

**THE WORKSESSION  
OF THE MAYOR AND CITY COUNCIL OF BENSON, ARIZONA  
HELD NOVEMBER 25, 2013, 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 (arriving at 6:10 p.m.), Councilmembers Patrick Boyle, Ron Brooks, Jeff Cook (arriving at 6:10 p.m.) and Chris Moncada. Absent was: Councilmember Peter Wangness.

**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 October 14, the Council left off the top of page 10 and began reading Section VIII – Motions beginning with D – Motion of Direction. Ms. Vivian then stated in the past, Council has discussed giving Staff direction and there have been times the direction wasn't as clear as it could have been, adding any time the Council gives direction to Staff, the preferred way to do so would be with a motion and a vote. Councilmember Moncada asked about Council giving Staff direction to bring information to the Council with Ms. Vivian stating direction in the past has been done with and without motions and votes and this is something the Council may want to discuss. Councilmember Brooks stated this issue could be revisited after the Council has new legal counsel. Council concurred.

Ms. Vivian then read E – Ordinances and Resolutions with no comments from the Council.

Ms. Vivian then continued, reading F – Voting. Ms. Vivian stated Council had briefly discussed voting when they discussed abstentions and the Council consensus was anytime that there was a possibility of having a majority of the entire Council body voting without anyone having to abstain, Council would require 4 votes for any legal action to carry. Councilmember Brooks asked about a Councilmember being able to participate and vote via telephone, if they couldn't attend a meeting in person and if the issue should be addressed in this section. Ms. Vivian stated the issue did need to be addressed, adding she had notes on issues that should be discussed and decided on by Council, including telephonic participation and excused absences, adding right now the City Code states Councilmembers can be docked pay if they fail to attend meetings, unless the absence is excused, but nothing in the Code defines excused absences or who makes that determination. Interim City Manager Brad Hamilton stated the telephone participation should be noted as "electronic media" since Skype is becoming popular and the Council may not want to be limited to participating via phone. Councilmember Brooks stated he would like to revisit this issue and make sure it's included in the final document.

Ms. Vivian then read G – Abstention, adding again, this was briefly discussed by Council when they decided action will require 4 votes. Ms. Vivian then stated Council also discussed the Councilmember who declared a conflict being required to leave the dais and asked if they would like to discuss the issue further. Councilmember Brooks stated he liked the idea of the Councilmember stepping down, but Attorney Bill Sims had informed the Council at a worksession held on October 10 that the law didn't require a Councilmember to step down. Councilmember Brooks then stated he felt perception was very important

and stepping down from the dais reassures the public that the Councilperson isn't participating in the discussion. Councilmember Brooks then stated he also has an issue with the abstaining Councilmember addressing the Council as a member of the public, adding even if he were to speak as a member of the public at the Call to the Public, he's still a Councilmember and everyone knows it. Councilmember Brooks then stated the abstaining Councilmember would just be getting his part of the discussion in before the Council addressed the item and he didn't think that was right. Councilmember Moncada stated he could see what Councilmember Brooks was saying, but he didn't know if the Council could put something in the rules that would prohibit a Councilmember from speaking at the Call to the Public, adding it could be a freedom of speech issue. Councilmember Cook stated he agreed with Councilmember Moncada and asked how the Council would enforce such a rule. Councilmember Brooks stated the Council would simply not recognize the Councilmember at the Call to the Public, adding to do so would be weighing in on a decision the abstaining Councilmember shouldn't be part of, noting everyone present at the meeting would hear the comments at the Call to the Public, and would essentially be the abstaining Councilmember bypassing the conflict of interest he declared. Councilmember Brooks then stated the Council could revisit this issue when new legal counsel was approved. Councilmember Moncada stated a Councilmember maybe shouldn't address the Council at the Call to the Public regarding an issue he has declared a conflict of interest on, but his concern is that the Council saying it can't be done or won't be allowed may be an issue. Councilmember Brooks stated to not allow them to address the Council would not be a violation of freedom of speech because it would still be allowed outside in public, adding Council meetings are really a meeting that the public is allowed to view, which doesn't automatically give them the right to participate, noting Council allows them to speak on subject matters. Councilmember Moncada stated if the Council gives the right to address the Council to other members of the public, he was concerned about taking that right away from a Councilmember, adding he understands Councilmember Brooks' concerns, but ultimately when a Councilmember steps down from the dais, he is still a citizen with rights and to let everyone else speak and not them could be an issue. Councilmember Brooks then stated he would like to revisit this subject with new legal counsel and would like their opinion. Councilmember Cook stated he is a member of the public and he would address Council as such, asking again, how this would be enforced. Councilmember Cook then stated if the Council had a police officer remove him from a meeting when he was addressing them as a member of the public, the Council wouldn't have a frivolous civil rights lawsuit on their hands; they would have a valid civil rights lawsuit against them. Councilmember Brooks stated this issue would be a good subject for discussion with the new City Attorney. Ms. Vivian stated she would like to have a legal opinion before amending the proposed rule, adding in the past, a developer had been on the Council and had come before the Council as the property owner with a rezoning request. Ms. Vivian stated he had to appear before the Planning & Zoning Commission as the applicant and then before the Council, adding he removed himself from the dais and addressed the Council as the property owner. Ms. Vivian then stated to not allow a Councilmember to address the Council as a member of the public would definitely require a legal opinion, adding she made a note to revisit this issue at a future worksession.

