City of Benson
City Council Communication

Regular Meeting **March 9, 2015**

To: Mayor and Council Agenda Item # 6

From: William D. Stephens, City Manager

Subject:

Discussion and possible direction to Staff about enforcing law(s) involving residency and/or principle place of abode requirements for Councilmembers, and/or drafting rules, and/or Code revision defining Councilmembers' requirements involving residency, principle place of abode and/or physical presence at Council meetings

Discussion:

After public complaint, during the Call to the Public, regarding Councilman Wangsness' physical attendance at Council meetings and questioning his principle place of abode, Council requested to have this issue placed on Council's agenda for the February 23, 2015 meeting.

During this Council meeting, Council discussed and Councilman Wangsness gave input regarding his situation. During the discussion, Council asked to have this issue further researched, reviewed and placed on the March 9, 2015 agenda and for the City Attorney to review applicable State law, City Code and Ordinances.

Staff Recommendation:

Council pleasure

CHAPTER 2 MAYOR AND COUNCIL

ARTICLE 2-1 COUNCIL [1]

2-1-1 Elected Officers
2-1-2 Corporate Powers
2-1-3 Duties of Mayor, Vice Mayor and Council
2-1-4 Vacancies in Council
2-1-5 Compensation
2-1-6 Oath of Office
2-1-7 Bond
2-1-8 Financial Disclosure Statements

Section 2-1-1 Elected Officers

The elected officers of the city shall be a Mayor, directly elected by the people pursuant to Article 2-3 of this code, and six councilmembers, one of whom shall be designated as the vice mayor in accordance with Section 2-2-1. The mayor, vice mayor and the other five councilmembers shall constitute the council and shall continue in office until assumption of duties of office by their duly elected successors. The regular term of office for the Mayor shall be two (2) years and the regular term of office for the other six councilmembers shall be four (4) years.

Section 2-1-2 Corporate Powers

The corporate powers of the city shall be vested in the council and shall be exercised only as directed or authorized by law. All powers of the council shall be exercised by ordinance, resolution, order or motion.

Section 2-1-3 Duties of Mayor, Vice Mayor and Council

The mayor, vice mayor and council shall meet regularly to carry on the business of the city including but not limited to:

A. Passage of ordinances, resolutions and motions.

B. Preparing and overseeing the city's budget.

C. Appointing officers of the City and members of commissions and committees.

D. Hearing of reports and recommendations of city employees and officers.

E. Such other activities concerning the general welfare of the citizens of the city.

[1] Modified by Ordinance 541

Section 2-1-4 Vacancies in Council [1, 2]

A. The Council shall fill any vacancy that may occur, by appointment until the next regularly scheduled Council election if the vacancy occurs more than thirty days before the nomination petition deadline, otherwise the appointment is for the unexpired term. The appointment shall be made within thirty days of the date the vacancy occurs.

B. City residence, for the purpose of qualification to serve on the city council, shall consist of maintaining, by the councilmember, a principal place of abode for the councilmember and the councilmember's family within the city. In the event that a councilmember removes their principal place of abode to a location outside the city limits for a period of more than fifty consecutive days, the council seat to which such councilmember was elected shall be deemed vacant by operation of law. In the event that a councilmember resides outside the city temporarily, the remaining members of the council, upon finding such residence to be temporary may, by a majority vote thereof, authorize such temporary residence and not declare the council seat vacant for up to an additional fifty days.

Section 2-1-5 Compensation [3]

The mayor and members of the council shall be paid four hundred dollars ($400.00), and two hundred dollars ($200.00) per month respectively. If the mayor or members of the council miss two consecutive meetings, the pay shall be withheld for those meetings, based upon a monthly schedule of two regular meetings, unless the absence is excused by the council.

Section 2-1-6 Oath of Office

Prior to the assumption of the duties of office, and at or prior to the commencement of the term of office, the Mayor and each Councilmember shall, in public, take and subscribe to the oath of office after receiving the officer's certificate of election.

