

**THE REGULAR MEETING
OF THE MAYOR AND CITY COUNCIL OF BENSON, ARIZONA
HELD AUGUST 26, 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 the Allegiance. Mayor King introduced Kirk Sorenson of the Assembly of God who offered the invocation.

ROLL CALL:

Present were: Mayor Toney D. King, Sr., Vice Mayor Al Sacco, Councilmembers Ron Brooks, Jeff Cook, Chris Moncada (arriving at 7:16 p.m.) and Peter Wangsness. Absent was Councilman Brian Crafts.

EMPLOYEE RECOGNITION: None

PROCLAMATION: None

PUBLIC HEARING: None

CALL TO THE PUBLIC:

Kathy Suagee stated her remarks were not an attack on Council; they are simply her comments on the past couple of meetings. Ms. Suagee stated on July 22nd, former Councilmember Lori McGoffin defended her participation on the City Manager Selection Committee because she has participated in numerous candidate interview committees as a member of the Council and her input would be valuable. Ms. Suagee explained she has also participated in numerous searches to fill professional positions going back as far as 1984 for Montana University. Ms. Suagee stated when she sat on the Benson School Board she helped select the current superintendent and when she was on City Council, the Council hired 3 City Managers. Ms. Suagee added in her experience multiple candidates should always be personally interviewed because it never pays to consider only one candidate. Ms. Suagee stated at the May 13 meeting, item 5, Councilman Ron Brooks moved, and this Council voted, to establish a committee to search for a new City Manager. Ms. Suagee stated the language from the minutes reads "each member of the Committee will vote on a recommendation that will be made to the Council, the Council will then take final action." Ms. Suagee then stated she doesn't believe this wording mandates the recommendation of a single candidate over all others. Ms. Suagee stated for the Committee to refuse to provide a slate of candidates to the Council is to substantiate that this was, indeed a City Manager Selection Committee acting as an ad hoc City Council. Ms. Suagee quoted Mayor King as saying the whole process was confusing. Ms. Suagee then stated apparently a recommendation was made and the candidate was contacted and it was the beginning of a negotiation. Ms. Suagee stated once the story was printed in the News-Sun, the Council held an emergency meeting and formally decided to offer Mr. Pauken the job, but Council knew how much they had to offer the man because negotiations had already commenced. Ms. Suagee stated whoever it was to begin negotiations before the Council identified Mr. Pauken as their sole candidate by passing a motion to that effect in a public meeting, that person broke the law and put the City in a bad place and that someone needs to be identified and punished even if it takes a third party to do the review. Ms. Suagee stated this should be a caution for the next position to be selected, the City Attorney. Ms. Suagee then stated at the August 12th meeting, the agenda stated there was to be the appointment of a City Attorney Selection Committee and Council should consider the name of the Committee and give the Committee written instructions, adding Council should get out the rule book and do it right. Ms. Suagee stated the Committee is comprised of the Council and must still conduct business in open meetings, not executive sessions, and after they have interviewed multiple candidates, they must make their selections in a public meeting. Ms. Suagee then stated the salary is paid by public money, asking what happened to the salaries approved by the Council last May that the public also approved of. Ms. Suagee then stated Council should consider hiring someone that is out of work a plus.

Aaron Kramm spoke to Council regarding the past, present and future. Mr. Kramm stated his grandfather was Jack Kramm who opened first wrecking yard in Benson, which is now where Arizona Demo and Recycle resides. Mr. Kramm stated his grandfather was a hard worker, raising 8 children and helping thousands of people, both locals and travelers, and to this day people come up to him and tell him what a good and honest man his grandfather was. Mr. Kramm stated those were the times when a hand shake meant something, not "I will scratch your back if you scratch mine." Mr. Kramm then stated he grew up here and is a young adult and he has seen many changes in this town; some good and some not. Mr. Kramm stated when the Bluegrass Festival came up, and the discussion was on the \$9,000 it cost the City to sponsor the event, he commended Councilmember Cook because he was the only one to mention putting that money toward our younger citizens. Mr. Kramm exclaimed the Councilmembers are the City Council and this does not mean caring for part of the City or part of the citizens; it means caring for the whole city and all of its people. Mr. Kramm stated he knows Council knows what it is like for the younger generations and ignoring problems does not make them go away. Mr. Kramm then stated it is scary the way this town is going and hearing 8 businesses have closed is scary. Mr. Kramm stated maybe the Council should include young people in Council meetings and maybe put some sort of survey in the paper for young people to fill out and ask them how to spend the \$9,000 and let them know the Council will discuss some of those suggestions at upcoming meetings and invite them to attend. Mr. Kramm stated he was raised here and he has roots here and asked if he wanted to raise a family here and does he have a future here. Mr. Kramm then answered his questions, stating no; because this town has a poor reputation. Mr. Kramm then stated he is not sure, he just doesn't want to be embarrassed to live in Benson; he wants to be proud of this town like his grandpa was. Mr. Kramm then stated he guarantees this town was not built on being fake and talking out of both sides of your mouth nor a lot of back scratching. Mr. Kramm stated history repeats itself and maybe the Council needs to be reminded of the true meaning of a simple handshake and what doing the right thing is. Mr. Kramm directed his comments to Councilmember Brooks stating Councilmember Brooks is not the voice of the people and all Mr. Kramm has heard is negativity, adding Councilmember Brooks' should stop political grand standing.

