

**THE REGULAR MEETING
OF THE MAYOR AND CITY COUNCIL OF BENSON, ARIZONA
HELD MAY 13, 2013, AT 7:00 P.M.
AT CITY HALL, 120 W. 6TH STREET, BENSON, ARIZONA**

CALL TO ORDER:

Vice Mayor McGoffin called the meeting to order at 7:00 p.m. with the Pledge of Allegiance. Vice Mayor McGoffin introduced Adam Gilbert with the Baha'i Faith who gave the invocation. Vice Mayor McGoffin then introduced Pastor Lupe Diaz who offered a special invocation dedicated to Mayor Toney King and his recovery.

ROLL CALL:

Present were: Vice Mayor Lori McGoffin, Councilmembers Ron Brooks, David Lambert, Nick Maldonado, Chris Moncada and Al Sacco. Excused was Mayor Toney King.

EMPLOYEE RECOGNITION:

Vice Mayor McGoffin recognized Kelly Jeter for 5 years of service with the City of Benson. Vice Mayor McGoffin recognized Troy McGoffin for 25 years of service with the City of Benson.

PROCLAMATION:

Councilmember Chris Moncada read a proclamation declaring the month of May as Older Americans Month. Councilmember Sacco then read a proclamation declaring Monday, May 27, 2013 as Memorial Day. Vice Mayor McGoffin then presented the Proclamation to the Ed Meza of the VFW.

PUBLIC HEARING: None

CALL TO THE PUBLIC:

Alan Berkemeier addressed Council regarding the Relay for Life event that was held on April 21, 2013. Mr. Berkemeier thanked all of those who participated and volunteered. Mr. Berkemeier's remarks will be retained with the Council packet.

Dianne Tipton addressed Council regarding New Business Item 6 and a recall. Ms. Tipton's remarks will be retained with the Council packet.

Vice Mayor McGoffin announced if there are any outbursts from the audience this evening the offenders will be removed by an officer. Vice Mayor McGoffin stated this is a professional meeting and will be conducted as such.

Mr. Don Groner addressed Council regarding the possible future City Code that was written by Mr. Garcia. Mr. Groner stated he has some suggestions, adding Arizona has the ROC (Registrar of Contractors) and the Sierra Vista newspaper reported last month in Willcox, 9 people were charged with unlicensed contracting, violating all kinds of rules and regulations simply because the City of Willcox is not signed on to the Arizona Registrar of Contractors and he does not know if that is the same case with the City of Benson. Mr. Groner stated the benefit of all of this is that when contractors come into town, they show their qualifications by document and experience. Mr. Groner stated if you have unlicensed contractors roaming around then of course the owners of the property get taken for a ride. Mr. Groner suggested instead of having an overpriced, overpowered zoning supervisor who has basically no experience in the construction model in Arizona and has no experience as a licensed contractor, the Council should eliminate that position

and make a zoning supervisor of someone in their 40's or 50's that has a general contractor's license and experience who will accept a reasonable amount of money. Mr. Groner stated this would resolve several issues because this person would be knowledgeable in all requirements of contracting and the safety measures for the public. Mr. Groner added that it could be any project below a certain dollar amount would not require a licensed contractor. Mr. Groner stated the second thing would be that a registered contractor would come to the City with their documentation proving their qualifications for any future lawsuits and the public is protected so they have somebody to go to or respond to and get response back if there is an issue. Mr. Groner stated this would save money for everyone, the Council would not make the taxpayer responsible for what the contractor does and the contractor would be fined instead of the taxpayer. Mr. Groner stated it is amazing it has never been considered. Mr. Groner then stated he had heard that someone brought in a code book from somewhere like Chicago, adding Benson is not Chicago, and following zoning codes written for a place like Chicago does not make sense.

Stephen Insalaco addressed Council stating he is sending thoughts and prayers for Mayor Toney King in hopes for a speedy recovery. Mr. Insalaco then stated there is a need to promote the airport for the economic development plan, adding the airport is a great resource and the City, after 13 years, has not fully realized the return on investment or the full economic potential of the airport, noting our exceptional flying weather, the amount of open space surrounding the airport and the uncontrolled airspace. Mr. Insalaco pointed out it is because the City has failed to significantly promote the airport giving for example that there is still no welcome sign announcing the name of the airport or the field elevation which is traditional at most airports. Mr. Insalaco asked each Councilmember to think of ways to promote the economic development of the Benson Airport adding the plan should be to develop a premier general aviation entity, one that brings a wide spectrum of aviation services and jobs to the area and generates an airport revenue stream that makes the airport a self-supporting municipal business entity. Mr. Insalaco stated as the airport develops and grows, the economic impact will eventually spill into the community and the residents will feel the benefits of having an airport. Mr. Insalaco stated the City needs to take advantage of having an airport in the city, adding the airport doesn't just serve the city, it serves the region. Mr. Insalaco stated the questions that need to be asked are how to encourage additional pilots to use the airport, to bring investors, aviation business entities, additional aviation services and many other services to the area, as well as how the City could bring the U.S. Forest Service to the property and businesses such as Lifeline, FAA Test Range and UAS Operators which are some of the permanently based programs that can be looked at. Mr. Insalaco stated part of the plan should include making some of these things a reality by including members of SAEDG or an airport advisory committee. Mr. Insalaco then stated he is asking Council to seriously consider a new plan for greater growth and economic development than has previously been seen.