Section 2-1-7 Bond

Prior to taking office, every councilmember shall execute and file an official bond, enforceable against the principal and his sureties, conditioned on the due and faithful performance of his official duties, payable to the state and to and for the use and benefit of the city or any person who may be injured or aggrieved by the wrongful act or default of such officer in his official capacity. A person so injured or aggrieved may bring suit on such bond under provisions identical to those contained in A.R.S. §38-260. Bonds shall be in such sum as shall be provided by resolution and the premium for such bonds shall be paid by the city. Nothing in this section shall preclude the city from obtaining a blanket bond pursuant to the provisions of A.R.S. §9-302.

Section 2-1-8 Financial Disclosure Statements

The mayor and each member of the council shall file by January 31 of each year, on a form prescribed by the clerk, a financial disclosure statement, setting forth such information as determined by resolution of the council.

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[1] Modified by Ordinance No. 265
[2] Modified by Ordinance 572
[3] Modified by Resolution 2-2007

MAYOR AND COUNCIL

ARTICLE 2-2 MAYOR AND VICE MAYOR

2-2-1 Selection of Mayor and Vice Mayor
2-2-2 Acting Mayor
2-2-3 Powers and Duties of the Mayor
2-2-4 Failure to Sign Documents

Section 2-2-1 Selection of Mayor and Vice Mayor

The Mayor shall be directly elected by the people by a majority vote of the qualified electors pursuant to Article 2-3 of this code. Each year in which an election to Council is held, the councilmembers shall at the first regular meeting after taking the oath of office, choose a vice mayor from among their number. The council may, at any regularly scheduled meeting at which all seven councilmembers are present, upon proper motion, second and majority vote, reselect the position of vice mayor.

Section 2-2-2 Acting Mayor

In the absence or disability of the Mayor, the Vice Mayor will serve as the Acting Mayor. In the absence or disability of the Mayor and Vice Mayor, the Council may designate another of its members to serve as Acting Mayor. The Acting Mayor shall have all the powers, duties and responsibilities of the Mayor during such absence or disability.

Section 2-2-3 Powers and Duties of the Mayor

The powers and duties of the mayor shall include the following:

A. Shall be the chief executive officer of the city.

B. Shall be the chairman of the council and preside over its meetings. May make and second motions and shall have a voice and vote in all its proceedings.

C. Shall enforce the provisions of this code.

D. Shall execute and authenticate by his signature such instruments as the council, or any statutes, ordinances, resolutions, or this code shall require.

E. Shall make such recommendations and suggestions to the council as may be considered proper.

F. May, by proclamation, declare a local emergency to exist due to fire, conflagration, flood, earthquake, explosion, war, bombing, or any other natural or man-made calamity or disaster or in the event of the threat or occurrence of riot, rout or affray or other acts of civil disobedience which endanger life or property within the city. After declaration of such emergency, the mayor shall govern by proclamation and impose all necessary regulations to preserve the peace and order of the city, including but not limited to:

1. Imposition of a curfew in all or any portion of the city.

2. Ordering the closing of any business.

3. Closing to public access any public building, street or other public place.

4. Calling upon regular or auxiliary law enforcement agencies and organizations within or without the political subdivision for assistance.

G. Shall perform such other duties required by state statute and this code as well as those duties required as chief executive officer of the city.

Section 2-2-4 Failure to Sign Documents [1]

If the mayor refuses or fails to sign any ordinance, resolution, contract, warrant, demand or other document or instrument requiring a signature for two business days consecutively, then the Vice Mayor shall be authorized to sign such ordinance, resolution, contract, warrant, demand or other document or instrument which when so signed shall have the same force and effect as if signed by the mayor.

ARTICLE 2-3 COUNCIL ELECTION

2-3-1 Candidate Financial Disclosure
2-3-2 Non-Partisan Elections
2-3-3 Optional Municipal Election Procedure
2-3-4 Direct Election of the Mayor

Section 2-3-1 Candidate Financial Disclosure

Each candidate for the office of councilmember shall file a financial disclosure statement on a form prescribed by the clerk when such candidate files a nomination paper. The statement shall contain such information as required by resolution of the council.

Section 2-3-2 Non-Partisan Elections

No paper or document, including the ballot, used in the procedures for the election of members of the council shall identify any candidate by partisan party affiliation.

