



## MURRAY CITY MUNICIPAL COUNCIL COMMITTEE OF THE WHOLE

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The Murray City Municipal Council met as a Committee of the Whole on Tuesday, August 6, 2013, in the Murray City Center, Conference Room #107, 5025 South State Street, Murray Utah.

### Members in Attendance:

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

### Members Excused:

Jim Brass	Council Member
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### Others in Attendance:

Dan Snarr	Mayor	Jennifer Kennedy	Recorder
Janet M. Lopez	Council Office	Jan Wells	Mayor's COS
Frank Nakamura	City Attorney	Pete Fondaco	Police Chief
Tim Tingey	ADS	Diane Turner	Resident
Mike Terry	HR	Blair Camp	Resident
Kellie Challburg	Council Office		

Chairman Hales called the Committee of the Whole meeting to order and welcomed those in attendance. Mr. Hales excused Jim Brass who was out of town on business.

### Minutes

Mr. Hales asked for corrections or action on the minutes from the Committee of the Whole meeting held on June 4th, 2013, as well as minutes from the Council Initiative Workshop meeting held on June 19th, 2013. Mr. Shaver moved for approval. Mr. Stam seconded the motion. All were in favor.

### Business Item 2.1

### Regulating Door to Door Solicitation- Darren Stam & Frank Nakamura

Mr. Stam stated that he had received numerous comments relating to solicitation, and not simply because the Council is considering the issue. The comments that Mr. Stam was hearing were the surrounding cities have put this model ordinance in place and it is causing the solicitors to come to Murray instead because they don't want to have to register.

Mr. Nakamura said his office made some minor adjustments to the model ordinance the cities that Mr. Stam is referring to, have passed and are currently using. The model ordinance arose out of litigation, and was approved by some of the litigants in the Kirby vacuum case. Mr. Nakamura is not aware of any challenges to the model ordinance since the resolution. The changes that were made were very minor adjustments to account for the Mayor and Council form of government, and some wording to make it consistent with the other codified ordinances. The registration requirements are still there. It is different from the previous ordinance that was in place that was challenged. The fee section has been left open; that was one of the issues in the case. Fingerprinting has also been left off because the Federal court had focused on that as being unnecessary. This is a policy call and Mr. Nakamura distributed a memorandum. The memorandum was written to give a background and explain the litigation that occurred.

In 2007, the Council decided to let solicitation go unregulated and rely on the existing ordinances that were in place. Currently, there are no registration requirements for solicitors in Murray.

Mr. Shaver confirmed that it is still up to the citizens to make the call and notify the police of someone in their neighborhood, and that the Police would not be able to check every person that is knocking on doors. Mr. Nakamura agreed that is probably the most realistic option. If the police sees them and they are not registered, they don't have to rely on citizens.

Mr. Shaver asked about minors soliciting, such as Boy Scouts, Girl Scouts, youth groups, etc. Mr. Nakamura expressed some concern about those definitions, but anything that has to do with free speech or interpretation of religion are difficult to handle. Under the law, it has to be narrowly construed and drafted. He is not aware of any subsequent issues in regards to door to door sales. Mr. Nicponski asked if this ordinance will make it more difficult for the Scouts. Mr. Stam replied that there is a section in the ordinance that makes exceptions for the youth, and school and sport teams. Mr. Shaver commented that it is the youth that are selling the candy, etc. and are not associated with a local entity and may be from a business outside the City. Usually, the school sports teams may sell products using a local entity, but other businesses may hire youth to knock on doors and solicit sales for newspapers, magazines or other products.

Mr. Shaver noted that the ordinance that the City is drafting looks very similar to the ordinance of other cities, and questioned if one city is singled out for litigation, would the other cities support each other if the ordinance is challenged. Mr. Nakamura said he would prefer to handle the case independently anyway. He said that is the best opportunity to direct the litigation. In the past, there have been experiences where other entities have settled the cases and left Murray stranded simply because they were jointly named.