Ms. Vivian then read H – Tie Votes – Motions for Reconsideration, which addresses having the same item on the agenda over and over, adding in the past an item failed when it was presented to Council for action, however, 2 Councilmembers continued to put the item on the agenda for several meetings. Councilmember Moncada stated he liked that reconsidering an item required 1 Councilmember from each side requesting to place the item back on an agenda. Councilmember Brooks stated he would also like to include that a motion for reconsideration could be made by a Councilmember who was absent with Ms. Vivian stating paragraph 2 covered that issue. Councilmember Brooks then stated if an item keeps coming back to Council over and over, the Council could decide it was enough and not address the issue again.

Ms. Vivian then read J – Suspension of the Rules with no comments from the Council.

Ms. Vivian then reads Section IX – Open Meeting Law Violations, adding the Council went over this subject in depth at the October 10 meeting held with Attorney Bill Sims. Councilmember Brooks stated he would like to get the new City Attorney's opinion on this issue when the Council approved a new City Attorney. Councilmember Brooks stated emails are another big problem adding if he sends an email to a Councilmember and they forward it on to another Councilmember who then forwards it to another Councilmember, it could create a violation since it could be ultimately forwarded to a quorum of the

Council. Councilmember Brooks then stated the Council may want to consider adding a statement to their emails requesting it not to be sent to other Councilmembers to keep that from happening, but again, he would like to get the new Attorney's opinion on how to handle this. Councilmember Boyle asked about what to do if that happens with Councilmember Moncada stating the most common violation was when a Councilmember hit "reply all" when replying to an email, adding in the meeting with Mr. Sims, he told the Council if an email did end up being sent to a quorum, the Council should acknowledge it publicly. Councilmember Brooks then stated if a Councilmember wanted to get something out to all the Councilmembers, they could send it to the Clerk and ask her to send it to the Council and ask them not to reply to the message. Ms. Vivian stated Mr. Sims had indicated one-way communication from Staff with information would be ok, but those requests should go to the City Manager. Councilmember Brooks then restated for the Council to stay out of trouble, they could send something to the City Clerk and ask her to distribute it to the Council with a request for them not to reply with Ms. Vivian restating any emails and messages from the Clerk's office would be information only, such as what time a meeting was starting, where the meeting would be held and logistical information. Ms. Vivian then stated any other requests to distribute something to the Council should be directed to the City Manager.

Ms. Vivian then read Section X – Conflict of Interest, adding the City Attorney can always advise a Councilmember on whether or not they have a substantial or remote interest on an issue coming before the Council.

Ms. Vivian then read Section XI – Public Hearings, adding the Council has 2 public hearings that will be held on December 9. There were no comments from the Council.

Ms. Vivian then read Section XII – Final Action with no comments from the Council.

Ms. Vivian then read Section XIII – Call to the Public, beginning with A – Addressing Council. Councilmember Brooks asked if the written statements by the public and given to Council were made a record with Ms. Vivian stating the comments are scanned and retained with the Council packet. Councilmember Brooks stated he would like to emphasize that if the member of the public is addressing the Council on a topic that is not a matter susceptible to action by the Council, the Mayor can hold the speaker out of order and can ask them to stop addressing the Council. Ms. Vivian then read B – Responses from Council with Councilmember Brooks stating there are times the Council needs to clarify comments from the public, which was allowed.