J.T. Moffett asked Mayor King for 2 extra minutes with Mayor King stating that would be alright. Mr. Moffett stated it is painfully obvious that Councilmember Ron Brooks intends to spend his last 6 months on Council making a nuisance of himself, adding 2 weeks ago Councilmember Brooks began the meeting by usurping the authority of the Mayor and giving orders to members of the public body by demanding that those at the Call to the Public give their addresses when they speak. Mr. Moffett stated that is a violation of Civil Rights and is not found in any code nor is it found in any Arizona State Statute governing Open Meeting Laws. Mr. Moffett stated Councilmember Brooks then added insult to injury by interrupting a member of the public body with his demand for an address which inspired Councilmember Wangsness to interrupt a member of the public when they were speaking. Mr. Moffett pointed out that Councilmember Brooks continued to disrupt other Councilmembers during that same meeting when they were discussing agenda items. Mr. Moffett reminded the Mayor that he has the right and obligation to remove any nuisance during the meeting so whether it is a member of the public or a Councilman, the Mayor can and should have them removed from the Chambers. Mr. Moffett asked Councilmember Wangsness, stating he is the Council's laptop lawyer, why he didn't inform Councilmember Brooks of the public body's rights. Mr. Moffett then stated he had numerous emails from Councilmember Wangsness directed at the City Manager, City Clerk and Councilmembers quoting his internet laws over and over, trying to intimidate them with his heady knowledge citing Open Meeting Laws right and left. Mr. Moffett stated the City of Benson has never been found in violation of the Open Meeting Law since it was incorporated in 1924 and Councilmember Wangsness has only been on Council for 2 months and suddenly the City can't seem to do anything right. Mr. Moffett stated Councilmember Wangsness has been proven wrong at every turn but never admitted it, adding the latest example of Councilmember Wangsness fool heartiness is to boycott a Special Session of Council last Wednesday citing another Open Meeting Law Violation. Mr. Moffett stated once again, Councilmember Wangsness was wrong and there was not a violation. Mr. Moffett then stated it is funny how the law never seems to apply to Councilmember Wangsness. Mr. Moffett stated he had made a public records request a month ago that Councilmember Wangsness still has not fully complied with, adding he can only guess that Councilmember Wangsness doesn't want the public to know what is in those emails. Mr. Moffett then stated the refusal to provide the information speaks of hypocrisy and a smug self-righteousness, the same qualities that Councilmember Wangsness campaigned against in order to get elected. Mr. Moffett stated Councilmember Crafts and Councilmember Wangsness gave false hopes and don't give any indication that they intend to keep their promises and they are acting like children by boycotting meetings and following bad advice, adding he has tried to tell them what people are saying about them. Mr. Moffett then stated the Brookie Rookies act like they are the 3 Musketeers fighting for justice when they are more like the 3 Stooges who have turned these Council