J.T. Moffett addressed Council stating that \$96,000 per year is what we pay for Brad Hamilton and when he asked why the City paid so much, he was told that Mr. Hamilton has an engineering degree and does the City's engineering. Mr. Moffett asked then why have there been engineering firms paid the past 6 years and why it is that Mr. Hamilton, with all of his degrees and experience in City management, withheld an insurance claim form from Little Caesar's Pizza. Mr. Moffett stated surely in all the wealth of Mr. Hamilton's experience he knows the first thing a manager should do when a customer claims damage is turn it over to the insurance company to do an investigation and pay the claim if it is justified. Mr. Moffett stated what Mr. Hamilton has done is like getting into an accident, taking pictures of the vehicles, waiting 3 months, then sending in the pictures to get paid; and when the insurance company asks for the police report investigation, Mr. Hamilton would say "I didn't get one, but trust me, it's not my fault." Mr. Moffett stated instead of going through the proper channels and affording Stephen Rose every opportunity to resolve the matter, Mr. Hamilton withheld the claim form for 3 months and then to add insult to injury, after admission of guilt from a City employee, Mr. Hamilton sends rags with oil on them to be tested 3 hours away to determine fault. Mr. Moffett stated now Mr. Hamilton further provokes Mr. Rose by standing firm in this idiotic lab test claiming the City is innocent. Mr. Moffett stated he wonders how long Vice Mayor McGoffin and her fellow members of the voting block will tolerate this circus coming from our esteemed overpaid Public Works Director adding Vice Mayor McGoffin has been a huge supporter of inflated salaries for City management. Mr. Moffett then stated he feels Vice Mayor McGoffin has hit an all-time low by circulating recall petitions, started by Sheila Perkins who created Chapter 7 Codes, trying to recall

Councilmember Brooks who is against the new codes. Mr. Moffett stated Councilmember Ron Brooks, along with Councilmember Sacco, has been the dissenting vote to every item on the agenda that has been an injustice to the people of Benson. Mr. Moffett stated he feels the good ole boys don't want to lose power. Mr. Moffett stated Vice Mayor McGoffin has no respect for the people of Benson and it is a travesty and unheard of in the history of Benson for a Vice Mayor to actively campaign to recall a fellow Councilmember out of bitter vindictiveness; the recall is frivolous and idiotic and will cost the taxpayers of Benson \$10,000.

Paul Lotsof addressed Council regarding the terms of Councilmembers and stated according to a published report, the new Council will be seated in early July but he doesn't think that is correct. Mr. Lotsof stated there is an ordinance stating the length of the terms but it does not state a date in which they should take office. Mr. Lotsof stated that if you use the dates from the June 22, 2009 New Business Item 1, you see that Mayor Fenn and Councilmembers Lambert, McGoffin and King were seated that night. Mr. Lotsof stated that 4 years from that date would be June 22, 2013 and used the same calculations for Mayor King's last election, adding Mayor King was seated on June 27, 2011. Mr. Lotsof stated that since there is not meeting on June 22 or June 27, seating should be done at the meeting on June 24. Mr. Lotsof stated the previous City Clerk Karen Johnson would hold a swearing in ceremony where no public was invited, but he doesn't know if current City Clerk Vicki Vivian has ever done that or not. Mr. Lotsof then stated for several days there were 2 separate Councils in office which is illegal and the City ordinance needs to be fixed to comply with the new State law.

