

**THE WORKSESSION
OF THE MAYOR AND CITY COUNCIL OF BENSON, ARIZONA
HELD JANUARY 13, 2014, AT 6:00 P.M.
AT CITY HALL, 120 W. 6TH STREET, BENSON, ARIZONA**

CALL TO ORDER:

Mayor King called the meeting to order at 6:01 p.m. Mayor King then led the public in the Pledge of Allegiance.

ROLL CALL:

Present were: Mayor Toney D. King, Sr., Vice Mayor Al Sacco, Councilmembers Pat Boyle, Ron Brooks, Jeff Cook, Chris Moncada and Peter Wangsness (via telephone).

NEW BUSINESS:

1. Discussion and possible direction to Staff regarding City Council Policies and Procedures, City Code as it relates to City Council

City Clerk Vicki Vivian stated the Council is currently holding worksessions to review the Policies and Procedures and is making comments, which she will integrate for Council's approval when their review of the document is complete and has had legal review. Ms. Vivian then stated at the last worksession held on November 25, 2013, the Council left off at the Section XV – Agenda Setting Process at the top of page 16. Ms. Vivian then began reading Section XV – Agenda Setting Process, adding this is the process that is currently in place. Ms. Vivian then read Section XVI – Committees, A – Council Member Appointments and Assignments, adding this is also the current procedure, for example, Council appoints a liaison to the Coronado RC&D and to the Chamber of Commerce. Ms. Vivian then read B – Council Member Participation in Community Activities. Councilmember Brooks stated if a Councilmember wanted to be a part of an event or community activity, they normally talk to the Mayor, but asked if there was something that could be put into place to address more than 1 Councilmember wanting that role. Ms. Vivian asked what capacity Councilmember Brooks was considering and if it was being part of a committee hosting the event with Councilmember Brooks stating it was to be a representative of the City, or if there was not a pastor available to give an invocation. Ms. Vivian stated she would think it would require Council action to appoint a Councilmember as an official representative of the City, but would defer to the City Attorney for his opinion.

City Attorney Gary Cohen asked for the question to be repeated. Councilmember Brooks then asked if a Councilmember wanted to be a representative for the City, would they need to submit a form or just talk to the Mayor, adding in the past, they have just talked to the Mayor and asked if they could do that. Mr. Cohen stated he didn't see any legal prohibition from doing it in the informal manner Councilmember Brooks was suggesting. Councilmember Moncada stated that is what has been done when the Mayor was unable to attend a SEAGO meeting. Councilmember Brooks stated it would be up to the Mayor to replace himself from a meeting or event, but asked how it should be done if a Councilmember wanted to participate in an activity or event that was not part of the Mayor's duty. Councilmember Boyle asked if it wouldn't go in the order of the Mayor, the Vice Mayor and then a Councilmember. Ms. Vivian stated she thought Councilmember Brooks was specifically talking about an event that he wanted to participate in as an official representative of the City with Councilmember Brooks stating Ms. Vivian was correct. Councilmember Brooks then stated if he would like to hold a golf forum and would like to represent the City, he would need approval and asked if he could just talk to the Mayor about it. Ms. Vivian stated it would be up to the Council to decide this, which is why they were discussing it. Mr. Cohen stated that speaking to the Mayor would be sufficient, but wouldn't be necessary, adding he is assuming there are public events where a Councilmember wouldn't need any permission, for example, a political rally that a Councilmember wanted to attend wouldn't require the Mayor's approval. Ms. Vivian stated the proposed Policies & Procedures basically state that a Councilmember attending a rally or event is participating on

behalf of themselves, unless the Council has formally designated them as a representative of the City with Mr. Cohen stating the question is more about the Councilmember acting in an official capacity. Ms. Vivian stated she understood Councilmember Brooks question to be that he would want to act in an official capacity. Councilmember Brooks stated that was correct and asked if he could just get the Mayor's permission on that with Mr. Cohen stating that would be fine.

