

**THE REGULAR MEETING  
OF THE MAYOR AND CITY COUNCIL OF BENSON, ARIZONA  
HELD OCTOBER 14, 2013 AT 7:00 P.M.  
AT CITY HALL, 120 W. 6TH STREET, BENSON, ARIZONA**

**CALL TO ORDER:**

Mayor King called the meeting to order at 7:00 p.m. with the Pledge of the Allegiance.

**ROLL CALL:**

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

**EMPLOYEE RECOGNITION:**

Mayor King recognized Lori Fink for 10 years of service with the City of Benson and then recognized Bob Nilson for 10 years of service with the City of Benson.

**PROCLAMATION:** None

**PUBLIC HEARING:** None

**CALL TO THE PUBLIC:**

Dianne Tipton stated she attended the worksession where the Council discussed being respectful and she would like to say she finds it disrespectful when Council or Staff looks at the screen or is talking to each other or rolling their eyes and making faces instead of looking at the speaker. Ms. Tipton then stated she would like to ask Council to not do that. Ms. Tipton then stated she came to talk about the Open Meeting Law and asked Council to search on the internet for Open Meeting Law 101. Ms. Tipton then stated there have been recent discussions as to whether or not the public's rights are being violated if they are not allowed to speak at the Call to the Public. Ms. Tipton then stated the Open Meeting Law is a law to protect the public, to avoid Council making decisions in secret, to promote accountability by encouraging public officials to act responsively and responsibly, to protect public officials, to avoid exclusion by requiring a notice and to avoid being blindsided by requiring an agenda, to memorize what happened in the meetings by requiring minutes, to maintain integrity in our government, to maintain a better informed citizenry and to build trust between government and the citizenry. Ms. Tipton then stated these are good reasons to have the Open Meeting Law. Ms. Tipton then stated the Open Meeting Law does talk about a Call to the Public, adding the Call to the Public is permitted, but is not required and should be on the agenda if it is permitted. Ms. Tipton then stated the public body may limit speakers' time, may require speakers on the same side with no new comments to select a spokesperson and may set ground rules such as civility, language and treating everyone the same. Ms. Tipton then stated the rights of the public concerning a Council meeting are that they have the right to attend, the right to listen and the right to record, whether on tape or on video. Ms. Tipton then stated the public has no right to disrupt or to speak, adding she wanted to make that clear to the Council because they were told there is no law and she wanted to make sure they knew the Open Meeting Law was a law and Council is to abide by the law.

J.T. Moffett stated he would like to remind everyone about the public forum on Chapter 9 of the Benson City code next Monday night, adding the forum is a golden opportunity for the good people of Benson to express their desires and opinions in a one on one dialogue with Building and Zoning Official Luis Garcia. Mr. Moffett stated he wanted to stress that this is Luis Garcia's and the public's time as he is merely the promoter and moderator for the event. Mr. Moffett then stated the main theme is what to do with the

