. the name, address and telephone number of the signer;
- 2. a statement that the signer has actual knowledge of the facts and circumstances alleged in the affidavit;
- 3. the facts and circumstances testified to by the signer;
- 4. a statement that the affidavit is believed to be true and correct and that false statements are subject to penalties of perjury; and
- 5. the signature of the signer.

2.47.130 FORMAL REVIEW OF ETHICS ALLEGATIONS IN THE COMPLAINT

A. 1. The scope of a Formal Review by the Commission is limited to alleged ethics violations stated in a complaint that were not dismissed at the Preliminary Review Meeting.

2. During a Formal Review Hearing, the Commission may:

- a. review the complaint ;
- b. review the formal response;
- c. hear arguments from the Parties or the Parties' representatives;

- d. hear testimony of Parties or witnesses; and
- e. review and make decisions on the admission of other evidence.

3. The Commission will follow the procedure outlined in 2.47.150 of this Chapter during the Formal Review Hearing.

B. 1. Before holding the Formal Review Hearing, the Chair may schedule a separate meeting of the Commission, open to the public and noticed as provided in section 52-4-204, Utah Code Annotated, for the purposes of:

a. hearing motions or arguments from the parties, including hearing motions or arguments relating to dismissal of an ethics complaint in whole or in part, admission of evidence, or other procedural matters;

b. holding a vote of the Commission, with or without the attendance of the parties, on procedural or Commission business matters relating to an ethics complaint in whole or in part; or

c. reviewing an ethics complaint in whole or in part, with or without the attendance of the parties, to determine if the complaint should be dismissed in whole or in part, by means of a majority vote of the Commission.

2. Notwithstanding section 2.47.110 of this Chapter, the Commission may, by a majority vote, change the date of the meeting for the Formal Review Hearing in order to accommodate:

a. a meeting authorized under subsection B1; or

b. other reasonable scheduling considerations.

C. 1. The Commission and all Parties must comply with the Utah Rules of Evidence except where the Commission determines, by majority vote, that a rule is not compatible with the requirements of this Chapter.

2. The Chair must make rulings on admissibility of evidence, based upon the Utah Rules of Evidence, consistent with the provisions of section 2.47.070 of this Chapter.

D. 1. A Formal Review Hearing authorized in this part is open to the public except as provided in section 52-4-204, Utah Code Annotated.

2. The following individuals may be present in the Formal Review Hearing and during the presentation of testimony and evidence to the Commission:

a. Members

b. the Complainant;

c. the Complainant's counsel, if applicable;

d. the Respondent;

e. the Respondent's counsel, if applicable;

f. staff to the Commission;

g. a witness, while testifying before the Commission; and

h. necessary security personnel. If the Commission decides

that security personnel is needed for any hearing, the Commission will make a request to, and security personnel shall be provided by, the City Police Department.

3. The Commission may, in accordance with section 52-4-204, Utah Code Annotated, close a meeting to:

1. seek or obtain legal advice on legal, evidentiary or procedural matters; or

2. conduct deliberations to reach a decision on the complaint.

E. If a majority of the Commission determines that a continuance of the hearing is necessary to obtain further evidence and testimony, to accommodate

administrative needs, or to accommodate the attendance of Members, witnesses, or a party, the Commission must:

1. adjourn and continue the meeting to a future date and time after notice to the parties; and
2. establish that future date and time by majority vote.

F. A record, as defined in section 63G-2-103 of the Utah Code, created, reviewed, or received by the Commission during the Formal Review Hearing is considered a public record.

2.47.140 GENERAL PROCEDURES – HEARINGS

A. In conducting a hearing on a complaint, the Commission shall comply with the following process in the order specified:

1. introduction and instructions for procedure and process, given by the Chair;
2. Complainant's opening argument, to be presented by a Complainant or Complainant's counsel;
3. Complainant's presentation of evidence and witnesses in support of allegations in the ethics complaint;
4. consideration of motions to dismiss the ethics complaint in whole or in part or motions for a finding of no cause, as applicable;
5. Respondent's opening argument, to be presented by the Respondent or Respondent's counsel;
6. Respondent's presentation of evidence and witnesses refuting allegations in the complaint;
7. presentation of rebuttal evidence and witnesses by the Complainant, at the discretion of the Chair;
8. presentation of rebuttal evidence and witnesses by the Respondent, at the discretion of the Chair;
9. Complainant's closing argument, to be presented by Complainant or Complainant's counsel;
10. Respondent's closing argument, to be presented by the Respondent or Respondent's counsel;
11. deliberations by the Commission; and
12. adoption of the Commission's findings.