sessions into a comedy act, but it is not funny. Mr. Moffett then stated instead of attending meetings, they boycott them like children who didn't get their way, adding they blatantly disregard the speakers right to the floor and disrupt meetings and their agenda items have nothing to do with public's best interest. Mr. Moffett stated Councilmember Crafts lives and works out of town 5 days a week and is only here on the weekends, adding he cannot possibly fulfill the residency requirements to be on Council. Mr. Moffett stated Councilmember Crafts either needs to quit his job or resign his seat on Council because he cannot fulfill his obligations to the people who voted him in, adding Councilmember Crafts has made a conscious decision to spend a majority of his time out of town and that the public may as well let snow birds who own a house in Benson run for Council. Mr. Moffett stated Councilmember Crafts boycotted the City Manager Selection Committee meetings, boycotted the Special meeting about the City Manager, excused himself from coming to tonight's Council meeting and he sent an email to vote for City Manager when he didn't even attend the meetings. Mr. Moffett stated 2014 is shaping up to be a busy year for recalls, adding that Councilmember Brooks will be recalled in March and Councilmember Wangsness and Councilmember Crafts will be eligible to be recalled in January, adding the 3 of them don't have enough public support to save them. Mr. Moffett stated the whole City Manager selection has been a disaster, adding the Council should have never involved the League of Cities in the City's business at a cost of \$5,500 in addition to \$10,000 the League is already paid each year. Mr. Moffett then stated the selection committee should have been comprised of citizens and business owners with only one Councilman as a liaison. Mr. Moffett stated the childish and futile Brookie boycotts only hindered the process further and cast a negative shadow on our community. Mr. Moffett then stated the salary range was decided to start at \$70,000, yet with a Public Works Director at \$96,000 and a Streets Superintendent at \$72,000, asked how the Council expects to get a City Manager below \$97,000. Mr. Moffett stated if Council does not agree to hire Mr. Pauken tonight, the logical alternative would be to ask Jim Cox to stay on board and offer him at least \$97,000 and a vacation package he can live with, adding that is what he should have been given in the first place, adding after all, the old Council didn't hesitate to give Glenn Nichols a big raise. Mr. Moffett then stated for the record, Jim Cox has proven he is more than capable and worth every dime. Mr. Moffett stated if the selection process is started over, Council should take the time to build a stronger foundation, build employee morale and consumer confidence and restructure the management staff and that will give the City more bargaining power in negotiations. Mr. Moffett then stated when the Council puts out RFPs again, it will not be for a hero or a savior, but for someone to quarterback a great team.

George Scott stated he represents Southeast Arizona Economic Development Group and addressed Council regarding item 6 on the agenda, the City Manager position. Mr. Scott's comments will be retained with the Council packet.

Geoff Oldfather thanked the Council for the opportunity to also address agenda item number 6. Mr. Oldfather stated for about a year he was on board of Southeast Arizona Economic Development Group with George Scott, adding he had to resign when the board applied for a Rural Economic Development Loan through the USDA, which he administers for southern Arizona. Mr. Oldfather stated the USDA program has approximately \$500,000 out in rural economic development loans, adding rural economic development is a critical issue for the organizations he represents. Mr. Oldfather stated he works behind the scenes on those issues and he hears a lot of discussion about how best to encourage rural economic development for communities like Benson. Mr. Oldfather stated he is not here to criticize but he is here to share some concerns that he has. Mr. Oldfather then stated 3 years ago he was elected to the national board of directors for Touchstone Energy that represents more than 740 utilities across the country and he has been directly involved in 2 executive searches since then and is currently involved in the process of reviewing and hiring a chief operating officer for a critical position, so he is familiar with how this process should work to ensure getting the best candidate. Mr. Oldfather stated he has 2 points, one is there are a lot of concerns when he talks to people who are involved in economic development in this part of the state, including officials with the USDA out of Phoenix, about what they perceive as political and other issues in Benson and surrounding communities; the other issue is the selection process for any chief executive position. Mr. Oldfather stated the selection process has to be well-defined and his process has to be transparent, adding it has to involve all stakeholders and it has to be decisive. Mr. Oldfather stated he would encourage Council to look at the process which is occurring and try to make a decision quickly. Mr. Oldfather then stated he feels Council needs to get past what he thinks are petty and really unimportant political issues. Mr. Oldfather stated he has a lot of confidence in current Council and he appreciates Mr. Kramm's concerns and wanting to have pride in his community. Mr. Oldfather stated he was born and raised in Benson and he sees behind the scenes, adding he also sees a lot of potential on the horizon and he does not want to see that put in danger. Mr. Oldfather stated he

would like to encourage Council to look at the process and make a decision adding he can appreciate the deliberation process, but there is a lot at stake here. Mr. Oldfather stated the current candidate is well-respected in Bisbee and has a good reputation and that is all he knows. Mr. Oldfather then stated it is good to know he is worth something and that so many say he is good choice.