current Chapter 9 of the Benson City code, which addresses home, property and community standards and will include some discussion on the building codes as well. Mr. Moffett stated Mr. Garcia will then use the information gleaned from the forum to present a proposal for the City code to the Council at a public worksession, adding he hopes the meetings will provide more than ample opportunity for public input before the Code changes would be approved by a vote of the Council and he encouraged everyone to come and help shape the future standards for this great community next Monday night, October 21 at 7:00 p.m. in the Council chambers. Mr. Moffett then stated on another topic, he has been hearing a lot lately from a select few voices about the need to censure the Call to the Public and he finds it very interesting to examine who is pushing the issue and what the motive is behind it. Mr. Moffett stated the Mayor and Council received an email from the head of the Southeastern Arizona Economic Development Group as well as from the Chamber of Commerce, both insisting the Mayor censure the public, citing criticism and personal attacks. Mr. Moffett then asked Council to step back about 3 years ago when Dianne Tipton and Kathy Suagee were on City Council, stating they received an enormous amount of criticism from a couple of citizens as well as personal attacks from them, adding even the City Manager joined in. Mr. Moffett then stated what Ms. Tipton and Ms. Suagee suffered was far worse than anything this Council has endured and it's funny that these 2 men who have spoken out recently were quiet as a mouse back then, adding no one rushed to Ms. Tipton's or Ms. Suagee's defense. Mr. Moffett then stated over the past 2 years, Lori McGoffin, David Lambert and Nick Maldonado received a barrage of personal and professional criticism, and again, there was silence from these 2 men, adding there were no passionate speeches railing against the criticism, no one accused the Mayor of being weak and no one called J.T. Moffett a viper, in fact, all was well. Mr. Moffett stated he knew this because he used to share an office with these men at their offices on 4th Street and he was told back then that he served a vital role in the community, quoting one of them as saying, 'I appreciate you J.T. because you say the things I wish I could say'. Mr. Moffett then stated his point was that the Council should examine the motives behind these men and their phony plea to protect the Council, adding if the men were sincere, they had ample opportunity and cause to say something for 3 years. Mr. Moffett then stated there are 5 seats up for reelection next year and silencing the opposition now would be a big help in getting their candidates with their hidden agendas elected. Mr. Moffett then stated for far too long, Benson has been controlled by a handful of good ol' boys and they seem to always have a majority vote on Council, adding he wouldn't belabor Council with the details right now, of so many deals done behind closed doors and then passed by former Councils. Mr. Moffett then stated the current Council has been ostracized and ridiculed for not getting along, but at least that can change, in fact, he believes it is changing for the better, adding what is missing from this Council is the selling out of the people of Benson to the good ol' boys and their agendas and now they want back in and the first step is to silence their opposition. Mr. Moffett then stated that is what's really behind all the hoopla about the Call to the Public, adding history is all the proof Council needs to see his point. Mr. Moffett then stated as for the issue of criticism itself, he would like to remind Council that as public officials, they are subject to criticism for as long as they hold office, adding the public has the right and even an obligation to criticize Council's behavior. Mr. Moffett then stated it was this very right to criticize that helped defeat the Chapter 7 codes and aided Council in dodging a bullet when they almost hired Stephen Pauken as the City Manager, adding the same people that want to shut him up told Council how great Mr. Pauken was, and no one, not even the League of Cities bothered to tell why Mr. Pauken's contract was terminated in Frederick, Colorado after only 1½ years as City Manager. Mr. Moffett then stated he only had to Google Mr. Pauken's name to get the news clips he provided to Council, adding Mr. Pauken was being promoted as Benson's savior by the same prominent members of the City who want to shut the public's voices down. Mr. Moffett then stated he wondered if Councilmember Cook, a Pauken supporter, would give a passionate expose on Mr. Pauken, like he did when he smeared Don Howard a week ago. Mr. Moffett then stated he felt that was deplorable behavior for a City Councilman and he believed Councilmember Cook owes Mr. Howard and the Council an apology. Mr. Moffett then stated he was again, asking the Mayor and Council to question the motives behind these few men who want to censure the public's right to speak, adding it is difficult to respect their opinions from a double-standard and hypocritical point of view. Mr. Moffett then stated the Council needs to remember the oath they swore to take office, adding it was not to protect each other or some special interest group. Mr. Moffett then stated he would like to quote some words penned long ago, by some very wise men, stating, 'Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof or bridging the freedom of speech or of the press or the right of the people peaceably to assemble and to petition the government for a redress of grievances'. Mr. Moffett then stated the Mayor

and Council swore an oath to defend and protect the Constitution of the United States of America which includes the very words he just quoted to Council and which gives the public the freedom to speak freely at these meetings. Mr. Moffett then stated the people of Benson fully expect Councilmembers to uphold their oaths.

Councilmember Cook asked for permission to respond, then stated regarding him smearing Don Howard, what he did was tell the truth, adding Mr. Howard misrepresented the budget in Pine City, MN as \$10 million when the biggest budget they had was \$2.9 million and Mr. Howard misrepresented the number of employees, saying he managed 65 when the largest count with a Councilmember from Pine City determined there were only 25 employees. Councilmember Cook then stated Mr. Howard was fired from his job in Pine City, adding he read the reasons why. Councilmember Cook then stated a vocal member of the community that wears a cowboy hat and talks about cash for goods called up Mr. Howard prior to the last skype interview with Council and interviewed Mr. Howard by phone, preparing him for the final skype interview; negotiating the contract amount of \$85,000 a year and apparently rounded up the votes for Mr. Howard. Councilmember Cook then stated that is the truth and is not a smear.

