

**THE WORKSESSION  
OF THE MAYOR AND CITY COUNCIL OF BENSON, ARIZONA  
HELD JULY 14, 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, Chris Moncada and Jeff Cook. Absent was: Councilmember Peter Wangness.

**NEW BUSINESS:**

**1. Discussion and possible direction to Staff regarding City Council Policies and Procedures, and/or City Code as related to City Council conduct or procedures**

City Clerk Vicki Vivian addressed Council stating the “Council Policies and Procedures” document was brought before Council in worksessions to address basic Council proceedings, actions and expectations. Ms. Vivian then stated at a worksession held on August 12, 2013, the Council decided to hold worksessions as needed to address possible changes to the draft, as well as possible Code changes. During the course of these worksessions, Council made changes to the draft and she sent the changes, as well as the minutes to the City Attorney for his legal review. Ms. Vivian then stated the draft being presented now has the Council requested changes and changes the City Attorney determined were needed. Ms. Vivian then stated once Council review and approval is received, which will take place a future Council meeting; Staff will work on Chapter 2 of the City Code to ensure consistency.

City Attorney Gary Cohen then addressed Council stating he spent many more hours reviewing the document than he anticipated, adding he wanted it to be consistent with City Code. Mr. Cohen then stated he also removed specific references to the City Code, adding he tried to retool the references with an eye toward making the document one that would stand the test of time without having to change it when the Code changes. Mr. Cohen then stated he also tried to encapsulate direction from the Mayor and Council in trying to balance various issues. Mr. Cohen then stated he would be happy to address anything the Council wished to review.

Mayor King asked if the Council had reviewed the presented draft with several Councilmembers stating they hadn’t been able to review the entire document. Mr. Cohen stated he could point changes from the previous draft to Council or they could wait and schedule another worksession at a later date with Councilmember Brooks stating he thought the Council should go ahead and start the review since the Council was here to do so.

Councilmember Cook stated he would like to start with Section VIII – Motions, stating he has problem with Sections F – Voting and G – Abstention. Councilmember Cook then read the language in Section VIII G – Abstention, “No member of the Council shall be excused from voting, except upon matters involving the consideration of his or her own personal or official conduct, business interest or property, or in which he or she declares the appearance of or an actual conflict of interest. A Council Member who declares that he or she may have the appearance of or an actual conflict of interest shall leave the dais after the agenda item is announced and before any discussion of that agenda item. A voluntary abstention shall count as an “aye” vote...” Councilmember Cook then stated the language sounds like voter fraud and stealing someone’s vote and that it was intended specifically for him. Councilmember Cook then stated the incident he is referring to is when the Council put a soft hiring freeze on and took the authority to do the City Manager’s job of hiring and firing, adding he refused to vote on the hiring of a seasonal part-time

dishwasher. Councilmember Cook then stated when it comes to voting on any of the hiring and firing that are other than what the Council is authorized to do, which is the City Manager and City Attorney, then he is not going to vote for it or against it and he resents immensely his vote being stolen by the language that requires a voluntary abstention be counted as an “aye” vote.

Mr. Cohen then assured Councilmember Cook that he did not draft the language with Councilmember Cook in mind, adding there are two philosophies on how to approach abstentions and he included the proposed language after reviewing what he understood was direction from the Mayor and Council on how they wanted to deal with abstentions. Mr. Cohen then stated he borrowed the proposed language from the City of Scottsdale’s policies and procedures, but he didn’t see any law that governs abstentions and it was up to the Council to decide how to handle them. Mr. Cohen stated he was also trying to strike a balance, noting that an abstention only counts as an “aye” vote when a Councilmember abstains for a reason other than an actual or perceived conflict of interest, again stating he would be happy to draft new language if the Council wanted him to do so.

Councilmember Boyle asked if an abstention could just not be counted for that particular issue with Mr. Cohen stating the Council could implement such a policy, but would need to define how the abstention would affect the quorum of the Council.

