



**MURRAY CITY MUNICIPAL COUNCIL
COMMITTEE OF THE WHOLE**

The Murray City Municipal Council met as a Committee of the Whole on Tuesday, November 9, 2010, in the Murray City Center, Conference Room #107, 5025 South State Street, Murray, Utah.

Members in Attendance:

Jeff Dredge	Council Chairman
Darren V. Stam	Council Vice Chairman
Jim Brass	Council Member
Jared A. Shaver	Council Member
Krista Dunn	Council Member

Others in Attendance:

Frank Nakamura	City Attorney
Michael D. Wagstaff	Council Executive Director
Janet M. Lopez	Council Office
Peri Kinder	Valley Journals
Tim Tingey	Comm & Econ Dev Director
Gil Rodriguez	Murray City Fire Chief
Jennifer Brass	Citizen
Dan Barr	Murray City Library Director

Chairman Dredge called the meeting to order at 5:30 p.m. and welcomed those in attendance.

Minutes:

Mr. Dredge asked if there were any substantive changes on the minutes from the Committee of the Whole meetings held on October 5, 2010, or October 19, 2010. Mr. Shaver moved approval as written. Mr. Stam seconded the motion. The motion carried 5-0.

**Business Item #1: Open and Public Meetings; Forms of Government;
Separation of Powers - Frank Nakamura**

Open and Public Meetings:

Mr. Nakamura mentioned that Open and Public Meetings training is required to be given to the Council annually. The key of this act is to promote transparency and openness.

The first criterion is to establish what constitutes a meeting, which is sometimes no so easy to define. If a quorum of the Council is present there are concerns that it will be a meeting, therefore, the requirements in the statute for noticing a meeting must be followed. There can be social meetings that are not defined in the statute.

The Council staff assists in noticing the meeting. A minimum of 24 hours notice is required, although, the public is given a much longer period of time for Murray meetings. Notices are posted in City Hall, and provided to the media. It is also posted on the Utah Public Notice website. The City has not had any issues with notices. Currently, the Council office is publishing on the Friday preceding the Tuesday Council meeting.

An emergency meeting can be called. Public Hearings require 10 to 14 days notice. Land use issues require 10 days, however, Murray has made it a practice to publish 14 days before the hearing, Mr. Nakamura explained.

Another notice requirement is making sure the agenda identifies the issues for discussion. The City is very careful about that. Other jurisdictions use very general phrases, such as, *other or emergency add on*. Murray agendas are very specific in these areas.

Closed meetings are very specifically identified in the statute. These are rather rare, and allowed for real estate transactions; discussion of character, professional competence, or physical and mental health of an individual; or pending and imminent litigation.

Mr. Nakamura pointed out that minutes must be taken of all meetings, and meetings must be tape recorded. This is handled by the Council and Recorder's office. Closed meetings must be recorded, except for personnel discussions or implementing security devices. The recordings give an opportunity for a judge to determine if a meeting was appropriately closed, if challenged. The judge would review the recording in private to make the determination.

Murray is very careful in this regard, and he pointed out that recently there was an occasion with three Council members in a City meeting that was not noticed. Mr. Nakamura had to ask one member to leave.

Forms of Government:

Mr. Nakamura indicated that he was asked to talk about Forms of Government for municipal entities. In 1981, citizens of Murray voted that the City would have a Council - Mayor form of government. He planned to address that more in the Separation of Powers discussion.

Since May of 2008, there are two other forms of government that the electorate can vote on. One is the Six-Member Council form of government, and a Five-Member

Council form of government. The Council-City Manager form of government was repealed at that time. Those cities that operated under the Council-Manager form have been grandfathered in and are allowed to maintain that form of government.

The Six-Member Council form does have the executive and legislative powers, however, they can, by ordinance, create and define their own powers. There can be a department head who is also a council member. It must be done by ordinance, but allows some flexibility. To accomplish that, the mayor must cast a vote and all the council members. An ordinance would define the various powers. Salt Lake City formerly had this type of government, and each council member was a head of a department. They switched to the Council-Mayor form of government.