Ms. Vivian then read Section XIV – Council Meeting Agenda, A – Call to Order with Councilmember Brooks noting sometimes the Council doesn't have an invocation. Ms. Vivian stated Staff always call to remind the scheduled clergy member who volunteers to offer the invocation, but sometimes they forget and don't attend the Council meeting and other times, no clergy member is scheduled, adding this is done on a voluntary basis. Ms. Vivian then stated a Council resolution is in place, requiring the Clerk's office to send a letter to all the clergy in the surrounding areas every November, asking them to sign up for invocations, adding they are allowed to offer the invocation up to 3 times per year. Ms. Vivian then stated in the absence of a scheduled invocation, the resolution allows the Mayor to call on Councilmembers who have volunteered to either offer invocations or a moment of silence.

Councilmember Moncada then stated this section deals with the order of business the Council will have on the agenda and he would like the Council to consider moving the Call to the Public to the end of the meeting, adding other cities do this and while it hasn't been that bad lately, in the recent past, the Call to the Public has lasted up to an hour. Councilmember Moncada then stated there are people who attend the meetings for agenda items and they have to wait until after the Call to the Public. Councilmember Moncada then stated it would also help the Council get through the meeting faster, adding it has been relatively calm lately, but sometimes, people are held hostage for agenda items until after the Call to the Public, which can be very lengthy, adding again, he would like the Council to consider moving the Call to the Public to the end of the meeting. Ms. Vivian then stated in the past, the City Council had the Call to the Public split between Agenda Items at the beginning of the meeting and Other Items or Non-Agenda Items at the end of the meeting. Councilmember Brooks stated if there was a large crowd wanting to address the

Council at the Call to the Public, he would like for the Mayor to have the option of limiting each speaker to 3 minutes instead of the 5 minutes that is currently allowed. Councilmember Brooks then stated if a member of the public wants to give some serious input on a Council decision, it wouldn't make sense to hear their comments at the end of the meeting after Council addressed the item and voted on it. Councilmember Moncada stated if the Call to the Public were moved to the end of the meeting, he would want there to be plenty of notice to the public, so they would be well aware of the change. Councilmember Boyle stated there are many times people come to Council regarding a particular agenda item and if the Call to the Public is at the end of the meeting and Council already voted on the issue, then the public is just wasting their time, adding he likes the idea of splitting the Call to the Public like Ms. Vivian mentioned. Councilmember Brooks stated he would still like the Mayor to have the ability to shorten the speakers' times if needed, adding if a lot of people sign up to address Council, the Mayor could limit them to 3 minutes per speaker so the length of the meeting would be kept within reason. Ms. Vivian addressed Council stating currently, the Mayor has the ability to require a large group of people addressing Council on an item, to consolidate their comments and select a spokesman to address the Council, adding shortening speakers' time to 3 minutes could be added to the proposed rules, but a person could still ask for more time and it was up to the Mayor whether they were granted it or not. Vice Mayor Sacco stated a lot of people attend to vent their frustrations and he didn't think most of the people would want to stay for the entire Council meeting and wait to speak at the end of the meeting. Vice Mayor Sacco then stated he didn't see a problem leaving the Call to the Public where it is right now, adding there has never been a problem where the Call to the Public extended for a long period of time. Councilmember Moncada stated earlier this year, the Call to the Public lasted an hour. Councilmember Brooks stated in those circumstances, he felt the Council needed something in place giving the Mayor the option to limit the speakers' times to 3 minutes and if there are numerous people addressing the Council on one item, to have the Mayor require them to select a spokesperson for the group. Vice Mayor Sacco asked why anyone thought it was better to have the Call to the Public at the end of the meeting with Councilmember Moncada stating some people attended Council meetings for specific agenda items and didn't want to wait the hour for the Call to the Public to be over. Vice Mayor Sacco stated the Council has the Call to the Public so people can express their concerns and if the Council meeting is a long meeting, they won't stay to address the Council. Councilmember Brooks stated he agreed, but he still felt the Mayor should have the opportunity to shorten the Call to the Public if there were a lot of people signed up to address the Council. Councilmember Cook stated he was in support of Councilmember Brooks that the Call to the Public be split, adding he has watched extensively, where many individuals have their individual frustrations they vent to Council and often, the Council can do nothing about them, but when the Council has items on the agenda and people come to speak on those issues, they are speaking with a common concern that almost everyone present has. Councilmember Cook then stated he felt the majority should rule when there's a common concern on agenda items and that those comments should come first and when it's an individual concern, maybe it should be separated out and taken at the end of the meeting. Councilmember Cook then stated after going through those 45 minute and hour-long Calls to the Public, he has to spend 2 weeks defending why Council looks so stupid and why it's such a circus and he can't defend it, but if the Call to the Public is separated, he could defend it. Councilmember Moncada stated he just wanted the Council to consider changing the Call to the Public, and while he is fine with it either way, other cities have moved it to the end of the meeting and he was just wanting Council to consider it. Councilmember Brooks stated there was another city having problems at their meetings and they did move the Call to the Public to the end so they could try and get City business done, but he still agreed with Vice Mayor Sacco that if someone may bring some news to the Council, it would do no good to hear it at the end of the meeting after Council had addressed and voted on an item, adding then Council would have to put the item on an agenda again and revote on it. Mayor King stated the Council would move on to the next section with Councilmember Brooks asking if the Council was going to put something in place for the Mayor to have the ability to shorten the Call to the Public with Mayor King stating it was something to still discuss.