Councilmember Moncada stated he liked the proposed language, adding he is sure eventually there will be a situation when a Councilmember or the Mayor decides not to vote because they don’t want to be on the record on a tough decision, such as during an election year, even when they don’t have a conflict. Councilmember Moncada then stated they may want to vote “present,” adding people see this happening in Congress all the time because they don’t want to vote and be held accountable for their vote when they are up for reelection. Councilmember Moncada then stated the way it’s written, the Councilmembers have to make a choice and vote, adding he thinks it’s perfectly acceptable because that is what the Councilmembers are here for. Councilmember Moncada then stated he thinks if a Councilmember has a legitimate reason to abstain, that’s one thing, but to just say they aren’t going to vote on an issue because they don’t want to be held accountable or they don’t believe in the issue, is unacceptable and the Councilmember wouldn’t be doing the job they were elected to do.

Councilmember Brooks agreed, stating the voters are entitled to the Councilmembers’ opinion on the issues before Council. Councilmember Moncada stated they are also entitled to get action on issues, and if all of Council decides they don’t want to make a decision on an issue and abstains, the Council needs to have something in place that moves the issue along. Councilmember Brooks agreed, stating Councilmembers could be abstaining all the time. Councilmember Moncada stated he understood Councilmember Cook, but he still felt the proposed language was appropriate. Councilmember Cook disagreed, with Councilmember Brooks stating he also thought it was inappropriate when the Council makes a decision about something and the dissenting Councilmember decides to say the Council is wrong and isn’t going to go along with them, adding he has been stuck with things he didn’t like, but he had to go along with them because that’s how it works. Councilmember Moncada stated it was part of the job.

Councilmember Cook disagreed, stating part of the job is to leave the authority of hiring and firing in the hands of the City Manager. Councilmember Cook then stated he was not part of the vote to take the authority away from the City Manager, adding he did not vote on the issue. Councilmember Cook then stated again, to assume the City Manager’s responsibility and to make those hiring and firing decisions is not the Council’s job and he thinks he has a legitimate right to neither vote for it or against it, adding on every other board, commission, all the way up through Congress and the Senate, members can vote “present.” Councilmember Moncada stated it is a Councilmember’s job to vote on agenda items, adding the reason he likes the language is because as a citizen, he is frustrated with members of Congress who vote “present” and don’t take a position on an issue instead of doing their jobs. Councilmember Moncada stated he thinks citizens deserve better than that, they deserve a decision and if a Councilmember is opposed to an issue, they can vote against it.

Councilmember Cook disagreed, stating when there are two political sides in opposition to each other and one side creates a situation where there is no good vote to come out of it, the Councilmembers look bad either way and he felt this language was setting up the Council for that sort of shenanigans. Councilmember Brooks stated in that situation, he just makes his opinion known to the public before he votes.

Mayor King stated he felt the citizens deserved a vote from the Councilmembers, so they would know the Councilmembers' position. Mayor King then stated he felt if the Council wasn't voting on issues, they weren't doing their jobs.

Councilmember Cook stated the situation of abstaining without a conflict has only happened twice in the last 13 or 14 years, at least, adding it was over a hiring and firing decision the Council had no right to. Councilmember Cook then stated at that meeting, he spoke his mind about the Council using that assumed authority to hire and fire, adding it was wrong, a vote on either side would have been wrong and he doesn't feel that he should have to vote in a situation like that and be on record voting for or against the issue, when he feels that either vote would contradict the reasons he abstains. Councilmember Cook then stated he felt he was being railroaded with this. Councilmember Cook then stated the language also says that Councilmembers agree not to address the Council from off the dais as a public citizen, adding he feels this language comes from Councilmember Brooks because Councilmember Brooks has been the one talking about preventing Councilmembers from speaking at the Call to the Public.