Councilmember Brooks stated Ms. Tipton's remarks hit the spot, as far as the Call to the Public goes, adding the Council is required to do business in public meetings which are to be open to the public and meet the Open Meeting Law, but they are not required to have a Call to the Public. Councilmember Brooks then stated he thinks a Call to the Public is a good idea and allows the Council to hear from citizens on issues they are dealing with, but the law clearly says it should be concerning things in the jurisdiction of the Council and not on things the Council can't make decisions on or has no control over. Councilmember Brooks then stated it is not the place for the public to come and express their freedom of speech, adding the Council isn't going to discuss Congress not doing their job or what's going on in Washington because they should only address things affecting our City that Council has the capability of changing. Councilmember Brooks then stated he would like to see citizens address issues on the agenda, adding that is their opportunity to say what they think so Council can include their opinion in their decision making. Councilmember Brooks then restated open meetings are for the Council to conduct business in public and to give citizens an opportunity to address issues before the Council.

Kathy Suagee stated she would like to address both the issues of hiring of a City Manager and hiring a City Attorney. Ms. Suagee then stated the great American folklorist Carl Sandburg wrote a group of stories called the Rootabaga Stories, noting one of them was about a woman who wanted to change her life and leave her home and town and get out in the world, so she got up one day and took a shower, got dressed, looked in the mirror, packed her suitcase, packed her hat, looked in the mirror, went downstairs and then had to run up and check the mirror, then she started down the block, but had to run back and see what she looked like in the mirror again. She did this day after day and consequently, never got anywhere. Ms. Suagee then stated the moral of the story is if you keep looking at yourself and only recognizing yourself in the way you are and not looking forward to the way you can be, you'll never change. Ms. Suagee then stated the Council has to make a decision about a City Manager and a City Attorney, adding the City is not going to look like it did before; it's going to look different and it's going to be ok. Ms. Suagee then stated it's not like a marriage, adding Council can always go back and hire a different City Attorney or a different City Manager, but they do have to move forward and they do have to make that choice. Ms. Suagee then stated she was asking Council to not let Thanksgiving come without making these choices.

Hector Figueroa stated he had put his name on the Call to the Public when he saw that Council had an item on the agenda regarding filling the Interim City Attorney position. Mr. Figueroa then stated he has been at the last 4 Council meetings and gave Council something in writing offering to serve at their pleasure for \$100.00 per hour along with a letter of resignation that upon the majority of Council agreeing they didn't want his services anymore, they could fill in the date and he would no longer provide legal services. Mr. Figueroa then stated the Council didn't have to advise him or even give him a reason for discontinuing his services and if they chose to terminate his services, he would be willing to abide by their vote. Mr. Figueroa then stated the other reason he wanted to talk to Council was to say he agrees with the lady who spoke and that the Council needs to make a decision on the City Manager and the City Attorney, adding they can do that by appointing both an Interim City Attorney tonight and an Interim City Manager, which

will give them the opportunity to do what Councilmember Moncada previously motioned, which was to interview the attorneys or law firms that responded to the RFP and to continue searching for other candidates if they didn't feel one of the respondents was adequate. Mr. Figueroa then stated on the other hand, if Council gives him an opportunity to serve as the Interim City Attorney, they will have the opportunity to see how he works, adding he served for 12 years as the City Attorney in South Tucson and from 2007 to 2012, he was the City Attorney in Willcox. Mr. Figueroa then stated he also served as the Chief Magistrate in South Tucson from 1995 to 2000, adding he has done municipal law for quite a few years now and has been in practice for over 25 years. Mr. Figueroa then stated he was raised in Willcox and graduated from Willcox High School so he knows the community, adding he and his wife have several businesses with 5 commercial properties in Willcox. Mr. Figueroa then stated as he told Councilmember Brooks, in reading material from the Chamber of Commerce and looking at statistical data, Benson is going to be one of the fastest growing communities in the State of Arizona, adding he and his wife feel there is potential here for economic development and business, not only for other people, but for themselves. Mr. Figueroa then stated he would like to be given an opportunity to serve as the Interim City Attorney and will be available when the item comes up should Council have any questions.

**CITY MANAGER REPORT:**

The list of upcoming meetings and events were provided in the Council packet, however, no verbal report was given.