Mr. Stam noted that one positive aspect of the ordinance is that it allows the City and the Police to know who is coming into the City. He is aware that previously people didn't register and didn't get picked up, but having the ordinance on the books will hinder some people from entering the City.

Mr. Nicponski asked Mr. Nakamura to walk the Council through the steps required to solicit in Murray. Mr. Nakamura said a person would need to register through business licensing, and go through a background check. After the registration form is reviewed, and the background check completed, the person would be issued a card.

Mr. Nicponski asked about the number of staff needed to process the applications. Mr. Tingey said he doesn't know how many people will proactively come in and register. He believes that most people would be referred to get a license after they have been caught soliciting without one. He said there are a couple of issues, but can make it work.

Typically, if a police officer sends someone in to get a license, that person would want a fast track for approval. The City processes hundreds of business licenses each week, and the timing and tracking may be an issue. Currently, they are a little strapped in that department, but could work through it. The difficult part is knowing how many people would come in to register and go through this process. He said even with the youth groups that are exempt, there would need to be some follow up with the school administrators that the students are carrying their student identification. Mr. Tingey said if the ordinance is adopted, they will make it work, but there are challenges.

Mayor Snarr asked a question about a person in the neighborhood soliciting lawn service. The sales man was attaching his card to the door with a rubber band. Mayor Snarr asked if that was considered solicitation.

Mr. Nakamura said the legal side is the interpretation of whether it is affiliated with religion or non-profit. The underlying policy decision is whether or not this ordinance would cause a chilling effect on people coming into the City to sell door to door. That is the difficult policy call, he noted. Murray is a community minded City and typically welcomes that communication. The issue is whether the City wants to discourage the ability to go to the neighbor's house, and those that may fall into the exempt category may not choose to risk it. Mr. Nakamura believes it is a policy call; there may be some administrative costs, but it is feasible.

Mr. Nakamura asked Chief Fondaco to talk on the subject also. Chief Fondaco said normally they would receive a complaint, which would still be the case with this ordinance because the Police are not going to go looking for solicitors. He noted that the solicitors would not go in and register on their own, they will come in to register because the Police have told them that they need to.

The solicitors would then go in to register and want their permit issued that day. They will not want to have a waiting period, because they need that immediately to do their job. He doesn't believe that anyone would register in advance. Even with the old ordinance, solicitors did not register until they were told that they had to.

Mr. Nicponski commented that is how a typical businessman would do it. Mr. Shaver noted that a typical businessman would be registered with a business license. Mr. Nakamura commented that a typical business license may not include solicitation. Mr. Shaver asked if that was something that could be done when a business license is issued, to include the possibility of solicitation on the license.

Chief Fondaco said that many solicitors do not have a business license issued by Murray, and are using the reciprocal agreement between cities. For example, a company such as Terminix may be licensed in Salt Lake, but going door to door in Murray.

Mr. Nakamura said that is where this becomes problematic. There needs to be a governmental reason to perform background checks, not simply because you are a business owner. The only reason that you can do a background check on door to door sales is because there is a governmental interest in protecting the safety of the residents. If you are simply a business owner, such as the owner of a Mini Mart, he is unsure of whether the City has the right to do a background check. That cannot be included as part of a business license application because there is not a governmental reason to do that.

Mr. Shaver commented that if he was a business owner in Murray and came in to renew his license, and wanted the opportunity to solicit door to door, then could that question be included on the business license application. Mr. Tingey said that could be done, but agrees with Chief Fondaco that most of these individuals soliciting are coming from outside of the City and are not licensed business owners in Murray.

Mr. Stam said it is interesting when looking at other cities that have this ordinance in place. If there is a legitimate business, such as a Terminix, they would go to neighboring Cottonwood Heights and get caught and then register, they would then return to Cottonwood Heights because they were already registered there. The solicitors that never register, are probably the ones that the City doesn't want. He commented that after the first time caught, they would know they need to register when coming to Murray.

Mr. Shaver asked the length of time that the registration would be current. Mr. Tingey said it would be a yearly renewal. Mr. Nakamura commented that a fee had not been specified.