Councilmember Brooks disagreed, stating he has no problem with Councilmembers speaking at the Call to the Public and he never has, adding that is a Councilmember's prerogative as a citizen. Councilmember Brooks then stated he felt citizens were entitled to hear a Councilmember's opinion on something. Councilmember Brooks then asked Councilmember Cook what a hiring freeze meant with Mayor King hitting his gavel. Councilmember Brooks continued and stated a hiring freeze means there is a freeze on any hiring. Councilmember Cook asked Mayor King who he was gaveling with Mayor King stating he gaveled Councilmember Cook. Councilmember Cook stated he didn't say anything and told Mayor King not to gavel him if he was being quiet. Mayor King stated Councilmember Cook was interrupting and that Councilmember Cook could speak when Councilmember Brooks was done. Councilmember Cook told Mayor King that if he was quiet, the Mayor shouldn't gavel him with Mayor King stating it sounded like Councilmember Cook was about to interrupt. Councilmember Cook disagreed, stating this was no way to run a meeting of the Mayor and Council. Councilmember Brooks then stated this is also something that needs to be addressed in Council policies. Councilmember Cook then stated he was speaking and Councilmember Brooks was interrupting him and the Mayor didn't gavel Councilmember Brooks. Councilmember Cook then stated he was the only Councilmember Mayor King gavels with Mayor King disagreeing. Councilmember Cook stated he and David Thompson are the only people the Mayor gavels.

Councilmember Brooks then continued speaking, stating a hiring freeze means no one is to be hired that is not critical, which is why the Council had the authority to override that hiring freeze, which is what they were doing. Councilmember Brooks then stated a hiring freeze means the City is in trouble and something needs to be done, adding that is the only reason it went that way. Councilmember Brooks then stated he didn't have any problems with the proposed language and he may have seen some language like it in Robert's Rules of Order, but it was nothing of his doing.

Councilmember Moncada then stated one thing he would like to see is Councilmembers being able to address the Council from off the dais, as a public citizen, if they are abstaining. Mr. Cohen stated this subject was one of the major discussions the Council held, adding the question is when can or can a Councilmember take off their Council hat and come down and speak as a member of the public. Mr. Cohen then stated the questions are can it be done, should it be done, it is right, does it give the appearance of impropriety, adding these are all interesting questions and are really something for Council to decide. Mr. Cohen then stated based upon what he gleaned from the Council discussions, and some opinions he has given the Council about how it makes the City Attorney a little uncomfortable, he tried to balance the issue so that a Councilmember could not come down and address Council unless they have an actual conflict that they can't vote on, because if the issue involves that Councilmember's property, business, conduct or

something to that issue, then it's a different story, but again, it would be up to the Council to decide. Councilmember Moncada stated he personally would not address the Council, but he feels the language is restricting this Council or future Councilmembers' ability to speak as private citizens, adding just because someone may be an elected official, doesn't mean they are not a private citizen.

Councilmember Brooks stated Attorney Bill Sims gave the Council a presentation on open meeting laws and Mr. Sims thought it was appropriate for a Councilmember to address the Council as a citizen. Councilmember Brooks then stated he didn't necessarily think it was appropriate because he thought the Councilmember could twist the arm of the Council to lean in their direction since that person was a Councilman and would be making their argument just as if they were on the dais, even though they couldn't vote. Councilmember Brooks then stated on the other hand the issue might be a piece of property the Councilmember owns that is next to City property and the Councilmember would have the right to speak about it. Councilmember Brooks then stated he would maybe go along with what Mr. Sims said, which was that a Councilmember has the right to address the Council; however, it just doesn't look good from the public's view, so it would ultimately be up to the Councilmember with the issue.

Councilmember Moncada agreed, stating he wouldn't address the Council, but he feels the language would be restricting someone's first amendment rights. Councilmember Brooks stated the Councilmember would also be entitled to talk to 2 other Councilmembers about the issue and convince them of his opinion.

Vice Mayor Sacco stated this had come up in the past, because he was involved in one and he thought it would be a good idea if the City Clerk would review the past minutes. Vice Mayor Sacco then stated that is a simple solution, unless there was some case law on the issue.

Mr. Cohen stated it had come up in the past, adding he has told Council before and would say again; when a Councilmember takes off their hat and comes down and addresses Council, it's kind of a grey area and it makes him uncomfortable. Mr. Cohen then stated he attempted to balance between not wanting to overly restrict the ability to do it, by giving them the right to do it, but not anytime they want to. Mr. Cohen then stated if that restriction wasn't in place, the Mayor or Councilman could take their Council hat off and come down and address the Council whenever they want to, and if it was taken to the extreme, the ability to do so could be abused. Mr. Cohen then stated he wasn't saying that would happen, but that is why it is an interesting question and he is glad the Council is addressing it, adding however Council wants to approach it is fine.

