

**THE SPECIAL MEETING
OF THE MAYOR AND CITY COUNCIL OF BENSON, ARIZONA
HELD OCTOBER 10, 2013 AT 12:00 P.M.
AT CITY HALL, 120 W. 6 TH STREET, BENSON, ARIZONA**

CALL TO ORDER:

Mayor Toney D. King, Sr. called the meeting to order at 12:09 p.m. with the Pledge of Allegiance.

ROLL CALL:

Present were: Mayor Toney D. King, Vice Mayor Al Sacco, Councilmembers Patrick Boyle, Ron Brooks, Jeff Cook, and Peter Wangness. Excused was: Councilmember Chris Moncada.

Staff present were: Interim City Manager Jim Cox, City Clerk Vicki Vivian, Public Works Director Brad Hamilton, Human Resource Coordinator Melissa Quiroz and Deputy City Clerk Danna Judd.

NEW BUSINESS:

1. Council Ethics Training

Attorney Bill Sims from the Sims-Murray Law Firm gave his presentation “Public Service Ethics – Staying Out of Hot Water.” Mr. Sims introduced himself stating he is the City Attorney for 5 cities and towns across the state of Arizona and he works with the Arizona Risk Retention Pool as their General Counsel and has been with them since 1986. Mr. Sims stated as part of that program he also provides assistance in land use for all 70+ cities and towns that are in the Risk Pool. Mr. Sims stated he has found that working with cities and towns is the best way to avoid law suits. Mr. Sims stated he really enjoys coming and meeting with Councils. Mr. Sims stated when the City of Maricopa was newly incorporated, he provided this training the them which ended up lasting about 4 hours and they rolled up their sleeves and began to think and talk about how they were going to govern their community because they were a brand new community and a new Council getting ready to lead their community. Mr. Sims stated Benson is not a brand new community; however some of the Council is new and this is a good opportunity to have a discussion about the rules of the road concerning governance and ethics in the State of Arizona. Mr. Sims stated he enjoys working with new officials because they don’t get paid a lot and they end up working a lot of late nights and are held to task by the citizens. Mr. Sims stated local governments probably have the most challenges and the least amount of resources. Mr. Sims stated he sees the reactivity of government to be directly related to the responsiveness. Mr. Sims then stated he is really impressed with the variety of services the City of Benson provides and he knows of no other jurisdiction that provides as many services, but in doing so, the Council has to make sure the water works, the gas is on, the toilets flush and that solid waste can be collected. Mr. Sims stated Council has a daunting challenge, especially when revenues are down. Mr. Sims stated the session today will be very similar to what some of the Council has seen at Newly Elected Official Training and he would like to agree to just sit and talk and ask questions about what the rules of the road are and how the laws are created so that Council can best carry out the mission they were charged with when the citizens voted them into office.

Mr. Sims stated he would like to talk about four Pillars of Government adding these 4 elements of Open Government, Unbiased Government, Responsible Government and Efficient Government pull together to help guide Council’s efforts. Mr. Sims stated the laws are here to help and not trap Councilmembers and lawyers are here to serve and not direct Council. Mr. Sims stated Council is elected to make policy decisions; lawyers are not. Mr. Sims stated when he is giving training to new city attorneys, he advises them they are there to guide their Council, not direct them; for example in Executive Session they can warn the Council of the decisions they might make but once they make the decision the attorney has to abide by it. Mr. Sims then stated that is sort of the gist of what he is going to talk about today which is a lot of laws that are meant to help, not hurt. Mr. Sims then read a quote from James Madison, “A people who mean to

be their own governors must arm themselves with the power knowledge gives. A popular government without popular information or the means of acquiring it is but a prologue to a farce or tragedy or perhaps both.” Mr. Sims stated there are two basic components of public law; one is the Open Meeting Law and the other is the Public Records Law, adding they have been around for years in the State of Arizona. Mr. Sims stated Open Meeting Law gives an opportunity to lead constituents, to teach, and to show government in the open and requires Council to be accountable and all of those are good things. Mr. Sims stated he has had many managers and many mayors call him and say, “we have to get this in an executive session,” and there are many reasons to have an executive session, but the folks that sit out in these chairs expect Council to do the government’s bidding in public. Mr. Sims stated having discussion in the open really does help develop a consensus.

Mr. Sims then moved on to Hot Topics – Open Meeting Law, Splintering the Quorum, stating that when there are 4 Councilmembers in sequential communications on a matter that will come before Council in an open meeting, that is an Open Meeting violation. Mr. Sims stated Council has then created a quorum and as a result they violate Open Meeting Law; adding Councilmembers can talk one on one and one on two, but the minute they get 4, they have a problem. Mr. Sims stated Council can communicate using Staff, phone, email or internet, but with no more than 3 people. Mr. Sims stated he does not want anyone to leave this session afraid to communicate with colleagues, but they just need to be careful and reach out maybe to the person they disagree with the most, but they are not to create a quorum.