Councilmember Cook asked about the difference in acting as an official representative of the City opposed to Councilmember Brooks being at an event as a Councilmember. Councilmember Cook stated the next paragraph addressed ceremonial representatives, where, if the Mayor cannot attend, he will select a designate or someone to represent the City in his place. Councilmember Brooks asked if the language needed to be amended with Councilmember Cook stating it was clear to him that at community activities, Councilmembers would be recognized as Councilmembers, but when there is a ceremonial activity where a City representative would be recognized, he thinks it would be covered by the ceremonial representative paragraph.

Councilmember Brooks stated from what he could see, it would be up to the Mayor, unless it's something the Mayor feels should be a Council decision, then he can make that choice. Ms. Vivian stated the language could be changed in the community activities paragraph, to: "Acting and participating on behalf of the City Council is limited to those instances when the ~~Council~~ Mayor has formally designated that Council Member as its representative for the matter. Unless the ~~Council~~ Mayor has formally designated a Council Member as its representative, all correspondence and dialogue should inform all participants of the activity, committee or event that the Council Member is acting on his or her own behalf and does not represent the City" adding this would then allow the Mayor to appoint someone for community activities.

Ms. Vivian then read Section XVII – Ceremonial Representative, adding this covers things such as carrying the flag during the League of Cities Conference and speaking at the Veterans Day ceremony or other events the Mayor has been asked to participate in.

Councilmember Wangsness then stated the opening paragraph regarding Council participating on committees, says Councilmembers appointed to a committee may abstain from voting on matters to be forwarded to the Council, adding since the word "may" indicates abstaining is voluntary, he didn't know if the sentence needed to be included. Council discussion focused on abstaining with Council agreeing an abstention would require a conflict of interest being declared and a Councilmember couldn't abstain just because they wanted to. Ms. Vivian stated the proposed Policies & Procedures were drafted from a multitude of other municipalities, adding she would have to research the issue, but she believes in some committees, they don't necessarily allow members to abstain from voting unless there is a conflict of interest, because of tie votes or not having a quorum participating. Ms. Vivian then stated if that were the case, this language would then give a Councilmember the right to abstain on any action that would be coming to Council for approval, but if Council would like the language removed, it could be done. Councilmember Wangsness stated a member always has the right to abstain regardless, with Ms. Vivian stating in going over abstentions at the Council level, Council recently decided to put language in place that allows Councilmember to abstain only if there is a conflict of interest and if there is any legal way to obtain a minimum of 4 votes, Council will require all Councilmembers that can participate to vote regardless of whether they want to or not. Councilmember Wangsness then stated the language could remain in the proposed draft.

Ms. Vivian then read Section XVIII – Administrative Support for Council, A – Mail, B – Events for Council, C – Council Correspondence, D – Clerical Support, E – Personal Correspondence, F – Council notification of significant incidents. Comments from Council were to add electronic media to A – Mail and to C – Council Correspondence.

Ms. Vivian read Section XIX – City Council/Staff Relations, reading 1, 2, 3, 4 and 5. Councilmember Brooks stated it may be covered in a different area, but he would like to include language that says Councilmembers are not allowed to give directives to employees and asked if it was somewhere else. Ms. Vivian stated it is in the City code and as Council reviewed the Policies & Procedures, they decided to

cross reference as much as possible, so it could be added. Councilmember Brooks stated he would like to see it here and in the employee handbook, adding it would keep Councilmembers and employees out of trouble, noting the employee could ask a Councilmember if they were giving the employee a directive and the Councilmember could clarify it was a request, adding this would keep things from going awry. Ms. Vivian stated she would like to ask what the difference was between a directive and a request with Councilmember Brooks stating a request would be in the form of a question, such as “would you do this?” and if the employee says no, the Councilmember can place the request on an agenda. Ms. Vivian stated the language regarding Councilmembers giving employee directives would be integrated in this section. Councilmember Brooks stated he would also like it placed in the employee handbook so employees can remind Councilmembers if they forget so it would keep both people out of trouble, with Ms. Vivian stating the City Manager was present and he could look at that request.

