

**THE WORKSESSION  
OF THE MAYOR AND CITY COUNCIL OF BENSON, ARIZONA  
HELD NOVEMBER 26, 2012, 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 6:00 p.m. with the Pledge of Allegiance.

**ROLL CALL:**

Present were: Mayor Toney D. King, Sr., Vice Mayor Lori McGoffin, Councilmembers Ron Brooks, David Lambert (arriving at 6:01 p.m.), Nick Maldonado, Chris Moncada and Al Sacco.

**NEW BUSINESS:**

**1. Discussion on updates to the City Code Chapter 7 Building and Chapter 9 Health and Sanitation**

Building Official Luis Garcia addressed Council stating this item is the same City Code proposal brought to Council a year ago to update and merge Chapters 7 and 9, creating Development Services. Mr. Garcia then reviewed the major revisions in the proposed new chapter stating the first change is the consolidation of the Planning Department, the Zoning Department and the Building Department into one department called Development Services. Mr. Garcia then stated this change will reflect the way the City currently operates and has for some time, adding the Code change does not request any additional staff or any changes in current operating conditions.

Mr. Garcia then addressed Section 7-2, stating this section contains major revisions since the last proposal was before Council, adding the section now fulfills the requirements of recently passed Senate Bill 1598 (SB 1598), which has been dubbed the "Homeowner Bill of Rights". Mr. Garcia then stated SB 1598 makes the municipality accountable for the process in providing permits and requires the City to establish timeframes for the process. Mr. Garcia then stated the process contains two parts, one for the administrative review, which is making sure the City has a complete permit application and everything needed to do the technical review, and one for the technical review. Mr. Garcia then stated SB 1598 also establishes inspection provisions, such as having to provide documentation on rights and appeal procedures, adding this requirement provides transparency on services the City will provide during the visit to perform inspections. Councilmember Moncada asked if SB 1598 gave timeframes with Mr. Garcia stating it allows for the municipality to establish those timeframes, just requiring them to be reasonable, adding the timeframes specific to the stages of the permitting process are contained in Section 7-2. Mr. Garcia then stated this new requirement will be in effect in January and the proposal makes sure the City is in line with State law.

Mr. Garcia then continued his review stating Section 7-3 addressed the International Codes, which were left unchanged from the current code. Councilmember Sacco asked if the International Codes have been adopted with Mr. Garcia stating the International Codes are currently in place and were adopted by Council, again adding there is no change to the International Codes in the proposed new chapter. Councilmember Brooks verified the International Codes, such as Residential, Fire and Plumbing all applied to the City, with Mr. Garcia adding each one of the International Codes has their own provisions contained within their respective code editions. Councilmember Brooks asked about adopting updated International Codes with Mr. Garcia stating Council would approve those codes at some point, but it is not being proposed at this point.

City Attorney Mike Masee stated the International Codes are documents published by the International

Code Council, adding they will sell a copy of the codes for a price and for the Council to adopt under the codes by reference, the City has to have 3 copies on file in the Clerk's office. Mr. Masee then stated if the Council feels updating the multiple codes is a priority, the cost for the documents needs to be in the budget. Mr. Garcia then stated each code is approximately \$1,000 for a complete set, adding the City has 4 copies of the current International Codes and we have access to view the unamended editions online. Councilmember Sacco stated the City should do an annual review to make sure we are up-to-date with Mr. Garcia stating he would like to have the Board review the building codes, noting the insurance rating service is rating us already, so it needs to be done in the near future. Mr. Garcia then stated those would be brought to Council in a different legislative process. Councilmember Sacco then expressed concern regarding the City having up-to-date codes with Mr. Garcia stating a moratorium was placed which stopped the City from adopting any codes that would mandate the installation of residential sprinkler systems, adding the City is currently up-to-date according to the State of Arizona.

Mr. Garcia then stated Section 7-4 addressed public nuisance and premise maintenance, stating this section remained intact, but provided additional definitions due to the evolving industry.

Mr. Garcia then stated Section 7-5 addressed violations enforcement, stating this section contains changes from our current code, adding the current enforcement provisions has loop holes and issues. Mr. Garcia stated everything is charged criminally with the current code and the proposed code is not that aggressive, adding the City is more interested in encouraging compliance than in collecting fines, and the proposed chapter gives Staff an opportunity to work with citizens to do so. Mr. Garcia then stated the proposed chapter creates a hierarchy of enforcement, adding there is a flowchart for the administrative process, enabling everyone to see the administrative process that is being proposed. Mr. Garcia then stated this process allows the City to remain within the City's coffers and be able to work with citizens toward compliance instead of going to the City court to remedy the issues. Mr. Garcia stated the proposal included the applicable timeframes, adding this is something that did not previously exist in Chapter 9 and Administration feels strongly that this gives the City the opportunity to work with citizens in gaining compliance.