There were some questions about the City Manager form of government. The materials sent out prior to the meeting included the powers of a city manager. The city manager is the administrator of the city, with many executive powers. The manager is hired by the City Council and can be removed by the City Council. The duties were specified in state law prior to 2008.

Mr. Shaver asked if the council could hire a city manager. Under the Six-Member Council form of government an ordinance could be enacted to hire a manager, and identify what the manager would do. It must be voted on by the mayor and all council members. The mayor acts as chair of the council in that form of government. The ability to enact ordinances gives a lot of flexibility in creating authority and responsibilities in that form of government.

Mr. Stam clarified that in the Six-Member Council form, the mayor and five council members are included. Mr. Nakamura confirmed that was correct, and the mayor has a vote in council decisions. Under that form the ability to enact ordinances gives a lot of flexibility as to how authorities, duties, and responsibilities are created. In order to enact this form of government, the citizens of Murray would have to vote for it.

Ms. Dunn asked Mr. Nakamura to summarize the differences between Murray's form of government and the other forms available. Mr. Nakamura stated that the Council-Mayor form is a complete separation of powers, not shared power, it is a balance similar to the federal and state system of power. These other forms have a mixing of executive and legislative powers. Executive authority is the mayor's in the Council-Mayor form, and in the others it can be delegated to a city manager or to council members, under an ordinance. Salt Lake County had a commission form of government with all the executive and legislative powers in three commissioners.

Separation of Powers:

Mr. Nakamura expressed that Separation of Powers is not clear cut. It is determined by reading case law, which indicates that a complete separation exists, with the mayor executive in administrative authority, and the council with legislative, and budgeting powers.

Mr. Nakamura stated that he has written a number of separation of powers legal opinions in his career. One of his first assignments was to read *Martindale versus Anderson* which referred to the authority to sell real property. The Utah Supreme Court ruled that it was the mayor. The council has the ability to enact legislation which outlines the rules under which property may be sold, such as, necessity of an appraisal, sale will be at appraised value, and it must be budgeted for. The actual negotiation and implementation are the mayor's responsibility.

The second opinion Mr. Nakamura had to address was whether the city council could remodel their offices. The mayor argued that it was a historic building, and those changes would not be allowed. The question was, did the council have the authority to do the remodeling. The ruling was that the mayor has the authority to maintain and manage the buildings.

Mr. Brass asked about the power of the Municipal Building Authority (MBA). Mr. Nakamura replied that it would be a decision of the MBA if they owned the building.

Another decision was whether the city council had the ability to make purchases without going through the city purchasing agent. The answer was that the city council established the parameters of procurement laws, however, the ultimate purchasing was done by the executive side.

Further, Mr. Nakamura stated that some self restraint was necessary, and an understanding of what the separation of powers was intended to accomplish. The legislative branch enacts general policy direction, ordinances, laws, and budgeting of funds. It is up to the mayor to implement these policies and laws. The mayor is in charge of the employees and departments.

In 2008, the legislature codified the powers of the mayor and council. They specifically stated that the legislative branch could not direct a mayor employee. The council can give input. Advice and consent are given to the mayor on appointments of department directors, and boards and commissions.

Some of the issues are not easily defined. In Arizona, the authority on immigration laws has been questioned.

The council is more general, policy making. The executive is implementation of day to day operations.

Ms. Dunn asked how many forms of government exist since 2008. Mr. Nakamura reiterated that there are three. They are the Five-Member Council, the Six-Member Council, and the Council-Mayor. She stressed that Murray is not a Five-Member Council. Mr. Nakamura confirmed that and stated that the legislature can make changes in the future.

Mr. Wagstaff explained that in 2008, a few legislators had the desire to take on the city manager issue, and formed a committee to make that change. He feels that in a few more years, someone will form a committee to make changes again to help cure problems existing at that time. Defining the powers of the mayor was a problem for some cities, which brought on that particular change.

Mr. Nakamura said that he likes the idea that the legislature took the authority of the council and mayor, and tried to spell it out the best they could. In the future there may be more forms of government.

Mr. Dredge thanked Mr. Nakamura, and there being no further business the meeting was adjourned at 5:58 p.m.

Janet M. Lopez
Council Office Administrator