B. The Commission may, in extraordinary circumstances, vary the order contained in section A by majority vote and by providing notice to the parties.

C. The Chair may schedule the examination of a witness or evidence subpoenaed at the request of the Chair or the Commission under 2.47.190 of this Chapter by a majority vote of the Commission.

2.47.150 TESTIMONY AND EXAMINATIONS OF WITNESSES – OATH – PROCEDURE – CONTEMPT

- A.1. The Chair is required to ensure that each witness listed in the ethics complaint and response is subpoenaed for appearance at the hearing unless:
- a. the witness is unable to be properly identified or located; or
 - b. service is otherwise determined to be impracticable.
2. The Chair determines the scheduling and order of witnesses and presentation of evidence in consultation with the Members.
3. The Commission may, by majority vote:
- a. overrule the Chair's decision not to subpoena a witness under A.1.;
 - b. modify the Chair's determination on the scheduling and order of witnesses under A.2.
 - c. decline to hear or call a witness that has been requested by the Complainant or Respondent;
 - d. decline to review or consider evidence submitted in relation to an ethics complaint; or
 - e. request and subpoena witnesses or evidence according to the procedures of section 2.47.190 of this Chapter.

B.1. Each witness must testify under oath, which oath is outlined under subsection F, below.

2. The Chair or the Chair's designee will administer the oath to each witness.

C. After the oath has been administered to the witness, the Chair will direct testimony as follows:

1. allow the party that has called the witness, or that party's counsel, to question the witness;
2. allow the opposing party, or that party's counsel, to cross-examine the witness;
3. allow additional questioning by a party or a party's counsel, as appropriate;
4. give Members the opportunity to question the witness; and
5. as appropriate, allow further examination of the witness by the Commission, or the parties or their counsel.

D.1. If the witness, a party, or a party's counsel objects to a question, the Chair will:

- a. direct the witness to answer; or
- b. rule that the witness is not required to answer the question.

D.2. If the witness declines to answer a question after the Chair or a majority of the Commission determines that the witness is required to answer the question, the witness may be held in contempt as provided in this Chapter.

E.1. The Chair or a majority of the Members may direct a witness to furnish any relevant evidence for consideration if the witness has brought the material voluntarily or has been required to bring it by subpoena.

2. If the witness declines to provide evidence in response to a subpoena, the witness may be held in contempt as provided in this chapter.

F. The following oath, or one substantially similar hereto, must be given by the Chair or his designee, and sworn to by the witness before a witness or party may be allowed to testify in any proceeding before the Commission:

1. "Do you solemnly swear or affirm, under the pains and penalties of perjury, to tell the truth, the whole truth, and nothing but the truth?"

G. Witnesses or parties committing perjury may be criminally prosecuted in accordance with state law under Title 76, Criminal Code, Utah Code Annotated.

H. In all hearings in which the Commission hears testimony or reviews evidence, the Utah Rules of Evidence shall be strictly followed unless the Commission decides otherwise by majority vote.

2.47.160 COMMISSION DELIBERATIONS – STANDARD OF PROOF

A. After each party has presented a closing argument at the Formal Review Hearing, the Commission may, by majority vote, begin its deliberations either:

1. immediately after conclusion of the closing arguments; or
2. at a future deliberation meeting of the Commission, on a date and time agreed upon by a majority of the Members, no less than 30 calendar days following the Formal Review Hearing.

B.1. The Chair shall conduct the deliberations.

2. Upon motion made by a Member, the Commission may:

- a. exclude Commission staff from all or a portion of the deliberations by a majority vote of the Members; and
- b. close the meeting in accordance with section 52-4-204, Utah Code Annotated.

C. For purposes of this chapter, "clear and convincing evidence" is defined as "evidence indicating that what is to be proved is highly probable or realistically certain."

1. During deliberations, for each allegation reviewed by the Commission, each Member will decide and cast a vote stating:

- a. that the allegation is either:
 1. proven by clear and convincing evidence; or
 2. not proven; and
 - b. for each allegation proven, whether the Member believes the Commission should make a recommendation to the appropriate authority.
2. a. a verbal roll call vote will be taken on each allegation.