Councilmember Sacco stated the proposed chapter states "nothing shall preclude the Director of Development Services from seeking voluntary compliance..." and asked what would happen if the City didn't obtain voluntary compliance with Mr. Masee stating the purpose of having an enforcement provision is to address issues when there isn't voluntary compliance, adding the number one goal is to achieve compliance, which is why the proposal contains procedures that first provides a notice with an opportunity to cure before the violation moves to an administrative hearing and then on up to civil and criminal charges. Mr. Masee then stated the proposed change is not an attempt to create a profit center for the City, but to put something together that is workable to allow Staff to identify the properties that need to be brought into compliance and work with them to do so. Mr. Garcia then stated the language Councilmember Sacco was referring to already existed in Chapter 9, but has now been extracted and placed at the beginning. Councilmember Sacco then asked if some of the provisions are involuntary with Mr. Garcia stating all the code provisions the City has are mandatory, but the language Councilmember Sacco is referring to states the City doesn't need to go down the enforcement process if the property owner complies and nothing prevents Staff from seeking voluntary compliance.

Councilmember Brooks then asked if something like the flowchart would be given to violators with Mr. Garcia stating it would be given out, along with notice of their appeal rights, adding SB 1598 actually mandates that. Mr. Garcia then stated the flowchart will also be contained in the proposed chapter as an exhibit. Councilmember Sacco then asked about the flowchart being given out with a citation and if someone would need to sign for it with Mr. Garcia stating when it is adopted, it will be part of the documents given with any violation. Councilmember Brooks then asked about Staff giving out reports on citations with Mr. Garcia stating Staff would issue a citation on the spot, giving the offender 2 copies of the citation along with the additional information which would include the flowchart and the appeal process.

Mayor King stated when an inspection and violations were found at his previous place of business, the City told his employer what the problems were, explaining in detail what was wrong and what needed to be done. Mayor King then stated he asked a lot of questions during the process and he would hope any homeowner or business owner would ask questions as well, to see what needs to be done and how it needs to be done. Councilmember Brooks then asked about the timeline for compliance with Mr. Garcia stating the flowchart indicates 15 days to comply, but the City is flexible and has discretion for circumstances, adding the most important thing is to have the offender working toward compliance. Mayor King then stated his concern is that the City can sometimes be too flexible and he has heard the frustration of the community with not having compliance done in a reasonable period. Mayor King then stated when the offender is working reasonably with the City toward compliance, we need to recognize that, but if they start dragging their feet, we need to put a stop to it. Councilmember Moncada then stated he felt it was good to have the flowchart, adding as a Councilmember he hears both sides of giving too much time and not enough time to an offender to come into compliance, but there has to be a balance, adding working toward achieving compliance is the goal.

Councilmember Lambert stated he had talked to Mr. Garcia several times on this proposal and he feels as long as an offender maintains communication with Mr. Garcia and is making an effort toward compliance, they should be given the time to do so, but if they completely ignore the violation and Staff's attempts to communicate, then he feels the procedures to gain compliance should be utilized and the proposed chapter gives the City the authority to move forward.

Mr. Garcia then continued his review of the proposed chapter moving on to Section 7-5 which addressed enforcement, stating Staff has run into some issues with our current code edition since it only specifies the owner or tenant of the property and leaves out the party responsible for creating a violation on the said property, adding even more sensitive, is the fact that there is a lot of property in Benson that is actually owned by deceased individuals and this issue is something the proposed chapter remedies. Mr. Garcia then addressed the right of entry subject, stating he has heard comments around the community that the proposed chapter is attempting to obtain the right of entry, but that is false information, as the City has always had the authority to enter a property for an immediate life safety issue. Mr. Garcia then stated the right of entry currently exists in the building safety codes, but it is now clearly defined in the proposed chapter.

Mr. Garcia then stated Chapter 7.1 is a new proposed chapter which lays out the administrative path to compliance, adding it is different than the civil and criminal process that exists today, but by creating it as chapter 7.1, it is still linked to Chapter 7.