Mr. Nicponski commented that they had solicitors coming to his door selling day old fruit, and literally had a knife in their hand to cut the fruit to give a sample. Sure enough, Murray police showed up shortly after, before they got very far down the street. Chief Fondaco noted that the Police could have responded to a trespassing or disorderly conduct call. Mr. Nakamura also commented that a person could have a no solicitation sign on their house, and if that is ignored, then it is a trespassing issue.

Mr. Hales noted that some condominium complexes have signs out that say no solicitation. Mr. Stam said as a politician it is different, you are not soliciting anything. Mr. Hales said that some residents don't see it any differently.

Mr. Shaver reiterated that the problem isn't those individuals that the neighborhood would like to see soliciting there. The background check is specifically for those individuals that may not be as desirable in the neighborhood, but this is the only way for them to make a living. He noted that the line is between protecting residents and allowing other solicitors that may be wanted in the neighborhood. Mr. Stam said the solicitor that the City doesn't want is the vanload of kids dropped off and canvassing the neighborhood. They are often aggressive, and accuse racism if their products are not purchased.

Mr. Nakamura said that is part of the difficulty of registering; does the driver register or the kids being dropped off, he asked. The driver is often the person making money and exploiting the kids. Mr. Stam stated that the ordinance states that those going door to door are the ones needing to be reviewed. If that van brings in a bunch of kids, all those kids would need to be registered. The fee may not be required for every kid selling, just for the one entity, if a fee is linked to the registration.

Mr. Stam noted that there was just an arrest made in Herriman for an aggressive solicitor. Mr. Nakamura agreed that there have been issues, but also believes the Police can handle those issues on trespassing or disorderly conduct when called. Mr. Stam asked what the rule was on trespassing and if it required two warnings. Chief Fondaco said no, the homeowner just needs to tell them to leave their property and if the person does not immediately leave, then it is trespassing. Chief Fondaco said if the homeowner answers the door to an aggressive person, they simply need to tell them to leave their property.

The second warning is for law enforcement, and that is not on private property.

Mr. Nicponski suggested educating the citizens, possibly a flyer in the utility mailer, as to the solicitation rules, and let the homeowners know of their rights.

Mr. Shaver asked if the discussion was moving away from the ordinance, and sticking with what was currently in place. Chief Fondaco stated that the Police will enforce the ordinance if it is enacted, whatever this body decides. Mr. Shaver commented that if he was to tell a solicitor to leave his property, they would simply move on to the neighbor. If every house refuses the solicitor, they are still walking the neighborhood and there has not been a background check performed. The trespassing and disorderly conduct rules would address a single event, but not multiple events throughout different neighborhoods.

Mr. Nakamura believes there will be difficulty in the interpretation of who is exempt, and who is not. That part of the ordinance will be very difficult.

Ms. Wells commented that the Mayor's office never receives phone calls about this issue. Chief Fondaco said that the Police Department has received calls about solicitation, but receives more calls on the people soliciting money on the freeway exits than the solicitors in the neighborhoods. He gets complaints everyday on those solicitors at the freeway in Murray. The Police respond to them and tell the solicitors not to be aggressive, and not to enter the street, but leave them there because there is not an ordinance forbidding it.

Mr. Hales said the time limit was approaching and asked if the Council would like to continue the discussion at another time.

Mr. Stam said he receives comments that the other cities are enforcing this ordinance in an effort to clean up their cities, and the people that get turned away in the other cities will come to Murray.

Mr. Shaver asked if the discussion could be moved to another day. Mr. Stam said he has heard a lot of comments since he has been knocking on doors as a candidate. Mr. Hales agreed that the subject should be continued at a future meeting, and thanked all those in attendance.

### **Announcements**

Ms. Lopez reminded the Council to make their reservations for the Boards and Commissions Banquet.

Mr. Hales adjourned the meeting at 6:30.

Council Office Administrator II  
Kellie Challburg

