



MURRAY CITY MUNICIPAL COUNCIL COMMITTEE OF THE WHOLE

The Murray City Municipal Council met as a Committee of the Whole on Tuesday, August 21, 2012, in the Murray City Center, Conference Room #107, 5025 South State Street, Murray Utah.

Members in Attendance:

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

Others in Attendance:

Dan Snarr	Mayor	Tim Tingey	ADS Director
Janet M. Lopez	Council Office Administrator	Jan Wells	Mayor's Chief of Staff
Frank Nakamura	City Attorney	Doug Hill	Public Service Director
Justin Zollinger	Finance Director	Zach Fountain	Mayor's Office
Jennifer Kennedy	City Recorder	Chad Wilkinson	Comm Econ Development
Jennifer Brass	Citizen	George Katz	Citizen
Sally Hoffelmeyer-Katz	Citizen		

Chairman Brass called the Committee of the Whole meeting to order at 5:30 p.m. and welcomed those in attendance.

Business Item #1: Independent Audit Policy Revision – Justin Zollinger

Mr. Zollinger reviewed some history relating that in the early 2000s the Enron situation occurred creating legislation that affects the City. One of them was the Sarbains Oxley Act of 2002 reacting to corporate accounting scandals addressing the fact that auditors and companies were becoming too cozy with each other. This Act requires auditor partner rotation to keep auditing at a distance from the company. His auditing policy change takes into account some of these ideas.

He has changed the language that the City auditing is bid out every five years. Although, he feels that if our current auditors offer the lowest bid, as they are very qualified, he questioned if there would be a way to still provide the change, with a new set of eyes looking at the accounting, and still accept the lower bid. He has put into the policy that the accounting firm would change the accounting audit manager. This way the City would still have someone new

looking at the books and would come closer to how auditing is handled in the private sector in publicly held companies. That is the change he has made and he asked if there were questions or input.

Mr. Shaver asked if that change is being made. Mr. Zollinger responded yes. He reiterated that the bid would go out every five years and if the same firm was the low bid, then the City would require audit manager rotation.

Mr. Hales asked what the change was. Mr. Zollinger stated that the current policy states the audit be bid every ten years. The amendment would be to bid out every five years. If the same firm were the low bid, then the auditor here on site would be rotated to a different auditor.

Mr. Shaver asked what the policy was driven by. Mr. Nakamura said that it is the annual audit that is required by law. He said it is more than a policy and would be submitted on September 4 at the Council Meeting for Council approval.

Mr. Shaver confirmed that the policy was being suggested, it had not been done. Mr. Nakamura verified that and said it would be presented as a resolution to the Council for approval.

Mr. Nicponski understood that the City contracts out the auditing and asked if the Finance Director oversees that. Mr. Zollinger stated that he oversees that audit.

Mr. Shaver pointed out that he wanted to discuss further the five year bid. The audit is conducted for the City; however, as far as the finances are concerned the Mayor exacts that through the Finance Director and the Council sets the policy. It is not an arbitrary thing it needs to be discussed by the Council how it is to be done. As part of the Budget Committee the handbook suggested an Audit Committee that would do that and it is something that needs to be reviewed and considered very seriously because Mr. Zollinger brought up a good point. If the auditors are doing a great job, why change. It needs to be discussed. Now it means that a company may do the audit for a certain amount of time and then it needs to be changed completely, opened up for a completely different bid. That company cannot now, according to the current policy, bid on the auditing.

Mr. Brass supports that policy and the reason behind it because one tends not to ding your friends. With the same person dealing with the audit over and over again, you become very familiar with the people you are dealing with and things can be missed that are important. Everyone has read about city officials or school district people who disappear with cash. The audit is good and having a different set of eyes looking at it is good.

Mr. Hales asked if the City had been using the same people and same set of eyes for the ten year period of the current audit policy. Mr. Shaver said he would recommend as suggested by Mr. Zollinger the five year change of personnel and a ten year change of auditors putting the City completely outside the group with fresh eyes. The people doing the City audit have to be specifically certified to do this kind of audit; it is not just a regular CPA firm. He would like to consider that as part of the policy. Mr. Zollinger has made a good suggestion, Mr. Shaver stated.

