

**THE WORKSESSION
OF THE MAYOR AND CITY COUNCIL OF BENSON, ARIZONA
HELD DECEMBER 10, 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, Nick Maldonado and Chris Moncada. Absent was: Councilmember 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 a continuation of the worksession Council held on November 26 regarding Chapter 7. Mr. Garcia then stated the first thing he would like to do is clarify a lot of misconceptions, adding this document is not a zoning code update; it is a separate document from the zoning ordinance and a separate document from the building codes, adding those documents are referenced because they all work in concert, but Chapter 7 is an entirely different document. Mr. Garcia then stated the previous meeting left off with Council's comments and questions. Mayor King asked if Councilmembers came in and talked to Mr. Garcia about their questions with Mr. Garcia stating some Councilmembers had. Mayor King then asked Mr. Garcia to review those questions with Mr. Garcia stating the first question was related to where the language regarding the historic preservation issue in Section 7-2-4 E on page 6 came from. Mr. Garcia then stated the language in this section came from the current zoning code, adding all that is being done is the language is being moved, since it was dealing with requirements in the permits process, citing Senate Bill (SB) 1598, as the reason it was brought forward. Mr. Garcia then stated if the language were to be changed, it would have to be done in the Zoning Regulations.

Mr. Garcia then stated another comment was based on the International Codes referred to on page 13, adding again, this language was pulled forward from existing City code and the only change in this proposal is the name change from "Uniform Codes" to "International Codes" since the International Codes are what the City has adopted. Mr. Garcia then discussed a question on why the International Codes are used, stating the International Codes are the model codes that are geared for the U.S.A., adding it deals with scoping from coast to coast in the United States and they were created with the name International Codes because they were created and published by the International Code Council. Councilmember Brooks asked if the International Codes were adopted by a previous Council or if they were done internally with Mr. Garcia stating a previous Council first adopted the 2003 International Codes which were the codes used until 2009 when the Council adopted the 2006 edition of the International Codes. Councilmember Brooks then stated the City still used the National Electrical Code with Mr. Garcia stating the National Fire Protection Agency published that code, which the City Council adopted and is the electrical standard the International Code Council recognizes.

Councilmember Lambert then asked Mr. Garcia if the other affected Department Heads had reviewed the proposal with Mr. Garcia stating all the Department Heads have been tasked with updating their respective chapters and updating the City Code accordingly. Councilmember Lambert then stated a lot of people are saying that Mr. Garcia is just writing this code on his own and he wanted that information clarified. Mr. Garcia stated the proposed chapter only deals with development services and the functions that occur under

the development services purview. Mr. Garcia then stated the Building and Planning & Zoning Departments are currently, and have for almost a decade, been overseen by the Building Official, noting the departments are currently operating in the manner outlined in the proposed chapter and there is no change from the way the departments operate now emphasizing there are no changes to any staffing dynamic at all in the proposed chapter. Mr. Garcia then stated all affected Department Heads had also reviewed this proposal.

Councilmember Moncada stated he still didn't like the historical preservation issue, adding he understood it was adopted as part of the code, but if the City is going to enforce this provision, it would make it very expensive to own a building on 4th Street, if the owner was trying to update the building. Councilmember Moncada then stated he felt the Council should do something about that. Councilmember Moncada then stated on page 19, the proposal addresses exterior premises and vacant land, with the language being carried over from the previous code sounding like the person who is responsible for the property is also responsible for cleaning the streets and alleys in front of and behind their building. Mr. Garcia then stated that is basically what it reads, adding we have a lot of solid waste dumping that is not being disposed of properly, and we need to make sure the public right-of-way is being kept clear so first responders and emergency responders that might have to use those alleyways or even streets can do so without having cars or furniture or any type of outdoor storage in the way, adding the people responsible do have that responsibility. Councilmember Moncada asked if that meant those people would be responsible for weeds and debris with Mr. Garcia stating what it's trying to be able to do is not have the responsible person dump stuff in those areas. Councilmember Moncada stated he felt it was the City's responsibility to cut those weeds down, but he does understand that if the person responsible for the property were dumping trash or a sofa in the alley, they should be responsible for it since first responders may need to utilize those rights-of-way to respond to emergencies, adding he just wanted to make sure the City was not going to be citing people for weeds in the alley. Mr. Garcia stated the only time that would come into play would be for a low hanging tree limb coming into a public right-of-way, adding the City would request that it be taken care of so the public right-of-way could remain free and unobstructed, adding the City does reserve the right to be able to clear the right-of-way if it is blocked.