Ms. Vivian then read B – Roll Call, C – Employee Recognition, D – Proclamations, E – Public Hearings and F – Call to the Public, adding the Mayor also has the ability to see if a speaker signed up for the Call to the Public wanted to address Council when the item came up, such as with a previous major amendment to the General Development Plan. Ms. Vivian then stated at that meeting, the Mayor asked the speaker if they would like to speak later in the meeting when the item was addressed and they did. Ms. Vivian then

continued, reading G – City Manager Report. Councilmember Brooks stated the previous City Manager Glenn Nichols gave Council a schedule of who he met and what times they met and he would like to give a directive to have that in the future. Ms. Vivian stated she would give that request to the new City Manager when he started and if he has any questions, he can talk to the Council. Ms. Vivian then read H – New Business, adding it is nice to have something in place that addresses the Consent Agenda, noting the proposed rule reflects the way the Council currently handles the Consent Agenda. Councilmember Brooks then questioned placing appointments to Boards and Commissions on the Consent Agenda, stating he thinks the Council should look at each new appointment under New Business instead of the Consent Agenda. Councilmember Moncada stated the only time the appointment is on the Consent Agenda is when there is only 1 applicant for the position, noting anytime there are multiple people applying for a position, it is not done on the Consent Agenda. Councilmember Brooks stated the Council meeting will go just as fast, but he believes any new appointment should not be on the agenda, adding he thinks Council should give a little more attention in recognizing someone coming on board with the City. Councilmember Cook disagreed stating whenever there is a single applicant for a single position, there is no controversy and if any Councilmember has any issue with any item on the Consent Agenda, the procedure in place allows them to simply remove the item from the Consent Agenda and it would be dealt with separately as Councilmember Brooks is asking. Councilmember Brooks then stated when a reappointment is being made, the Council has already looked at their resume once, so those could be addressed on the Consent Agenda, but any new appointment, he felt should be looked at with a fresh view and actually be a separate agenda item. Councilmember Cook countered stating the Council can do that now by simply removing any item from the Consent Agenda. Councilmember Brooks then stated there is a distinction when the Council is bringing someone new on board, adding the Council needs to look at who they are, what experience they have and if they want to appoint them, adding it's a little different than just reappointing someone who has been doing a good job. Discussion continued between Councilmember Brooks and Councilmember Cook with the Mayor then stating the Council would move to the next section. Councilmember Brooks asked what would be done addressing this subject with Mayor King stating it would be looked at again.

Ms. Vivian then continued reading I – Department Reports and J – Adjournment. Councilmember Brooks then stated Council never seems to hear about the airport and asked if there was a way to get an update on what's been going on out there, adding maybe the Council could have the Fixed Base Operator (FBO) address Council with a summation. Interim City Manager Brad Hamilton stated he has been discussing that, but with performing both roles of the Public Works Director and the Interim City Manager, he's been very busy. Mr. Hamilton then stated he is looking into adding the airport to the current Public Works report. Councilmember Brooks asked if Mr. Hamilton was considering having such information as traffic, volume and fuel sales with Mr. Hamilton stating he would include statistical data and airport issues. Mayor King then stated the Council would stop at this point.

#### **ADJOURNMENT:**

Councilmember Moncada moved to adjourn at 6:47 p.m. Seconded by Vice Mayor Sacco. Motion passed 6-0.

ATTEST:

\_\_\_\_\_  
Vicki L. Vivian, CMC, City Clerk

\_\_\_\_\_  
Toney D. King, Sr., Mayor