

**THE WORKSESSION  
OF THE MAYOR AND CITY COUNCIL OF BENSON, ARIZONA  
HELD FEBRUARY 10, 2014, AT 6:00 P.M.  
AT CITY HALL, 120 W. 6TH STREET, BENSON, ARIZONA**

**CALL TO ORDER:**

Mayor King called the meeting to order at 6:01 p.m. Mayor King then led the public in the Pledge of Allegiance.

**ROLL CALL:**

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

**NEW BUSINESS:**

**1. Review, discussion and possible direction to Staff on City Code Chapter 9 Health and Sanitation**

Mayor King stated before the Council started discussion, he would like Building Official/Zoning Administrator Luis Garcia to address Council and explain how much Building and Planning & Zoning has to do with Chapter 9. Mr. Garcia stated Chapter 9 contains a lot of different functions, for example, solid waste disposal, public smoking and the sale of pseudoephedrine are all in Chapter 9, but are not under Building or Planning & Zoning, adding he didn't know if Council wanted to go section by section in Chapter 9, which would entail different departments or if they would like to review the sections the Building and Planning & Zoning Departments cover, which would begin with Article 9-2.

Councilmember Brooks stated as Council reviewed the Chapter, if they found issues that would be better addressed in another chapter, the City Clerk could keep a record of those, so the Council could address that later.

Council agreed to begin with Article 9-2 with Mr. Garcia asking Council if they wanted to review the article section by section. Council concurred.

Mr. Garcia read from Article 9-2, the purpose as contained in 9-2-1. Mr. Garcia then stated this is a generic statement when it comes to premise maintenance, adding it's trying to encompass all types of property within the corporate limits of the City of Benson and is pretty much on point. Councilmember Boyle expressed concern about the words "health and general welfare" adding they are in the Constitution of the U.S. and have been abused so badly that just about anything can be squeezed in under that term and asked if it would be possible to narrow the focus to nuisances and things like that and drop "health and general welfare" because it is completely open to anyone's interpretation. Mr. Garcia stated in applying Article 9-2 for premises maintenance as it is really intended, is not to be able to go in and address something that is only affecting one property, but is to address the public at large, so including the language for the general welfare of the community, rather than one person, is typical language, adding he didn't know how to narrow down language for the intention of the article and didn't know if there was a legal precedence.

Vice Mayor Sacco agreed with Councilmember Boyle, stating he would also like to see the article be more specific, adding when something is in general terms, it opens it up to all kinds of interpretation and he would like to see it narrowed down to be more specific.

Councilmember Brooks stated when the Council looked at definitions, they could make sure they were specific, such as defining what deterioration is and what blight is. Councilmember Brooks then stated if the Council decided to change the language in the purpose, specific definitions will assist with the changes.

Councilmember Wangsness stated he didn't know if it was a real problem, since this was just a purpose statement, adding it's when they get into the definitions that are the hard portions of the article. Councilmember Wangsness then stated the Council is not trying to define general welfare, aesthetic or economic in the purpose, but agreed with Councilmember Boyle that the term "general welfare" in the Constitution has been abused.

Councilmember Boyle then stated he was just suggesting removing the words "general welfare" since it could mean whatever someone wanted it to mean. Mr. Garcia then stated he would like to caution Council, adding if they start further defining these down to where there is absolutely no discretion at all, then it would take any type of discretion or flexibility from the code official, and would leave the strict letter of the code in place, rather than the intent of the code. Mr. Garcia then asked Council if they wanted Staff to count the number of paint bubbles on a structure, adding that is not the intent of the code and while he was sure someone could read issues into the code, he didn't know how to deal with extremisms, adding he would like to believe anyone who is enforcing the code is going to be fair and is applying it consistently.

Councilmember Brooks asked Mr. Garcia if he was saying that the Council could say that more than 5 paint bubbles will result in a violation with Mr. Garcia stating that was correct and the Council didn't want to paint themselves into a corner. Mr. Garcia then stated any type of code enforcement is intended to have some level of discretion, adding anywhere you go, you will find this terminology in the codes because it's typical language. Mr. Garcia stated he understood the concern, but he wanted to caution Council about being so specific that it takes away any type of flexibility Staff will be able to afford the public.