Jim Gray addressed Council regarding New Business Item 6 and New Business Item 7, which had been removed. Mr. Gray stated when an ordinance is passed, it doesn't take effect for 30 days. Mr. Gray stated he has heard a little here and there about the censuring of a Councilmember and he doesn't know why anyone would want to do that. Mr. Gray then stated he wished the City Manager was here today because if it involves a City employee, there is a chain of command; there are Department Heads, the City Manager and the City Attorney. Mr. Gray stated that a grievance should not be taken to the City Councilmembers individually because there could be friendship or nepotism or backbiting and the Council is opening a whole can of worms against each other, adding any grievance should follow the chain of command and the City Manager can determine if it should go to City Council. Mr. Gray suggested to the new Councilmembers to keep an arm's length from City employees because it is too easy to get involved with them personally and it is not right, adding the Council should use the City Manager to handle these things.

CITY MANAGER REPORT:

Acting Interim City Manager Vicki Vivian addressed Council, giving the dates of upcoming meetings and events.

- May 14, 2013 – Library Advisory Board, 4:00 p.m., City Library
- May 15, 2013 – City Council Budget Worksession, 7:00 p.m., City Hall
- May 18, 2013 – Historic Preservation Commission, 9:00 a.m., City Hall
- May 20, 2013 – City Council Budget Worksession, 7:00 p.m., City Hall
- May 22, 2013 – City Council Budget Worksession, if necessary, 7:00 p.m., City Hall
- May 27, 2013 – Memorial Day, City Offices Closed
- May 28, 2013 – Community Watershed Alliance, 6:30 p.m., City Hall

- May 27, 2013 – City Pool Opens

Acting Interim City Manager Vicki Vivian reminded everyone to check the ADOT project closures at www.adot.gov for more information. Ms. Vivian then stated the pool will open on Monday, May 27, 2013 and also reminded everyone that Monday, May 27, 2013 is Memorial Day and City offices will be closed.

NEW BUSINESS:

1. Consent Agenda

- 1a. Minutes of the April 8, 2013 Regular Meeting
- 1b. Minutes of the April 22, 2013 Regular Meeting
- 1c. Resignation of Allan “Archie” Archer from the Board of Adjustment
- 1d. Appointment of Jason Miller to the Board of Adjustment
- 1e. Resolution 13-2013 of the Mayor and Council of the City of Benson, Arizona, authorizing the Chief of Police to apply for a grant from the Tohono O’odham Nation for Training Equipment
- 1f. Resolution 14-2013 of the Mayor and Council of the City of Benson, Arizona, authorizing the Fire Chief to apply for a grant from the Tohono O’odham Nation to Purchase Equipment
- 1g. Invoices processed for the period from April 12, 2013 through May 2, 2013

Councilmember Brooks requested to pull items 1d and 1g from the Consent Agenda. Councilmember Moncada made a motion to approve the Consent Agenda without items 1d and 1g. Seconded by Councilmember Sacco. Motion passed 6-0.

Consent Agenda – Items Removed:

- 1d. Appointment of Jason Miller to the Board of Adjustment

Councilmember Brooks stated he had spoken to Jason Miller and will be able to meet with Mr. Miller, as the acting Chair of the Board of Adjustment, next week to talk about his qualifications. Vice Mayor McGoffin asked if there were any Board of Adjustment meetings coming up with Councilmember Brooks stating there will be one in June, but the actual date has not been set. Ms. Vivian stated the next Regular Council meeting will be on June 10, adding Council could address this item then, if they chose. Councilmember Brooks then made a motion to table the appointment of Jason Miller to the Board of Adjustment to the June 10, 2013 meeting. Seconded by Councilmember Sacco. Motion passed 6-0.

- 1g. Invoices processed for the period from April 12, 2013 through May 2, 2013

Councilmember Brooks stated there was a change in the way the format was supplied to the Council, adding in the past it used to be supplied with descriptions and he would like to go back to that. Finance Director Megan Moreno stated when she took over the Finance Department she provided the first report and had asked for feedback and after not hearing anything from any Councilmember, had moved forward with the condensed report. Ms. Moreno stated she is open to going back to the previous report or can create a more detailed user-friendly report. Vice Mayor McGoffin asked if Councilmember Brooks would like to meet with Ms. Moreno to go over some reports and choose one. Councilmember Brooks asked if Ms. Moreno could supply the previous report showing more description and each department’s costs. Councilmember Moncada made a motion to approve item 1g. Seconded by Councilmember Lambert. Motion passed 6-0.

2. Presentation by SEAGO Economic Development Program Manager Akos Kovach on the economic development potential for the City of Benson

Acting Interim City Manager Vicki Vivian stated SEAGO Economic Development Program Manager Akos Kovach will give a presentation on “Why Benson is poised for new employers and new jobs.” Ms. Vivian stated this brief presentation will identify the best features of what the City of Benson has to offer site selectors, industry and investors and is ready to promote the economy of this I-10 and railroad rich growth area.

