

**THE SPECIAL MEETING  
OF THE MAYOR AND CITY COUNCIL OF BENSON, ARIZONA  
HELD NOVEMBER 12, 2013, AT 3:00 P.M.  
AT CITY HALL, 120 W. 6TH STREET, BENSON, ARIZONA**

**CALL TO ORDER:**

Mayor King called the meeting to order at 3:00 p.m. with the Pledge of Allegiance.

**ROLL CALL:**

Present were: Mayor Toney D. King, Sr., Vice Mayor Al Sacco (arriving at 3:02 p.m.), Councilmembers Patrick Boyle, Ron Brooks, Jeff Cook (arriving at 3:47 p.m.), Chris Moncada and Peter Wangsness.

**NEW BUSINESS:**

**EXECUTIVE SESSION:** As per A.R.S. §38-431.03(A)(1), Discussion or consideration of employment, assignment, appointment, promotion, demotion, dismissal, salaries, disciplining or resignation of public officer, appointee or employee of any public body. The Committee will discuss City Manager interviews.

No executive session was held. Mayor King stated Kyle McCain notified Staff that he found other employment and requested to be removed as an applicant. Councilmember Brooks stated in other interviews for the City Manager position, Council asked some additional questions not listed and asked if they should be added to the list for these interviews, adding the questions were how soon the applicant would be willing to start and what their pay expectation would be. Councilmember Moncada stated the salary expectation question was included on the list and Council agreed to add the question of when the applicant would be willing to start.

**1. Interview of William Stephens for the position of the City Manager**

The Council interviewed William Stephens.

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No executive session was held.

**2. Interview of Robert Museus for the position of the City Manager**

The Council interviewed Robert Museus. Councilmember Brooks moved to take a 10 minute recess. Seconded by Councilmember Boyle. Motion passed 7-0. Council reconvened at 4:05 p.m.

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No executive session was held.

**3. Interview of Kyle McCain for the position of the City Manager**

Mayor King had informed the Council at the beginning of the meeting that Kyle McCain had withdrawn his application. No interview was held.

**EXECUTIVE SESSION:** As per A.R.S. §38-431.03(A)(1), Discussion or consideration of employment, assignment, appointment, promotion, demotion, dismissal, salaries, disciplining or resignation of public officer, appointee or employee of any public body. The Committee will discuss City Manager interviews.

No executive session was held.

4. **Ordinance 567 of the Mayor and Council of the City of Benson, Arizona, amending the City Code, Chapter 3, “Administration”, to clarify that the City Council by motion may regulate Councilmembers’ improper conduct via censure and exclusion order**

Mayor King stated he asked for this item to be back on the agenda and then stated with all the fighting with the public and the Council, he spoke to Mr. Sims with the League of Cities and verified the Council can censure Councilmembers. Mayor King then stated the Council needs to find a way to stop fighting which is why he brought this item forward.

Councilmember Brooks stated there probably is a need to be able to do something about Council meetings and for the Mayor to maintain control over them, but he doesn’t agree with being able to get a quorum of the Council shut down another Councilman without a some kind of a hearing or a proper way to let that Councilmember defend themselves. Councilmember Brooks then stated he would prefer something in the rules or the handbook that has the Mayor talk to the Councilmember and if that doesn’t work, the Mayor could bring a second Councilmember to talk to him and if the Councilmember is still resistant and there is a problem, then the Council could take another step. Councilmember Brooks stated he wasn’t sure what that step should be, but he agrees the Mayor needs to be able to control the meetings. Councilmember Brooks then stated all Councilmembers have to be tolerant, whether they like it or not, but at some point, it’s enough, adding if he was the Chair, he would warn the person and if they didn’t stop, he would have them removed from the meeting.

