

**THE SPECIAL MEETING  
OF THE MAYOR AND CITY COUNCIL OF BENSON, ARIZONA  
HELD OCTOBER 7, 2013, AT 7:00 P.M.  
AT CITY HALL, 120 W. 6TH STREET, BENSON, ARIZONA**

**CALL TO ORDER:**

Mayor King called the meeting to order at 7:00 p.m. with the Pledge of Allegiance. Mayor King then introduced Pastor Blair of the First Baptist Church who gave the invocation.

**ROLL CALL:**

Present were: Mayor Toney D. King, Sr., Vice Mayor Al Sacco, Councilmembers Patrick Boyle, Ron Brooks, Jeff Cook and Peter Wangness. Absent was Councilmember Moncada.

**CALL TO THE PUBLIC:**

J.T. Moffett stated he wanted to make a public service announcement, adding a public forum on the Benson City Codes would be held on Monday, October 21 at 7:00 p.m. in the Council chambers. Mr. Moffett then stated the forum would be held to discuss the current Chapter 9 in the Benson City Codes and the Building Codes, adding he is pleased to announce the Zoning and Building Administrator Luis Garcia will be present and will be the guest speaker. Mr. Moffett then stated he has confirmed members of City Council will be present to answer questions and receive public input on the revisions to Chapter 9. Mr. Moffett then stated the public's participation will determine the future of the codes and the future of the community which is why he is so excited about this forum, adding it's the first time he remembers the people and the City working together to decide their future. Mr. Moffett then encouraged everyone to attend, adding he knows the City codes are dear to Councilmember Wangness' heart and encouraged him to attend also. Mr. Moffett then stated he once again, wanted to thank Luis Garcia for his willingness to come and answer questions and take the public's input and put it into what will be the new standard of living in Benson. Mr. Moffett then stated he just wanted to announce the forum and encourage the Council, adding tonight is a vital night of decisions and he hopes the Council can work together and come to a conclusion that suits the people of Benson best.

Paul Lotsof stated he understood the Council was seriously considering Mr. Sims and since he knows nothing about Mr. Sims, he wouldn't comment, but did want to note Mr. Sims' office is in Phoenix and if the Council has to pay travel costs, that may be an important consideration. Mr. Lotsof then stated should Council wish to not hire Mr. Sims, they are back to square one, adding when the Council first published the RFP for the attorney, he had suggested Council send out mailers to every law firm within a 50-mile radius of Benson, but for some reason the list was expanded to a 100-mile radius and he thinks that was the fatal flaw which resulted in so many law firms. Mr. Lotsof then stated the Council should eliminate anyone whose practice is limited to criminal law or personal injury law, adding those wouldn't be appropriate for the City. Mr. Lotsof then stated in the case of City Manager, if Council decides not to hire Mr. Howard, they are pretty much back to square one on that issue also. Mr. Lotsof then suggested using the League of Cities and Towns to find applicants and advertising an RFP for the position, adding the Council should be the body to review the applications instead of the Council forming a special committee to do so.

Pastor A.B. Blair stated he wanted to make a public announcement that the First Baptist Church has contacted Dr. Ravi Zacharias to come and speak in Benson on October 27. Pastor Blair stated since the event is growing larger than anticipated, with over 1,600 requesting tickets for the evening session, they have moved the meeting to the Benson High School gymnasium, adding they expect a total of 2,000 to 3,000 people coming to Benson for the event. Pastor Blair then stated this event is going to benefit Benson not just in spiritual ways, but also in monetary ways, noting people will be using hotels and restaurants while they are here. Pastor Blair then gave some information on Dr. Ravi Zacharias, stating

he was born in India in 1946 and emigrated to Canada with his family 20 years later and since his conversion to Christianity, Dr. Zacharias has spoken all over the world, including South Africa, Peru, Moscow, Dubai and India. Pastor Blair then stated Dr. Zacharias has also spoken in government venues, was a well-known author of over 20 books, has appeared on CNN and Fox and other international broadcasts and has a weekly radio program. Pastor Blair then stated he wanted to invite Councilmembers to the event, adding it requires a ticket, which are free, so the church can prepare for the number of people who will be attending. Pastor Blair then stated he thinks all who attend will enjoy and benefit from the event, adding their goal is to have the area benefit in a spiritual realm, but as they could see the event developing, realized it will impact the area monetarily also. Councilmember Brooks asked what time the meetings were with Pastor Blair stating they would be held on October 27 at 10:30 a.m. and 6:00 p.m.