[1] Modified by Ord. No. 548

Section 2-3-3 Optional Municipal Election Procedure [1, 2]

A. Any candidate who shall receive at the primary election a majority of all the votes cast shall be declared to be elected to the office for which he is a candidate effective as of the date of the general election, and no further election shall be held as to said candidate; provided that if more candidates receive a majority than there are offices to be filled, those candidates equal in number of the offices to be filled with the highest number of votes shall be declared elected.

B. Nothing on the ballot in any election shall be indicative of the support of the candidate.

C. If at any primary election held as above provided, there be any office for which no candidate is elected, then as to such office, the primary election shall be considered to be a primary election for nomination of candidates for such office, and the general municipal election shall be held to vote for candidates to fill such office. Candidates to be placed on the ballot at the general municipal election shall be those not elected at the primary election and shall be equal in number to twice the number to be elected to any given office or less than that number if there be less than that number of candidates running for that office during the primary election. Candidates, to include any candidate who qualified and ran during the primary election as a write-in candidate pursuant to A.R.S. §16-312 as amended, who receive the highest number of votes for the respective offices at such first election shall be the only candidates nominated to run at such second election, provided that if there be any person who, under the provisions of this section, would have been entitled to become a candidate for any office except for the fact that some other candidate received an equal number of votes therefore, then all such persons receiving an equal number of votes shall likewise become nominated candidates for such office.

D. At the general election, the candidates equal in number to the offices to be filled who receive the highest number of votes shall be declared elected.

Section 2-3-4 Direct Election of the Mayor [3]

A. Commencing with the next regularly scheduled Primary and/or General Election after approval by a majority vote of qualified electors voting at the next regularly scheduled election, the Mayor shall be directly elected by the people by a majority vote of the qualified electors.

B. The term of the Mayor shall be for two (2) years.

C. Any candidate who shall receive at the Primary Election held by the City of Benson, a majority of all votes cast for Mayor at such Primary Election shall be declared to be elected to the office of Mayor effective as of the date of the General Election for the City of Benson and, said candidate shall not be required to run for Mayor at the General Election.

D. The provisions of sections 2-3-1, 2-3-2 and 2-3-3 are applicable under this section.

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[1] Added by Ordinance No. 272

[2] Modified by Ordinance No. 556

[3] Added by Ordinance No. 444

E. A candidate cannot run for both Mayor and Councilmember at the same election.

F. Councilmembers who desire to run for Mayor must resign their position on the Council as of the day they submit their nomination papers, unless they are in the last year of their term.

G. All other provisions of the Code of the City of Benson and Arizona State Statutes dealing with municipal elections are hereby declared to be applicable to the direct election of the Mayor for the City of Benson.

ARTICLE 2-4 COUNCIL PROCEDURE

2-4-1 Regular Meetings
2-4-2 Special Meetings
2-4-3 Meetings to be Public
2-4-4 Quorum
2-4-5 Agenda
2-4-6 Order of Business
2-4-7 Committees and Commissions
2-4-8 Voting
2-4-9 Suspension of Rules

Section 2-4-1 Regular Meetings[1, 2]

The council shall hold regular meetings on the second and fourth Monday of each month at seven o'clock p.m., provided that when the day fixed for any regular meeting of the council falls upon a day designated by law as a legal holiday, such meeting may be held at the same hour of the next succeeding day not a holiday if the council so elects upon motion at a prior meeting. All regular meetings of the council shall be held at the city hall. Council may, upon motion at any regular meeting, elect to cancel the succeeding meeting if it appears in its sole discretion that the items to be considered at the succeeding meeting may properly be postponed to the next regular meeting.

Section 2-4-2 Special Meetings

The mayor or a quorum of the council may convene the council at any time after giving at least twenty-four hours notice of such meeting to members of the council and the general public. The notice shall include the date, hour and purpose of such special meeting. In the case of an actual emergency, a meeting may be held upon such notice as is appropriate to the circumstances.

Section 2-4-3 Meetings to be Public

A. All official meetings of the council at which any legal action is taken shall be open to the public. Notice of meetings shall be given in a manner consistent with state statutes. Upon approval by a majority vote of the council, the council may meet in a closed executive session as provided by state law.