Councilmember Moncada stated he felt the Council should tread lightly on removing a Councilmember from a meeting, adding it’s one thing to remove a member of the public because they are being disruptive and out of control, but it’s another thing to remove a Councilmember, who is an elected voting member of the Council. Councilmember Moncada stated he would be very hesitant in giving the Mayor the authority to do so because it would allow removing a voting member which could affect a motion on the floor and theoretically the Mayor could have someone removed if he or another Councilmember didn’t like the way that Councilmember was voting or didn’t agree with him, which could completely change the balance of the vote. Councilmember Moncada then stated he thinks the Mayor already has the option to have a Councilmember removed from a meeting, but he feels it should be the absolute last option. Councilmember Moncada then stated Ordinance 567 is not just about the meetings, it’s about the Mayor or Councilmembers going directly to Staff and directing them, which to him is more important than controlling the meetings. Councilmember Moncada then stated he would hesitate to call the Council meetings out of control, adding he does think they are a little embarrassing sometimes, but at the same time, Councilmembers were all elected by different type of people who expect them to voice their opinions passionately. Councilmember Moncada then restated he is more in favor of the proposed ordinance for the purpose of keeping the Mayor and Councilmembers from going to Staff and directing them directly than to control the Council meetings.

Mayor King stated having a Councilmember removed from a meeting is not part of the censure, adding the only thing he would do in a meeting is use the gavel to gain control of the meeting. Mayor King then stated censuring a Councilmember would only happen if 4 Councilmembers wanted to censure a Councilmember, adding a censure wouldn’t keep a Councilmember from doing his job, it would just be an action taken to try and correct a wrongdoing. Mayor King then restated he was not talking about having a Councilmember removed from a meeting, adding he thinks all Councilmembers have differences and want to express themselves and have a right to say what they want, but he does think they need to learn to say it in a way that doesn’t start a fight. Mayor King then stated what he is really concerned about is Councilmembers going to employees and giving them directives or threatening them.

Council discussion then focused on what type of steps or procedure to put into place with Councilmember Brooks stating he felt the first step should be for the Mayor to address the issue with the Councilmember. Councilmember Brooks then expressed concern over 4 Councilmembers being able to abuse the power of censuring a Councilmember for the purpose of shutting a Councilmember down and that he felt it was important the Councilmember be able to have the opportunity to defend themselves against a censure with some sort of a hearing. Councilmember Moncada stated if a motion was made to censure a Councilmember, the Councilmember would have the opportunity to explain or give his side of the story as part of the discussion. Councilmember Wangness stated he thought part of the problem was that there was no warning and censuring a Councilmember could just come up at a meeting with Councilmember Moncada stating censuring a Councilmember would have to be listed on the agenda and therefore couldn't just come up at a Council meeting. Further discussion centered on putting some sort of procedure in place to try and address the issue before it would come to Council for censuring a Councilmember, such as the City Manager addressing employee relationships with Council and then the Mayor addressing the issue, if necessary. Councilmember Moncada stated if a Councilmember needs to be counseled and receive a warning first, he was completely ok with that, but he was concerned about the City Manager having to address the issue with a Councilmember because it could cause a problem for the City Manager since he works directly for them, but he would be in favor of the first step being the Mayor addressing the issue and counseling and/or warning the Councilmember.

Councilmember Wangness stated as far as censuring, he wouldn't like to do it unless there were 6 Councilmembers in agreement to the censure. Councilmember Moncada stated he would be ok requiring at least 5 Councilmembers to agree to the censure, but not 6.

Councilmember Brooks stated there is a statute that fines an elected official \$1,500 for directing someone, adding after a warning, a Councilmember would be facing that State statute. Councilmember Brooks then stated the Council is a legislative body, not a judicial body and he has a problem with this because he sees too much chance for abuse, especially if the Council doesn't have all the facts, adding there has got to be a proper procedure so just a few Councilmembers who don't like someone can't just shut that Councilmember down. Councilmember Brooks then stated he knows the Mayor would like to address this issue and he would also, but he didn't feel this was the right way to go. Councilmember Brooks then stated the Council will be hiring a new City Attorney and he would like the new attorney to review the Ordinance and give his opinion on the issue. Vice Mayor Sacco asked if Councilmember Brooks was questioning the legality of the ordinance, adding he spoke to a couple of law firms already and other cities have a censure program in place and the proposed ordinance is perfectly legal. Vice Mayor Sacco then stated the Councilmembers can't be going wild and taking over the Council meetings, adding the Mayor has to take control. Councilmember Wangness stated the proposed ordinance doesn't address Council meetings, but only relates to Councilmembers behavior with employees.