Mr. Stam remarked that if this was in place to come forward then the ten year change of companies should be discussed before it comes to the Council.

Mr. Shaver asked if a two week delay would hurt too much so that it could be considered again and have a further conversation.

Mr. Zollinger agreed with that process.

Business Item #2

Handyman Ordinance for Home Occupations- Tim Tingey and Chad Wilkinson

Mr. Tingey reminded the group that a few weeks prior a Council Initiative Workshop (CIW) discussion took place about the Home Occupation Ordinance. In 2007 businesses associated with construction were eliminated as home occupations. Other types of uses are also not allowed in home occupations. It was decided in the CIW to have the Community Development staff look at possible scenarios to evaluate relating to that. Mr. Wilkinson will present information gathered on what Murray currently allows, what other communities permit and get direction from the Council on what they would like as they move forward with possibilities to the Planning Commission and eventually back to the Council.

Mr. Wilkinson explained that home occupation permits are reviewed through the Business License Department. It does not go through Planning Commission or any other process.

The current Zoning Ordinance has some specific limits on all home occupations. It limits the size to no more than 25% of the square footage of the home. The number of employees is limited, signage is prohibited, and use of detached buildings or yard area is prohibited. The number and size of vehicles is limited, as well as, the traffic generation produced by the business. Uses that generate noise, odors, fumes and hazardous substances are also limited as they go with a higher intensity use.

A list of expressly prohibited uses was presented by Mr. Wilkinson with construction businesses included, which covers the handyman business. Another use prohibited that draws a lot of requests is vehicle, boat and trailer repair business. The wording says that types of businesses associated with these are prohibited. Another one mentioned is a permanent yard sale.

Mr. Brass asked how the City enforces against these occupations. Mr. Wilkinson replied that enforcement is based on complaints and then the Code Enforcement will investigate.

All the businesses on the list were prohibited prior to 2007 when construction businesses were added. Nothing else changed at that time. The minutes regarding that issue did not contain a lot of discussion or language about it; however, in talking with staff that was with the City at that time, it was discovered that there was concern and issues with outdoor storage of material, backhoes, large trailers, and mobilizing work crews early in the morning. These were problems for the neighbors.

Handyman businesses did produce some confusion and for awhile, because they were not licensed contractors, a couple of them were permitted. Functionally, a handyman business is a construction business. One could be a painter, plumber, framer or take small jobs. These people have the same characteristics as a construction business. Where this came from was complaints by licensed contractors, because the City did not allow them to do the same thing. There are quite a few requests for handyman and also requests for other things, which prompted him to discuss this in broader terms.

The City regularly receives requests for other businesses that may not be explicitly prohibited but are implicitly prohibited because of other standards in the code. The language in the code states that these are uses that have “a pronounced tendency” of the business “once started to rapidly increase beyond the limits permitted for home occupations.” Some of the requests include a limousine service and taxi service (both were 24 hour businesses), pesticide business (harmful chemicals) and vehicle sales (display of merchandise outside the home). These businesses were denied licenses based on being inappropriate for a residential neighborhood.

Mr. Shaver asked if as a taxi driver or handyman, he could park his work vehicle outside his home. Yes, it just cannot be licensed for business at his home, Mr. Wilkinson responded.

Mr. Brass mentioned a limousine business in his neighborhood, and every driver left their car and picked up a limousine; therefore, parking was an issue.

Mr. Wilkinson stated that people have good intentions and do not intend to impact the neighbors; however, these businesses do have the tendency to rapidly increase.

A multi community comparison of home occupations was displayed. Mr. Wilkinson said some of the communities require a conditional use permit based on operational characteristics of a business. If customers visit the site or if an outbuilding is in use, a conditional use permit may be required. Some cities require a conditional use permit based on the use itself. There are a wide range of uses prohibited by other cities and some of those are not an issue for Murray. Sexually oriented businesses have a really good definition in Murray and there would be no confusion about that.

Mr. Shaver mentioned that some of the occupations listed are only allowed in specific zones. Mr. Wilkinson said that most of the things seen as home occupations have met all the criteria for home occupations. They are not listed as permitted use in the zone. The restrictions are based on business licenses not on zoning issues that need a larger land mass than in a residential issue.