Jim Gray stated he would like to welcome the new Councilmembers. Mr. Gray stated he doesn't think they have been here long enough to make any decisions to face any personal wrath. Mr. Gray stated he is looking for positive, productive, thoughtful decisions of this City Council, adding there is a lot on the plate right now. Mr. Gray then stated this town has gone through bickering for years and it has been negative. Mr. Gray stated he has a poll from the RV people that come to Benson and a lot of them say they are not sticking around here and "these guys fight all the time." Mr. Gray stated there was a blog on the internet not too long ago that said "the town of Benson, too dumb to get along." Mr. Gray stated everyone has a right to their opinion and they shouldn't be chastised for that opinion, so he is looking forward to working with Council through all of the RV parks in town. Mr. Gray stated he is compiling an email list of all the owners and managers because, really that is the biggest industry in town, so we should really take a close look at it. Mr. Gray then stated his advice is to try and get along and do positive things and look forward to maybe trimming the City budget and number of employees, adding there was more businesses in 1996 than there are now, so the City can trim down and streamline and get some production from employees. Mr. Gray stated if the City could cut 10% of \$2 million that is \$200,000 a year to do some projects, it would benefit everyone in town. Mr. Gray then stated the community has good support for young people in town and Mr. Kramm had some good points. Mr. Gray stated everyone should work together, quit the name calling, just shake hands and everyone should just get along.

Paul Lotsof stated he would like to address Council regarding the City Attorney and promotion of tourism. Mr. Lotsof stated he thinks the list of potential new city attorneys is pretty dismal and he believes the City could have gotten a much better roster to choose from. Mr. Lotsof then stated when the City has advertising that delivers poor results, the reason is usually ill-conceived advertising. Mr. Lotsof stated the prevailing thinking is that the centerpiece of the City's advertising must always be newspapers with particular emphasis on any that happen to be owned by the Wick family. Mr. Lotsof stated if the potential attorney happens to read the ad, the City will see results, but if the potential attorney does not happen to read that paper containing the City's ad or doesn't notice the ad, the City is out of luck. Mr. Lotsof then stated he has a better idea, and no, he is not going to suggest using the radio; he is suggesting compiling a list of attorneys or law firms within a 50 mile radius of Benson, adding the database could come from the Arizona State Bar Association or from a directory called Martindale Hubbel Law Directory or the yellow pages could be used. Mr. Lotsof then suggested compiling a list of attorneys within a 50 mile radius of Benson and mailing a form letter advising them of the available position, adding the postage would be .50 a letter and the City would likely save money on advertising. Mr. Lotsof stated he would extend the deadline and maybe the City would get more applicants. Mr. Lotsof then addressed tourism and the idea he suggested 2 weeks ago, which was to take \$9,000 that would be lost on the Bluegrass Festival, and instead print up 900 vouchers, each good for a \$10 discount on one night's accommodation at a Benson Motel or RV park. Mr. Lotsof stated the thought occurred to him that if the City distributed the vouchers at the Visitor's Center, they could also let local businesses present coupons good for discounts at local shops; for example a restaurant could offer a breakfast special or a convenience store could offer a free soft drink with a fill up of gasoline. Mr. Lotsof stated the City would immediately recoup some of the \$10 voucher with bed tax revenues. Mr. Lotsof then stated what makes this proposal particularly neat is that it makes Benson a tourist destination even though this community has no tourist attractions to speak of. Mr. Lotsof stated this is a sales promotion that is nearly impossible to lose on, noting it may involve keeping the Visitor's Center open a little later and on weekends. Mr. Lotsof then stated he hopes Council will consider some of his suggestions.

CITY MANAGER REPORT:

Interim City Manager Jim Cox addressed Council, giving the dates of upcoming meetings and events.

Tuesday, September 3, 2013	–	Planning & Zoning Meeting, 7:00 p.m., City Hall
Monday, September 9, 2013	–	City Council Public Hearing, 6:00 p.m., City Hall
		City Council Meeting, 7:00 p.m., City Hall
Tuesday, September 10, 2013	–	Library Advisory Board, 4:00 p.m., Library
Monday, September 16, 2013	–	Economic Development Subcommittee, 5:15 p.m., City Hall

Saturday, September 21, 2013	–	Historic Preservation Commission, 9:00 a.m., City Hall
Monday, September 23, 2013	–	City Council Worksession, 6:00 p.m., City Hall
		City Council Meeting, 7:00 p.m., City Hall
Tuesday, September 24, 2013	–	Community Watershed Alliance, 6:30 p.m., City Hall

Mr. Cox reminded those present that City Offices will be closed on Monday, September 3, 2013 to celebrate Labor Day. Mr. Cox reminded those present to check the ADOT project closures at www.adot.gov for more information.