Councilmember Cook stated the ordinance before Council addresses City Code Section 3-3, adding Section 3-3 currently has subsections A and B while Ordinance 567 creates subsection C and refers to violations of subsection A, which is only dealing with any member of the Council giving direction to City staff. Councilmember Cook then stated somehow the Council started off discussing disagreements on the Council. Councilmember Cook then stated he has actually brought up the reasons why something is happening at a Council meeting and has been called out of order for doing so, adding whatever discussion comes up, the Council needs to discuss what is happening, where and when it matters, who it affects and why the Council is discussing it. Councilmember Cook then stated Councilmembers' behavior at Council meetings or the type of discussion occurring at Council meetings is not covered under Ordinance 567 so there is a big phony argument right now about disagreements on the Council and this is why Ordinance 567 should be passed. Councilmember Cook then stated the other issues need to be brought up as a second agenda item, but are not on the agenda right now, so Council should only be talking about any Councilmember giving direction to Staff in violation of City Code Section 3-3(A) and that's all they should be discussing.

Councilmember Wangsness stated Councilmember Brooks said giving direction to Staff is already addressed in the State statutes with a \$1,500 fine with Councilmember Moncada asking if the Council should have to resort to charging each other with a violation of State law.

Councilmember Brooks then stated he agreed with Councilmember Cook that Council meetings aren't a part of the proposed ordinance, but he also agreed with the Mayor, adding the Mayor needs to run Council meetings and needs to be in control of the meetings and stated the subject needs to be put on a future Council agenda. Councilmember Brooks then stated he doesn't think the Council should slam a Councilmember with a censure and he thinks there should be a warning system prior to a censure, with the Mayor warning a Councilmember and if the behavior continues, then legal actions can be taken.

Councilmember Wangsness stated as far as controlling the Council meetings, the Mayor has the gavel and should use it when needed. Councilmember Wangsness then moved to table Ordinance 567 until a new City Manager and new City Attorney are hired since they are intimately involved in the issue. Seconded by Councilmember Brooks.

Councilmember Cook stated during Council discussion of an agenda item, he generally gives everyone a chance to voice their opinion and waits for the opportunity to express his, but he has been gavelled in the past. Councilmember Cook then stated when a motion is made before a discussion is finalized, it appears that the discussion is trying to be suppressed, adding the same thing occurs when the Council is called to vote before the discussion is over, adding he thinks his freedom of speech is being suppressed when he still has things to say about the agenda item.

Mayor King stated he could handle an agenda item either way; first calling for discussion prior to a motion and a vote or he could call for discussion prior to a motion and again call for discussion prior to a vote. Councilmember Brooks stated he liked the way the Council usually held discussion before and after a motion, adding many times, things come to mind and the Council needs to be able to discuss it. Councilmember Wangsness stated sometimes until there is a motion in words, there may be very little discussion, but afterward, there could be more, based on the motion. Councilmember Brooks agreed, stating he liked both discussion opportunities. Councilmember Brooks then reiterated it is important to address these issues, but that he would feel more comfortable addressing them after a new City Attorney and a new City Manager are hired.

Councilmember Cook stated he didn't get to finish giving his opinion, adding he is in favor of what Councilmember Brooks is suggesting because he thinks when there is an imbalance of votes on Council, a censure can be done out of vengeance rather than trying to make things better. Councilmember Cook then stated he thinks if the Council approves this ordinance; it puts a vehicle in place for that vengeance to be carried out and while he is not suggesting Council has that imbalance now, it will exist from time to time and again, with this ordinance, the possibility of it being used for vengeance exists. Councilmember Cook then stated he also thinks there should be an appeal process if a censure comes up for a Councilmember giving direction to Staff as an individual or any number of individual Councilmembers directing Staff outside of an official Council meeting, which is what Ordinance 567 addresses.

Vice Mayor Sacco asked who the Councilmember would appeal to with Councilmember Cook stating that is something the Council needs to discuss. Councilmember Brooks stated a new attorney can help the Council facilitate the issues. Councilmember Brooks then stated the Council could possibly use the court system, adding a censure is a restraining order, in a sense, and most of the time, for a restraining order, the person at least has the right to go before a judge and explain his side and be heard. Councilmember Brooks then stated he doesn't want the Councilmembers to set themselves up a way to abuse each other, adding he likes the idea of talking to each other and he would feel better about just working things out.