Councilmember Boyle stated if the code official is looking to be merciful, he liked the leeway, but on the other end of the spectrum, the code official could do just the opposite with it if the same language is in place and that was his concern. Mr. Garcia stated as the Council got further into the review of the the article, they would see that while Staff may identify a potential violation, Staff is never the one to make the determination on whether it is indeed a violation, adding that is done by someone who is impartial, whether it's a hearing officer or the magistrate, adding there are checks and balances built into the system to keep any code official from abusing his authority.

Councilmember Cook stated he didn't have a problem with the language in the purpose, but he knew there would be a problem when they address the maintenance of rights-of-way and the streets beyond the property line. Councilmember Cook then stated for example, he knows of a vacant property with a slope and all the water from that runs to the alley and then east and has cut a channel more than a foot wide and almost a foot deep, and it creates a weed problem on the neighbor's property. Councilmember Cook then stated he doesn't feel the problem is the neighbor's problem, but is the problem of the property owner whose property caused the problem. Councilmember Cook then stated when the Council needs to be thinking of how to deal with that issue when they get to it because he has a lot of objections to that. Councilmember Cook then stated it happens to a lot of properties and with the flooding that has never been addressed, the weeds are all over and are not the fault of the property owners.

Mr. Garcia then stated in going back to the purpose statement, he will look into how other jurisdictions do it and will see if they exclude the "general welfare" terminology or further define it and will let Council know the findings.

Mr. Garcia then continued, reading Article 9-2-1, paragraph B, adding again, this is the property maintenance code and would apply to all properties in the City of Benson.

Vice Mayor Sacco stated he was pleased to see Mr. Garcia added a definition section, adding it takes a lot of argument out of the picture and pins it down and he is sure the City Attorney likes that. Vice Mayor Sacco stated he felt all the codes should be done this way. Mr. Garcia stated the current definitions are pretty limited and his intent is to expand the current definitions to include additional items, adding they will go over definitions in their review.

Councilmember Boyle asked about the date of construction and the code making concessions for existing property with Mr. Garcia stating there is no protection in any law that protects violations, adding there are no vested rights in violations. Councilmember Boyle then asked if this article was not talking about applying updated codes with Mr. Garcia stating this article addresses premise maintenance only, adding the building safety codes contain protections for existing structures.

Councilmember Brooks spoke about Councilmember Cook's point with drainage, stating after 30 years of rain, it probably changed the runoff which is now going in another direction, and asked if the determination was made that it was a hazard to another property, would the property owner need to repair it. Mr. Garcia stated that is something that would need to be codified if the City was going to enforce anything, adding that is typically the reasons for zoning regulations and density requirements, noting the more rooftops we have, the less impervious surfaces we have, so the potential for flooding increases and that is why there are density requirements built into the zoning code and construction standards built into the City code to address such things as flooding. Mr. Garcia then stated the flooding issue would be under the Public Works Department, especially since it's dealing with public rights-of-way on how the development of the property is affecting drainage. Councilmember Brooks then asked if his property's drainage was now affecting his neighbor below him, would he have to do anything about it with Mr. Garcia stating if the problem was caused by a lack of property maintenance, then he would guess the City could enforce the code to such conditions, but again, it would be addressed on a case by case basis, adding if an act of God caused the issue, the City would have to look at different avenues to address it.

Councilmember Cook then stated all along 3rd Street on the north side is private property subject to the enforcement of debris and weeds and directly across the street, there is the railroad property and it has no maintenance and the weeds are all over it, he then asked Mr. Garcia what authority the City had on the railroad property. Mr. Garcia stated he would check on the railroad property to see how far the City's enforcement authority extends.

Mr. Garcia then continued, starting to read Article 9-2-2 Definitions, stating he had a handout with further definitions for Council to consider, adding they are typical definitions and if the Council wanted to change any part of the definition before considering it, they could discuss it. Mr. Garcia then read definition A – Attractive Nuisance, adding there is some discretion in this definition because it is impossible to define all the conditions that may act as an attractive nuisance, for example, if there is an older refrigerator that has locking type doors, it would be an attractive nuisance because a child may not be able to open the door and could suffocate and not get out. Mr. Garcia then stated he is not proposing anything additional in this definition, stating Article 9-2 has been in existence for quite some time and the section on public nuisances further defines what constitutes a public nuisance. Councilmember Cook asked about the remedies to attractive nuisances with Mr. Garcia stating remedies are not typically in the code, because ultimately the resolution would be to remove the public nuisance, adding in less dense areas, there may be some sort of concession, such as removing the doors, adding he didn't think that would apply to cities with more density than rural areas.