Councilmember Wangsness stated to Mayor King that he would like to respond to some of the criticism he received from Mr. Moffett at the last meeting and this meeting. Mayor King responded by saying he is trying to put a stop to this. Councilmember Wangsness stated he just wanted to correct the record; he is not planning on attacking Mr. Moffett. Mayor King then stated he does not want any of the public body attacked. Councilmember Wangsness stated he wasn't planning on it. Mayor King told Councilmember Wangsness to go ahead. Councilmember Wangsness stated Mr. Moffett said he interrupted him during his speech last time, which is correct, but what he failed to mention is that after the meeting Councilmember Wangsness met with Mr. Moffett and shook his hand and made a formal apology to him for that. Councilmember Wangsness stated he was not on Council at the time the Recommendation Committee was formed so he had no choice in that and the same thing with the vote on Mr. Cox's salary, adding he did prefer the higher amount but the previous Council voted that down. Councilmember Wangsness then stated he sent an email to City Clerk Vicki Vivian stating there could not be a Special Meeting because there was not a 48-hour notice, but in fact the email sent to Ms. Vivian included a request for a clarification on that and she advised him it was only a 24-hour notice that was required not 48; and he thanked Ms. Vivian for that. Councilmember Wangsness then spoke on broken campaign promises, stating he had met with Ms. Moreno on this topic and found out that the food tax represents 90% of the sales tax, so it will take a while to eliminate that. Councilmember Wangsness then stated as far as tourism goes, apparently Mr. Moffett didn't know it, but he has been working on that since January and has produced at least 5 pages of ideas for tourism around town and also perhaps people have been in restaurants and have seen a flyer which is called Old West Benson, adding he produced it and has been sending it around to various restaurants for visitors and locals to read.

NEW BUSINESS:

1. Consent Agenda

- 1a. Minutes of the July 22, 2013 Worksession
- 1b. Minutes of the July 22, 2013 Regular Meeting
- 1c. Appointment of George Lounsbury to the Board of Appeals
- 1d. Appointment of Gary Douglas to the Local Public Safety Personnel Retirement Board for the Police Department
- 1e. Invoices processed for the period from August 2, 2013 through August 15, 2013

Councilmember Brooks stated he would like to note that Council is approving minutes from last month adding he doesn't know why they don't have the minutes from the last meeting, but these are pretty far back trying to remember what happened. Councilmember Brooks asked Mayor King if it was possible to start getting these minutes a little more current. Mayor King asked Mr. Cox if we could start getting the minutes a little sooner. Mr. Cox stated Staff will do their best, noting the Clerk's office has been extremely overloaded lately. Mayor King stated he did know that. Councilmember Cook stated he recollects recent Council Packets that were a couple hundred pages which were compiled by the Clerk's Office and also there are numerous records requests that they have to respond to. Councilmember Cook stated that it is nice to be able to sit up here and say "can we do things quicker" adding if Councilmember Brooks' would pay attention to what is happening in the City, he would know there are tremendous pressures being placed on the City Manager's Office and on the City Clerk's Office. Councilmember Cook addressed Councilmember Brooks' comment stating he is quite happy with the way things are going now and incidental things like Ms. Vivian's mother-in-law dying and her having to be out for a week are unforeseen and he doesn't think additional pressures need to be placed on the City Clerk's Office and the City Manager's Office.

Councilmember Moncada made a motion to approve the Consent Agenda. Seconded by Councilmember Wangsness. Motion passed 6-0.

2. **Resolution 24-2013 of the Mayor and Council of the City of Benson, Arizona, permitting the public display of fireworks during the Butterfield Stage Days Festivities**

Mayor King stated this is something that has been done the past couple of years and asked Building Official Luis Garcia if this is being done from now on with Mr. Garcia stating it would be up to the Council. Mr. Garcia explained the current City Code prohibits the use of consumer fireworks and public assemblages any days other than the 4th of July or New Year's Eve so this resolution is necessary for the fireworks to take place at Butterfield Stage Days. Mr. Garcia then stated with the fireworks show, there are also hopes of bringing in tourists and additional revenue to the retail vendors as well. Mayor King stated the parks are packed and it is important to continue the tradition of having fireworks during this program. Mr. Garcia stated the fireworks were approved during a previous meeting and this is just a pathway in order to provide them. Councilmember Cook stated he has heard a few people are not in favor of this, which is actually only a dozen or so who want it stopped, however he sees the rest of the town enjoying this. Councilmember Brooks stated this was included in the budget and he definitely thinks it brings revenue to town and is the best show in Cochise County. Councilmember Brooks stated the resolution looks like it also lifts the ban on public use of fireworks with Mr. Garcia stating that is correct. Councilmember Brooks stated this time of year is ok for that.