- b. -each Member's vote must be recorded.

D.1. An allegation is not proven unless four of the five Members vote that the allegation is proven.

2. An allegation that is not voted proven is dismissed.

3. After the Commission votes that an allegation is proven, it may vote to adopt a recommendation for further action. A recommendation is adopted by majority vote.

4. a. Before the Commission issues its findings and recommendation, the Commission may, upon a majority vote, reconsider and hold a new vote on an allegation.

b. A motion to reconsider a vote may only be made by a Member who initially voted that the allegation was not proven, and may only be made before the end of the Formal Review Hearing or separate deliberation meeting.

E. At the conclusion of its deliberations, the Commission must prepare its findings and recommendations as provided in sections 2.47.170 and 2.47.180 of this Chapter.

2.47.170 FINDINGS AND RECOMMENDATION OF THE COMMISSION

A.1. If the Commission finds that no allegations in the ethics complaint were proven, the Commission must:

a. issue and enter into the record an order that the ethics complaint is dismissed because no allegations in the complaint were found to have been proven;

b. provide notice of the decision at a public meeting; and

c. provide written notice of the decision to:

1. the Respondent;

2. the Contact Complainant; and

3. the City Council or Mayor's Office, pursuant to subsections

B2i and B2j, below.

B. If the Commission finds that one or more of the allegations in the ethics complaint were proven, the Commission must:

1. if one or more of the allegations were not found to have been proven, enter into the record an order dismissing those unproven allegations; and

2. for each allegation that was found to be proven, prepare a written finding that:

a. lists the name of each Complainant;

b. lists the name of the Respondent;

c. states the date of the finding;

d. provides a reference to the specific provision of the City's or State's Ethics Code allegedly violated, as well as a brief synopsis of the unethical conduct;

- e. states the number and names of the Members voting that the allegation was proven and the number and names of Commission Members voting that the allegation was not proven.
- f. at the option of those Members voting that the allegation was proven, includes a statement by one or all of those Members stating the reasons for voting that the allegation was proven; and
- g. at the option of those Members voting that the allegation was not proven, includes a statement by one or all of those Members stating the reasons for voting that the allegation was not proven;
- h. contains any general statement that is adopted for inclusion in the recommendation by a majority of the Members;
- i. for City Employees, contains a statement referring the allegations found to have been proven to the Mayor's Office for review and, if necessary, further appropriate action in accordance with the City's employment policies and procedures;
- j. for City Council staff, contains a statement referring the allegations found to have been proven to the City Council for review and, if necessary, further appropriate action in accordance with the City's employment policies and procedures;
- k. states the name of each Member; and
- l. is signed by each Member.

- C. The Commission must provide notice of the decision:
- 1. at a public meeting; and
 - 2. provide written notice of the finding to:
 - a. the Respondent;
 - b. the Contact Complainant; and
 - c. the Mayor's Office or City Council, subject to subsections B2i and B2j above.

- D. The Commission must ensure that, within five (5) business days of the date of public issuance of the findings in accordance with subsection C, the following documents are provided to the Mayor's Office or City Council:
- 1. a cover letter giving notice of the proven allegations contained in the ethics complaint to the Mayor or City Council for review;
 - 2. a copy of the complaint;
 - 3. a copy of the response;
 - 4. a copy of the Commission's findings and recommendation.

2.47.180 FINDINGS AGAINST MAYOR OR CITY COUNCIL MEMBER-RECOMMENDATIONS TO DISTRICT ATTORNEY

- A. If the Commission finds that an allegation made against the Mayor or a City Council Member is proven, the Commission must send written findings and recommendations to the district attorney for appropriate action to be taken.

- B. Written findings and recommendations sent to the district attorney must:
1. list the name of each Complainant;
 2. list the name of the Respondent;
 3. state the date of the request;
 4. for each allegation, provide a reference to the provision of the City or State Ethics Code allegedly violated;
 5. include a general statement that is adopted by a majority of the Members;
- C. If the Commission sends findings and recommendations to the district attorney, the Commission must enter into the record a copy of the written materials forwarded to the district attorney.