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[1]Modified by Ordinance No. 325

[2]Modified by Ordinance No. 494

B. Minutes of executive sessions shall be kept confidential except from members of the council.

C. No executive session may be held for the purpose of taking any final action or making any final decision.

Section 2-4-4 Quorum

A majority of the councilmembers shall constitute a quorum for transacting business but a lesser number may adjourn from time to time and compel the attendance of absent members.

Section 2-4-5 Agenda

Prior to each council meeting, or on or before a time fixed by the council for preparation and distribution of an agenda, whichever is earlier, the clerk shall collect all written reports, communications, ordinances, resolutions, contracts and other documents to be submitted to the council, and prepare an agenda according to the order of business and shall furnish each council member, the mayor and the attorney with a copy of the agenda and any material pertinent thereto.

Section 2-4-6 Order of Business[1]

The business of the council shall be taken up for consideration and disposition in the following order:

A. Call to Order. The mayor shall take the chair precisely at the hour appointed for the meeting and shall immediately call the council to order. The Mayor or his designee shall then lead those present in the pledge of allegiance before introducing the invocation speaker, who will offer the invocation. In the absence of the mayor and vice mayor, the clerk shall call the council to order and an acting mayor shall be selected to chair the meeting. Upon the arrival of the mayor or vice mayor, the acting mayor shall immediately relinquish the chair upon the conclusion of the business immediately before the council. The mayor shall preserve order and decorum and conduct the proceedings of the meetings.

B. Roll Call. Before proceeding with the business of the council, the clerk or deputy shall call the roll of the members, and the names of those present shall be entered in the minutes. If a quorum is not present, the members present may adjourn pursuant to Section 2-4-4 of this code.

C. Employee Recognition. The Mayor shall use this time to present employment awards to those City employees accumulating five (5) years of employment with the City and every five (5) years thereafter or to present recognition awards for specific acts regarding public service, if any.

D. Proclamations. The Mayor or his designee shall read any proclamations which may be present on the agenda.

[1]Modified by Ordinance No. 470

E. Public Hearings. The Mayor will open the public hearing, if listed on the agenda, to receive comments from the public in opposition or support of the proposed subject of the public hearing. After comments from the public are received, the Mayor shall close the public hearing. The Mayor may impose reasonable time limits for each speaker and may apportion time between those speaking in favor and those speaking against the matter which is the subject of the public hearing.

F. Call to the Public. Communications and comments from citizens regarding the City of Benson or other matters properly addressed to the City Council shall be heard by the Council. Such remarks shall be addressed to the Council as a whole and shall be limited to five (5) minutes unless additional time is granted by the Council. If the presiding officer so elects, and the speaker consents, public comments may be deferred until the specific item comes before the Council for action. No questions shall be asked of a Councilperson except through the presiding officer.

G. City Manager Report. The City Manager will update and inform the public of specific items of interest regarding City matters.

H. New Business. The council shall consider any business not heretofore considered including the introduction of ordinances and resolutions and may provide for a consent agenda in accordance with procedural rules adopted by the Council.

1. Consent Agenda. The consent agenda will be the first item under this category and shall list separately distinct items requiring action by the City Council that are generally routine items not requiring council discussion. A single motion will approve all items on the consent agenda, including any resolutions or ordinances, or claims/invoices that are of a routine nature. A Council Member may remove any issue from the consent agenda, and that issue will be discussed and voted upon separately, immediately following the consent agenda under its proper regular category of New Business.

2. Action Items Listed for Discussion. New Business shall also include ordinances, resolutions, motions, contracts or other matters listed as separate action items, which shall be voted upon separately and in the order presented on the agenda unless a motion to deviate from the listed order on the agenda is made and passed. City staff or an applicant may address the Council regarding the action item, to include taking questions from Councilmembers, after which Council shall entertain such discussion that it deems proper. Such discussion may include a motion to amend or motion to table, which takes precedence over the motion to consider the item and which shall be voted upon as part of the discussion of the item if there is a second to the motion. At the end of the discussion, the Mayor shall call for a motion and the Clerk shall record the results thereof in the official minutes.

3. Updates of On-Going Projects and City Activities. New Business may also include updates by Staff on current issues facing the City that have been or may be the subject of Council action.

I. Department Reports. Written Department Reports will be provided to councilmembers as part of the council packet.

J. Adjournment. The council may, by a majority vote of those present, adjourn from time to time

to a specific date and hour. A motion to adjourn shall always be in order and decided without debate.