Mr. Kovach introduced himself and stated he was born in Mittenwald, Germany, but he is Hungarian as his parents fled Hungary at the end of the war, adding when his family immigrated, they came through Ellis

Island. Mr. Kovach stated he lived all over the country because his father was a professor and during that time they formulated their fervor for the country and became naturalized citizens. Mr. Kovach stated he went into the Army, served in the National Guard, is a father and a grandfather, and has been a business owner, an employer and a commercial and residential mortgage banker. Mr. Kovach stated he is with SEAGO, the SouthEastern Arizona Governments Organization, which has a 14,000 square mile footprint, adding it is a big territory but it is a lot of fun. Mr. Kovach stated he had no idea when he was invited by Mr. Cox and Councilmember Moncada that the meeting would be so lively, adding one thing that is evident is that people really do have a lot of passions and one of the things we love about this Country is that we have the freedom to express ourselves and as we do that, we actually are living the sentiments of our forefathers through the Bill of Rights and the Constitution. Mr. Kovach stated the passions expressed here earlier this evening show there is willingness in a community to discuss and to try new things and that's one of the things that underscores the fact that Benson is poised for growth and has the citizenry and Council that want to get involved. Mr. Kovach stated investors want to know what the community is like and what the leadership is like, adding it is great that we have I-10, the railroad, natural wonders and a lot of regional attractions, but that's insufficient without willingness to take action. Mr. Kovach stated by reaching out and creating new job centers like a Foreign Trade Zone for example, or some of the other opportunities like the museum farm that has been discussed; things like that will catapult Benson into a more positive business environment. Mr. Kovach stated one of the things he has discussed with the Economic Development SubCommittee has been capturing a larger percentage of the traffic off I-10 and one idea is a low-power FM station the City or a non-profit could use to pull traffic off I-10, noting it would also offer a new public forum that serves a definitive purpose. Mr. Kovach stated adding a local TV channel through Cox Communications can promote the City, depending on how many hours a day it's run and the information for the channel should be in our franchise agreement. Mr. Kovach stated Benson has employers and is a job corridor, which hallmark good things for the future. Mr. Kovach stated it is important everyone feels confident in asking any of your resources for help, adding you should never be embarrassed to ask for help. Mr. Kovach stated the key to asking for help is to treat it like a business; with a business plan covering 3-5 years, a financial model to show how the enterprise will sustain itself, and probably the key thing is developing a group of stakeholders that are passionate about whatever this enterprise is going to be. Mr. Kovach stated having all of the resources available doesn't mean anything unless you ask them to step up to the plate. Mr. Kovach then stated leadership changes and people come and go, but the most important thing to remember is that it's important to interact in a positive and professional manner and allow them time to hear your story and investigate the facts and come up with a solution. Mr. Kovach stated Benson is poised for growth and the City will have to be bold and take action and do things that are not comfortable, and if you find yourself in a rut, you have to pick your head up and take the opportunity to look around and reach out. Mr. Kovach stated he can say from his experience of working with a lot of cities throughout the state, he has always had very good results working with the City of Benson.

Councilmember Moncada asked Mr. Kovach to explain, for the rest of Council, the Foreign Trade Zone and what our role is in that. Mr. Kovach stated the City does not necessarily have to take a role in Foreign Trade Zones, however they are huge job and employer magnets. Mr. Kovach gave Phoenix as an example stating since they have become a Foreign Trade Zone, they have increased by 4,000 employees, adding the City could expect to add up to 500 jobs in Benson because of the intermodal capability. Mr. Kovach stated he is confident sometime in the future the Sonora Railroad will re-open at Naco because Union Pacific now owns the right-of-way. Mr. Kovach stated it will be up to people like the City Council to show there is a demand here and now. Mr. Kovach stated the Financial Times came out with a report stating ports are a great way to invest money and the port of Guayamas and the City of Nogales and Sonora are on the top 10 list in 2 different categories, which will help Benson. Mr. Kovach stated this will take traffic from Long Beach and make it quicker for companies to ship by rail and bring traffic through Benson, adding this is a long way of saying Benson is in a great place but it will take vision to actuate things. Councilmember Brooks stated he appreciated his history and asked what SEAGO is doing now for Benson and what they can do in the future. Mr. Kovach stated SEAGO handles several functions like CDBG projects, the housing department handles foreclosure prevention, the Save our Home program, buyer opportunities, and

our regional transportation department, regional mobility, and the administrative council almost always meets in Benson at the College and they also have an economic development department.