2.47.190 SUBPOENA POWERS

- A. Except for a preliminary review, the Commission may issue a subpoena for any proceeding authorized by this Chapter to:
1. require the attendance of a witness;
 2. direct the production of evidence; or
 3. require both the attendance of a witness and the production of evidence.
- B. The Commission is required to issue a subpoena:
1. in accordance with section 2.47.210 of this Chapter;
 2. at the direction of the Chair, if the Chair determines that the testimony or evidence is relevant to the review of an ethics complaint; or
 3. upon a vote of a majority of the Members.
- C. If the Commission issues a subpoena under this section, the Commission must give a reasonable period of time, not less than 14 calendar days, for the person or entity to whom the subpoena is directed to petition a district court to quash or modify the subpoena before the time specified in the subpoena for compliance.

2.47.200 CONTEMPT OF COMMISSION

- A.1. The following actions constitute contempt of the Commission in relation to actions and proceedings under this Chapter:
- a. disobedience to a direction of the Chair;
 - b. failure, without legal justification, to answer a question during a hearing when directed to do so by:
 1. the Chair, unless the direction is overridden by the Commission in accordance with section 2.47.070 of this Chapter; or
 2. a majority of the Commission;
 - c. failure to comply with a subpoena or other order issued under authority of this Chapter;

- d. violation of privacy provisions established under section 2.47.240 of this Chapter.
- e. violation of the communication provisions established under section 2.47.220 of this Chapter.
- f. violation of a request to comply with a provision of this Chapter by a Chair or a majority of the Members; or
- g. any other ground that is specified in statute or recognized by common law.

A.2. Because the purpose of the Fifth Amendment privilege not to incriminate oneself is to prevent prosecution for criminal action, it is improper for a witness to invoke the Fifth Amendment privilege if the witness cannot be prosecuted for a crime to which the witness's testimony relates.

- B.1. The following persons may authorize an enforcement action against a person in contempt of the Commission under the provisions of this Chapter:
- a. The Chair, subject to the provisions of section 2.47.070 of this Chapter; or
 - b. Members by means of a majority vote.

B.2. In initiating and pursuing an action against an individual for contempt of the Commission, the individual must comply with the procedures and requirements of section 2.47.210 of this Chapter.

2.47.210 ORDER TO COMPEL – ENFORCEMENT

A.1. If the subject of a subpoena issued in accordance with section 2.47.190 of this Chapter disobeys or fails to comply with the subpoena, or if a person appears before the Commission pursuant to a subpoena and refuses to testify to a matter upon which the person may be lawfully interrogated, the Commission may:

- a. file a motion for an order to compel obedience to the subpoena with the Third District Court;
- b. file, with the Third District Court, a motion for an order to show cause why the penalties established in Utah Code Annotated, Title 78B, Chapter 6, Part 3, Contempt, should not be imposed upon the person named in the subpoena for contempt of the Commission; or
- c. pursue other remedies against persons in contempt of the Commission.

A.2. The Commission may be represented by either the City Attorney or outside counsel, subject to budget considerations, in proceedings initiated under this section.

B.1. If a Commission subpoena requires the production of accounts, books, papers, documents, or other tangible records, the person or entity to whom the

subpoena is directed may petition the Third District Court to quash or modify the subpoena at or before the time specified in the subpoena for compliance.

2. The Commission may respond to a motion to quash or modify the subpoena by pursuing any remedy authorized by section A.1. above.

C. Nothing in this section prevents the Commission from seeking an extraordinary writ to remedy contempt of the Commission.

2.47.220 COMMUNICATIONS OF MEMBERS

A. As used in this section, "third party" means a person who is not a Member of or staff to the Commission.

B. While an ethics complaint is under review by the Commission, a Member may not initiate or consider any communications concerning the complaint with a third party unless:

1. the communication is expressly permitted under the procedures established by this Chapter; or

2. the communication is initiated by the third party, in writing, simultaneously to all Members.

C. While the Commission is reviewing an ethics complaint under this Chapter, a Member may communicate outside of the meetings, hearing, or deliberations with another Member or staff to the Commission, only if the Member's communication does not materially compromise the Member's responsibility to independently review and make decisions in relation to the ethics complaint.

2.47.230 ATTORNEY FEES AND COSTS

A. Complainants filing a complaint under this Chapter:

1. may, but are not required to retain legal representation during the ethics complaint review process; and

2. are solely responsible for payment of Complainant's attorney fees and costs incurred.