- Saturday, October 19, 2013 – Historic Preservation Commission, 9:00 a.m., City Hall
- Tuesday, October 22, 2013 – Community Watershed Alliance, 6:30 p.m., City Hall
- Monday, October 28, 2013 – City Council Worksession, 6:00 p.m., City Hall  
City Council Meeting, 7:00 p.m., City Hall

- Saturday and Sunday  
October 12 and October 13, 2013 – 28th Annual Butterfield Overland Stage Days. There will be a 2-day Rodeo beginning at 3:00 p.m. on Saturday. Events starting at 8:00 a.m. at the Benson Museum on Saturday, Parade at 9:00 a.m., and the Pony Express Mail Office opens at the Benson Museum at 10:00 a.m. Fireworks at 8:30 p.m. Saturday night at Lions Park. For schedules and information, go online to [www.cityofbenson.com/whattodotoday](http://www.cityofbenson.com/whattodotoday)

- Thursday, October 31, 2013 – Halloween Carnival at the Benson Fire Station, 375 E. 7th Street, Benson, sponsored by the Junior Women's Club. More details to follow.

**NEW BUSINESS:**

1. **Consent Agenda**

- 1a. Minutes of the September 9, 2013 Special Meeting
- 1b. Minutes of the September 9, 2013 Regular Meeting
- 1c. Minutes of the September 10, 2013 Special Meeting
- 1d. Invoices processed for the period from September 12, 2013 through October 3, 2013

Councilmember Brooks stated he would like to remove item 1c. Councilmember Brooks then moved to approve the Consent Agenda without item 1c. Seconded by Councilmember Moncada. Motion passed 6-0.

## **Consent Agenda – Items Removed:**

### 1c. Minutes of the September 10, 2013 Special Meeting

Councilmember Brooks stated he would be abstaining from this item, since he didn't attend the entire meeting. Councilmember Moncada moved to approve Consent Agenda item 1c. Seconded by Vice Mayor Sacco. Motion passed 5-0 with Councilmember Brooks abstaining.

### 2. **Ordinance 566 of the Mayor and Council of the City of Benson, Arizona, changing the basis for calculation of a majority of votes cast at the Primary Election**

City Clerk Vicki Vivian stated Ordinance 566 is a proposed ordinance to provide a different calculation of what a "majority of votes cast" means, adding during the 2010 legislative session, the Legislature amended A.R.S. §9-821.01 to allow cities and towns by ordinance to establish a different method of calculating a majority of the votes cast at a Primary Election. Ms. Vivian then stated now that cities and towns are required to consolidate their elections with the State Primary Election, this ordinance is of interest. Ms. Vivian stated the new law was passed because voters in consolidated elections may choose not to vote in the City or Town part of the ballot, thereby creating a significant undervote, adding the statute prior to the amendment required the Clerk to calculate the majority using the total number of ballots cast in the election regardless of whether the voters marked their ballots in the City or Town part of the ballot. Ms. Vivian then stated this amendment reduces the number of votes required to those that actually vote for the office of Mayor on the ballot. Ms. Vivian then stated this issue was discussed at a previous worksession, adding typically, a City election has between 600 and 800 voters and a candidate could possibly be seated at the Primary election if they received a majority of the ballots cast, which would be 50% of those ballots, plus 1, but in a consolidated election, there could be 2,000 or more ballots cast because the election would include registered voters who do not live in the City limits and cannot vote in a City election. Ms. Vivian then stated the City would never have anyone seated at the Primary election, because calculating a majority would be based on all the ballots cast instead of just City ballots cast. Ms. Vivian then stated instead of counting all of the ballots cast at the election, Ordinance 566 allows the City to only count ballots cast for the office of Mayor to determine if any candidate received a majority of the ballots. Councilmember Brooks asked about people not voting for the office of the Mayor and if the ballots for the office of a Councilmember could be used instead or amending the ordinance to address an undervote for the Mayor. City Attorney Mike Masee stated the ordinance creates a very clear basis for determining how many ballots were cast in the City election by using the ballots cast for the office of the Mayor, adding the statute only authorizes counting the ballots cast for the office of the Mayor and doesn't allow for anything else. Councilmember Brooks moved to approve Ordinance 566. Seconded by Councilmember Boyle. Motion passed 6-0.

### 3. **Resolution 28-2013 of the Mayor and Council of the City of Benson, Arizona expressing its support for the continued operation of the Queen Mine Tour in Bisbee, Arizona**

Interim City Manager Jim Cox asked City Clerk Vicki Vivian to read the resolution. Councilmember Moncada then stated the tour is pretty cool, adding once you realize you are 1½ miles underground, it's a little scary, but it's a tourist attraction that brings about 45,000 people to Bisbee each year, adding some of those people have to stop in Benson, so he thinks it's vital to both Bisbee and Benson. Councilmember Brooks stated he knows a lot of people stay in Benson because there are not a lot of hotels in Bisbee, adding the attraction benefits Benson and the County. Councilmember Brooks then stated the support the Council gives is just a proclamation that the Council supports the tour, adding we also carry brochures here in Benson. Councilmember Boyle moved to approve Resolution 28-2013. Seconded by Councilmember Brooks. Motion passed 6-0.

