

**THE REGULAR MEETING
OF THE MAYOR AND CITY COUNCIL OF BENSON, ARIZONA
HELD SEPTEMBER 8, 2014, 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.

ROLL CALL:

Present were: Mayor Toney D. King, Sr., Councilmembers Pat Boyle, Jeff Cook, and Peter Wangsness (via phone). Absent were: Vice Mayor Al Sacco, Councilmembers Ron Brooks and Chris Moncada.

Mayor King then introduced John Mitchell from the Benson Church of our Savior who gave the invocation.

EMPLOYEE RECOGNITION:

Mayor King recognized Brian Williams for having 10 years of service with the City of Benson. Mr. Williams was not in attendance.

PROCLAMATION:

Mayor King asked Councilmember Cook to read the proclamation declaring September 22 – 26, 2014 as “National Employer Support of the Guard and Reserve week.”

PUBLIC HEARING:

The Mayor and Council will be available to receive comments from the public regarding the use of approximately \$198,141 in Fiscal Year 2014 Federal Community Development Block Grant (CDBG) funds from the Arizona Department of Housing Regional Account (RA).

Mayor King welcomed those present to the third Fiscal Year 2014 Community Development Block Grant Public Hearing, stating another hearing will be held on October 13, 2014. Mayor King stated the public hearings are held to gather citizen input on the use of Community Development Block Grant (CDBG) funds and the Fiscal Year 2014 CDBG application. Mayor King then stated City Clerk Vicki Vivian would address the Council with a statement.

Ms. Vivian then read a statement informing the public about the CDBG funds and the criteria projects must meet to be eligible for the funding. Mayor King then stated Public Works Director Brad Hamilton would also address the Council. Mr. Hamilton addressed Council, stating the public hearing process must be repeated due to the previous public hearing notices published in the San Pedro Valley News-Sun on November 20, November 27 and January 8 not containing the following statement: “All Facilities are handicapped accessible. If you have a special accessibility need, please contact Vicki L. Vivian, City Clerk, at (520) 720-6311, no later than eight (8) hours before the scheduled meeting time.” Mayor King then opened the public hearing at 7:07 p.m. stating there was no one signed up to speak during the public hearing and asked if there was anyone present who wished to speak. After receiving no requests to speak, Mayor King closed the public hearing at 7:08 p.m.

CALL TO THE PUBLIC:

David Thompson addressed Council stating rumors around town were saying he and Barbara Nunn were killed in a plane crash and he was here to dispute those rumors. Mr. Thompson then spoke about the plane crash, stating after stopping in Yuma to refuel and climbing to an altitude of 6,500 feet, the engine

stopped. Mr. Thompson stated he thought they would land on Highway 8, but wound up upside down right of the guard rail. Mr. Thompson then spoke of their injuries stating Ms. Nunn has 2 breaks in her back and eye socket damage, while he also suffered 2 breaks in his back, adding they were both in the TMC trauma center for 8 days, but their doctors have told them they should be ok by the middle of October. Mr. Thompson then stated he wanted to thank the people in Benson for the phenomenal support, help and meals he and Ms. Nunn have received, adding even their enemies showed up. Mr. Thompson then stated again, he wanted to thank the people of Benson.

Barbara Nunn addressed Council stating she moved to Benson almost 6 years ago planning to make this her last stand after falling in love with this little town, adding she didn't plan for it to almost happen a few weeks ago in a plane. Ms. Nunn then stated she wanted to thank everyone who called and sent cards and for all the meals that people prepared and brought them, adding it's been overwhelming. Ms. Nunn then stated she wants to live in Benson and have it be a little slice of Mayberry and she certainly did not want Benson to be another Lake Havasu City, adding at least there, they knew how to take the trash out. Ms. Nunn then stated she again wanted to thank everyone for their love and support and asked everyone to not give up on our town, but fight for it.