City Attorney Gary Cohen addressed Council with regards to paragraph 4, stating it basically talks about a Councilmember not being able to request a legal opinion without seeking direction from the Council, adding he would recommend adding some language that states something along the lines of, “notwithstanding anything in the Benson City Code including but not limited to Article 2-6, (which specifically says the Mayor and members of City Council may individually may make legal inquiries to the City Attorney, noting he would want to make sure it recognized that Council knew there was this ordinance and no one thinks there is a conflict between that provision and the Policies & Procedures) the request that can be made of the City Attorney by an individual Councilmember or Mayor for a written legal opinion, is as set forth in this paragraph.” Councilmember Brooks clarified that if the Council wanted an official legal opinion in writing, they would need Council action to do so, but if a Councilmember wanted legal advice, he could contact the City Attorney with Mr. Cohen confirming that was accurate. Mr. Cohen then stated he may even recommend that the language in addition to what he just mentioned, be changed to request a formal written legal opinion, adding he can foresee a situation where Council is talking about a formal legal opinion where the City Attorney is asked to take a position formally and he thinks that is what this paragraph is really about. Council concurred.

Ms. Vivian read Section XX – City Council Relations with other committees/groups, 1 and 2 with Councilmember Moncada stating if a Councilmember attends a meeting for their own personal reasons, such as a Planning & Zoning Commission meeting, they should indicate that at the meeting with Council agreeing.

Ms. Vivian then read Section XXI – Penalties and Violations. Comments from Council were to cite the State statute. Council discussion then centered on how it is determined documents are confidential with Vice Mayor Sacco asking if the document had to be stamped confidential. Mr. Cohen stated the document did not have to be stamped, adding it is a good idea or practice to do so, but not doing so did not waive the confidentiality of the document, adding for example, if he were to communicate to Council in writing and he inadvertently did not indicate the document was under the attorney/client privilege, the document would still be attorney/client privileged. Ms. Vivian stated the Clerk’s office also tries to catch confidential documents and make sure they are stamped, but stated conversely, just because something is marked confidential, doesn’t necessarily mean it is confidential, adding there have been members of the public come in and deliver letters to Councilmembers with a big stamp marking it confidential and it is not a confidential document; it is a public record. Vice Mayor Sacco asked who makes that determination with Ms. Vivian stating confidentiality is governed by State law. Vice Mayor Sacco then stated in the past, it has been very easy for someone to get a stamp and mark something confidential and if it isn’t confidential, he doesn’t want that to happen. Ms. Vivian agreed, stating sometimes members of the public stamp things confidential and they aren’t. Mr. Cohen then stated with regards to the question about who ultimately decides whether or not a document, whether stamped or not stamped, is actually confidential, it would be up to the law and he would be the right person to make that decision. Mr. Cohen then stated if there was a dispute, ultimately a judge would decide, for example in a public records request dispute, a court would answer that, but whether it’s confidential or not is governed by laws, by the attorney/client privilege and by the work product privilege. Mr. Cohen then stated most relevant for Council is the public records laws, so those laws govern what is confidential or not, adding if there’s ever any question about that, he is happy to answer. Vice Mayor Sacco then verified if there is a question regarding confidentiality, it should be