### 4. **Discussion and possible action regarding filling the Interim City Attorney Position**

Councilmember Brooks stated the Council has Hector Figueroa here today who has been attending the Council meetings and has expressed his desire to work as an Interim City Attorney, adding the Council also

had the opportunity to talk with Mr. Sims from the League of Cities, who also expressed his interest in being Interim City Attorney, so right now, they are the only ones he knows that want to do that. Interim City Manager Jim Cox stated he had a conversation with Mr. Sims this afternoon and Mr. Sims respectfully declined because of his firm's participation in other litigation with the City. Mr. Cox stated Mr. Sims said at some future point, he would be very interested, but it would have to be after the conclusion of the City's current litigation. Councilmember Moncada stated he didn't know why the Council would look at appointing an Interim since the RFP process is underway for a City Attorney. Councilmember Brooks then stated the Council should continue with the RFP process in a very aggressive way, but he feels the Council needs someone between now and when the Attorney is selected. Councilmember Brooks then stated he thought the Council voted on and wanted to go with a new City Attorney and he doesn't see why they need to continue right now with the services they are getting from Mr. Masee. Councilmember Brooks then stated he would like to try Mr. Figueroa, adding Mr. Figueroa is one of the candidates for the RFP and the Council can give him a try and if they happen to like the man, they can maybe look at him as a permanent Attorney. Councilmember Boyle stated he agreed with Councilmember Brooks on that and he thinks it's something that expedites the thing, adding Council should probably go ahead and do it, noting at the same time, it would give Mr. Figueroa an opportunity to show his stuff. Vice Mayor Sacco asked City Clerk Vicki Vivian how many responses to the RFP were received with Ms. Vivian stating the City received 7 responses, but 1 firm withdrew, leaving 6 remaining responses. Councilmember Brooks then stated the Council received a contract from Mr. Figueroa and then asked Mr. Figueroa if he would like to address the Council. Mr. Figueroa stated what he did was give the Council a letter with a blank date the Council could fill in, adding he indicated a contract would be just 1 page that says the Council appoints Hector Figueroa to act as Interim City Attorney to serve at the pleasure of Mayor and Council pursuant to the terms and conditions enumerated in the appointee's October 10, 2013 letter of resignation, approved by the Mayor and Council of the City of Benson, Arizona, to commence on, which is left blank, adding if the Council were to appoint him today, they could put in today's date. Mr. Figueroa then stated the hourly flat sum retainer of \$100.00 per hour and all other terms and conditions contained in the appointee's letter of resignation shall remain in full force and effect until changed or modified by City Council official action. Mr. Figueroa then stated in the future, if Council decided they want him as the permanent Attorney, they can just modify it or it could go into a different contract. Mr. Figueroa then gave copies of the letter and contract to the City Clerk for Council distribution. Councilmember Brooks stated the contract is basically an at-will, per-hour situation, so the Council would notify Mr. Figueroa in advance when they would need him or for certain matters they would need Mr. Figueroa to take care of, adding personally, he would like to see a City Attorney at all the Council meetings and asked Mr. Figueroa if that would be a problem. Mr. Figueroa stated he didn't have other legal matters right now and would be available for Council meetings, adding he turned over the Willcox contract to the former Benson City Attorney Ann Roberts. Mr. Figueroa then stated at that time, he was involved in business ventures, but now he's finished his construction and development and is available. Councilmember Brooks then stated Staff also needs to utilize the City Attorney for questions and legal review and asked if that would be part of the services provided with Mr. Figueroa stating he could provide that service via email or telephone, adding he would serve in the same capacity as the current City Attorney. Mr. Figueroa then stated he has been a City Attorney for over 12 years and he knows what it takes, knows the resolutions and ordinances and has done code revisions and enforcement, adding in South Tucson, he even did prosecution. Mr. Figueroa then stated he knows Willcox and Benson turned over their prosecutions to the consolidated court and he's well aware of what the job would take and he is willing and able and ready to do it. Vice Mayor Sacco asked Mr. Figueroa how many associates he had with Mr. Figueroa stating he has 1, who has been with him for 9 years and who also served as the Acting City Attorney both in South Tucson and in Willcox and would be Mr. Figueroa's backup. Councilmember Brooks asked about the hourly rate and if Mr. Figueroa charged in 15 minute increments with Mr. Figueroa stating he billed in 30-minute increments, adding it would have to be more than 30 minutes for him to charge an hour, but he could also bill in 30-minute increments at \$50.00 per half hour, if Council wished. Councilmember Brooks asked if something would have to be added to the contract to give City Staff or Department Heads utilization with Mr. Figueroa stating he didn't think so, adding he understands what needs to be done and he is offering Council whatever they need, whether the person needing legal assistance is the Mayor and Council, the City Clerk, the City Manager or Department Heads. Mr. Figueroa then stated he also understands the City has a Planning & Zoning Commission and other committees, adding if they need legal assistance; he would be there for them too. Mayor King then