B.1. A Respondent against whom an ethics complaint is filed under this Chapter may:

a. but is not required to retain legal representation during the complaint review process; and

b. be entitled to the provision of legal defense by the City in accordance with section 63G-7-902, Utah Code Annotated.

2. For purposes of subsection B.1., an ethics complaint filed against a Respondent in accordance with this Chapter constitutes an action against a governmental employee in accordance with section 63G-7-902, Utah Code Annotated.

3. If a Respondent requests representation for legal defense by the City in accordance with section 63G-7-902, Utah Code Annotated, the City Attorney shall deem there to be a conflict of interest, and give no further legal advice to the Commission regarding that particular matter. The Commission shall hire outside legal counsel to give it legal advice for all remaining proceedings and associated hearings related to that matter, subject to annual appropriation of funds.

C.1. An attorney participating in a hearing before the Commission must comply with:

a. the Rules of Professional Conduct established by the Utah Supreme Court;

b. the Utah Rules of Evidence;

c. the procedures and requirements of this Chapter; and

d. the directions of the Chair and Commission.

2. A violation of subsection C.1 may constitute:

a. contempt of the Commission; or

b. a violation of the Rules of Professional Conduct subject to enforcement by the Utah State Bar.

2.47.240 PRIVACY OF ETHICS COMPLAINT – CONTEMPT – DISMISSAL

A.1. Except as provided in subsection 2, 3 or 4 below, a person, including any Complainant, the Respondent, a Member, or staff to the Commission, may not disclose the existence of an ethics complaint, a response, or any other information concerning any alleged ethics violation that is the subject of an ethics complaint:

a. unless otherwise provided in this Chapter; or

b. after an ethics complaint is presented at the Formal Review

Hearing.

2. The restrictions under A.1 do not apply to the Respondent's voluntary disclosure of a finding by the Commission that no allegations in an ethics complaint were proved after that finding is issued by the Commission following a Preliminary Review Meeting.

3. Nothing in this section may prevent a person from disclosing facts or allegations about potential criminal violations to a law enforcement authority.

4. Nothing in this section may be construed to hinder or prevent a Respondent from preparing a defense to an ethics complaint, including contacting a witness or other actions in preparation for review by the Commission.

B. A person who violates the provisions of subsection A.1. is in contempt of the Commission and proceedings may be initiated to enforce the finding of contempt using the procedures provided in this Chapter.

C. If the existence of an ethics complaint is publicly disclosed before or during the preliminary review period by any Complainant, the ethics complaint must be summarily dismissed without prejudice.

2.47.250 RECORD – RECORDING OF MEETINGS

A.1. Except as provided in subsection A2, an individual may not use a camera or other recording device in a meeting authorized by this Chapter.

2. a. The Commission must keep an audio or video recording of the portions of each meeting that is considered open pursuant to the Utah Open and Public Meetings Act.

b. The Commission may, by a majority vote, permit a camera or other recording device in the Formal Review Hearing or the public meeting in which the Commission announces the Commission's findings and recommendation.

B. In addition to the recording required in subsection A2a, the Chair must ensure that a record is made of the Formal Review Hearing and public meeting in which the Commission's findings and recommendations are announced, which record must include:

1. official minutes taken during the meeting or hearing;
2. copies of all documents or other items admitted into evidence by the Commission, if any;
3. copies of a document or written order or ruling issued by the Chair or the Commission, if any; and
4. any other information that a majority of the Commission or the Chair directs.

2.47.260 ANNUAL REPORTS

F.1. The Commission must prepare, on an annual basis at the end of each calendar year, a summary data report that contains:

a. a general description of the activities of the Commission during the past year;

b. the number of ethics complaints filed with the Commission;

c. the number of ethics complaints dismissed by the Commission in accordance with this chapter;

d. the number of ethics complaints formally reviewed by the Commission;

e. an executive summary of each complaint formally reviewed; and

f. an accounting of the Commission's expenditures, including the amount expended for outside legal counsel.

2. The summary data report must be submitted to the Mayor and City Council on an annual basis at the end of each calendar year.

3. The summary data report is considered a public record.

Section 3. Effective date. This Ordinance shall take effect upon first publication.

PASSED, APPROVED AND ADOPTED by the Murray City Municipal Council on this _____ day of _____, 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.

Jennifer Kennedy, City Recorder

Mayor's Report and Questions

Adjournment