Councilmember Brooks moved to approve Resolution 24-2013. Seconded by Councilmember Moncada. Motion passed 6-0.

3. **Review and discussion of the Request for Proposals submitted to the City for Municipal Legal Services (City Attorney), discussion may include the process for selecting a City Attorney, including but not limited to the process for selecting applicants to interview, questions to be used in the interview process, submittal requirements, evaluation criteria and direction to Staff to schedule interviews**

Mayor King stated he thinks the City Manager Recommendation Committee was poorly done because Councilmembers were on it, so they were just answering to themselves and it is very confusing. Mayor King then stated the Committee had a meeting on August 15 to recommend a person and wonders how can they report back to the Council when they are the Council, adding in his opinion, the Committee should consist of one or two Councilmembers and some outside people from the community. Councilmember Brooks stated he totally disagrees with the Mayor, asking why Council would want to have people who don't deal with the attorney day in and day out choose an attorney. Councilmember Brooks then stated there were only 6 applicants who applied and he thinks Council can easily find someone and be their own committee. Councilmember Brooks stated he would like to keep the position open because there may be others who want to apply and some attorneys out there that don't even know the Council is looking for an attorney. Mayor King stated the problem is there is so much boycotting of meetings, adding the Council needs everyone here, noting it is taking too long to pick the City Manager and the Council is still waiting to decide what they are going to do. Mayor King stated he thinks Council should use outside people and Council for a committee, but it is Council's pleasure, adding Councilmember Moncada did a good job and it is just confusing when Council has to decide what they want to send to the Council when they are the Council; it just doesn't make sense. Councilmember Brooks stated that is his point, asking why the Council would have a recommendation committee to slow the process down when they could just use Council. Mayor King stated the time wasted was also due to boycotts with Councilmember Brooks stating if Council is not going to be at meetings; let their constituents talk to the Councilmember about that. Vice Mayor Sacco stated he thinks we need to dissolve the City Manager Recommendation Committee and form a new committee. Mayor King stated we are talking about the City Attorney Recommendation Committee. Vice Mayor Sacco continued saying he thinks we need to resurrect the applicants' resumes and proceed. Councilmember Cook stated he is going to address the City Attorney process however he is going to reference the City Manager Recommendation Committee. Councilmember Cook stated approximately 30 people responded to the request for a proposal and some of those people had no municipal experience, much less City Manager experience and when it came down to the final 8 candidates, there was a clear dividing line between the top 4 and the bottom 4. Councilmember Cook then stated 3 of the top 4 candidates have already found other jobs, the number one is what the Council is considering, adding the other 4 candidates are not worthy in his opinion. Councilmember Cook then stated one of the bottom 4 candidates is just looking for somewhere to retire, another one has not had a job in