stated he was a little skeptical of a 1-page contract with Mr. Figueroa stating he would be able to put in whatever Mayor and Council wanted in and get a contract back to them, adding if they were to appoint him today and told him they needed it by tomorrow, he could do so. Councilmember Brooks stated it may be a conflict of interest, but he would like to ask the present City Attorney Mike Masee what he thought of the contract. Mr. Masee stated he would like to refrain from responding, but the Council is well advised in seeking other counsel if they would like to. Mayor King stated he thinks the Council may need to hold off on this until they get a regular contract laid out instead of a 1-page letter, adding never in his 12 years on the Council has he seen a 1-page contract, which makes him nervous. Mayor King then stated he has nothing against Mr. Figueroa; he just wants to make sure the Council is doing things right. Mr. Figueroa then stated he served as the City Attorney in South Tucson without a contract, using the same letter of resignation that he gave Council for 12 years, adding every 2 years, his position was up for reappointment and for 6 terms, he was reappointed. Councilmember Brooks stated he would like to see the Council move ahead on this and asked if it was possible to have a special meeting later this week so the Council could have a chance to look at this and maybe ask questions of other people to make sure they are not just making an on the spot decision. Councilmember Brooks then stated personally, he thinks this could be a really good thing for the Council, but he agrees with Mayor King, adding he hasn't seen this 1-page contract until this moment. Mayor King stated he would be unavailable Thursday with Councilmember Brooks stating the meeting could be held on Friday, adding there are a couple other items he would like to address, if the Council does hold a special meeting, such as the RFP process for the City Attorney, which he would like to see the Council move forward with. Councilmember Brooks then moved to table this item for the Interim City Attorney until Friday, October 18, at 7:00 p.m. asking if the date and time would be appropriate for everyone. Vice Mayor Sacco stated he would like to make some comments, adding the Council has tried a 1-man operation for a number of years and he thinks it's time now to engage a regular law firm with several attorneys because he is concerned if Mr. Figueroa was the attorney selected and he was unavailable for a period of time, the City would be up a river. Vice Mayor Sacco then stated again, he thinks it's time for the Council to choose a regular law firm with clerks and so forth, adding that is his personal opinion and he has nothing against Mr. Figueroa. Councilmember Brooks then stated he thinks that is appropriate for an RFP for a permanent attorney, but right now, he just wants to get an Interim until Council can get a permanent City Attorney, adding he would definitely like to move forward quickly on that, so this could just be temporary for a month or two. Vice Mayor Sacco stated he disagreed and felt the Council should go on with the RFP process. Mayor King stated there was a motion on the floor and asked if there was a second. Councilmember Moncada asked what the motion was with Councilmember Brooks stating he moved to table this issue of the Interim City Attorney until Friday, October 18, at a 7:00 p.m. meeting to be able to make a decision on the contract before Council with Mr. Figueroa for an Interim City Attorney. Councilmember Brooks then stated the Council could also move ahead with the RFP for a City Attorney at the same special meeting. Councilmember Moncada stated the last time the Council discussed the City Attorney, he thought they did give direction to move forward. City Clerk Vicki Vivian stated Council did give direction to Staff to set up interviews with attorneys who responded and to also continue sending letters out, adding she was unsure of the parameters for the letters, but Council also directed Staff to move forward with the City Manager interviews and Mr. Cox sent out an email to Council on Friday, saying they could interview City Managers on Tuesday at 3:00 and 4:00 p.m. but he received no responses. Councilmember Moncada stated he responded, but it was late. Mayor King then asked if there was a second to the motion on the floor. Motion was then seconded by Councilmember Boyle. Councilmember Cook asked Mr. Figueroa how he found out about the potential opening for an Interim City Attorney with Mr. Figueroa stating he saw the RFP through the League of Cities and Towns and then went to the City Clerk to get deadlines and everything else. Mr. Figueroa then stated the Interim City Attorney was a discussion Council had about Mr. Sims and Mr. Sims couldn't be present, so the Council rescheduled it for another day. Mr. Figueroa then stated after that discussion, Council had a training session in which Mr. Sims provided some training and Council asked Mr. Sims if he would be willing to serve as the City Attorney, adding this and by attending the Council meetings is where Mr. Figueroa got his information. Mr. Figueroa then stated the idea is that if the Council has a problem trying to get the City Manager and the City Attorney squared away, they could have him serve as an Interim City Attorney and get the legal advice and assistance they need to get past the selection process for the City Manager and the City Attorney. Mr. Figueroa then stated this would also give Council an opportunity to see what kind of work product he produces, adding if Council doesn't like his work product, they didn't have to continue with him.