Vice Mayor Sacco stated the Councilmembers would all feel better, but asked what should be done when there is a Councilmember going wild during a Council meeting and if the Mayor should have the Councilmember removed from the meeting with Councilmember Brooks stating the Mayor is in charge of the meeting and it would be up to him to stop the meeting or have the person removed if they were that wild.

Mayor King then called for a vote on the motion with Councilmember Moncada requesting the motion on the floor be repeated. Mayor King then stated the motion on the floor was to table this issue until a new City Attorney was hired and he could review the Ordinance. Councilmember Wangsness stated his motion was to table the issue not only until a new City Attorney was hired, but a new City Manager was hired also. Councilmember Cook confirmed the motion on the floor with City Clerk Vicki Vivian stating the motion was to table the issue until a new City Attorney and a new City Manager were hired. Motion passed 6-1 with Councilmember Moncada voting nay.

**5. Discussion and possible direction regarding the importance of shopping at local businesses**

Vice Mayor Sacco stated he wanted the City to buy locally before buying from businesses outside the City, adding the City that has to make a decision to shop locally first and if what is needed can't be found locally, then it could be bought from outside businesses.

Councilmember Moncada stated the City has a duty to spend taxpayer dollars reasonably, so Department Heads should look at purchases and if it's a little more expensive to buy it locally, they should, but there has to be some common sense. Councilmember Moncada then stated the City also has to spend taxpayer dollars as wisely as possible and has the duty to get the best price, but that quality and service are also important factors to consider, adding if Tucson or Sierra Vista can provide something in a couple of days when we need it, and Benson can provide it in 2-3 weeks, then it would be reasonable to go outside the City, but all things being the same, even priced a little higher locally, he would absolutely expect the City to buy locally first.

Councilmember Wangsness added the City could give local businesses the opportunity to bid for purchases and may match the lower price.

Councilmember Brooks stated the Council needed to look at the legality involved since the City is spending taxpayer money, adding he thinks if the City buys a product locally for \$200 and could have bought it in Tucson for \$100; the public will have an issue they can pursue. Councilmember Brooks then stated there may be a margin the Council can create, giving local businesses an advantage, adding he knows the County does something similar with contractors, giving them a 6% advantage over outsiders, but he was unsure how it would work with retail and suggested getting a legal opinion. Councilmember Brooks then stated he was absolutely behind shopping locally, noting the City also gets the sales tax, which is an advantage in addition to supporting businesses here.

Vice Mayor Sacco agreed, but stated if there are local vendors and businesses that can match the price, the City should shop locally. Vice Mayor Sacco then stated the City hasn't been doing that and automatically shops outside the City, adding it is difficult enough to run a business in Benson and make money and the City shouldn't make it more difficult.

Councilmember Brooks restated the Council would need to obtain legal advice to see what can be done with Mayor King asking Interim City Manager Brad Hamilton to research the issue and find out if there is a certain percentage the City could pay more for products or what the City can do to shop locally when the price is more expensive locally. Mr. Hamilton stated he would research the issue, adding he has seen bonus points for being local and other things in contracting, but he would need to consult with the City Attorney and find out the legalities involved. Mayor King then asked Mr. Hamilton to bring the issue back to Council after he does his research with Mr. Hamilton stating he would want the attorney present to explain his opinion. Councilmember Moncada stated he would like the information

researched not only for contracts, but for the retail purchases, such as parts and material also.

Mr. Hamilton then stated in his department, if he can make purchases locally for a reasonable price, he does, noting he also takes into consideration the cost of sending a vehicle and employee to Tucson or Sierra Vista. Mr. Hamilton then stated this is true for most Department Heads, but added if there is a significant savings or if the item is not available locally, purchases are made outside the City. Mr. Hamilton then stated the City also utilizes the State contract or the Tucson procurement contract, adding the City isn't large enough to have our own procurement department and is able to piggyback on those contracts to get some purchases at a much lower price, which is why some purchases are made outside the City.