over a year, another one has not had a job in over 4 years and he understands the other one has not had a job in 10 years. Councilmember Cook stated we now have 7 applicants for City Attorney; one is in Flagstaff and is going to charge mileage or time, which in his mind reduces the number right away to 6 candidates. Councilmember Cook then stated there are a few more out of Phoenix that will also charge mileage, which now reduces the pool to 5 candidates. Councilmember Cook then stated he is seeing the problems with the City Manager Committee and thinks Council is setting themselves up for embarrassment if they just take these 7 applicants and make a decision out of those. Councilmember Cook stated he thinks they need to reopen the bidding and advertise again and need to get probably a couple dozen applicants for this job, adding Council doesn't need to settle. Councilmember Brooks stated he agrees they need to get more applicants. Mayor King stated Council is directing the City Manager to go out for more candidates for City Attorney, adding Staff may need to use the radio or the internet to get more people and try to entice people to apply. Mr. Cox stated direct mail could be used, which has not been done, and he thinks Mr. Lotsof made a good suggestion and for small amount of money, a solicitation could be done. Councilmember Brooks suggested a 100 mile radius to include Tucson with Councilmember Moncada stating he was in favor of that also. Councilmember Brooks stated the Council does have the 7 applicants to interview and a committee still has not been decided on, adding he would like to keep it simple and stay with Council to avoid dealing with people who don't show up for the meetings and he wanted to do it in house instead of going out. Vice Mayor Sacco stated he thinks it should be turned over to the Council right away adding he doesn't think they need a committee. Councilmember Brooks stated he would like to look at these 7 attorneys and rate them or give them a mark and move forward, adding he likes the idea to keep searching. Mayor King directed Staff to do a direct mail. Councilmember Moncada asked how long they will have to respond, adding he thinks it should be at least 2 weeks. Councilmember Brooks asked when Mr. Masee's contract will be completed with Mr. Cox stating it will be on September 6. Mr. Cox then stated there will either be a time the City will not have a City Attorney or Council could address this in an agenda item at the next meeting. Councilmember Cook asked Mr. Masee if he would be willing to stay on until another attorney is found with Mr. Masee stated he would continue at-will. Councilmember Moncada stated he wanted to have interviews soon for the 7 applicants the Council already has with Mr. Cox stating it would be in the next two weeks and asked for clarification on how many applicants to interview. Mayor King stated he would like to interview all 7 candidates. Mr. Cox stated he will get back with Council on a date.

4. **Discussion and Possible action concerning City Manager Contract Negotiations**

Councilmember Brooks stated this is a very long process, adding it has taken 3 months to come up with a suggestion of just one candidate instead of 3, 4 or 5 candidates. Councilmember Brooks stated the newspaper reported that there was an offer made and he spoke with Mr. Pauken and Mr. Pauken confirmed there was an offer made to him prior to Council making an official offer. Councilmember Brooks then stated this is very serious because this Council has wholly power to make all decisions here and nobody in Administration has that power, which is why the citizens voted the Councilmembers in and when someone sidesteps the Council, it is a serious violation. Councilmember Brooks stated he was concerned about the way the last meeting went and he feels the way it was written did not give Council the right to make a decision. Councilmember Brooks then quoted the agenda from the July 21 Special Meeting saying "discussion and possible direction to Staff..." regarding the City Manager position had nothing to do with appointing anyone. Councilmember Brooks stated he apologizes to Mr. Pauken for the way this has been handled adding there was also an executive session that he believes was not legally held. Councilmember Brooks then stated he agrees we need a City Manager right away but does not believe there should only be one choice.

Councilmember Brooks then moved to void the last meeting because he believes it was illegally held and was not posted properly. Seconded by Councilmember Wangsness. Councilmember Wangsness stated one reason he didn't show up for the meeting was he did feel there was a conflict with Open Meeting Laws. Councilmember Wangsness then stated there are only 7 reasons the Council is allowed to hold an executive session and he didn't feel this session, the way it was described, fit any of the 7. Councilmember Brooks asked Councilmember Wangsness to read the 7 reasons with Councilmember Wangsness stating they are personnel, discussion or consideration of records exempt by law from public inspection, legal advice with public body's own lawyer, discussion or consultation with public body's lawyer, discussion regarding labor negotiations, to discuss interstate travel negotiations, discuss purchase, sale or lease of real property and he did not see this conforming to any of these 7 items. Councilmember Wangsness stated he didn't agree with agenda item number 1 because of two different definitions occurring for the same meeting and referenced the agenda wording which states "discussion