Mr. Wilkinson said that the goal for the City is not to have an ordinance that must be changed every time a new use is proposed, but to have some flexibility. He did not propose to include all the businesses prohibited by other cities. One thing he felt was interesting was that Taylorsville allowed up to two vehicles to be sold at one time. Murray would not prohibit someone selling their private vehicle.

Some cities require neighborhood sign off for some of the business uses. Salt Lake City can go to a conditional use permit or board of adjustment hearing if the neighborhood sign off is not obtained. There are pros and cons to that, and he does not necessarily advocate it, but it is something that is used by other communities. Mr. Shaver liked the idea of the last resort, so that people are not held hostage by a single neighbor.

Mr. Wilkinson asked if there are other uses that the Council feels should be considered as prohibited or allowed, as they look at the handyman as a permitted use.

Mr. Shaver mentioned gardening. He has a neighbor who sells produce from his home garden. It is an issue as to whether or not taxes are collected or if it is bartered. One thing

coming up in a couple of weeks is beekeeping because he has a neighbor who has bee hives and every year he sells honey with a sign in the front yard.

Mr. Brass noted another businessman who will be moving into his neighborhood and has the Mantel Magic business. He sees this more as cabinetry or furniture making than construction. The downturn in the economy and home building has crippled his business to the point where he cannot afford the lease and stay in business. He wanted to move the shop to his house. It is a business of one person and people do not come there. Mr. Wilkinson said they would need some specific descriptions of his business because there is noise, dust and those types of things that are not specifically mentioned on the prohibited list. It is in the realm of construction or carpentry business. That is something where a call must be made every time if it is similar to the uses prohibited. The department tries to help people conduct business and use discretion when they can, but is especially sensitive where it affects the neighbors.

Mr. Shaver mentioned the neighborhood sign off and conditional use permit in this situation.

Mr. Wilkinson focused on direction from the Council. Some options are listed and these could go together.

- To make no change at all.
- Allow construction business but to use the existing code to regulate it.
- Allow construction businesses but add standards to specifically regulate construction businesses in residential zones, such as mobilizing a crew, and prohibiting certain equipment.
- Go through conditional use permits for certain types of construction businesses. In one municipality there were major and minor home occupations. A major home occupation was anything where customers came to the site, which required a mitigation meeting with the neighbors. They could express concerns with the hearing officer. That is one approach.

The department would like direction from the Council on what approach they would like the staff to consider. Any of these approaches, except the first, requires additional research to see what works and apply it to Murray.

Mr. Brass likes the last two suggestions. If a handyman can park his truck with everything he uses for his business in his garage, then it is much different than a major contractor. Regrettably, the economy has forced people to make adaptations to their lives to make a living. It is better for the City to have them making a living than not, and he feels some flexibility is worth looking at. He does not want a construction business in his neighborhood, but if a handyman could fix things when he is out of town, his wife would love it. He thinks they should look at it and decide what is okay in a neighborhood and what is not.

Mr. Shaver agreed, adding that it is a neighborhood, so they are seeking to minimize the impact on the residents that surround that particular business. Noise, dust, traffic and things that are not wanted should be detailed just as those things that could be included.

Mr. Brass mentioned that he does not want someone making ammunition in the neighborhoods.

Mr. Wilkinson stated that one thing the staff wants to be very careful about is the language. Contained in the code now is that some businesses once started have a tendency to rapidly increase beyond the limits of a home occupation. In creating the standards he wants to be cognizant of this criteria. There could be some enforcement due to the success of the business.

Mr. Brass pointed out that the last choice is good because with the conditional use permit a permit may be revoked if necessary. Mr. Wilkinson agreed stating that the permit gives some teeth to the process and the existing ordinance. On the other hand, with business licensing, once someone has one, the tendency is to continue to approve it forever. The license must be renewed annually. Mr. Brass said that the Fire Department inspects every year and he said the same thing can be done with the business license.

Mr. Shaver mentioned the hearing officer of another city and detailed that neighbors could complain to the hearing office and the conditional use permit may be put on probation until the situation is rectified. This is what is done on parking now and complaints on weeds.

Mr. Tingey said that the mechanism that would respond would probably be the Planning Commission, because Murray has no hearing officer. The revocation process is initiated through Code Enforcement and the Planning Commission makes the final decision.