Mayor King then discussed the historical preservation issue stating his understanding is a lot of times, the historic group deals with it directly and advises the owner what can and can't be done, adding he has never heard of any complaints over the issue. Mr. Garcia then stated there haven't been any issues, but once Chapter 7 is acted upon, he would like to look at other programs to bring up, such as an Adaptive Reuse Program, adding the City may be able to offset some of the hard lines standards and trade them off for some of the aesthetics issues, noting anything that is not life safety driven can be looked at and examined to see if the City could accommodate the issue, such as parking. Mr. Garcia then stated the proposed chapter doesn't look at changing anything, but was solely brought forward from the current Zoning Regulations to be in compliance with SB 1598. Mayor King then asked if the proposal would allow enforcement if someone wasn't complying with the regulations with Mr. Garcia stating this section is only to let the applicant know what they are to be looking at, adding this is required to be in compliance with SB 1598.

Councilmember Brooks asked about who would be running the Planning & Zoning, GIS and Building Safety with Mr. Garcia stating they are all currently being run by the Building Official, adding an organizational chart has been provided to Council with the proposal. Mr. Garcia then stated the Building Official, Zoning Administrator and Planning Director would be consolidated into the Director of Development Services, which is currently the way the departments are operating and have been for quite some time. Councilmember Brooks asked about Staff with Mr. Garcia stating Michelle Johnson is the Planning Technician/GIS Manager, Tim Brandenburg is the Building Inspector and Sheila Perkins is the Permit Specialist.

Councilmember Brooks then expressed his concern on City employees being able to enter any premises, building or structure while working for good and probable cause. Mr. Garcia stated good and probable cause is anything that is imminent danger either to the occupant or the public at large, so we can see if

something could be done to remedy the life safety issue immediately. Councilmember Brooks felt there should be a way to clarify that language so people wouldn't worry about someone coming onto their property without a complaint of a serious health or safety violation or justifiable cause. City Attorney Mike Masee then addressed Council stating the phraseology "good and probable cause" is a pretty standard legal concept, so if something were ever challenged in court, it would be something to say to the court, adding the courts are accustomed to measuring something based on probable cause. Mr. Masee then stated this is the same standard that a judge would probably be comfortable with, adding probable cause means something more than no cause, but it also means something more than just suspicion, it means not proof of a preponderance, but that we have some articulable basis that says we really need to go in to check out the property for some health or safety reasons. Mr. Masee then stated it could be based on someone else's report, if we believe that person to be reliable, adding it could also be based on other information, but it is a very fact-based type inquiry so we have to be able to say we went on the property for some real reason. Mr. Garcia then stated if there were an extension cord visible from public way, or if we could smell smoke or something that was life safety related, that is when the right to be able to enter the property to be able to relieve the immediate life safety issue would come into play, adding the language would not be used just for the purpose of entering someone's property. Mr. Garcia then added that a standard violation process would go through the process that is contained in the code. Councilmember Moncada asked if a complaint could be a reason to enter onto someone's property with Mr. Garcia stating if the complaint was something that was an immediate life safety issue, such as burning wires, then we would need to get to that location quickly, but in most cases, we are going to make ourselves known, which is the standard enforcement practice. Councilmember Brooks stated the language was very generic and there could be a chance for abuse of it by a future Director of Development Services, adding he felt there should be a way to identify that life, safety or health hazards would be considered good and probable cause. Mayor King disagreed stating today's generation has grown accustomed to the language "good and probable cause" and know what it means, adding if a future Director was abusing his powers, it would be the City Manager's responsibility to take care of the issue. Councilmember Brooks again expressed his concern about the City's limit and where the line would be drawn between life and health and safety issues and other issues such as rotting wood on the outside of a house. Mr. Masee then stated there is a balance between the right to privacy and exercising dominance and control of your own property vs. the legitimate interest of the local government to make sure everything is safe and healthy, not just for the property owner, but for others who might be entering the property, adding we may be also talking about rental properties. Mr. Masee then stated you can look to the 4th amendment in the constitution that preserves the right to be reasonably secure in your property in your possession, which also uses the language to be free from "unreasonable" searches and seizures, adding the use of the word "unreasonable" says we're going to depend on the facts, for an inspector to come in and say we really need to look at something, we have to be able to articulate something. Mr. Masee then stated the proposed chapter also says that we don't enter into property without a consent, and if we don't get a consent, we can apply to court, the City magistrate, for a code search warrant, adding there is a code enforcement search warrant process built in, so instead of arguing with the property owner, Staff would put the facts down on paper, sign an affidavit, present it to a neutral magistrate and if that neutral magistrate believes those facts that we can articulate in the affidavit, and arise to a probable cause to justify an inspection type search, then the magistrate signs off and gives the City a warrant, noting this is the same process any kind of search warrant requires. Councilmember Brooks then stated he would still feel more comfortable if it was more specified what exactly probable cause is. Councilmember Brooks then stated on page 11, Section 7-2-11, he would like to clarify Section C, that addresses what must be done prior to a certificate of occupancy being issued, asking if the sidewalks referenced were required for existing homes or new tract homes. Mr. Garcia then stated this would address anything that would require additional on-site development, adding that is where a certificate of occupancy is going to mandate that the on-site development be done as well. Mr. Garcia then stated the O'Rielly Auto Parts store was an example, adding until they had their entire infrastructure in, including parking spots, the certificate of occupancy was not issued. Councilmember Brooks asked if this would apply to residential also with Mr. Garcia stating it would apply to all construction. Councilmember Brooks then asked if a house was built in an existing neighborhood, would it require a sidewalk with Mr. Garcia stating if a sidewalk is part of their development standard, it would be required. Mr. Garcia then stated the proposed