Will Jacobek stated none of the Council ran on political party affiliations, but he is willing to guess some of the Councilmembers are Republican and one strong resilient plank in the Republican Party happens to be that government should do as little as possible and should not try to compete with private industry and private enterprise. Mr. Jacobek then read from an article in the Wall Street Journal, reading that the next decade will likely center on the debate of how to deal with the public sector that often seems to exist more for the benefit of its employees rather than its citizens, adding the struggle of the 20th century was labor vs. management, but the 21st century has ushered in a new dichotomy of government vs. private enterprise. Mr. Jacobek then stated the article mostly addressed the federal government, but he thinks it could be applied to Benson, adding government is spread too thin in attempting to carry out activities best left to private enterprise. Mr. Jacobek then stated when President Obama got elected; he wanted to talk about creating over 200,000 new jobs with 20% of them being in the public sector, adding it seems to him that would be akin to what the postal service has employed right now and is a bit more than taxpayers need to pay for. Mr. Jacobek then stated Defense Secretary Robert Gates notes the public is not seeing the cost savings they had hoped for with insourcing. Mr. Jacobek then spoke about the Michigan legislature and 2 bills they are considering that may effectively eliminate the unfair competition between municipalities and private businesses such as golf courses. Mr. Jacobek stated the bills are designed to mandate accounting procedures to prevent government from spreading the true costs of operating certain businesses across bureaucratic departments and to prohibit the creation of additional public enterprises that unfairly compete with private business. Mr. Jacobek then stated all too often such costs are spread across bureaucracies and it is impossible to determine if an activity actually generates more revenue than expenses, stating for example, some municipalities may charge golf course lawn maintenance to their Department of Public Works, making golf course operations appear less expensive than they really are. Mr. Jacobek then stated he understood the City purchased golf cars and someone had brought up that the golf cars were needed because the City was going to try and sell the golf course and people won't buy it with the rickety golf cars the City had. Mr. Jacobek then stated he looked online and doesn't see advertising to sell the golf course and asked if the City even had a broker for the golf course. Mr. Jacobek then went back to the legislation he was discussing, stating the bills explicitly allow for the privatization of essential and necessary services including water supply, sewers, garbage and trash removal, recycling, utilities, streets and public roads, public transportation, correctional facilities, fire departments, emergency services and medical services. Mr. Jacobek then stated if the City is indeed hemorrhaging, he feels these are the same things the City needs to look at in cutting costs and removing inefficient departments, adding hopefully, the next City Manager will be someone who has experience in that kind of downsizing.

Mayor King addressed the public stating he received a phone call from Congressman Ron Barber, who asked Mayor King to let the public know they are working hard on trying to get the government to work together in negotiations right now to get the government back up and running correctly, adding Congressman Barber has crossed party lines in an effort to do so. Mayor King then stated Congressman Barber also asked everyone, regardless of their party affiliation, to please contact their Congressmen and elected officials to let them know how the government shutdown impacts and affects the public, adding government officials want to hear directly from the public.

## **NEW BUSINESS:**

**EXECUTIVE SESSION:** As per A.R.S. §38-431.03 (A)(1), (3) & (4), Discussion or consideration of employment, assignment, appointment, promotion, salaries, or resignation of a public officer, appointee or employee of the City. The Council will discuss and consider the appointment and employment contract of the Interim City Manager and the City Manager, and may receive legal advice and give instructions to the City Attorney

Mayor King moved to enter into an executive session with the Mayor and Council, Interim City Manager Jim Cox, City Attorney Mike Masee and City Clerk Vicki Vivian at 7:16 p.m. Seconded by Vice Mayor Sacco. Councilmember Brooks asked for the purpose of the executive session with Mayor King stating it was being held to discuss the City Manager candidate Don Howard. Councilmember Brooks stated the purpose probably should have been advertised with City Clerk Vicki Vivian stating the agenda gives the subject as the "...appointment and employment contract of the Interim City Manager and the City Manager, and (the Council) may receive legal advice and give instructions to the City Attorney." Motion passed 6-0.

Council reconvened at 7:44 p.m.