directed to the City Attorney. Ms. Vivian then stated that is the practice currently in place, but if there is no question on whether a document is confidential or not, there is no need to contact the City Attorney, stating for example, if a document comes from the attorney or from outside legal counsel, there is no question it is covered by the attorney/client privilege and to ask the City Attorney every time would be redundant. Vice Mayor Sacco stated in the past, things that are not confidential have been marked confidential, and that is why he is asking the question on who makes the determination regarding confidentiality. Ms. Vivian stated there have also been times members of the public who have marked things confidential and they were not actually confidential so if any Councilmember had a question on the confidentiality of a document, they should contact either the City Manager or the City Clerk and if they didn't know answer with 100% certainty, they would contact the City Attorney for a legal opinion. Vice Mayor Sacco stated the language that governs confidentiality should be included in this section so everyone understands it. Ms. Vivian stated the statutes that govern confidential records are too numerous to be included in the proposed Policies & Procedures with Vice Mayor Sacco stating some language should be included. Ms. Vivian asked Vice Mayor Sacco if he was looking for language that would direct Councilmembers having questions about the confidentiality of documents to contact Staff with Councilmember Brooks stating the language could say who was allowed to make the determination on whether a document was confidential or not, whether it was the City Manager, the City Clerk or the City Attorney. Ms. Vivian stated the law governs confidentiality, so it would ultimately be up to the City Attorney, but there are certain things she knows and makes that decision on every day, for example, she knows that attorney's invoices, are protected under the attorney/client privilege and must be redacted, adding the Council can waive that confidentiality requirement if they want to do so in an open meeting, but since she already knows that, it would be a waste of resources and money to request that opinion from the attorney each month when an invoice is submitted to the City and each time a member of the public requests it. Ms. Vivian then stated if there were a question about whether something is confidential or not, she would contact the City Attorney and get his opinion on the statutes and laws that cover confidential records. Mr. Cohen stated in pondering what Vice Mayor Sacco is requesting, he is thinking something along the lines of "City Staff is encouraged to contact the City Attorney whenever there is a question or reasonable question" or words to that affect about the confidentiality of any particular document, adding this is just an idea for Council to consider. Vice Mayor Sacco stated he thinks if there is any doubt in confidentiality, it should be referred to the City Attorney for the final decision. Mr. Cohen stated Ms. Vivian indicated this is what happens now, adding it is up to the Council how they would like to see it handled, and while he would be happy to determine the confidentiality of each document, he thinks Council may not want to spend money contacting him every single time on obvious questions, such as the attorney invoices Ms. Vivian mentioned.

Councilmember Cook stated the Council had gotten documents from members of the public before that were marked confidential and also from Staff that were marked confidential and stated if the confidential stamp was used in conjunction with the City logo stamp, the Council would then know the document, was indeed, confidential. Councilmember Cook then stated Council making suggestions on how the determination of confidentiality is made is more a procedure for Staff and he is not sure that should be included in the Council Policies & Procedures. Mr. Cohen agreed this may not be the place for the language as discussed. Councilmember Brooks then stated he would like the confidential stamp to indicate who made the confidential determination, adding if the City Clerk did it, he may question that, but if it came from the City Attorney, he would know he would have to argue his legal opinion and didn't know if he would bother with it. Ms. Vivian stated the procedure is something that can be looked at in the Clerk's Office and the Administration Office, if it's something Council would like so there is no question on who made the determination or if something really is confidential, but she agreed the Council Policies & Procedures wasn't the proper place to address it. Ms. Vivian then stated the Council Policies & Procedures are really addressing the Council and informing them not to disclose confidential information and if they do, they could be penalized.

Mr. Cohen then stated the Council may want to consider removing this section, since it just tells Councilmembers what the law is with Council all agreeing they wanted the section included to serve as a reminder to Councilmembers of the seriousness of releasing confidential information. Councilmember Brooks stated he would like to have language citing the statute, if possible.

Ms. Vivian stated this concluded the review of the proposed Council Policies & Procedures, but instead of continuing on to review Chapter 2 of the City code, she would like to have a few weeks to insert Council comments from the worksessions and would like to have Council revisit issues they could either not agree on or decided to wait to review with new legal counsel. Ms. Vivian then stated once that is completed, Chapter 2 of the City code can be reviewed by Council.

Ms. Vivian then stated Councilmember Brooks brought 2 handouts for Council; one that addresses the Call to the Public and another that addresses agenda requests. After conferring with the City Attorney regarding the Open Meeting Law, Council discussed these forms.