Mr. Sims then touched on the Public Records Act stating not all emails are public, for example if Councilmembers are emailing their wife. Mr. Sims stated even if Council is doing public business on a home computer, they are creating public records or if they are using social media responsibly, as an individual and not as a quorum, to gather information from constituents, they are probably creating public records. Mr. Sims added using social media is good way to communicate and be communicated to. Councilmember Brooks asked if Council and Staff could ask questions with Mr. Sims stating that would be best, adding he has at times, had an entire Council and Staff in his workshops and they just sit down and talk. Mr. Sims stated his speech states that Council sets policy, Staff’s job is to implement policy, Council’s job is to guide Staff and the City Manager’s job is to run the City. Councilmember Brooks stated it can be a problem sometimes if Councilmembers mention something to somebody by email and they didn’t know it was sent on to somebody else to discuss the same thing, so appropriately it would be best to say this is to stop at Councilman such and such or you will get into Open Meeting Laws if it goes any further; as a reminder he says he has done this once or twice to make sure it didn’t end up being a quorum. Mr. Sims stated that is a very good point and normally what he sees is for a City Manager who is sending a message to all that says not to reply to all and do not forward as a guard to not create a quorum. Mr. Sims stated the Council doesn’t need to be upset if, by mistake, an email was sent to a quorum, just be careful not to send an email to all. Mr. Sims stated the Clerk is there to help with the Open Meeting Law and Council can go to her. Mr. Sims stated if there was an unintended email sent to a quorum, the best thing to do would be at the next meeting to admit the email was sent and what it said, to get that information out to the public. City Clerk Vicki Vivian stated she has seen several emails back and forth between Council that are replying to all. Mr. Sims stated Council cannot do that. Ms. Vivian stated she understood information is ok but not opinions, with Mr. Sims replying not even information is ok to send to all. Ms. Vivian then gave an example of the information she was talking about, such as “the meeting is at 6:00” with Mr. Sims stating that is ok from Staff to all but not from Council to all. Mr. Sims stated one way communication back to Staff is fine, however Council should never reply to all. Councilmember Wangsness stated he has sent a couple of emails replying to all because he was thinking it was alright because email is a public record. Mr. Sims replied that Councilmember Wangsness is combining two different bodies of law in his thinking and repeated it is alright to send a response to the City Manager or colleagues of 3 or less. Mr. Sims stated if it is something a Councilmember wishes to discuss with more than 3 colleagues, they should put the issue on an agenda. Mr. Sims stated the City Code states 2 Councilmembers may place something on the agenda or the Mayor can place something on the agenda, so for example a Councilmember can ask 1 or 2 Councilmembers to be their second but they cannot ask a 3rd Councilmember to second an item if the first two say no, adding that would be breaking the Open Meeting Law. Councilmember Wangsness stated that previously Mr. Sims had stated Councilmembers could discuss something with 3 colleagues but asked if he really meant 2 in order to keep it under a quorum with Mr. Sims stating that was his error, adding 1

Councilman may not communicate with more than 2 other Councilmen. Mr. Sims then stated if a Councilman cannot find a second after going to 2 other Councilmembers, he is barred from going to a 3rd because he would be creating a quorum. Mr. Sims stated normally the Mayor and City Manager work together to create an agenda, and if 2 Councilmembers don't agree with the Mayor; they can put an item on an agenda.

Mr. Sims next discussed Unbiased Government, stating what Council does should be open and in the public's interest not in their own self-interest; remember we need unbiased government. Mr. Sims stated there are several laws that deal with this. Mr. Sims stated in 2000 he went around to all the cities and towns in the entire state because the reinsurer for their risk-pool was very upset with the amount of land use claims they were getting and required that cities and towns get some training. Mr. Sims stated the Attorney General was part of the training and they would get up and scare Councils about land use and then Mr. Sims would get up and speak and reassure Councils that it was not all that bad and this is the part of the training that is intended to show Council the laws are here and can easily be satisfied.

Mr. Sims explained No Self Dealing, which means there should be no conflicts of interest, no extra compensation, bribery or extortion, no inappropriate gifts, entertainment or travel, no discrimination, favoritism or nepotism and no retaliation against whistleblowers. Mr. Sims explained the goal here is in open government, the business is to be done in the furtherance of the public's interest not Councilmembers' own self-interest. Mr. Sims stated conflict of interest is addressed in Title 38, which guides Council in what they do; it says if there is a conflict, Councilmembers have to step out. Mr. Sims stated a conflict of interest is not bad, adding some of the best Councilmembers have been developers because they know what it takes to create development in a community. Mr. Sims stated we do want people with a variety of interests to serve on Council; adding we don't want people with no life that don't interact with people and have no conflicts. Mr. Sims stated when there is a conflict, it needs to be identified, disclosed and disqualified. Mr. Sims quoted, "Any public officer or employee who has, or whose relative has, a substantial interest in any decision of a public agency shall make known such interest in the official records of such public agency and shall refrain from participating in any manner as an officer or employee in such decision." Mr. Sims clarified what he just read by saying if Councilmembers have a conflict; they need to tell the City Clerk, because as the law says, she keeps a separate log with identified conflicts. Mr. Sims stated those that are subject to conflict of interest includes all of Council and includes family members such as spouses, children, grandchildren, parents, grandparents, siblings and in-laws. Mr. Sims stated if they have the interest, the Councilmember has the interest. Mr. Sims stated what the law says is a public officer has a conflict of interest if they have a substantial interest, unless it is a remote interest. Mr. Sims listed remote interests as being a Non-salaried officer of a nonprofit corporation, a landlord/tenant of a contracting party, a member of a nonprofit corporate association, an owner of less than 3% of a corporation, reimbursement of expenses incurred when performing official duties, receiving municipal services on comparable terms, an officer/employee of another political subdivision (unless there is a direct economic benefit) and a member of a class of persons of at least 10 members.