Stephen Insalaco addressed Council first congratulating the Councilmember winners in the recent City Council elections and thanking those outgoing Councilmembers for their service, adding he hopes they will continue to support the community in their own way. Mr. Insalaco then spoke to the Council regarding New Business Item #2, focusing on the ability of a Councilmember to abstain from an issue on the agenda. Mr. Insalaco felt all Councilmembers should vote on issues unless there was a conflict of interest or the appearance of a conflict of interest. Mr. Insalaco's statement will be retained with the Council packet.

CITY MANAGER REPORT:

City Manager William Stephens addressed Council, giving the dates of upcoming meetings and events.

- Tuesday, September 9, 2014 – Library Advisory Board, 4:00 p.m., City Library
 - Saturday, September 20, 2014 – Historic Preservation Commission, 9:00 a.m., City Hall
 - Monday, September 22, 2014 – City Council Meeting, 7:00 p.m., City Hall
 - Tuesday, September 23, 2014 – Community Watershed Alliance, 6:30 p.m., City Hall
 - Saturday, September 27, 2014 – Benson Airport Advisory Committee, 7:00 a.m., Hangar B9, Benson Airport
- Tuesday, September 23, 2014 – A free seminar provided by the City of Benson's Attorney, for the Citizens of Benson. The seminar topic is "Tips on Employer and Employee Rights and Responsibilities," 6:00 p.m. to 7:30 p.m., At the Benson Community Center, 705 West Union Street, Beverages and Snacks will be included.

NEW BUSINESS:

1. Discussion and possible action on the Consent Agenda

- 1a. Minutes of the July 14, 2014 Worksession
- 1b. Minutes of the July 14, 2014 Regular Meeting
- 1c. Minutes of the July 28, 2014 Worksession
- 1d. Minutes of the July 28, 2014 Regular Meeting
- 1e. Invoices processed for the period from August 15, 2014 through August 27, 2014

Councilmember Boyle moved to approve the Consent Agenda. Seconded by Councilmember Cook. Motion passed 4-0.

2. **Discussion and possible direction or action regarding City Council Policies and Procedures, and/or related provisions in the City Code**

City Clerk Vicki Vivian stated the attached document was brought before Council in several worksessions, starting with August 12, 2013, where the Council decided to hold additional worksessions as needed to address possible changes to the Council Policies and Procedures draft, as well as possible Code changes. Ms. Vivian stated during the course of these worksessions, Council made changes to the Policies and Procedures and she sent the changes, as well as the minutes to the City Attorney for his legal review, adding this resulted in additional changes being made to the draft, which was then presented to Council for a final review. Ms. Vivian then stated the final review was completed at the worksession held on July 28 and the document was presented to Council for their consideration on August 25. Ms. Vivian then stated at that meeting, the Council discussed, at length, the ability of a Councilmember to abstain from voting and then directed the City Attorney to draft language addressing an abstention not being counted in the final tally of votes. Ms. Vivian then stated the amended draft is now being brought to Council for additional direction or possible approval, adding once Council approves the document, Staff will review Chapter 2 of the City Code and draft ordinances with any changes needed to ensure consistency between the two documents, which will then be presented to Council for their consideration.

Councilmember Wangsness stated he sent down a document from the Pennsylvania legislature dealing with abstentions and he thought some of that might need to be included in language, adding the information covers how abstentions affect the number of votes required to pass something. Councilmember Wangsness then stated in the draft before Council, it's not very clear; then stated if there are 7 Councilmembers present and 1 abstains, 4 votes are still needed to pass something, but if there are only 6 Councilmembers present and 1 abstains, the number of voting Councilmembers is reduced to 5 and only 3 votes would be needed to pass an item. Councilmember Wangsness then stated the way it's written now, he doesn't see anything that clarifies that, adding he thought it was more of a housekeeping measure to include some of the language he sent to the Council.