Councilmember Cook stated he was a little vague on when the Council met with Mr. Sims to discuss him possibly being the Interim City Attorney and asked Mr. Figueroa when that was with Mr. Figueroa stating he has been to the Council meetings and someone brought it up at a Council meeting and the Council had Mr. Sims come to do a training session with Council and they asked him then. Councilmember Cook asked Mr. Figueroa if he spoke with anyone on the Council or City Staff or in the community about applying for this job. Mr. Figueroa stated after he submitted his letter proposal, which he gave to all of Council, and prior to that, he introduced himself to Councilmember Moncada probably at the first meeting he attended, adding he just met Councilmember Boyle and at the last meeting he attended, he told Councilmember Brooks he was interested in the position and would be here to answer any questions Mayor and Council might have. Councilmember Cook then stated he would like to clarify his question and asked prior to Mr. Figueroa submitting his letter, did he speak with anyone on Council, on Staff or in the community about this job with Mr. Figueroa stating he did not. Councilmember Cook then stated he remembers about 2 months ago, there was some disapproval and a speech being made about the Council rushing into hiring a City Manager, adding it was Stephen Pauken at the time. Councilmember Cook then stated in contrast, Council now has a man applying for this job that they don't know and they are being pushed to rushing into hiring him for this position. Councilmember Cook then stated the Council doesn't know Mr. Figueroa and has not yet interviewed anyone for the Interim City Attorney that he recalls or anyone for the permanent City Attorney and he thinks if the Council hires Mr. Figueroa as the Interim City Attorney, it gives him an unfair advantage when it comes to interviewing and making a decision for the permanent City Attorney. Councilmember Cook then stated by getting rid of Mr. Masee, the Council would also have to shoulder the burden of the cost of getting Mr. Figueroa up to speed on Stagecoach Trails, adding those are his concerns and he just feels like he has no information but he's being pushed to make a decision. Councilmember Brooks stated he would like to remind all the Councilmembers that they had Mr. Figueroa's full resume in their packets when they initially got the responses to the RFP. Councilmember Brooks then stated Mr. Figueroa has shown a strong interest in our Council and in our City, adding he doesn't know him personally, but from what he has talked to Mr. Figueroa about, it sounds like he has the credentials and can do a temporary job, adding he stresses it is temporary and he has no intention of keeping an Interim City Attorney for months and months. Councilmember Brooks then stated he would like to get on with the process of not trying to find an Interim City Attorney, but trying to find a permanent City Attorney, and he thinks this would give Council a filler until they can get to that point and that is his recommendation to Council. Vice Mayor Sacco stated he was going to stand by his previous comment that he thinks it's time for the City of Benson to hire a law firm, not a 1-man operation, adding that way the City Attorney can consult with other attorneys in case some problem comes up that he can't resolve. Councilmember Brooks stated he agrees with needing a law firm, but if the Council puts out an RFP for Interim City Attorneys, he thinks Council will be spending a long time trying to find a permanent City Attorney. Vice Mayor Sacco stated he disagrees, adding it's time for the Council to get good legal representation. Mayor King then called for a vote. Councilmember Brooks asked if the Clerk could read the motion. Ms. Vivian stated Councilmember Brooks moved to table this item for Interim City Attorney until Friday, October 18 at a 7:00 p.m. special meeting with the second by Councilmember Boyle. Motion failed 2-4 with Mayor King, Vice Mayor Sacco and Councilmembers Cook and Moncada voting nay. Councilmember Brooks then asked about the contract with the current City Attorney and if it was running endless or had a termination date with Mr. Masee stating he is serving at the pleasure of Council and should they decide to terminate his services, he is done. Ms. Vivian stated Staff will continue moving forward with Mr. Cox setting up interviews with City Attorney candidates either before or after he sets up interviews with City Manager candidates, depending on what happens with the next item. Councilmember Brooks stated he would like to get the interviews done with Mayor King stating Staff has direction to get the interviews set up as soon as possible. Mr. Cox stated he would schedule the interviews as soon as possible and asked if there were any dates preferred by Council. Council concurred they would like the interviews to be held Thursday, October 17 or Friday, October 18. Councilmember Brooks then stated he would also like the Council to review the list of candidates they passed up and be ready to move on those also, in case Council didn't like who they had interviewed via skype. Mr. Cox stated no attorney interviews had been held via skype with Councilmember Brooks stating that comment was for the next item. Mr. Cox then stated he would set interviews up and get the details out to Councilmembers with Councilmember Boyle asking for the interviews to be in the afternoon. Council concurred.