Councilmember Brooks stated this wasn't addressed under the Call to the Public with Mr. Cohen stating it was addressed in Section VIII, G – Abstention. Mr. Cohen then stated the language allows a Councilmember to address the Council only when the item on the agenda is about that Councilmember's property, business interest or conduct, which would mean they couldn't vote on that issue. Mr. Cohen stated in that instance, it would make sense that the Councilmember could address the Mayor and Council as a member of the public. Mr. Cohen then stated if the Councilmember can vote on the matter and speak on it from the dais, they could do so, but to also be able to come down and address the Council as a member of the public in addition to speaking from the dais struck him as unusual, adding again, it was up to the Council to decide what they wanted in place.

City Manager William Stephens stated he is seeing a discussion about 2 different issues; an issue where a Councilmember may actually have a conflict of interest and an issue that shouldn't be addressed at all by the Council. Mr. Stephens then stated the first issue in question was whether an item should have been brought to the Council or not, adding the issue of the hiring freeze definitely should be discussed and voted on by Council, but the issue of hiring or firing a specific position, probably should not have gone to Council under the current policy set up for the City Manager to do that, which is why he thinks there is a bit of a conflict on the definition of what is being discussed. Mr. Stephens then asked if that situation was a matter of a conflict of interest or just an objection to a particular item being on the agenda that maybe shouldn't be there, stating he is hearing the Council discuss both issues.

Councilmember Brooks gave examples of when it would be considered both appropriate and inappropriate for a Councilmember to address the Council, stating if Councilmember Moncada's father was up for a raise, Councilmember Moncada would abstain and it definitely would not be a time he would speak at the Call to the Public, but if Councilmember Moncada owned some property and the City was going to be doing something next door to his property, it would be appropriate for Councilmember Moncada to declare a conflict and then address the Council, adding for a Councilmember to address the Council as a member of the public would be appropriate for some situations but wouldn't be appropriate for other situations.

Mr. Cohen stated that was the balance he was attempting to achieve.

Councilmember Boyle then expressed concern over an abstaining Councilmember's vote being counted as an "aye" vote with Mr. Cohen stating the language say when a Councilmember abstains on an actual or perceived conflict, the vote is not counted as aye, but if they abstain just because they want to abstain, the abstention would be counted as an "aye" vote. Councilmember Boyle stated that made sense to him.

Councilmember Cook stated it appears to him to be a Catch 22, adding if a person did not want to vote on a specific hiring and firing of a position other than City Manager or City Attorney, the Councilmember would be wrong either way, even if they explained their vote. Councilmember Cook then stated their vote would be stolen by this language, because it would count as an "aye" vote if the Councilmember voluntarily abstains. Mr. Cohen stated Councilmember Cook was correct that the voluntary abstention would be counted as an "aye" vote, noting the language is designed to pressure or encourage Councilmembers to make decisions on issues, adding he believed this was the philosophy the majority of the Mayor and Council wanted, but it was up to the Council.

Mayor King stated he felt the Councilmembers should have the courage to vote on an issue and the proposed language should stay in the document. Councilmember Brooks agreed. Councilmember Cook stated he felt if there were a problem with Councilmembers abstaining, the language would be necessary, but since that isn't a problem, he thinks it's just an attempt to steal a vote. Mayor King stated it sounded like most of the Council agreed with the proposed language.

Councilmember Brooks then stated he would like to start at the beginning of the document, stating the proposed language on page 5 was too wordy, adding most of the Council know that they can go to the City website for all of their information, but he liked the language about the manual and that it is an internal document used by City Councilmen. Councilmember Moncada stated he was sure citizens would have access to the document also with Councilmember Brooks agreeing, but stating that the document was for Mayor and Council use only. Councilmember Moncada stated he understood that, but hoped if someone was considering running for Council, they would look at this document and having the City website information is helpful. Councilmember Brooks then stated the proposed language wasn't critical.