City Attorney Gary Cohen addressed Council, stating he did receive the information Councilmember Wangsness sent, adding he respectfully believes the language he drafted does cover exactly the concern Councilmember Wangsness was raising. Mr. Cohen then stated the language in Section VIII – Motions, F – Voting and G – Abstention go hand in hand dealing with the discussion the Council has been having about whether one should be able to abstain and if so, what the effect of that is. Mr. Cohen then stated he drafted this language based on the consensus at the last meeting, which was that one could exercise their right to abstain even if they didn't have an actual or perceived conflict and that the effect of the abstention would be neither an aye nor a nay vote. Mr. Cohen then stated the key language addressing Councilmember Wangsness' concern is in the middle of Section VIII – Motions, Section F – Voting and reads, "Unless State law requires a supermajority vote, the motion shall pass if it receives an affirmative vote of the majority of the members present and voting." Mr. Cohen then stated based on that language, a majority of the members present and voting would be required for the passage of an item, agreeing that if only 5 Councilmembers were voting, an item could pass with 3 affirmative votes. Mr. Cohen then stated he appreciated Councilmember Wangsness' concern and was glad he brought it forward, adding it is important to have the issue covered. Councilmember Wangsness thanked Mr. Cohen for clarifying the issue. Mr. Cohen then stated the document is lengthy and Council has the red-lined, strike-out version and he can appreciate the difficulty of reading the document over and over, adding the important thing is identifying and addressing Councilmember Wangsness' concern. Mr. Cohen then stated the only changes made to the draft since the last Council meeting are this section to clarify that now one has the right to abstain and the effect of the abstentions neither an aye nor a nay vote and Section XII – Call to the Public, B – Responses from Council, adding he had paraphrased the language regarding when a Councilmember could respond to comments made during the Call to the Public, but has now changed the last sentence to mimic state law. Mr. Cohen then stated he would be happy to answer any other questions.

Councilmember Cook stated he was on both sides of how an abstention affected the final outcome, adding right now, the Council has 4 members in attendance and if there was a dissenting vote, an item could pass with only 3 affirmative votes, which is less than a quorum of the entire Council. Councilmember Cook

then stated if someone were to abstain for a legitimate reason, there would only be 3 Councilmembers voting and something could pass with only 2 affirmative votes, adding this alarmed him. Councilmember Wangsness stated that was the nature of abstaining, adding if someone abstains, the voting members automatically drop down by the number of people abstaining. Councilmember Cook stated as long as the person abstaining remained on the dais, a quorum would still be maintained and the vote could still pass by 2 Councilmembers, but on the other hand, if there were 4 Councilmembers in attendance and the abstaining Councilmember were to leave the dais, it would deprive the Council of a quorum. Mr. Cohen stated he would respectfully disagree with Councilmember Cook's last comment, adding if 4 Councilmembers are present, there is a quorum present, regardless of abstentions, adding the concern being able to have something pass by less than a quorum of the Council is a separate issue and he would be happy to discuss it, but noted the language currently is that a "motion shall pass if it receives an affirmative vote of the majority of the members present and voting." Mr. Cohen then stated since he has served as the City Attorney, this very situation has happened with 2 issues he can recall, adding it wasn't a problem in the past. Mr. Cohen then stated tonight, with 4 Councilmember being present, an item could pass with 3 affirmative votes, adding if Councilmember Cook would like to go back and look into the issue of whether there should be some language that requires an affirmative vote of 4 or more Councilmembers for anything to pass is another issue, adding he would be happy to do it, but it was up to the Council.

Councilmember Wangsness stated if someone is abstaining and they are concerned about an item passing by such a small number of Councilmembers, he would think the abstaining Councilmember may want to participate in the vote to keep that from happening.

Councilmember Boyle stated this may be something that is a self-correcting, adding if a Councilmember abstains and the citizens of the City see that a particular measure is passed by a slim majority because of abstentions, it may cause the citizens of the City to say that Councilmember is not representing them and hopefully the citizens would pay attention the next time an election comes up.