Councilmember Brooks stated he got the subject documents off the Town of Taylor's website, adding he did some modifications to it and would like Council to look at it. Councilmember Brooks then stated he likes the Call to the Public form because it notifies the speakers of what they can and can't do in a meeting and sets guidelines, adding the City Clerk doesn't have to ask what their address is because everything is written down. Councilmember Boyle asked when the forms would be available to the public with Councilmember Brooks stating people wishing to speak could fill them out before the meeting. Ms. Vivian stated a lot of the information on the proposed form is already on the current form, adding if Council would like, she could take the current form and point out the differences in a memo or at a future worksession or meeting. Ms. Vivian then noted one difference is limiting the speaker to 3 minutes instead of the current 5 minutes they are allowed. Council all agreed the time limit needed to remain at 5 minutes. Councilmember Brooks then stated the public can speak about anything that is within the jurisdiction of the City, which is per A.R.S. statutes, adding if the subject is not within the jurisdiction of the City, they cannot speak about it. Councilmember Brooks then stated the form also talks about civility and respect. Ms. Vivian then stated the two biggest changes between the current form and the form Councilmember Brooks presented are the last two bullet points, which read "Unauthorized remarks or demonstrations from the audience, such as clapping, yelling or physical demonstrations will not be tolerated. Anyone, including speakers, who verbally attack other individuals, groups, elected officials and staff, or otherwise become boisterous while addressing or attending the meeting, shall be ruled out of order," and "The Mayor (or presiding officer) shall instruct the person(s) to immediately leave the meeting and grounds of the facility. Should they refuse to comply the Enforcement Officer shall be authorized to remove them." Ms. Vivian then stated the current form already includes bullet points 3, 5 and 6. Councilmember Brooks stated the Council could review the form and revisit it at a later date, and asked Ms. Vivian to prepare a comparison on the current form and the proposed form. Ms. Vivian stated she would do so and highlight the differences. Councilmember Cook stated he liked the idea of bringing it back later, adding the proposed document looks good, but he didn't want to take any kind of action on it without comparing it to what is already in place.

Vice Mayor Sacco brought up the enforcement officer and asked why it had to be the Chief of Police. Council discussed that it was up to the Mayor or the presiding officer to decide to have someone removed and would authorize the attending police officer to do so, whether or not it was the Chief of Police. Council then agreed the language on both forms should state the Mayor would authorize the Enforcement Officer and not the Chief of Police as was stated on the Agenda Request document.

Ms. Vivian then asked Council to review the Council Agenda Request document Councilmember Brooks provided. Councilmember Brooks stated there was no existing document to compare it to, adding the only way people think they can have something discussed by Council is to find a Councilmember and get him to understand what they would like and then the first Councilmember can get a second Councilmember to sponsor an agenda item. Councilmember Brooks then stated what this proposed form does is give citizens an opportunity to request an agenda item, adding either the City Manager or a City Councilmember would have to agree to the request. Ms. Vivian then stated the City does have a Standard Operating Procedure (SOP) for placing items on the agenda, adding many items on the agenda come in through Staff in the course of administration of the City, but they also come from requests from the public to the City Manager, the City Clerk or from 2 Councilmembers. Ms. Vivian then noted there are a lot of citizens who know they can contact City Hall for items they would like placed on the agenda without contacting a Councilmember, adding proclamations, requests for support of events or activities and the mural projects are recent items

that were placed on Council agendas. Ms. Vivian then stated she could show Council the SOP along with the proposed form and also indicate the differences for Council to review. Councilmember Brooks stated what he would like to do is to have the form available at City Council meetings in case anyone in the audience has a thought and wanted to fill one out, adding they could leave it with the Clerk and start the process. Ms. Vivian stated she would compare the SOP and the proposed document for Council to review.

ADJOURNMENT:

Councilmember Moncada moved to adjourn at 6:46 p.m. Seconded by Vice Mayor Sacco. Motion passed 6-0. (Councilmember Wangsness' phone call was disconnected.)

ATTEST:

Toney D. King, Sr., Mayor

Vicki L. Vivian, CMC, City Clerk