



MURRAY CITY MUNICIPAL COUNCIL COUNCIL INITIATIVE WORKSHOP

A Murray City Council Initiative Workshop was held on Tuesday, July 9, 2013 in the Murray City Center, Conference Room #107, 5025 South State Street, Murray, Utah.

Members in Attendance:

Brett Hales	Council Chairman
Dave Nicponski	Council Vice Chairman
Darren Stam	Council Member
Jim Brass	Council Member
Jared Shaver	Council Member

Others in Attendance:

Frank Nakamura	City Attorney	Janet M. Lopez	Council Staff
Jan Wells	Mayor's office	Mike Terry	Human Resources
Kellie Challburg	Council Office	Jennifer Brass	Resident
Justin Zollinger	Finance	Diane Turner	Resident
Greg Bellon	Power	Craig Burnett	Police
Pete Fondaco	Police	George Katz	Resident
Sally Hoffelmeyer-Katz	Resident	Doug Hill	Mayor pro-tem

Mr. Hales called the Council Initiative Workshop to order at 5:02 p.m. and welcomed those in attendance. Mr. Hales excused the Mayor's absence, and welcomed Doug Hill as the pro-tem Mayor.

Discussion Item

Registration, fee and permit process for individuals or businesses wishing to solicit goods or services in Murray neighborhoods.

Mr. Stam noted that this issue was brought to his attention from residents that had heard about a solicitation policy in other cities. This is also based on some experiences that he has had. Mr. Stam said he and his wife were out of town one time, and his children were home alone and someone knocked on the door selling soaps. It was a young black kid. The children stated that they were not interested and asked the young salesman to leave. The solicitor continued harassing the children, and accusing the children of racial discrimination. Mr. Stam's daughter called Mr. Stam and he could hear the young kid yelling outside.

Recently, in Herriman, there was a young salesman arrested for being too aggressive. Mr. Stam has heard concerns from residents that they are concerned with the manner they are being addressed at their front doors, and would like the industry to be regulated a little better. Mr. Stam was asked about a registration system, so the City and the police would know who was going door to door in the City. Then, the City would have done a background check on these individuals walking in the City. There are some similar ordinances in nearby cities. Cottonwood Heights has an ordinance that the solicitor has to pay a \$25 registration fee, and prove that the employees wishing to solicit have had a BCI background check.

Mr. Nakamura brought up a concern on the constitutionality of that type of ordinance. Mr. Stam asked if this was something that should be looked into, adding a little more regulation, or are there adequate laws that cover it. If the City does have an aggressive sales person, what kind of response would a resident get if they called for help, he asked.

Mr. Shaver noted that he didn't see a real specific ordinance on solicitation and asked if Mr. Nakamura would comment on the subject.

Mr. Nakamura apologized for the late distribution of the material because he had been on vacation. He stated that he believes Murray and all cities have an interest in protecting the public and also their privacy, and the courts recognize that. The courts have also recognized that it is speech, and there are some first amendment protections.

Prior to 2007, the City did have an ordinance with a registration process, including fingerprinting and background checks. The solicitors had to have an identification card if they were going door to door.

In 2004, Murray City along with ten other cities were sued by Pacific Frontiers, the company that runs Kirby vacuums. Pleasant Grove and Kaysville went to court first and received unfavorable rulings, both in the Federal District Court and the Tenth Circuit Court of Appeals. It was ruled that the ordinance must be narrowly crafted and show a true governmental interest and there are no other laws that could take care of this matter, without interfering with the first amendment of commercial speech. Ordinances are rather general and attempt to cover anybody and everybody. Some of the other laws, such as trespassing are done on a case by case basis. The ten other cities, after seeing Kaysville and Pleasant Grove, including Murray City decided to settle the case. As part of that settlement, Murray was approached with this option: either have an ordinance that is the model ordinance similar to the one Cottonwood Heights uses, or no ordinance at all. Those options were presented to the Council in 2007. Even though Kirby vacuums agreed not to sue those cities using the model ordinance, it doesn't mean that others wouldn't sue. There are still first amendment issues.

Secondly, after discussing it with Chief Fondaco and the City Recorder at that time, it was decided that the City could protect the citizens with the current trespass and harassment laws. The City Recorder said that not many solicitors were not actually coming in to register but still going door to door. Also, there were not any citations issued by the Police Department. It was decided to bypass the registration format, along with the constitutionality questions, and not have any ordinance at all. This was based on the premise that the other laws in place would be enough to enforce any problems. It was

decided at that time to handle it on a case by case basis. He realizes that resources are spread thin and the Police have many other matters to deal with also. In 2007, the ordinance was repealed, rather than adopting the model ordinance that Cottonwood Heights uses.