The meeting adjourned for lunch at 12:41 p.m. and it was decided to have a question and answer session during lunch. Mr. Sims asked Ms. Vivian if there were a lot of records requests in her office followed by laughter. Mr. Sims stated city attorneys were all looking at public records requests because Staff is spending so much time having to respond to these requests. Mr. Sims stated the constituents expect us to run the government in the open; therefore they have the right to ask for the documents, but at some point there has to be some degree of reason concerning responsiveness. Mr. Sims stated he tells the cities and towns he works with to do their best, but in times when city and town staffs are being diminished, they have to prioritize and take care of business. Ms. Vivian stated she usually responds within 3 days for most requests but there are those who make a request with numerous documents who want all of their documents in a week's time. Mr. Sims inquired as to how documents are kept at the City with Ms. Vivian stating minutes are electronic, however other records are still paper which make it difficult when the request requires searching documents to find other documents and when someone wants that request done in a week; it is a mess. Ms. Vivian added other jurisdictions have told her that a week to respond is incredible and yet the public will call and say they need this today and expect her to drop what she is doing and take care of it. Ms. Vivian stated she thinks our own Council doesn't realize how fast Staff replies to records

requests. Mr. Sims stated one thing the Clerk's office can do is to complete an initial search and tell the requestor what is found and can be had in the next 48 hours and explain to them there are numerous records so the Clerk's office may need another 3 or 4 days to give them a thorough search. Ms. Vivian stated she does keep in touch with the person requesting the records and lets them know of the progress that is being made and offers to send them electronically what records she may have electronically. Councilmember Wangsness asked what if the emails between Council were posted openly on the website or something, would that be an Open Meeting thing? Mr. Sims asked how their emails would get on the website with Councilmember Wangsness stating he was thinking if all City emails could be put on like a blog automatically. Councilmember Brooks stated if a Councilmember is going to cc more than 3 Councilmembers, they could also cc the website. Mr. Sims stated there is a statute drafted in 1996 or 1997 that stated if an elected official made a statement that was recorded in the press and their colleagues observed it, that would be a quorum. Mr. Sims stated the Attorney General drafted an opinion it was a quorum and that it violated the Open Meeting Law. Mr. Sims stated he was at a meeting where he knew the press was present and was asked by an elected official if the elected official could make a statement and Mr. Sims explained to him that if he made a statement and 3 or more colleagues read it, the AG would say that the elected official is in violation of Open Meeting Law; Mr. Sims stated he knew that quote would make it to the Arizona Republic and back to Terry Goddard, the Attorney General. Mr. Sims stated it did and the opinion was refuted and the law was passed and A.R.S. 38-431.09 reads, "Notwithstanding subsection A, it is not a violation of this article if a member of a public body expresses an opinion or discusses an issue with the public either at a venue other than at a meeting that is subject to this article, personally, through the media or other form of public broadcast communication or through technological means if: 1. The opinion or discussion is not principally directed at or directly given to another member of the public body. 2. There is no concerted plan to engage in collective deliberation to take legal action." Mr. Sims stated he does not think posting emails on the website would be a violation of Open Meeting Law unless the objective was to develop a quorum at a time when the public was not aware of deliberation. Mr. Sims stated the Clerk knows Open Meeting Law better than he does so she may have a different opinion. Ms. Vivian stated she had read that emails were able to be forwarded and therefore could be a violation of Open Meeting Law. Mr. Sims stated he has talked to the AG office and some views are extreme. Deputy City Clerk Danna Judd asked Mr. Sims if he was referring to an email somehow involving 4 or more Councilmembers that was sent on accident, and if a Councilmember purposely sent an email to the entire Council, if it would be a different story. Mr. Sims stated an email is maintained on the City system and questioned if there is a process by which it appears publicly on the website with Ms. Judd stating there is not a process in place. Councilmember Wangsness clarified he was asking if Council could do that. Mr. Sims stated he was assuming this was a process that was already in place where emails were automatically uploaded to the website, but if that is not the case and a Councilmember consciously sends an email that involves more than 4 Councilmembers, he agrees, that would be a violation. Ms. Vivian stated several Councilmembers use their personal email so those records are not located on the server. Mr. Sims confirmed their personal email would be public anyway. Councilmember Brooks stated a lot of times Councilmembers are talking about things they want to work out the bugs on and don't necessarily want to do that in public so they do that individually until they have something that makes sense, then they bring it to Council, so to him, he prefers to be able to work with the other Councilmembers individually to come up with plans to deal with issues. Councilmember Brooks then stated if he wants to present the issue to the rest of Council, it would obviously need to go on an agenda, but he could address the rest of Council and just cc it to the website with Mr. Sims stating no, no you cannot. Mr. Sims stated it is fine that Councilmembers are working out the glitches as long as it is with 3 or less, but if the goal is to cc it to the website so the other 4 can look at it, that is a violation. Councilmember Wangsness stated it would need to be an automatic process with Mr. Sims stating there isn't a process now. Mr. Sims stated there should be a document destruction policy that says, for example, after 30 days these emails are destroyed, or Council could have a policy that says after 30 days emails would be uploaded to the website, which he thinks would not be a wise policy with Councilmember Brooks adding it could asking for trouble.