3. **Trust Assurance Agreement to Construct Subdivision Improvements with Benson House, L.L.C. for House Ridge Estates Lots 1, 2, 3, 10, 11, 12, 13, 14, and 18, Blocks 1 and 2**

Acting Interim City Manager Vicki Vivian stated this trust assurance agreement is with the new owners of the House Ridge Estates, adding this is a routine item when a subdivision transfers owners. Ms. Vivian explained the lots left in the existing trust agreement are put into a new trust agreement and then there will be a full release on the existing trust, which is the next item of business. Councilmember Brooks asked George Scott to come forward to address the Council. George Scott stated they are transferring the property to Benson House, L.L.C. Councilmember Brooks asked if this agreement was for making assurances to the City of Benson for development at House Ridge with Mr. Scott explaining any developer signs a trust assurance agreement with the City to make sure the improvements get put in the subdivisions and the City has to sign off on each of them before the certificate of occupancy is issued to make sure the developer has complied. Ms. Vivian stated this agreement is to also ensure that infrastructure is up to City standards before the City accepts it. Councilmember Brooks asked if the City once owned this property with Vice Mayor McGoffin and Mr. Scott both answering no. Councilmember Brooks stated he does not know anything about Benson House, L.L.C., with Ms. Vivian responding that is why a trust assurance agreement is put into place. Mr. Scott stated the company is the same company that has been building houses up there already; there are 6 houses already built and sold. Councilmember Moncada made a motion to approve the Trust Assurance Agreement to Construct Subdivision Improvements with Benson House, L.L.C. for House Ridge Estates Lots 1, 2, 3, 10, 11, 12, 13, 14, and 18, Blocks 1 and 2. Seconded by Councilmember Lambert. Motion passed 6-0.

4. **Resolution 15-2013 of the Mayor and Council of the City of Benson, Arizona, authorizing the release of Assurances for the Subdivision known as House Ridge Estates Lots 1 through 18, Blocks 1 and 2**

Acting Interim City Manager Vicki Vivian stated this resolution will release the lots from the old trust assurance agreement. Councilmember Brooks made a motion to accept Resolution 15-2013. Seconded by Councilmember Sacco. Motion passed 6-0.

5. **Resolution 16-2013 of the Mayor and Council of the City of Benson, Arizona, approving the Benson Public Library's internet use policy in accordance with A.R.S. §§ 34-501 and 34-502**

Library Director Peggy Scott stated the Arizona Revised Statutes governing this issue went into effect on August 1, 2012 which stipulates stronger Internet filtering policies for schools and public libraries and makes accessing certain content on a computer easily accessed by children, illegal for both minors and adults. Ms. Scott stated the library has already implemented filters that will prevent all users from accessing obscene material and child pornography and in addition will prevent minors from accessing content deemed harmful to minors as specified by state and federal law. Ms. Scott stated this will be reviewed by Council every three years, which is required by the state. Councilmember Sacco asked if this has been in effect for three years with Ms. Scott explaining that ever since the library has had the internet, it has been in compliance with the law. Councilmember Sacco stated he would like to commend the library for protecting minors and asked if Ms. Scott is recommending any changes. Ms. Scott stated the ordinance has been stipulated by the state and she is not changing any policies, she is just making the City Library compliant, adding if the Library is not in compliance, it could possibly lose 10% of its funding. Councilmember Moncada made a motion to approve Resolution 16-2013. Seconded by Councilmember Lambert. Motion passed 6-0.

6. **Ordinance 563 of the Mayor and Council of the City of Benson, Arizona, amending the City Code, Chapter 3, "Administration", to clarify that the City Council by motion may regulate Councilmembers' improper conduct via censure and exclusion order**