Vice Mayor Sacco stated he remembered this coming up a few years ago and asked Mr. Cohen if he could confirm there was no case law on this with Mr. Cohen asking Vice Mayor Sacco what issue Vice Mayor Sacco was asking about. Vice Mayor Sacco then asked Mr. Cohen what his legal opinion was and asked Mr. Cohen to summarize it. Mr. Cohen stated he would be happy to, but he would need some direction as to what issue Vice Mayor was referring to, then asked if it was the issue of abstaining with Vice Mayor Sacco stating he did mean the issue of abstaining. Mr. Cohen then stated nothing in the Arizona statutes defines what happens when a Councilmember abstains, so it would be up to the Council to decide that. Mr. Cohen then stated the proposed language would result in the abstention being counted as an "aye" vote other than when a Councilmember has a conflict.

Councilmember Brooks asked how the City of Tucson handles it with Mr. Cohen stating he could contact their City Attorney to find out. Mr. Cohen then stated there very few cities and towns that have Council policies and procedures, adding it may be addressed in their codes.

Councilmember Brooks then went to Section I – Council Meetings, B – Holidays, stating he would like to see the word "rescheduled" put back in, adding he thinks anyone reading this needs to understand that the

meeting can be rescheduled and he doesn't think they should have to go to code to find that out. Mr. Cohen noted the request. Councilmember Brooks then continued stating Section I – D – Location During Local Emergency seems wordy to him with Mr. Cohen stating he agreed, then noting Section I – C – Other Locations and D – Location During Local Emergency are things that are not in the code, adding the Council could see his note that they will need to be addressed in the City Code. Mr. Cohen then stated it wasn't clear who would have the power to call an emergency meeting in an emergency situation such as an epidemic with both the Mayor and Vice Mayor being ill. Councilmember Brooks asked Mr. Cohen if he could find a better language with Mr. Cohen stating he could review it. Mr. Cohen then stated his intention is to bring Council proposed ordinances to address these issues once Council direction is received.

Councilmember Brooks then went to Section I – E – Cancelled Meetings, stating in the third sentence down, he would like the words "at least" put back in, adding he feels without those words, posting a notice of a cancelled meeting must be done exactly 24 hours before the meeting was to be held. Councilmember Moncada disagreed, stating the language means there would be a minimum of 24 hours before the meeting was to be held. Mr. Cohen stated the language was not intended to require only 24 hours, but he could put the words "at least" back in.

Councilmember Brooks then asked about specifically referencing sections in the City Code with Mr. Cohen stating the reason he removed specific references and only left general references to the City Code was that with specific references, any time a section number changes in the City Code, this document will have to be amended to reflect the same change. Mr. Cohen then stated if this document didn't get amended, the Council would then have a conflict in two documents and it could create problems for the Council and City Attorney at that time. Mr. Cohen then stated based on his experience and seeing those types of things come up in a wide variety of contexts, it was his opinion to not be specific, but it was up to the Council. Councilmember Brooks asked about the Council getting new pages for this handbook whenever there were amendments with Mr. Cohen stating that could be done. Councilmember Brooks then stated he felt it was just a little difficult to have to go online to look at the City Code. Mr. Cohen then stated he would follow the Council's direction in the matter. Mayor King stated he felt the language should remain the way it was with Councilmember Moncada agreeing. Councilmember Moncada then stated he could see Mr. Cohen's point, adding to have to amend both documents any time the Council makes a change to one is too much right now, but could possibly be done in the future.

Councilmember Moncada then stated he would like to discuss Section V – Duties of Council, D – City Officers. Councilmember Moncada stated he would like this language to list the City Officers the Mayor and Council appoints and/or approves, since each City may be different, adding in Oro Valley, the Police Chief reports directly to the Council, but in Benson, the Police Chief reports to the City Manager. Councilmember Brooks agreed the list needed to be included with Mr. Cohen stating he would do so.

Mr. Cohen then stated he wanted to assist the Council in completing the Policies and Procedures and stated if the Council had questions or comments, they could contact him, which may shorten the time it takes to complete the Council's review of the document.

**ADJOURNMENT:**

Councilmember Brooks moved to adjourn at 6:50 p.m. Seconded by Councilmember Moncada. Motion passed 6-0.

ATTEST:

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Toney D. King, Sr., Mayor

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Vicki L. Vivian, CMC, City Clerk