Councilmember Moncada stated his expectation for the first thing to happen is that the code official would talk to the property owner to have a conversation and not to issue a citation, adding his assumption was that the conversation would include how the violation could be remedied. Mr. Garcia agreed, stating that is the current enforcement procedure, adding the procedure is to do courtesy stops because the more that can be remedied without letters the better off everyone is; again the City is trying to have a more understanding means vs. being the strong arm of the government.

Councilmember Brooks stated there could be a lot of solutions to the refrigerator issue and as long as the situation could be made safe, he would think that would work. Mr. Garcia stated that was correct and what the code is trying to aim at is debris, adding the definition of debris is items on the property that have no economic value and no one has any intent to do anything with them. Mr. Garcia stated in rural areas there is usually more leeway and in dense areas there is usually less leeway.

Councilmember Brooks stated it looks like definition B – Debris in the City code and Number 5 in the additional definitions handout are pretty much the same. Mr. Garcia stated he got the additional definitions from the City of Chandler, adding he does like Number 5 better than what is in the City code because it would take care of the commercial kitchen storage issue right off the bat, noting if something has little or no economic value, it would be considered debris. Councilmember Cook then asked about someone having a miniature golf course in their front yard and if it would be considered a nuisance with Mr. Garcia stating he didn't think it would be. Councilmember Brooks then asked if Number 5 was ok with the Council and if they should make a note of it with Mr. Garcia stating if Council agreed, he would include the new definition as proposed on the handout. Councilmember Wangsness stated he liked Number 5 better also because it states it is including but not limited to. Council consensus was to include the proposed definition Number 5 in the City code in place of definition B – Debris. Councilmember Wangsness stated one thing that might have been helpful is if the definitions were in the same order as the existing code with Mr. Garcia stating the proposed definitions were something he added at the last minute and stated at the next worksession, he would have a redlined and strike out version of what has changed.

Mr. Garcia then read definition C – Litter, adding he would like to lean toward Number 22 in the additional definition handout instead of the current definition in the City code. Mr. Garcia stated few people will understand the terms putrescible and non-putrescible solid waste, which means something that has a chance to decay, and Number 22 changes the terminology to something that is understandable. Councilmember Boyle asked about composting being a problem with Mr. Garcia stating composting is not a problem because there is general maintenance that goes with it and this is addressing litter that is not going to be used, again noting, a composting pile would have some sort of future use.

Vice Mayor Sacco asked Mr. Garcia how he becomes aware that a resident or business is in violation with Mr. Garcia stating his office accepts complaints, but is also active in the community and actively canvasses the neighborhoods, adding when they spot a violation, they stop and have a conversation with the property owner.

Councilmember Brooks stated he knows there have been problems like people calling in about a dog barking and he would have liked to require two or more complaints before the City would respond with Mr. Garcia stating Councilmember Brooks may want to request the City Attorney to look into something like that, adding it is Mr. Garcia's understanding that if the City receives a complaint and doesn't pursue it and someone is harmed, the City could ultimately be responsible. Mr. Garcia then stated the City has a responsibility to the public to be able to be mobilized and that is what is done due to the liability issues. Councilmember Moncada stated just because someone may call on a barking dog doesn't mean anyone will be cited, adding if it turns out to be nothing, then there would be no violation and nothing would be done. Mr. Garcia stated his intent is to have more understanding and more conversation and not just be an enforcement machine, adding he wants to be able to actively pursue any violation but in a courteous fashion.

Vice Mayor Sacco asked if Mr. Garcia could foresee enforcing this in older neighborhoods, adding he thinks homeowners associations would be doing this. Mr. Garcia stated this is a code of minimums and homeowners associations are allowed to be more restrictive, noting the City doesn't get involved if it is more restrictive, but only enforces the bare minimums in the City code.