Councilmember Brooks asked about disclosing fees, stating inspections are normally a City function and shouldn't be charged to businesses with Mr. Garcia stating in our current code, there is a fee schedule and there may be a fee assessed in accordance with that schedule, adding with the passage of SB 1598, the City has to make that known. Mr. Garcia then stated if someone is trying to obtain compliance, there is typically no fee, but if it goes through the enforcement process through the legal channels, then fees will apply. Mr. Garcia then stated in the violation arena, there are no set fees, adding that is something worked through as the City tries to obtain compliance. Mr. Garcia then stated the fees could already have been paid, such as with a building permit, adding this is something Staff would make known before doing the inspection. Mr. Garcia then stated with the annual fire inspections, there is no fee, adding this is a fire prevention service the City provides to the community.

Councilmember Brooks asked about the documentation the proposed chapter indicates will be available to view online with Mr. Garcia stating at this time, a copy of the inspection report is left with the owner, adding the ability to view these documents online anticipates the use of a permit data tracking base, which is budgeted for this year, so hopefully the City will have those in electronic format if they are requested. Mr. Garcia then stated electronic formats are not applicable right now, but the Chapter covers it, eliminating the need to amend the proposed chapter if the permit data tracking base is utilized. Mr. Garcia

then stated SB 1598 requires a timeframe, so if something happens and an inspection report can't be left at the time of the inspection, the proposed chapter also informs the owner they have a right to the report within 30 days. Councilmember Brooks stated this would also give the City 30 days to get back to the owner should the inspection results warrant research with Mr. Garcia agreeing, stating with the size of the adopted codes and the reference standards, Staff may need that time.

Councilmember Moncada then asked about Section 7-2-4(e) regarding 4th street, stating the design review authority concerns him, and asked if they would have the final say on what a building on 4th Street looks like. Mr. Garcia stated the design review board was established to be the foremost authority on what is period correct, adding in addition to receiving their recommendation, the Development Services Director can utilize research, go to the State Library and Historic Preservation at the State level and get those experts to make sure they are period correct. Councilmember Moncada then stated his concern and complaints he has heard from business owners are that it's hard enough to get tenants into buildings on 4th Street, but with the added restrictions, it could be very cost prohibitive to do exterior remodeling if they have to redo the front of their store toward the period. Mr. Garcia then stated the proposed chapter is the same as any other code requirement, adding anything that is lawfully in existence prior to the adoption of the code is allowed to remain in existence unchanged, but if a change to a façade is made, then it would have to be in accordance with the period correct requirements. Councilmember Moncada asked if this would apply toward all exterior remodeling or repairs such as painting or replacing a broken window and having to reframe it with Mr. Garcia stating it would be assessed on a case by case basis, with the City treading softly on aesthetic things with the main focus on life safety related issues, adding the City would work with the applicant to make sure we get the best product. Councilmember Sacco then asked about the Historic Society's role regarding a building in a designated historic site with Mr. Garcia stating the Historic Preservation Commission has no legislative authority, but after building safety codes, he would ask for their recommendation on the design. Mr. Garcia then stated this would help preserve the heritage of the City of Benson, adding Staff coordinates with the Historic Preservation Commission now. Councilmember Brooks asked how this came to be with Mr. Garcia stating this is something that currently exists which was just pulled forward from the existing code sections.

Councilmember Brooks then questioned the standard plan policy addressed in Section 7-2-5, with Mr. Garcia stating the building code calls out that construction documents shall be provided with sufficient information to be able to show compliance with applicable codes, adding our current code did not meet the requirements of SB 1598, which calls for the City to be explicit on what we are going to be looking for in the set of construction documents.

Councilmember Brooks then stated he was concerned with Section 7-4-3, stating this would result in almost everything north of the railroad being condemned with Mr. Garcia stating this is to be able to combat life safety issues, so if something is just left exposed and left to deteriorate, it would be part of an educational campaign, telling them to cover it up before it's too far gone and is no longer safe, adding it's the ones that are left unmaintained and get into a dilapidated state that this is trying to address.

Councilmember Moncada then asked if there would be an additional worksession with Mr. Garcia stating it would be up the Council. Mayor King stated the Council received the information a week before the meeting and if they had more questions, they could meet with Staff. Council then agreed to another worksession to be held at 6:00 p.m. on December 10, 2012.

Mayor King then addressed the public, stating anyone that had a statement regarding the worksession material could address the Council at the Call to the Public at the regular Council meeting. Mayor King then stated the Council could not discuss items not listed on the meeting agenda, but they could get answers for the public, adding they could also meet with Staff to get their questions answered. Mr. Garcia then stated Staff is always available to the community.

**ADJOURNMENT:**

Vice Mayor McGoffin moved to adjourn at 6:52 p.m. Seconded by Councilmember Moncada. Motion passed 7-0.

ATTEST:

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Vicki L. Vivian, CMC, City Clerk

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Toney D. King, Sr., Mayor