Acting Interim City Manager Vicki Vivian read from Council minutes of the April 22, 2013 Regular Meeting "Council consensus was for Mr. Masee to present something at the next Council meeting regarding censuring members of the Council." Ms. Vivian stated she placed an amended Ordinance 563, just prior to the meeting, in front of Council adding the only change is that Section 4 is now the Severability section which reads if any chapter, section, subsection, sentence, clause or phrase of this Ordinance is for any reason is held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. Ms. Vivian stated that is a typical section that is placed in almost all ordinances. Councilmember Sacco stated he would like to add a definition section on proper conduct and site examples of improper conduct, adding without it, how would a Councilmember know they have acted improperly and that it may be a good idea to restate Article 3.3 as part of this Ordinance. City Attorney Michael Masee pointed out the asterisks above Section 1 and stated they mean to show omitting, for the purpose of this ordinance, content which is already present in the City Code which is Subsections A and B. Mr. Masee stated after the discussion last week, he assumed Council would already be familiar with or have already accessed the Article 3-3 Subsections A and B and other sections leading up to that. Mr. Masee stated Subsection A is the substantive standard of conduct which is standard language that appears in many other cities' codes. Mr. Masee stated he has done some research and found Douglas has this language, almost verbatim, in their charter and Sierra Vista also has this language in their in code. Mr. Masee stated this is standard language; the only enforcement mechanism is the standard penalty which makes a violation a Class 2 misdemeanor, which is extraordinarily heavy handed for this misconduct. Mr. Masee stated in Subsection A, Councilmembers deal with City administrative services through the City Manager, however they can contact employees below the City Manager for the purpose of inquiry, adding this Subsection C does not limit that contact. Mr. Masee then stated Subsection C states if Council says a Councilmember does not adhere to Subsection A then Council has authority to censure that Councilmember, adding even without this ordinance, the Council has the authority to do that. Mr. Masee stated in the memo he gave to Council last week he cited a case from the 6th Circuit Court of Appeals which recognizes legislative bodies by their very nature, have the authority to regulate and police their own members' conduct. Mr. Masee added the Court, in that case, stated it is beyond dispute that legislative bodies have this authority. Mr. Masee stated he had added one more thing that a censured motion could include, but didn't have to, an order of exclusion. Mr. Masee stated because Council has complete authority over City property, Council can stop a Councilmember or a member of the public, who is creating disruption, from entering City property for a particular period of time. Mr. Masee then stated nobody has a property right to enter onto City property for the purpose of contacting employees while they are performing their duties. Mr. Masee added the order of exclusion would not keep the Councilmember from getting their mail or interacting with the City Clerk or City Manager and for purpose of inquiry, they may contact City staff by email or phone. Mr. Masee stated if employees are uncomfortable with the email or phone call, that employee may forward the phone call or the email to the City Manager or their supervisor to handle the situation. Mr. Masee stated he does not agree that due process must apply and he does not agree with the opinion handed out by Councilmember Brooks; a censure is a free expression used in order to express a sentiment and the Council has the right to do that. Mr. Masee reconfirmed it is not a requirement to have in the City Code, although it is good to clarify authority and have an opportunity to regulate conduct; and to correct behavior that might be stepping over the line. Councilmember Sacco stated what it boils down to is "he said, she said" and asked if it should be required to provide written evidence because if it isn't, someone could accuse without proper evidence. Mr. Masee stated he believes the question is vested in the presiding officer and if the presiding officer wants to conduct, essentially, an evidentiary type of hearing adding in his opinion, Council does not need to comply with due process because Council is not touching on a Councilmembers constitutionally protected property rights. Mr. Masee stated Council does not have to comply with a Loudermill type of due process hearing, they just have to follow a procedure that is consistent with the will of the body; for example if a Councilmember doesn't agree with the Mayor, the Councilmember may then appeal to the majority for a decision. Mr. Masee stated Council may ask that a written report on the issue be done by the City Manager or someone else at Council pleasure. Councilmember Sacco stated this is after the fact and by that time the Councilmember has already been censured with Vice Mayor McGoffin stating no; it would be done at the same time in an open meeting. Councilmember Sacco stated he wants language added to have the accuser provide written evidence,

otherwise it boils down to “he said, she said” and asked Mr. Massee how the court looks at that. Mr. Massee explained the 6th Circuit stated in its opinion that these sorts of matters have been part and parcel of a legislative body in the Anglo and American tradition of Self Government for centuries. Mr. Massee stated legislative bodies regulate a member’s conduct and if there is a sense that a member is overstepping, then the body can censure, adding if a censure is made, a court will not determine facts or say the censure is wrong because a censure is vested in the discretion of the public body. Mr. Massee stated the procedures for conducting discussion of a censure are vested in the discretion of the presiding officer. Vice Mayor McGoffin stated the censure just redirects a Councilperson to do what they should be doing anyway. Councilmember Sacco stated the code should provide guidelines with Vice Mayor McGoffin answering that is already in the previous section. Mr. Massee stated a censure simply gives Council an opportunity to express a sentiment that someone is overstepping their boundaries. Mr. Massee added he consulted with the City Attorney for Douglas where they have had a similar situation; the Mayor was overstepping his role and directing Staff on how to perform and the rest of the Council moved and adopted a motion of no confidence, which is not found in their charter or code, but was just an expression put into a resolution.