Mayor King stated his biggest fear is Open Meeting Law adding he does not communicate enough with his Council because of that. Mayor King asked how he can get over that without breaking Open Meeting Law, adding it is a hard thing; Council wants communication but he doesn't know how to give communication. Mr. Sims stated that is a very good question, adding the Mayor is in a difficult but inspiring position. Mr.

Sims then stated the Mayor is just one vote like everyone else on Council, but the Mayor sets the agenda with the City Manager and the Mayor needs to lead all of his colleagues and feels disrespectful not communicating with all of them in fear of violating the Open Meeting Law. Mr. Sims stated there may be a limit and the Mayor may feel disinclined to talk to just a few, therefore a discussion needs to take place in an open meeting. Mr. Sims stated if the community is going through a rough patch and there is disagreement on the Council, he would suggest this would be the time to reach out to the person a Councilmember disagrees with the most to see if they can't build consensus. Mr. Sims stated he doesn't think colleagues would feel disrespected or left out or like the Mayor is not honoring their position if the reason he contacts another Councilmember is because they disagree on this issue and the Mayor were trying to learn his position. Mr. Sims stated he has never been asked that question by the Mayor, however he sees Mayor King's cause for concern.

Meeting officially reconvened 12:55 p.m.

Mr. Sims stated expenses have to have a receipt in order to be reimbursed and Councilmembers get to receive municipal services on comparable terms and can vote on the contracts that deal with those services. Mr. Sims gave for example, if a Councilmember has a family member that works for a school and an IGA is up for approval, the Councilmember may vote on it unless the family member is the superintendent and would receive a bonus for establishing the IGA with Council. Mr. Sims stated another remote interest is being a member of a class of at least 10 members; for example a Councilmember living within a plat up for approval with at least 10 parties involved is not a conflict. Councilmember Cook stated he was talking with his sister about grants and getting ideas on how to secure grants for the City, the schools and the senior meals and she approves grants, but she does not work for the government and asked if that was a conflict. Mr. Sims stated this is not a conflict because neither is directly involved. Mr. Sims stated there is a conflict if a Councilmember receives direct or indirect money or property interest. Mr. Sims explained if there is a conflict, the Councilmember is to remove themselves completely from all discussion or action on the issue and report the conflict. Mr. Sims gave an example of if a Councilmember's wife receives commission on a grant that is coming before Council; before the meeting the Councilmember would declare the conflict. Mr. Sims asked if Council removes themselves from the discussion physically with Mayor King responding yes and Councilmember Brooks responding it is up to the individual and Ms. Vivian adding it has been done both ways. Mr. Sims stated he has seen it recommended leaving it up to the individual, but cautioned an expression on a Councilmember's face or even the shaking of his head could be deemed discussion. Councilmember Brooks stated it is the public's perception that is important and Councilmembers want to give an image of doing what is right. Mr. Sims stated to declare the conflict is a choice and is a personal call adding he does not think Council could ask a Councilmember to leave the room.

Mr. Sims stated it is easy not to violate these laws and explained the No Bribes or Extortion portion of his presentation. Mr. Sims stated elected officials cannot use their position to get things that are of value. Mr. Sims stated bribery is when a public servant knowingly asks for or receives any gratuity or reward (or promise thereof) for doing any official act and the public official would be guilty of a class 6 felony. Mr. Sims stated extortion is explained when public servants use or attempt to use their official positions to secure any valuable thing or benefit that would not ordinarily accrue to them if the thing or benefit is of such character as to manifest a substantial and improper influence. Mr. Sims gave as an example that sometimes development agreements say a Council will vest their zoning if the developer will do certain things for the City, which developers have said is extortion but it is not, adding Council is asking for things that are provided for by the law. Mr. Sims then stated the development statute expressly says Council can condition zoning on any sorts of actions by the developer; for example, offsite improvements. Councilmember Brooks stated this is not a personal gain to anyone; it is a whole gain by the City so he doesn't see how it would be a problem in that way.

Mr. Sims stated Trading in a Public Office is if with a corrupt intent, the public servant solicits, accepts or agrees to accept any benefit from another, upon an agreement or understanding that the other will or may be appointed to a public office or designated or nominated as a candidate for public office. Mr. Sims gave an example of a person wanting to be on Planning & Zoning, adding if that person contributed to a Councilmember's campaign; it would be illegal. Mr. Sims stated a compensated lobbyist may not offer

Councilmembers entertainment or a gift to influence the passage or defeat of legislation. Interim City Manager Jim Cox stated our policy is not accepting a gift over \$25. Mr. Sims gave another example, stating if a developer offers to buy a Councilmember lunch and if they were meeting just before the agreement was to be approved by Council, lunch should not be accepted. Mr. Sims stated there needs to be a temporal separation between accepting a gift and any possible action. Councilmember Brooks stated a lot of it has to do with perception. Mr. Sims stated Council's job is to run the government, adding they are not acting for the benefit of one constituent.