5. **Discussion and possible action regarding the Interim City Manager's contract**

Mayor King stated he requested this item be placed on the agenda because he was trying to see if the City could save some money, adding he wasn't sure how it would work out, but it was up to the Council to discuss it and make a decision either way. Councilmember Brooks stated he wanted to discuss the next item before this one, but at this point, the Council was already here. Councilmember Brooks then moved to terminate the contract with the current Interim City Manager Jim Cox. Seconded by Councilmember Boyle. Councilmember Brooks then asked if the Council received a notice from Mr. Cox that he wanted to resign this position with Mayor King stating they did not. Interim City Manager Jim Cox then stated he had not given any notice to that effect, adding he made the commitment originally to serve at Council's pleasure in 30-day increments per his contract, which is automatically renewed, adding the next renewal will occur on Friday, October 18. Mr. Cox then stated when he makes a commitment, he lives up to the commitment and if the Council's pleasure is to terminate the contract, that's fine, but he made the commitment to stay as long as Council would like. Vice Mayor Sacco stated Mr. Cox's present annual salary is \$81,000, which equates to \$6,750 per month. Vice Mayor Sacco then stated he did the math and if Council decides to cancel Mr. Cox's contract effective tonight, it would save the Benson taxpayers anywhere from \$17,000 to \$20,250. Vice Mayor Sacco then stated if the Council decides to replace Mr. Cox, his estimation is that it would take them a good 2 months to put a replacement in place, which is a problem. Vice Mayor Sacco then stated he would like to suggest a temporary solution, adding since Mr. Brad Hamilton is on the City's payroll and has in the past, acted as the Interim City Manager, he suggests the Council appoint Mr. Hamilton as Acting City Manager until a replacement is approved. Councilmember Brooks stated this is why he wanted to address the next item first, adding it didn't make sense to address these items in this order. Councilmember Brooks then stated the Council could hire a new Interim City Manager and then terminate Mr. Cox's contract, but they haven't even come up with a candidate. Councilmember Brooks then addressed Vice Mayor Sacco's comments regarding saving money, stating it is written into Mr. Cox's contract that he was going to get 60 days no matter what, so he's still going to get that money, adding Council agreed on that when they hired him, so Council isn't going to be able to ask him to work another 2 or 3 months on the money he's supposed to get when he leaves. Vice Mayor Sacco then stated the Council should appoint Mr. Brad Hamilton since he's already on the City's payroll with Councilmember Brooks stating that is the next agenda item. Mayor King agreed that was the next Council item and then called for a vote. Motion failed 3-3 with Vice Mayor Sacco and Councilmembers Cook and Moncada voting nay.

6. **Discussion and possible action regarding the appointment of an Interim City**

Mayor King stated this item was not needed since the action on the previous item was to retain Mr. Cox as Interim City Manager.

**DEPARTMENT REPORTS:** None

**ADJOURNMENT:**

Councilmember Brooks moved to adjourn at 8:07 p.m. Seconded by Vice Mayor Sacco. Motion passed 6-0.

ATTEST:

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Toney D. King, Sr., Mayor

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Vicki L. Vivian, CMC, City Clerk