Chief Fondaco commented that if there was an incident similar to the one Mr. Stam described, the resident could call the Police for harassment and disorderly conduct, and the response would be the same. It would be a lower priority depending on the caseload when the call comes in. The response by the Police Department would be the same whether there was the model ordinance or no ordinance at all. The result would also be the same, both either a Class B or Class C misdemeanor. The Salt Lake County jail isn't taking a person on a Class B misdemeanor so a citation would be issued. The Police can always get the offensive solicitor to leave the area. Chief Fondaco would be worried about the enforceability of the ordinance, and also whether it was constitutional. Like Mr. Nakamura stated, there are some questions still as to whether the model ordinance could be challenged.

Mr. Nakamura stated the question is whether this changes the sense of community that people can go door to door and talk to residents. He doesn't want to go after the few harassers and leave a chilling effect on the community. After looking at the Cottonwood Heights ordinance, trick or treaters are probably in violation as they are not representing a charitable or school organization. He feels like the ordinance itself would not escalate the prosecution and enforcement. The enforcement becomes an issue of availability and resources. He believes that laws are there that can handle them. He is aware that there are fraud issues out there, and this ordinance would not solve that either. There are criminal statutes on the books for that.

Mr. Shaver asked about the issue of free speech, and the fact that these people are doing business in Murray without a business license. These sales people are soliciting money and asking the residents to purchase something. There is a transaction there, and asked if taxes are collected on those purchases. Chief Fondaco said that usually they get one business license from a city and that is honored by other cities. A person can get a business license in Salt Lake City and come to Murray and sell their goods or services. There is a reciprocity agreement there. Chief Fondaco said the registration ordinance would not be reciprocal. Every business or solicitor would have to be registered in each city and that is where the constitutional problems come up. Mr. Nakamura agreed and said the argument that Kirby Vacuums made was that there was no commerce at all due to having to register in each city. Mr. Shaver asked again whether taxes were collected. Mr. Nakamura said he didn't know. Mr. Brass said it would probably be the responsibility of the entity that issued the license.

Mr. Nicponski asked about the settlement and the cost to Murray. Mr. Nakamura said it cost the City \$40,000. It was a million dollar settlement split between the ten cities. Mr. Nakamura expressed some disappointment in the settlement, but Murray was grouped together with all the other cities. He would have liked Murray City to represent Murray City and have a separate set of facts.

Chief Fondaco added the fact that not many sales people came in and registered. The law abiding solicitors that came in and registered were not the problems in the neighborhood. The problem is these groups that have five or six teenagers and are dropped off in a certain neighborhood to flood that neighborhood, and that person dropping the teenagers off doesn't have to register under the law. Mr. Shaver asked if this would fall under the public nuisance law currently. Mr. Nakamura said many

people put up the sign that states no solicitors, and if they violate that sign, then they are trespassing.

The question came up if campaigning door to door violates the no trespassing also. Mr. Nakamura stated that there is an exception allowed for campaigning.

Mr. Brass asked Mr. Hales if this should go forward to a Committee of the Whole. Mr. Stam said the point of that was to bring up a discussion to see if it should be looked into further. Mr. Shaver said it may be something worth pursuing at a later meeting. Mr. Nakamura said the safest thing to do would probably be to use the model ordinance that all the cities have. The benefits and the risks of having such an ordinance should be looked at. Mr. Stam asked if it was worth the time for the Attorney's office to look into it and possibly enact the model ordinance. Mr. Nakamura didn't believe the model ordinance had been tested. Mr. Nicponski noted that it is probably worth moving on to another discussion, and learn more about the model ordinance. Ms. Lopez commented that there were copies of the model ordinance available in the packet.

Mr. Hales said that the Council would move forward with it, and research it further. Mr. Brass said he remembered in 2007 when this issue came up, and it was discouraging. He is concerned with the manpower it would require to enforce all the solicitors that come into the neighborhoods. He doesn't have a problem with Mr. Nakamura looking into it further, and see if a solution could be found. Mr. Nicponski added that he doesn't want to restrict the neighborhood children from being able to go door to door either. Mr. Hales noted that the Council would move forward with the issue.

Mr. Hales adjourned the meeting.

Kellie Challburg
Council Office Adminstrator II