Section 2-4-7 Committees and Commissions

The council may create such committees and commissions, standing or special, as it deems necessary. They shall consist of as many members and shall perform such duties as the council may require and shall exist at the pleasure of the council.

Section 2-4-8 Voting

A. The mayor may vote as a member of the council.

B. Upon the request of any member, the ayes and nays upon any question shall be taken and entered in the minutes.

Section 2-4-9 Suspension of Rules

Any of the provisions of this article may be temporarily suspended in connection with any matter under consideration by a recorded vote of three-fourths of the members present, except that this section shall not be construed to permit any action that is contrary to state statutes.

ARTICLE 2-5 ORDINANCES, RESOLUTIONS AND CONTRACTS

2-5-1 Prior Approval
2-5-2 Introduction
2-5-3 Passage of Ordinances and Resolutions
2-5-4 Requirements for an Ordinance
2-5-5 Signatures Required
2-5-6 Publishing Required
2-5-7 Posting Required

Section 2-5-1 Prior Approval

All ordinances, resolutions and contract documents shall, before presentation to the council, have been reviewed as to form by the attorney. When there are substantive matters of administration involved, all ordinances, resolutions and contract documents shall be referred to the person who will be charged with the administration of such ordinance, resolution or contract. Such person shall have an opportunity to present comments, suggestions and objections, if any, prior to the passage of the ordinance, resolution or acceptance of the contract.

Section 2-5-2 Introduction

Ordinances, resolutions and other matters or subjects requiring action by the council shall be introduced and sponsored by a member of the council, except that the attorney, the manager or the clerk may present ordinances, resolutions and other matters or subjects to the council, and any councilmember may assume sponsorship thereof by moving that such ordinance, resolution, matter or subject be adopted; otherwise they shall not be considered.

Section 2-5-3 Passage of Ordinances and Resolutions[1]

[1]Modified by Ordinance No. 278

A. All ordinances and resolutions shall be declared passed and in full force and effect from and after their passage by the affirmative vote of a majority of councilmembers present at any legally convened city council meeting subject to the provisions of Section 2-5-5 and 2-5-7 of this code.

B. The reading and passage of all ordinances and resolutions may be made by title only, providing that each member of the council in attendance has in his or her possession, written copies of said ordinance or resolution at the time of consideration and voting thereon.

C. The clerk shall certify the minutes of any council meeting at which an ordinance, resolution or franchise, except an emergency ordinance, is passed.

Section 2-5-4 Requirements for an Ordinance

Each ordinance may have only one subject, the nature of which is clearly expressed in the title. Whenever possible, each ordinance shall be introduced as an amendment to this code or to an existing ordinance and, in such case, the title of the sections to be amended shall be included in the ordinance.

Section 2-5-5 Signatures Required

Every ordinance passed by the council shall, before it becomes effective, be signed by the mayor and attested by the clerk.

Section 2-5-6 Publishing Required

Only such orders, resolutions, motions, regulations or proceedings of the council shall be published as may be required by state statutes or expressly ordered by the council. All notices of election, invitation for bids, notices of letting contracts, laws and ordinances approved or issued by the council must be published pursuant to A.R.S. §9-812, as provided in A.R.S. §39-204, in a newspaper of general circulation printed in English. If published in a weekly newspaper, publication shall be for two consecutive weeks; if a daily publication is used, publication shall be for four consecutive times unless otherwise required by law.

Section 2-5-7 Posting Required [1]

Every ordinance imposing any penalty, fine, forfeiture or other punishment shall after passage be posted by the clerk in three or more public places within the city, and shall be in force from and after the date of posting. Posting shall be established by an affidavit of the person who posted the ordinance, and said affidavit shall be filed in the office of the city clerk as proof of posting.

ARTICLE 2-6 LEGAL ADVICE FROM THE CITY ATTORNEY[2]

Not withstanding the provisions of Article 3-3, the Mayor and members of the City Council may individually make inquiries requesting legal advice from the City Attorney in matters of law pertaining to their offices.

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[1] Modified by Ordinance No. 278

[2] Modified by Ordinance No. 522

MAYOR AND COUNCIL