### **1. Discussion and possible action in approving an employment contract with Donald Howard for the position of City Manager**

Councilmember Brooks stated the Council recently received some background information on Mr. Howard which would make Mr. Howard difficult for the City to bond. Councilmember Brooks then stated there are a lot of candidates out there to look at, and while he knows the Council wants and needs to get someone in here, they shouldn't make the mistake of trying to bring in a City Manager they will have a difficult time bonding, which may result in increased bonding costs. Councilmember Cook stated the Council all knows why they are having a problem with Mr. Howard, but there may be some in the public who need to hear it on the record. Councilmember Cook then stated in addition to Mr. Howard misrepresenting his City budget and how much he managed there and misrepresenting the amount of employees he managed there and in addition to this Council trying to give him over a \$17,000 raise over the last job he was fired from, Mr. Howard also has 3 felony convictions with one being for aggravated battery and two others each for grand theft under \$20,000. Councilmember Cook then stated the felonies make it almost impossible to bond Mr. Howard, adding the City Manager needs to have a bond because he is over every department and every employee in the City, including the Chief of Police, adding he doesn't think having a felon in charge of the Chief of Police is a good idea. Councilmember Cook then stated he understands a felon cannot be an employee of a natural gas services company and with the City's gas department, Mr. Howard would be considered an employee of the gas company. Councilmember Cook then stated Mr. Howard would not be able to be in charge of the Finance Department, adding there are a lot of things Mr. Howard could not do. Councilmember Cook then stated if anything were to happen financially or with an employment issue, Mr. Howard would not have the protection a normal City Manager would have. Councilmember Cook then stated Mr. Howard may be able to be bonded at least for 6 months, but then if the City were to pick up the premium after that, it may be \$10,000 to \$50,000 to cover him, adding this is what Council is dealing with. Councilmember Brooks stated he only knew Mr. Howard from a skype conversation, adding he did want to speak to Mr. Howard to find out his side of this because if we're fair in the City, the Council needs to listen to both sides. Councilmember Brooks then stated as far as what Mr. Howard got into trouble for, it's definitely something to consider, although it was 30 years ago and that alone may not be a good reason to not consider Mr. Howard, but there is also the bonding issue. Councilmember Brooks then stated when he was younger, he made mistakes and wouldn't want to be held to those, but if the Council is going to have to take a liability for Mr. Howard's bond with increased premiums, that is also something the Council needs to consider. Councilmember Brooks then stated he only talked to one source about the amount of employees Mr. Howard managed, adding he did want to hear from Mr. Howard what he had to say about that, but the Council didn't call him because they were concerned

about the bonding issue and as far as Councilmember Brooks is concerned, he doesn't think it would be wise for the Council to take the risk of trying to bond Mr. Howard in the future. Councilmember Brooks then stated he thinks there are a lot of good candidates out there. Mayor King stated with the new information the Council received tonight, Councilmember Brooks was right on the nose, especially concerning the League of Cities and Towns and our insurance carrier. Mayor King then stated if Mr. Howard couldn't be bonded after 6 months, Mr. Howard's employment would have to be declared null and void, adding there's not a whole lot the Council is going to be able to do. Mayor King then asked if there was more discussion or if there was a motion. Councilmember Brooks moved to not accept the contract for Donald Howard. Seconded by Councilmember Boyle. Motion passed 6-0.