Mr. Cohen then stated Councilmember Cook's concern and point is well-taken, adding as it stands now and as it has been at times even before this document was in play, the Council could pass things with a vote of less than 4 Councilmembers. Mr. Cohen then stated if that is a concern of the majority of the Councilmembers here tonight, they could direct him to do something about it, but if it was not the majority of the Council's direction to him, he felt the draft was now finalized and ready for Council consideration.

Councilmember Wangsness moved to approve the Council Policies and Procedures as written and presented. Seconded by Councilmember Boyle. Motion passed 4-0.

Mr. Cohen stated for the record to be clear, the red-lined, strike-out version is presented, but the version that will be formally adopted will be the clean version without red lines and strike-outs.

3. **Resolution 25-2014 of the Mayor and Council of the City of Benson, Arizona, canvassing, declaring and adopting the results of the Primary Election held on August 26, 2014**

City Clerk Vicki Vivian stated this resolution is a requirement that must be completed no later than 20 days after the election, adding Resolution 25-2014 officially approves the canvass of the votes cast in the August 26, 2014 Primary Election. Ms. Vivian then recapped the number of votes each candidate received, adding there have been many comments and questions regarding the calculations used to determine candidates who are considered "seated" in the Primary Election. Ms. Vivian then said the State legislature recently passed HB 2126, which directs very specifically the way the votes will be calculated at Primary Elections in 2014. Ms. Vivian then stated the new law requires taking the number of votes cast for all candidates for an office whose names were lawfully on the ballot for that office, dividing that sum by the number of seats to be filled for that office and then dividing that number by 2 and rounding up to the highest whole number, adding if someone receives more than this number of votes, they receive more than 50% of the votes cast for that office and would be considered "seated" at the Primary Election.

Ms. Vivian then stated using this procedure, seated at the Primary Election were current Mayor Toney D. King, Sr. for the office of Mayor, Joe Konrad, Lori McGoffin and David Lambert for the 4-year Council terms, as well at current Councilmember Patrick Boyle for the 2-year Council term.

Councilmember Boyle asked Ms. Vivian about the election results with Ms. Vivian stating the voting machines all have memory cards and she was told by the County that the machines tabulated all the ballots correctly at each precinct, however, when the results were transmitted to the Secretary of State's office, which is what the County uses to post results on the County's website, those servers were corrupt and did not transmit the information correctly. Ms. Vivian then stated the County then took all 47 memory cards and flew them over to Graham County by helicopter and used Graham County's servers to transmit the information, which was then transmitted correctly. Ms. Vivian then stated there was an unusually high voter turnout of 62%, adding it is unfortunate that 62% voter turnout is considered unbelievably high, but what actually triggered the investigation was that the number of ballots cast in Tombstone was higher than the actual population of Tombstone, adding this triggered the County into immediately looking at the transmitted results. Ms. Vivian then stated the County does have steps in place, checks and balances, to verify the election results. Councilmember Boyle asked if the incorrect results just happened in Benson with Ms. Vivian stating the incorrect results were countywide.

Councilmember Wangsness then stated he had served as a precinct inspector before and can verify that when that card is done at the end of the night, poll workers hand-count the number of ballots and check that number against the number of ballots that are unused and compare those numbers with the report, adding there is cross-checking in the actual number of ballots cast, so there had to be a corruption in the transmission.

Councilmember Cook asked if there would be a recounting of the ballots with Ms. Vivian stating she has not heard of recounting, adding again, each polling place completes reports and tallies ballot numbers as Councilmember Wangsness explained. Councilmember Wangsness then stated, as a poll worker, he knows there are reports and checks and balances in each polling place.

Councilmember Boyle then moved to approve Resolution 25-2014. Seconded by Councilmember Wangsness. Motion passed 4-0.

DEPARTMENT REPORTS: No comments from Council.

ADJOURNMENT:

Councilmember Boyle moved to adjourn at 7:40 p.m. Seconded by Councilmember Cook. Motion passed 4-0.

ATTEST:

Toney D. King, Sr., Mayor

Vicki L. Vivian, CMC, City Clerk