Councilmember Brooks suggested putting items the City needs to purchase, such as office supplies, on the City's website for local businesses to bid prices on with Mr. Hamilton stating without a procurement department, it would be very difficult. Councilmember Brooks then stated he supports shopping locally, but he didn't want the City to do anything that was illegal and wanted Mr. Hamilton to find out what the City could do. Vice Mayor Sacco stated he would rather see tax dollars stay in Benson, instead of Tucson or Sierra Vista.

Councilmember Cook spoke, giving an example of an item he found in Tucson for 50% less than he could find it in Benson for, adding if he would have had to shop locally, he would have had to pay 50% more for the exact same item. Councilmember Cook then stated he knows that is not always the case and there are times items can be purchased locally and the price difference isn't that much, but if the Council is going to have the attorney look at the issue of shopping locally, he would also like the attorney to look at how it will be done without the Council micro-managing every purchase of the City. Councilmember Cook then stated when he has asked Staff why they bought outside of Benson; their response is universally that they got it the cheapest place they could. Councilmember Cook then stated he has faith that Staff is doing their best, but noted that doesn't mean he thinks everyone on Staff all the time does the best thing. Councilmember Cook then stated City employees need to look for the best deals and Council needs to avoid micro-managing, adding if they put an ordinance together dictating how purchases will be made, he thinks Council will be very sorry because that is micro-managing and Council can't do that, adding just the Councilmembers themselves probably couldn't all agree on where to make purchases and at what price.

Councilmember Brooks stated he thought the Council could make a general policy about purchasing locally, adding to have someone spend 40 minutes on the phone to save \$.25 wouldn't make sense, but the Council needed to find out how much the City can legally spend over the price of a product outside the City so they didn't get in trouble for shopping locally and spending too much money. Councilmember Brooks then moved to direct the Interim City Manager to look into the legalities of giving an advantage to local businesses over businesses outside the City and what that percentage could be. Vice Mayor Sacco stated he was not asking the Council to violate the law, but was asking them to give local businesses a fair shake, adding people get comfortable with their vendors and then shop with them and the poor guy in Benson trying to make a living is left out in the cold.

Councilmember Brooks then repeated his motion to direct the Interim City Manager to look into the legalities of giving an advantage to local businesses for purchases by the City. Seconded by Councilmember Moncada.

Vice Mayor Sacco then asked what the motion was with Councilmember Brooks repeating his motion was to give a directive to the Interim City Manager to look into the legalities of giving local businesses an advantage over businesses outside the City. Vice Mayor Sacco stated he didn't think local businesses would get an advantage over outside businesses with Councilmember Brooks stating if the City pays more to shop locally, it would be an advantage to local businesses that outside businesses would not get. Motion passed 6-1 with Vice Mayor Sacco voting nay.

Councilmember Moncada then asked Mr. Hamilton to contact the League of Arizona Cities and Towns and find out why Mr. Stephens and Mr. Museus were not in the League's top 10 recommendations with Mr. Hamilton stating he would do that and then asked if he should start the background process for Mr. Stephens and Mr. Museus. Council concurred.

Councilmember Brooks stated he would like each Councilmember to choose 4 more applicants to interview and get the names to Mr. Hamilton so the interviews could be scheduled should the Council decide to interview more applicants. Councilmember Cook asked why the Council would want to interview more candidates when they have interviewed several other candidates and the Council is seeming to ignore them as though they were irrelevant or invalid. Councilmember Brooks then asked about setting a meeting to discuss the interviews Council has done and possibly giving Mr. Hamilton 4 names of additional candidates they would like to interview with Councilmember Wangsness stating he is keeping in mind the candidates Councilmember Cook was referring to. Council then decided to schedule a meeting on Thursday, November 14 to discuss the interviews they have conducted and submit additional names for interviews should they not select a candidate for the City Manager position.

**ADJOURNMENT:**

Councilmember Brooks moved to adjourn at 4:46 p.m. Seconded by Councilmember Moncada. Motion passed 7-0.

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Toney D. King, Sr., Mayor

ATTEST:

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Vicki L. Vivian, CMC, City Clerk