## **2. Discussion and possible action regarding filling the City Manager position**

Mayor King asked if the Council wanted to put out a new RFP with Councilmember Brooks stating he thinks the Council should put out an RFP and should meet as often as needed to move forward on this issue quickly, adding the citizens are waiting and expect results. Councilmember Brooks then stated there are still 2 candidates he thinks the Council should interview and make a decision on whether they're credible for the City and if they aren't, then Council will be able to start looking at candidates who respond to the RFP. Councilmember Brooks then moved to direct Staff to create an RFP for a City Manager and that Council look at the two candidates that are left on the list from their last selection. Mayor King asked how long the RFP should be out for with Councilmember Brooks stating it should be 2 weeks. Vice Mayor Sacco stated he would like to amend the motion to include the Council reviewing all the applications they received, adding there might be a good candidate amongst those applications and he would hate to start the process all over again, noting it is time consuming and sometimes doesn't pay off. Councilmember Brooks then amended his motion to put out an RFP for a City Manager with a 2-week time limit on the responses and for Council to take a look at all the candidates who responded to the original RFP to see if they can come up with a candidate out of them. City Clerk Vicki Vivian verified Councilmember Brooks' motion was for a 2-week limit on the responses after the publication date with Councilmember Brooks confirming that was the motion. Amended motion seconded by Councilmember Wangsness. Councilmember Cook stated the Council had gone through this process not only for the City Manager, but for the City Attorney and when the Council used the League of Cities and Towns, over 30 responses were received, but when the City did this on its own for the City Attorney, only 7 responses came in. Councilmember Cook then stated if the Council tries to do the same thing for the City Manager position, he expects less than 7 responses, adding if there are more than that, he expects less than 7 valid responses. Councilmember Cook then stated he thinks the City needs to involve the League of Cities and Towns because they have a greater network throughout the entire country. Councilmember Brooks then stated he would like to look at what the City spent with the League and what the Council ended up with and possibly getting a refund or a partial refund because he is very disappointed, adding a simple background check on Mr. Howard would have resulted in more information. Interim City Manager Jim Cox stated the Council still has 2 other candidates they considered along with Mr. Howard, noting the background checks are complete on them with no major issues being found and asked if Council would like to consider interviewing those 2 candidates again on a priority basis, while still putting out the RFP. Councilmember Brooks stated Mr. Cox's statement was a good comment, but he would like to address the motion on the floor. Council then discussed having a background check on any candidates with Chief of Police Paul Moncada stating the Police Department uses the same background program the League of Arizona Cities and Towns uses with Council agreeing the background checks can be done internally. Mayor King then asked Councilmember Brooks if he wanted to amend his motion to include interviewing the 2 candidates for City Manager with Councilmember Brooks stating he would like to direct the Interim City Manager to look at the possibility of getting a partial refund from the League, adding it was very disconcerting to spend that kind of money and get this kind of result, but that his motion on the floor is to put out an RFP for a City Manager with a 2-week time limit on the responses and for Council to take a look at all the candidates the League of Cities and Towns sent the Council and for any of the candidates the Council reviews, to direct Staff to do a background check on them. Mayor King asked if Councilmember Wangsness wanted to second the amended motion with Councilmember Brooks asking Ms. Vivian to read the

amended motion. Ms. Vivian read the amended motion. The amended motion was then seconded by Councilmember Wangsness. Councilmember Cook stated he was curious who the RFP would be sent to with Ms. Vivian stating the HR Department has a process in place, utilizing the League of Cities and Towns website with the City being allowed to post job openings for free and various newspapers in the Tucson and Phoenix area with Interim City Manager Jim Cox confirming the process. Councilmember Brooks added if a Councilmember finds another place to advertise, they could inform Staff and if it wasn't too expensive, the RFP could be advertised there also. Councilmember Cook stated he thought there may be some objection on the Council in using the League of Cities and Towns website because the Council may get too many qualified and capable City Manager applicants applying for this job, adding he thinks there are some who want to narrow the field down to as few candidates as possible so they can get the more inferior candidate they can put in and then walk in the door and order them to do things because that person would not have the experience to do the job. Councilmember Brooks stated he felt at this point, the Council could make a better decision than the League could. Councilmember Cook stated Councilmember Brooks was the one who made the decision of Don Howard and Councilmember Cook was not comfortable with that decision. Mayor King then called for a vote. Motion passed 6-0.

**3. Discussion and possible action regarding filling the City Attorney position**

Interim City Manager Jim Cox stated he spoke to Mr. Sims of Sims-Murray and Mr. Sims would be available to meet with Council for an open session at noon on Thursday, October 10. Council stated they would be available and Mr. Cox stated he would get the meeting scheduled and have lunch brought in for the Council. Councilmember Wangsness asked if this item should be postponed until the next Council meeting. Councilmember Brooks stated the Council had 7 responses to the RFP, but 1 applicant had withdrawn, adding he would like the process to move forward as quickly as possible. Council then had further discussion on postponing this item until the next regular Council meeting to be held on October 14 with Mayor King asking if the direction to Staff required a motion. Councilmember Brooks then moved to table this item until after the Council meets with Mr. Sims on October 10, adding the item would be tabled until the next regular meeting on October 14, 2013. Seconded by Councilmember Wangsness. Motion passed 6-0.

**ADJOURNMENT:**

Vice Mayor Sacco moved to adjourn at 8:03 p.m. Seconded by Councilmember Boyle. Motion passed 6-0.

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Toney D. King, Sr., Mayor

ATTEST:

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Vicki L. Vivian, CMC, City Clerk