and possible direction to Staff regarding the City Manager position...” and the wording in the body of the blue sheet, which is supposed to be a description of that, which read “the purpose is to discuss the terms of employment that the Council may wish to consider for the position of City Manager...” adding in his opinion they do not say the same thing and he doesn’t feel either of them stated that the Council could make an offer to a candidate. Councilmember Wangsness then stated he does not have a problem with Mr. Cox or Mr. Pauken. Vice Mayor Sacco stated he would like to have a legal opinion on that. City Attorney Mike Masee stated he is not prepared to offer a legal opinion because he was gone last week and did not assist in the preparation of that agenda item; however the statutory basis for the executive session for personnel would likely apply. Mayor King stated he would like to read the verbatim minutes from the Committee meeting held on August 15, and read quoting Committee Member David Lambert “I just wanted to point out one thing; that 8 of the 10 people on the Committee chose Pauken as their number 1, it would have actually been 10 out of 10, but Mr. Brooks and Mr. Wangsness failed to turn in their recommendations on given orders. With that I would like to go ahead and make a motion that we close the nominations of the Selection Committee for the City Manager position, on what we had prior to now, and recommend Mr. Stephen Pauken.” Councilmember Brooks stated to the Mayor that there was a motion on the floor. Mayor King stated he was not making a motion, he was stating when you wonder how it got to the newspaper or how it got here or there, it was made that night on the 15th with the Committee and all the Councilmembers that were there made a motion to recommend Mr. Pauken. Councilmember Cook stated also on that vote and at that meeting that Mr. Lambert had made the motion and recommended to the City Council Mr. Pauken; the recommendation was for Mr. Pauken alone and for the 8 people that were there it was a unanimous vote, adding everyone voted aye and noted there were 5 Councilmembers there who also voted unanimously in their recommendation of Mr. Pauken to the City Council. Councilmember Cook then stated the motion was made at the Council meeting on the 21st to begin negotiations with Mr. Pauken and in between those two meetings the newspaper reported that an offer was made. Councilmember Cook then stated from what he sees, noting he has an exact transcript of the motion and the discussion, there was no offer made by the Committee or by the Council for a job offer of City Manager to Mr. Pauken. Councilmember Cook stated whether it was a member of the community or a member of Staff or even someone on the Council, whoever did it, it may not be illegal but it certainly is invalid. Mr. Cox stated he also has a transcript from the Committee meeting where there was a clear vote, and after that vote he made a telephone call to Mr. Pauken and told him the results of the vote, adding then there was a Special meeting where Council instructed him to pass along their offer which was done last Friday and there were no other conversations, adding he would have been the only one that would have spoken with Mr. Pauken unless it was another Councilmember. Councilmember Brooks stated he has something to say about that and he didn’t want to talk about it in open session, but he did speak with Mr. Pauken and the stories don’t match up. Mr. Cox stated he is telling the truth with Councilmember Brooks stating maybe Mr. Cox was. Mr. Cox then stated it was not a maybe; he was telling the truth. Councilmember Brooks then stated Mr. Cox had no right to make an offer. Mr. Cox stated he did not make an offer; he did exactly what he just communicated to Council, adding he would swear on a Bible if there was one present. Councilmember Brooks then stated he wanted to amend his motion, and asked the public to keep their voices down. Councilmember Brooks stated the selection committee made a recommendation but that doesn’t mean it is who the Council has to choose, adding it was not a selection committee and they had no right to pick the City Manager. Councilmember Brooks then stated he thinks the meeting was illegally done and thinks it needs to be looked at, adding Council had no right to appoint Mr. Pauken in that meeting and the public was not aware of it. Councilmember Brooks stated the Council needs to have that meeting again. Councilmember Cook stated the Council did not appoint anyone and he would like to repeat that of the 8 candidates interviewed, 3 of the top 4 had already been hired and he does not like the other 4 possibilities and he does not see a reason to go after any of them. Councilmember Cook then stated this kind of action by City Council makes the City look bad, the kind of phony accusations just made about the Interim City Manager also makes the City look bad and Councilmember Brooks is making our City look bad. Councilmember Brooks stated if the offer was made by someone other than Council, it also makes our City look bad. Councilmember Cook stated he has no knowledge of an offer being made except through false accusations.

Motion then failed 2-4 with Mayor King, Vice Mayor Sacco, Councilmembers Cook and Moncada voting nay.

5. **Discussion and Possible action of City Manager Candidates**

Councilmember Brooks moved to drop this item from the agenda. Seconded by Councilmember Moncada. Motion passed 6-0.

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

Councilmember Moncada moved to enter into an Executive Session at 8:14 p.m. with the Council, Interim City Manager, City Attorney and Deputy Clerk. Seconded by Vice Mayor Sacco. Motion passed 5-1 with Councilmember Brooks voting nay.

Mayor King reconvened the meeting at 8:51 p.m.

6. **Discussion and possible action regarding the City Manager position, possible appointment of a City Manager and approval of an employment contract**

Mayor King directed the City Manager to continue negotiations and to have a possible contract ready by the next Council meeting.

ADJOURNMENT:

Councilmember Brooks moved to adjourn at 8:52 p.m. Seconded by Councilmember Moncada. Motion passed 6-0.

Toney D. King, Sr., Mayor

ATTEST:

Vicki L. Vivian, CMC, City Clerk