Mr. Sims stated a Whistleblower is an employee who exposes wrongful conduct, adding Arizona law prohibits public employees and officials from taking an adverse personnel action in retaliation against a public employee who disclosed to a public body an allegedly wrongful conduct that the disclosing employee reasonably believed evidenced a violation of law, mismanagement, a gross waste of monies or an abuse of authority. Mr. Sims stated if an employee comes to Council and says that another employee is taking material from the yard, such as the manager, any action taken against that employee would give that employee a claim that can be taken to the personnel board. Mr. Sims stated when an employee comes to an elected official with a concern; Council needs to say go to the City Manager, or direct them to the correct person. Mr. Sims stated as far as Nepotism, Council should not appoint relatives and should recuse themselves from any situations involving relatives.

Mr. Sims spoke on Responsible Government reading a passage from the Arizona Constitution, Article 9, on Public Monies and the gift clause "Neither the State, nor...subdivision of the State shall ever...make any donation or grant, by subsidy or otherwise, to any individual, association, or corporation..." Mr. Sims stated this means Council is responsible for marshaling the resources constituents have given the City and this statute says we want to make sure those resources are promoting the public's interest, not an individual corporation's interest. Mr. Sims stated there was a case in North Phoenix where a shopping mall was going to be built and the City of Phoenix gave away the store to the developer and they got sued. Mr. Sims stated the court provides guidance and that is when developers come and ask for taxes, Council should just say no. Mr. Sims stated the statute states Council needs to make sure when they are trading away sales taxes, they are getting something in return. Mr. Sims stated Council is not to questionably abuse their discretion; as long as what they do doesn't shock the conscience, it will be tolerated. Mr. Sims advised whatever Councilmembers say, don't say in public something will be done 'over their dead body' because that means they are not using their discretion and someone may say a Councilmember is unreasonable. Mr. Sims stated it is better to say you will look at the facts and then decide how to vote. Mr. Sims stated in deciding on a development agreement if Council can document a hard benefit, do it, adding there is no reason to give sales tax away to a business that is pitting the City against other entities. Mr. Sims stated another example is a Chamber of Commerce who states they want part of the bed tax or the sales tax, but they really don't provide much. Mr. Sims stated what he has been doing with all the cities he works with is making agreements that say if the Chamber wants some money, they will have to do things in return. Mr. Sims stated he would have the Chamber agree to do public service announcements, staff the Visitor's Center and agree to produce pamphlets and pass them out to winter visitors and if that could be put into a contract, then when the Council gives to the Chamber, they are getting a benefit.

Mr. Sims stated Council should use the procurement rules, adding sometimes an elected official will say they have a friend and they are going to do sole source, which is hard. Mr. Sims stated there are lots of rules on how to spend public money and it is real hard to justify sole source, adding it is much easier to have a public procurement policy. Mr. Sims stated it is, of course, alright to use public money to build sewer and streets. Mr. Sims stated public property belongs to the public and should not be used to benefit specific public officers. Mr. Sims stated procurement can be tough and the "design then build" is probably one of the worst ways to build anything and is probably the most expensive. Mr. Sims explained there are many new ways to build something publicly, adding it is not always good to use the traditional design and get the lowest bidder, which usually gets you the worst product.

Councilmember Cook commented on Public Monies stating he has been questioned, lobbied, mocked and ridiculed because he has a particular view of a lawsuit Benson is currently litigating and he understands that until a court decides on it, Council does not know what the underlying nonconforming use actually is and

that's the side he is presenting. Councilmember Cook stated he is being told the City can just settle at any time for over a million dollars and make it go away. Councilmember Cook then stated his view is that this is just giving away free money. Mr. Sims stated the legal system is often times not the best system to use to resolve problems. Mr. Sims stated the question becomes at what point is it wise to settle to avoid continuing litigation and expenses. Mr. Sims stated attorneys have a duty to respond to a majority of Councilmembers to defend Councils as best they can, but the minute the Risk Pool and a majority of Council decides that settlement is a good solution, they have a duty to settle. Mr. Sims stated lawyers don't get to make that decision at all and frankly lawyers love righteous clients who want to defend to the hilt because lawyers get paid defending to the hilt, but usually the only winners then are those lawyers' kids. Mr. Sims stated there is a property in Cave Creek that has been litigated 3 times and over \$3 million dollars has been paid to the lawyers. Mr. Sims stated righteous clients on both sides have been litigating this while the property sits vacant; just think what could be done with the \$3 million dollars spent on lawyers. Mr. Sims stated he would think the developer would want to get property developed and the town would want to collect the sales tax. Mr. Sims then stated in this case, he would suggest a broad development agreement and binding arbitration. Mr. Sims stated he has gotten a developer to agree to not sue for damages and stated they should always go to marriage counseling to decide what the solutions will be. Mr. Sims stated he believes what Councilmember Cook was asking was if it was illegal to pay a settlement with public monies with Councilmember Cook stating it was not necessarily the public money, but the amount.