Mr. Stam explained that his business license was initially taken out 13 years prior and at one point there was an increase in fees from \$20 to \$100. When he asked why he was told it was based on a review of the policies and for the home inspection. He stated that he had never had an inspection of his home occupation and he insisted that nobody knows if the businesses are going beyond what is allowed or not.

Mr. Brass noted that it was determined from a fee adjustment study which showed that Murray was not covering the costs of enforcement. If you have never had a complaint then no one will come to the home. Where complaints are received this covers the expense of the City enforcing the ordinance.

Mr. Wilkinson said that another fee study for business licensing was being completed and the Council would get a lot more information on what goes into the fee structure when a report is presented in the next several weeks.

Mr. Shaver reviewed that Mr. Wilkinson was looking for some direction from the Council in order to come up with a review or ordinance or change. The first option does not require any changes; however the others can be approached from a variety of ways. The City can just say that a mistake was made in 2007 and the Council would like to put construction business back in and use existing standards to regulate it. He was looking for direction on whether the Council wanted staff to pursue a conditional use permit with standards specific to construction businesses. That is a fairly easy change to make.

Mr. Brass said that the option would be what makes sense to put back into the allowable home occupation ordinance.

Mr. Shaver commented that he liked the explanation pointing out that a lot of people in the current economy have been forced to move their businesses home. The City wants to encourage business in Murray so that residents continue to shop at Costco and the mall because that puts dollars in the City's pocket.

Mr. Wilkinson noted that relating to changing the ordinance there definitely are people requesting changes; however, there are also silent residents who do not know these changes are being requested. It is important to maintain standards that protect the neighborhoods.

In summary, Mr. Brass would like to have some uses looked at a little closer; but with a conditional use process. The bottom line is what can the City do to help people who have been hit by the economy without compromising the neighborhood? He would like to pursue something along those lines and would also like to provide notice so that all Murray citizens hear about it.

Mr. Shaver likes the item number three to allow for construction businesses but add standards to specifically regulate and also modify for conditional use permits. Mr. Brass' example of the man who constructs mantels with no one visiting his place of business would be covered under the conditional use permit. If other businesses could flourish under the conditional use permit, Mr. Shaver would like to see the City include them as home occupations, as well. He thinks the neighborhood sign-off is a great idea. It is not restrictive, Mr. Hales added.

Mr. Stam and Mr. Hales voiced their agreement with that option.

Mr. Tingey stated that on the full conditional use permit process, often times someone needs their business license in an expedited manner and the process takes three to four weeks with a fee of \$300. He anticipated the Council would get complaints from these people.

Mr. Brass said that unless there is a better way to protect the City and neighbors against the business that grows, and business owners should expect to grow, then at some point they need to move back into a building.

Neighborhood sign-off and site inspection will encompass that time period and there is a fee to have someone come to the location and see that the conditions are met. The process is not an instant approval.

Mr. Stam noted that \$300 could be a significant amount of money for some of the small businesses and he wondered if there could be a smaller amount for the home based business. Mr. Wilkinson said that they also get complaints about the \$100 fee. Additionally, there is a lower amount for a business that earns less than \$10,000 per year. Mr. Stam wondered if the same sort of thing could be done for the conditional use permit.

Mr. Brass agreed that it might be worth looking at. He pointed out that although the Council may want to help people out, it must be balanced with the fact that decisions made can affect the City forever. Having the conditional use permit process is an effort to protect people from bad business and that will take time.

Mr. Tingey said that there is an option to allow the construction business with some standards and one must get adjacent property sign off. Then without the property sign-off it is automatically a conditional use permit. This is another option. Mr. Wilkinson said that is the process used in Salt Lake City.

Mr. Brass insisted that the City must have a way to say stop to a home occupation that outgrows the home occupation standards. The City can revoke, Mr. Tingey said. It is a code enforcement issue. Mr. Brass was okay with that.

Announcements: **Janet Lopez**

Ms. Lopez mentioned that she would be out of the office the coming Friday and calls would be forwarded to the City Recorder.

With no further business, Mr. Brass adjourned the meeting at 6:12 p.m.

Janet M. Lopez
Council Office Administrator