Councilmember Sacco asked for case law with Mr. Massee stating case law was cited in a confidential memo dated May 10. Councilmember Moncada stated he didn’t believe he received that memo with Vice Mayor McGoffin stating it was sent to everyone on Council. Mr. Brooks asked if it should be in the packet with Vice Mayor McGoffin stating it was received in an email on May 10 at 5:16 p.m. from Jim Cox, adding the email said was a Censure Memo and Censure Items with an attachment from Mr. Massee. Councilmember Sacco stated he wanted copies of the memo and asked why it was not put into the packet. Ms. Vivian stated the memo was sent out after the packets were distributed. Mr. Massee stated the memo was in response to a request made by the Mayor via Mr. Cox. Councilmember Lambert stated Mr. Massee had already answered his questions. Councilmember Brooks stated this is a vindictive type of ordinance being created and he got an opinion from a reputable attorney in Arizona who does not see this as Mr. Massee does. Councilmember Brooks advised Mr. Massee the other attorney’s opinion stated this ordinance would be violating elected officials’ First and Fourteenth Amendment rights and he knows that anyone being accused deserves their day in court and to stand up to their accusers. Councilmember Brooks stated Council is a legislative body, not a judicial body and has no right to judge anyone. Councilmember Brooks stated if an employee has a problem with a Councilman, the employee may go to court and get a restraining order against the Councilman adding that does not mean the Councilman cannot go to City Hall. Councilmember Brooks stated this process is already in the City Code, it is a legislative process in the code with judicial consequences. Councilmember Brooks then stated his complaint with this ordinance is that Councilmembers can go after other Councilmembers, there are not consequences for it and it can be a free day for everyone. Councilmember Brooks stated this won’t stand up in court and stated Mr. Massee is wrong in stating this has to do with property rights. Councilmember Brooks suggested to Council that this amendment should be voted down in order to avoid possible lawsuits brought forward by a Councilmember whose rights have been violated. Councilmember Sacco again suggested that accusers should provide written evidence. Councilmember Maldonado stated something has to be in place and this is a step and it is in the Arizona Revised Statutes and that is all he can say. Councilmember Moncada stated he would like to see more steps in the ordinance and clarification and see it written out step-by-step as far as a verbal warning, a written warning and a time period to refrain from entering into City property so that it is not an indefinite period of time. Vice Mayor McGoffin stated the Council needs a policy for when a Councilmember doesn’t see they have done anything wrong, and the Mayor and the Vice Mayor have sat down and talked with them, and the Councilmember thinks they can do whatever they want because they are an “elected official.” Vice Mayor McGoffin stated when nothing gets through to that Councilmember, the Council has to do something besides talking. Vice Mayor McGoffin then stated it is frustrating when she gets first-hand and second-hand information and she also sees things and she doesn’t know whether this ordinance is the answer or a recall is the answer. Vice Mayor McGoffin stated individual Councilmembers are not in power and should not schedule meetings with employees, adding Councilmembers need to get approval from the entire Council by a majority vote to hold a forum and they are not to meet one-on-one with a Department Head unless Council has agreed to that meeting and they are not to meet with an employee. Vice Mayor McGoffin stated we cannot have a hostile work environment because employees feel like they have 7 bosses, noting this is where law suits come in, adding the employees have one boss

which is the City Manager. Vice Mayor McGoffin then stated Council are the policy-makers not the enforcers, and direction needs to be approved by Council, not an individual Councilmember. Vice Mayor McGoffin stated she didn't get a chance to read Mr. Wenker's opinion, because she received it as the meeting started and she believes the Mayor wants this first and foremost, adding she would like to table this and have Mr. Massee work on it a little bit. Vice Mayor McGoffin made a motion to table Ordinance 563 until the next meeting when the Mayor is back. Seconded by Councilmember Lambert. Councilmember Brooks stated he is the one that put on the Golf Forum on and invited City employees on their own time, not on City time with Vice Mayor McGoffin stating the forum was presented as a City event. Councilmember Brooks stated the forum was a good thing for the town with Vice Mayor McGoffin stating it was a good thing but was still not done correctly. Councilmember Brooks stated he agrees on tabling this item. Councilmember Moncada stated he would like to see clear steps that the Mayor takes and a time frame that a Councilmember will be barred from entering City property. Mr. Massee stated a motion would clarify a specific period of time if the motion included an order of exclusion. Mr. Massee stated he will work on that. Vice Mayor McGoffin called for a vote with Councilmember Brooks interrupting stating he had more comments. Vice Mayor McGoffin stated she has called for the vote and there will be no more discussion. Motion passed 5-1 with Councilmember Brooks voting nay.

~~7. **Discussion and possible action regarding the censure of a Benson City Councilmember**~~

(This item had been previously removed by an amended agenda.)