Mr. Sims explained efficient government is the Council-Manager form of Government, which is based on the private sector model of a CEO and a Board of Directors where the City Manager is appointed by the Council. Mr. Sims stated the City Manager serves at the pleasure of the Council and can be terminated for any reason and without cause, may have an employment contract with severance and other stipulations, oversees the entire municipal operations, except the attorney, oversees all departments, hiring of Staff, the budget and implementation of Council's goals. Mr. Sims read from a charter "Except as otherwise provided in this Charter, neither Mayor nor any Councilmember shall interfere with the execution by the City Manager of the powers and duties, or order, directly or indirectly, the appointment by the City Manager of any person to an office or employment or the removal therefrom. Except for purposes of inquiry, the Mayor and Councilmembers shall deal with the administrative service under the City Manager solely through the City Manager, and neither the Mayor nor Councilmember shall give orders to any subordinate of the City Manager, either publicly or privately." Mr. Sims stated the voters elected Council and have an expectation of Council to establish budgets and set policy. Mr. Sims stated Council is allowed to ask questions of the employees but is not allowed to give directions and go around the City Manager. Councilmember Cook asked where this was written in our code with Ms. Vivian stating she believes in Chapter 3.2. Mr. Sims stated basically what it says is that Council is in charge, they get to make inquiries, but they need to deal through the City Manager when they are working with Staff. Mr. Sims stated democracy is a terrible way to run anything, but it is what our founding fathers required, adding he loves a strong chain of command because strong chains of command put somebody in charge to be held accountable. Mr. Sims stated the Council-Manager form of government charges Council to establish a broad policy and to hold the Manager accountable. Mr. Sims stated there is a Statute in Arizona, A.R.S. 12-180.101, that says anything Council does here that is legislative, they cannot be sued for. Mr. Sims gave an example of an employee who went directly to a Councilmember with a complaint and the Councilmember gave the employee advice, adding that would not be legislative, and the Councilmember could lose this immunity. Mr. Sims stated Council is charged with establishing broad guidance, developing the legislative goals of the jurisdiction and the Manager and Staff are charged with implementation. Mr. Sims stated he loves having an organization that puts someone in charge, telling Council to hold their City Manager accountable, adding the minute Councilmembers go around the City Manager and give direction to Staff; they have given the City Manager a get out of jail free card. Mr. Sims stated the Manager can then say to Council that they violated the code and noted that violating the code is a misdemeanor. Mr. Sims stated it is in Council's best interest to let Staff implement the policies, adding it confuses Staff when Council gives them direction because Council is the ultimate budget setter and controls layoffs, etc. Mr. Sims stated it is best to hold the City Manager accountable. Mr. Sims stated by Council giving broad guidance and letting Staff take the lead, they can have deniability, adding that is not politically courageous but it is useful. Mr. Sims then gave an example of the building of the Bank One Ballpark and America West Arena, stating the job of Staff was to deliver the Council to claim a victory with this project and the

lawyers were willing to take the hit. Mr. Sims stated there are a lot of reasons Council would want to preserve the Council-Manager form of government. Ms. Vivian stated in a small town where everybody knows everybody, a lot of people from the public will call the Mayor or Councilmembers directly and request them to direct someone to fix a pothole on their street, adding she thinks this is another reason the Council should only deal with the City Manager, not only for deniability, but also so they can say that person needs to take their complaint to Staff, otherwise all 7 Councilmembers will be getting calls and it will not stop. Councilmember Brooks asked if he should call the City Manager if his trash is not picked up with Mr. Sims stating Councilmember Brooks gets services from the City and he should make it clear that he is calling as a customer, not as a Councilmember. Mr. Sims clarified if it was Councilmember Brooks' neighbor's trash that didn't get picked up, Councilmember Brooks should call the City Manager with the problem. Councilmember Brooks stated that way it does not look like Councilmembers are persuading someone because they are a Councilmember. Councilmember Cook stated there are other reasons too, adding he knows people that have complaints and they try to get people other than the City Manager to take care of their complaints and what they do is they end up soaking up all the City resources on their little concerns when the rest of the City needs to be run at the same time. Councilmember Cook stated he opposes anyone that wants to give direction outright with Mr. Sims stating it is up to the City Manager to filter out and prioritize and Council should not be calling Staff, adding this is another good reason to use the Council-Manager form of government. Councilmember Brooks stated when Councilmembers give someone a directive, it uses resources that maybe the City Manager didn't plan on or didn't know about so now there is an un-coordination of services being done which is a problem. Councilmember Wangness asked if Councilmembers should direct those with complaints to the individual departments or always go to the City Manager with Mr. Sims stating the public could possibly go to the City's website to find the number themselves and call directly. Mr. Sims stated Council should always refer questions to the City Manager. Mr. Sims stated he is confident in the Clerk and the Manager to make decisions.

Mr. Sims addressed Constitutional Claims stating no person shall be deprived of life, liberty or property without due process of law and due process has a procedural part, notice of hearing, and a substantive part and Council has to act reasonably. Mr. Sims stated Council must treat similar property owners similarly. Mr. Sims stated due process means being entitled to a hearing, adding the law is so broad in zoning and as long as it is related to health, safety, morals and welfare, the courts will bend over backwards to support Council as long as it is reasonable and bears a rational relationship and it doesn't shock the conscience. Mr. Sims stated the goal here is for those who are elected to be able to say to themselves that they have a reason and justification supporting their decision and will turn to the City Manager and ask for the reasons why, or why not, this is a good policy. Mr. Sims stated the 1983 Civil Rights Statute stated that if someone has a right and Council damages that person based on a constitutional claim, as long as they show at least \$1.00 of damage has been done, they will get their piece, adding if they owe their attorneys \$1.2 million dollars in fees, Council has to pay them too. Mr. Sims stated when cities get into litigation, especially when attorney's fees would apply; it is best to stop the bleeding early and use dispute resolution. Mr. Sims stated the Risk Pool says if they are going to provide coverage arising out of a development agreement Council has to put mediation into the agreement; mediation is an attempt to find a resolution and avoids the recovery of attorney's fees.