chapter is not saying a sidewalk is required, but is saying if one is required, it must be in place prior to a certificate of occupancy being issued.

Councilmember Brooks then expressed concern over the application of the proposal, stating almost all the homes north of the tracks could be cited and asking if we were going to be looking at health and safety issues or if we would be looking at cleaning up the town. Mr. Garcia stated he would like to clarify the proposal was not targeted to north of the tracks but would be applicable citywide and was to be a provision to offset blight. Mr. Garcia then stated no one would be cited for solely the cracking or peeling of paint, but was using the peeling of paint to be able to show a blighted property, adding the proposal is trying to be able to protect property values at that point. Mr. Garcia then stated this is something municipalities are trying to enact to have people maintain their properties to not give the appearance of a rundown neighborhood. Councilmember Brooks expressed his concern that a lot of homes would fall into that category and asked if he should have to worry about rotting wood on his house or if Mr. Garcia was only looking at properties that are really deteriorating badly and diminishing property values. Mr. Garcia stated if the property isn't appearing to be blighted property, it will not be called. Councilmember Brooks then asked about window screens with Mr. Garcia stating they are a health issue, because the building code does require minimum ventilation, so there are a percentage of the windows that have to be operable, adding if there aren't any screens, it creates a health issue since appropriate ventilation can't be obtained without exposing people to anything else. Mr. Garcia then stated screens alone would not be a sole reason to be able to cite a property. Councilmember Moncada stated the Council was only discussing the proposal and no action was being taken at this point. Mr. Garcia then stated he would like some direction on bringing the proposal back to Council for action, adding he could address any further questions at a Council meeting, if the Council so chose. Mr. Massee stated if the Council so desired, they could move to amend a particular provision of the proposal and if that motion were to pass, the Council could then consider approving the amended proposal. Mr. Massee then stated if the Council passed multiple amendments, Staff would then want to bring the amended version back to Council for action. Councilmember Moncada then stated the Council could still change it after they approved it, if Council wanted.

ADJOURNMENT:

Vice Mayor McGoffin moved to adjourn at 6:38 p.m. Seconded by Councilmember Moncada. Motion passed 6-0.

ATTEST:

Toney D. King, Sr., Mayor

Vicki L. Vivian, CMC, City Clerk