8. **Discussion and possible action regarding the cancellation of the May 27, Regular City Council Meeting**

Acting Interim City Manager Vicki Vivian stated the next Regular Council Meeting falls on Memorial Day. Ms. Vivian then explained there are several budget meetings in May, and a Special meeting could be called if there was a need to do so. Councilmember Moncada made a motion to cancel the next Regular Council meeting. Seconded by Councilmember Lambert. Motion passed 6-0.

9. **Discussion and possible action to designate \$4,000 to advertise the 4th of July Festivities**

Councilmember Moncada stated he has had discussions with Dick Ferdon and Laura Parkin and they are having trouble raising funds for the 4th of July Celebration due to having to compete with the Bluegrass Festival and the Relay for Life Event. Councilmember Moncada stated the reason for this item is to designate funds to advertise only; all other funds needed will still be up to the 4th of July Committee to raise. Councilmember Sacco asked if they were going to include newspapers with Recreation Coordinator Laura Parkin stating yes, with Wick Communications. Councilmember Brooks inquired about Cherry Creek Radio with Ms. Parkin stating Sierra Vista has 3 different radio stations with different demographics, adding the Rodeo Committee has used these stations for rodeo advertising. Ms. Parkin stated it helps by hitting demographics that the CAVE radio station may not hit. Councilmember Brooks asked if they were rock and roll stations with Ms. Parkin stating she believes they are country stations. Councilmember Brooks stated he doesn't know how well the laser show is going to go over and stated this is a good idea to help ensure it will have a good turnout. Councilmember Lambert stated he would like to add this money into the budget so next year it does not need to come back to Council because it will already be there. Ms. Parkin stated it is difficult for the Committee to raise money adding the Committee is aware of how much money they need to raise, and knowing they have the money to advertise will help immensely. Councilmember Lambert asked what the amount spent on advertising historically has been with Ms. Parkin stating 3 years ago the Committee didn't advertise at all due to no money and 2 years ago they didn't pay the bands in order to pay for advertising. Ms. Parkin emphasized it is progressively getting more and more difficult to get sponsors for this event. Councilmember Lambert asked Megan Moreno to put the money into community enrichment and they can talk about it at the next budget meeting. Councilmember Lambert made a motion to pull \$4,000 out of the Community Enrichment budget to pay for advertising for the 4th of July Celebration. Seconded by Councilmember Brooks. Motion passed 6-0.

10. Discussion and possible action regarding the process for selection of a permanent City Manager

Vice Mayor McGoffin stated she and Mayor King had talked about this and think it is time to decide what to do about a permanent City Manager and asked for suggestions on what the next plan of action is, now that we the have résumés. Councilmember Maldonado stated he thinks there needs to be a committee with new Councilmembers on it. Ms. Vivian stated the League has given their top 10 applicants, noting all résumés submitted are available for viewing by appointment in the Human Resource office. Ms. Vivian stated she and the Interim City Manager have talked about processes, stating if Council appoints a committee, it will follow open meeting laws. Councilmember Brooks asked for clarification that the incoming Councilmembers will sit with current Councilmembers and will have a right to vote, with Vice Mayor McGoffin stating each member of the committee will vote on a recommendation that will be made to the Council, adding the Council will then take the final action. Councilmember Brooks made a motion to create a selection committee including current and incoming electors. Seconded by Councilmember Maldonado. Motion passed 6-0.

Vice Mayor McGoffin stated Councilmember Moncada has expressed interest in being the chairman of this committee with Councilmember Brooks stating he would like the Mayor to chair the committee. Councilmember Moncada stated Mayor King has stated he was not interested in being the chairman. Acting Interim City Manager Vicki Vivian stated Council could choose both a chair and a vice chair. Councilmember Moncada stated this needs to be done now in order to move forward on hiring a new City Manager. Councilmember Brooks stated the committee could leave it up to the City Clerk to schedule committee meetings. Vice Mayor McGoffin stated she would like to appoint Councilmember Moncada as chairman and get the ball rolling. Councilmember Brooks stated Councilmember Moncada had already been appointed the chair of the attorney selection committee and he, Mr. Brooks, would like to be appointed. Councilmember Lambert made a motion to appoint Councilmember Chris Moncada chairman of the committee. Seconded by Councilmember Maldonado. Motion passed 4-2, with Councilmembers Sacco and Brooks voting nay.

DEPARTMENT REPORTS: None

ADJOURNMENT:

Councilmember Moncada moved to adjourn at 9:01 p.m. Seconded by Councilmember Maldonado. Motion passed 6-0.

Toney D. King, Sr., Mayor

ATTEST:

Vicki L. Vivian, CMC, City Clerk