Mr. Sims stated the lessons learned so far include: don't shock the conscience, get data to support your views, get everybody on the same planet and work out your differences. Mr. Sims repeated that mediation should be used before going to court. Mr. Sims continued with the lessons learned stating that Open Meeting Law is not an enemy; it should be a way for Council to lead the community and to educate the community on what Council's goals are, act in the citizens interest, not your own, be accountable when spending public money and the Council-Manager form of government is a good way to operate government. Mr. Sims stated Council should try to avoid extremes, adding the citizens want Council to find consensus and find ways to solve problems, not create them and finally, mediate when you can instead of paying a lawyer.

Mayor King inquired about the Call to the Public, stating it is one of his biggest areas to deal with, adding people come up and are supposed to be talking about an agenda item or something along that line, but instead they get up and start attacking and he needed to find out when he is allowed to give the Council

permission to respond. Mayor King then stated his other issue is that he has tried to stop speakers from talking about the public body such as city employees, noting once in a while he misses it, but he has been trying to control it. Mayor King then asked how far he could go as the Mayor, adding he knows he can pull the whole Call to the Public off of the agenda if he wants, but he is trying not to do that. Mayor King then asked Mr. Sims for his advice on how to handle situations, allow Council to respond when something is said and trying to keep names of employees and stuff out of the conversations. Mr. Sims stated the Mayor has one of the more difficult jobs, being charged with running the meeting and enforcing decorum, adding democracy allows the public to speak and if Council tries to put a muzzle on the public then they have defeated the purpose for a public meeting; having said that there are limits of decorum. Mr. Sims gave an example of a woman in Quartzite being escorted out during a meeting. Mr. Sims stated it is correct that the Mayor does not have to allow a Call to the Public, however he is here to make sure everyone has the opportunity to speak and when they get out of line he has the obligation to preserve decorum. Mr. Sims stated he does not think the Mayor should need law enforcement, adding the Mayor should recess the meeting and ask law enforcement to intervene. Mr. Sims stated Council can respond to criticism but should not be allowed to debate because that could actually cause an Open Meeting Law violation. Mr. Sims stated Council can use that as an excuse to stop the debate and either put the item on a future agenda or direct Staff to do some research. Mr. Sims stated the Mayor should issue a warning stating there will be no personal attacks and it is a time set aside to discuss policy. Mr. Sims stated if the debate continues, the Mayor could ask the Sargent at Arms to remove them and with the third strike, they are out of the meeting. Mr. Sims stated nobody has the right to scream and shout and the microphone can be turned off, if needed. Ms. Vivian stated she had heard a suggestion that all remarks be funneled through the presiding officer from both sides. Mr. Sims stated when there is criticism and a Councilmember would like to respond, they should do so by asking to be recognized. Councilmember Brooks read A.R.S 38-431.01 H. "A public body may make an open call to the public during a public meeting subject to reasonable time, place and manner restrictions to allow individuals to address the public body on any issue within the jurisdiction of the public body..." adding if it does not relate to City Council or if it is a personal attack, it should not be talked about and has no place in the meeting. Councilmember Brooks continued reading the statute "...at the conclusion of an open call to the public, individual members of the public body may respond to criticism made by those who have addressed the public body, may ask Staff to review a matter, may ask the matter be put on a future agenda." Mr. Sims stated working through the Mayor is the best way to handle it, but the minute the person on the dais starts acting emotionally, the Mayor needs to stop it or tone it down. Councilmember Brooks stated sometimes the person starts saying something back when a Councilmember is responding and that is a debate and needs to be stopped. Councilmember Cook stated he has seen at the call to public, defamatory and hostile remarks and lies directed at Council and at Staff. Mr. Cox stated then they claim to have the right to say those remarks with Mr. Sims stating they do not because there are defamation laws. Mr. Cox asked if that person should be escorted out with Mr. Sims stating the Council needs to be careful here because this is the public's meeting. Councilmember Brooks stated he believes this is the Council's meeting and they are trying to get business done and the public is invited to attend, but it is Council's meeting to get the work done. Mr. Sims stated if there are misstatements and Council is aware and they are attacking Staff incorrectly, in the Council-Manager form of government, Council has the duty to defend them through the Mayor. Mr. Sims suggested when a truly incorrect statement has been made and is known, he thinks Staff could ask to be recognized and respond to criticism, but should not debate the issue or comments. Councilmember Cook stated some of the behavior at the podium is disorderly and he wants to know how to balance freedom of speech with political speech. Mr. Sims stated disorderly conduct should be addressed by the Mayor and that person should be asked to leave or be removed if it does not stop.