Councilmember Cook stated on the handout Number 22 addresses inoperable vehicles, noting he has 3 inoperable vehicles on his property. Councilmember Cook stated one has a tire that is separated and he hasn't replaced it, another has a dead battery but it is a lovely historical vehicle and the other was his dad's truck and before the title could be changed, it went to the control of the court. Councilmember Cook then stated he has a problem with the definition of inoperable vehicles, adding it is like a one size fits all definition. Councilmember Cook stated in addition to the vehicles on his property, a few blocks up the street is someone who works for Beaudry's and has 5 vehicles, adding he doesn't think the owner drives all of them all the time because of battery problems, etc. Councilmember Cook then stated when the Council discusses inoperable vehicles; they need to take some things into consideration instead of having the one size fits all description. Councilmember Cook then commented about leaves on the ground stating he leaves as many as he can on the ground because there are bug cocoons attached to them which turn into moths that pollinate his plants and added some are praying mantis, noting again, this is another one size fits all definition. Mr. Garcia stated he

was not intending to be a detriment to the ecosystem and the code is referring to something that is more like a fire hazard, adding the City needs to have some sort of parameters to be able to define whether someone is creating a fire hazard or not. Councilmember Brooks stated he also has an inoperable vehicle and he is waiting for funds to repair it, adding he thinks the code is more concerned with cars that are abandoned. Councilmember Brooks stated he doesn't know if a solution to this would be to get a permit to keep the vehicle with the intention of repairing it and the permit being good for a few years or to allow another way to store it. Councilmember Moncada stated the City code says 2 or more inoperable vehicles, and he realizes that there are situations like Councilmember Cook's, but if someone has more than 2 inoperable vehicles, they may need to get rid of 1. Mr. Garcia stated the number is arbitrary and it would be up to Council if they wanted to change the number, adding ultimately Staff is looking for a number from Council. Councilmember Wangsness asked about visibility from the street with Mr. Garcia stating that would be more of a zoning issue, adding there shouldn't be any adverse effects on adjoining property owners and that is something the Council can look at putting in the code. Councilmember Moncada stated different parts of the City would result in different views from the streets. Councilmember Brooks stated he thinks if there is one vehicle with weeds and grass surrounding it and it is not being taken care of, it could be considered too many as opposed to having 2 or 3 vehicles where the weeds are mowed and the area is taken care of which could be fine. Mr. Garcia then stated Number 28 on the additional definitions handout defines an exterior screened area, adding a one size fits all definition may not be appropriate, so Number 28 may be helpful. Mr. Garcia then stated he is looking to accomplish not having adverse impacts on adjacent properties, noting he would like to add Number 28 to the definitions and then noted it would be up to the Council. Councilmember Brooks stated as far as the number of inoperable vehicles goes, it seems like everyone is agreement on what he was saying but it was not decided on. Mayor King and Councilmember Moncada stated they agree it should say 2 or more. Councilmember Brooks asked about a vehicle in the street being considered an attractive nuisance with Mr. Garcia stating it could be considered an attractive nuisance; however he was still not looking to strong arm anyone and he wanted a code that everyone could live with. Councilmember Cook then stated he couldn't live with this because he has 3 inoperable vehicles and they are not junk, noting one hasn't run for 10 months, one hasn't run for 10 years and the other hasn't run for more than 10 years, but stated again, that they are not junk. Councilmember Cook then agreed they are definitely inoperable but stated they do not constitute a public nuisance or an attractive nuisance, adding people that drive by want to purchase them and again this sounds like it is a one size fits all definition. Councilmember Cook then stated there are a lot of people that have more than 2 inoperable vehicles that are not necessarily junk or destined for the junkyard and he thinks Council needs to either pick a higher number or find a different definition of inoperable. Mr. Garcia stated he will continue to research inoperable vehicles and will report back to Council.

City Attorney Gary Cohen asked if it would assist the Council if Mr. Garcia would prepare Chapter 9.2 with redlines and strikeouts incorporating the suggestions, and instead of going through it line by line, the Council could read it and then focus on the areas they want. Council consensus was to have Mr. Garcia do so. Councilmember Moncada stated he thinks the Council will still review it line by line. Mr. Garcia stated he will go ahead and do a redlined, knockout version with his recommendations and then schedule a worksession.

**ADJOURNMENT:**

Councilmember Brooks moved to adjourn. Seconded by Councilman Moncada. Motion passed 7-0.

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Toney D. King, Sr., Mayor

ATTEST:

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Vicki L. Vivian, CMC, City Clerk