Councilmember Brooks asked about Charter cities with Mr. Sims stating charter cities also use the Mayor-Manager form of government and gave a few examples. Mr. Sims stated the Council-Manager form of government is the way to go for small jurisdictions. Councilmember Brooks stated a lot of times Council will sit on different boards like development committees or Planning & Zoning and such and asked if there was a conflict for a Councilman to be on the Board of Adjustment. Mr. Sims stated a Councilmember could not be on Planning & Zoning because they are the appellate body adding he has never seen a City have a Councilmember on the Board of Adjustments because Council is a legislative body of all the zoning codes. Councilmember Brooks stated the Board of Adjustment is not allowed to change any laws that are

put down by Council and all they are able to do is give a variance if it is within limited guidelines. Councilmember Wangness asked if what Mr. Sims was saying is that Council should not serve on the Board of Adjustment or Planning & Zoning with Mr. Sims stating not unless the whole Council is serving as the board. Mr. Sims stated Council is better served if they have entirely separate people on boards, adding Council needs to be careful and should appoint people who are of like mind with Council or Council will end up undoing everything the commission does. Councilmember Wangness stated he was at a seminar and was told there was no problem with Councilmembers on other commissions and Council didn't need to worry about the number, adding it could be all of Council, since they follow Open Meeting Laws. Mr. Sims stated that is not what he said and that he was referring to Open Meeting Law requirements. Ms. Vivian asked about having 4 Councilmembers on a committee as there are on the Economic Development Subcommittee (EDSC) with Mr. Sims stating the fact that there are 4 does not make it a Council meeting; it just makes it a quorum of that committee. Mr. Sims added Councilmembers cannot act as Council at any time during that meeting and may not discuss items that were not noticed on the EDSC agenda.

Councilmember Brooks asked about Executive Sessions and stated there was a meeting a while back where some people could not make the meeting and it was agendized that the Council was going to get legal advice. Ms. Vivian stated what the agenda said was the Council was going to discuss the City Attorney and the City Manager positions and they may receive legal advice from the City Attorney. Ms. Vivian added the City Manager could not be present at that meeting nor was the City Attorney, adding it did not say they were going to receive legal advice it said they may receive legal advice on personnel issues. Mr. Sims stated the Council held the meeting without legal advice and that is ok, adding the Council can discuss this in an Executive Session, under discussion of personnel, without an attorney and the City Manager. Ms. Vivian stated she worked with the City Attorney and the City Manager to create the agenda to discuss the two open positions and the contract parameters. Mr. Sims stated if it was a personnel evaluation, Council would have to give that person a 24-hour notice and the option to be there, but if it was just to discuss a position, that is not the case. Mayor King stated he appreciated Mr. Sims coming down and for the refresher and for being here for the new Councilmembers.

Councilmember Cook stated he has questions about emails. Councilmember Cook stated the City is in litigation with Stagecoach Trails and there have been some emails back and forth, with one in particular coming from Mr. Hinderaker and was back and forth in the emails. Councilmember Cook stated he interjected on one of the emails which included everyone, including Staff, and read what it said. Councilmember Cook stated he wrote his opinion and that he was not lobbying, but just stating his opinion and obviously broke the quorum and asked what he should do about that. Mr. Sims stated that is communication among a quorum and technically should have been a violation, adding probably every elected official in the State of Arizona has done just that and his recommendation is that Councilmember Cook has now stated it happened, in a public meeting, so now the public is aware of it. Mr. Sims stated it was an innocent mistake, adding the goal of the Open Meeting Law is to have that discussion in an open meeting. Mr. Sims stated since there was no action taken there is really nothing to ratify other than to let the public know that communication happened. Councilmember Brooks stated he wanted to make sure that this, doing a reply all, is addressed in the Council's policies.

Councilmember Cook stated Mr. Sims' name has come up as a possible candidate for City Attorney and he wanted to talk about that with Mr. Sims stating that topic is not on the agenda.

Mr. Cox stated recently we have had a situation come up where we have several Councilmen who all have a City email account and they all have personal email accounts and in order to cover all the bases he sends correspondence to both accounts to make sure they get his communications. Mr. Cox stated then Staff gets a public information request that would involve some of the emails that went to a personal account and that opens things up that the City does not have control over. Mr. Cox asked for advice in that area with Mr. Sims stating he thinks that if someone were to go to the Attorney General and ask for a public records inspection, those personal computers would be accessible, however he believes there should be a document destruction policy in which there is a regular destruction period every 30 days. Mr. Sims stated Council is creating a lot of work for the City Clerk by having personal emails involved. Councilmember Cook asked

if they should cc Ms. Vivian on all of the correspondence from personal emails so she already has a copy with Mr. Sims stating using the records destruction policy is the best way to go and deleting public emails every 30 days consistently. Ms. Vivian stated the City does not have a destruction policy for email because email itself is not a record; that it is the content of the email that is the record and the subject that the record retention would fall under. Ms. Vivian stated this is the first Council that has really used email for anything other than agendas and meeting notices and she thinks using personal email accounts is a bad idea when Council has access to City email 24/7 and it can be accessed from their home computer or their City iPad. Ms. Vivian stated the public doesn't necessarily trust Council to turn over the emails from their personal accounts, whereas if they utilize the City account, those emails can be retrieved by the IT Department. Ms. Vivian stated she does look through those when they are requested for attorney-client privileged documents before they are released.

ADJOURNMENT:

Motion to adjourn at 2:30 p.m. by Councilmember Brooks. Seconded by Vice Mayor Sacco. Motion passed 6-0.

Toney D. King, Sr., Mayor

ATTEST:

Vicki L. Vivian, CMC, City Clerk