

**THE WORKSESSION
OF THE MAYOR AND CITY COUNCIL OF BENSON, ARIZONA
HELD JULY 25, 2011 AT 6:30 P.M.
AT CITY HALL, 120 W. 6TH STREET, BENSON, ARIZONA**

CALL TO ORDER:

Mayor King called the meeting to order at 6:30 p.m. with the pledge of allegiance.

ROLL CALL:

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

NEW BUSINESS:

- 1. City Council will meet with the City Attorney for a working session to discuss relevant City Council policies regarding public disclosures (financial and for potential conflicts) and methods and means of interaction with City Staff.**

City Attorney Michael Masee stated he had put together this worksession to go over some of the pertinent laws that apply to the responsibilities of being a Councilmember, in particular, one is conflict of interest and the second is proper means of interaction with City Staff. Mr. Masee then explained what the handouts were that he had given to each Councilmember. Mr. Masee stated the first handout is the law on conflict of interest in Arizona, which is ARS §38-503 and he would like to go over sections (a) and (b). Mr. Masee stated section (a) is the situation that talks about contracts, sales and purchases and is the sort of thing we think of when we talk about conflict of interest; section (b) is also an important part of this law in that it says a substantial interest in any decision of the public agency, so it is not just a contract situation that could arise, but is any decision that could come up.

Mr. Masee stated the statutes regarding conflict of interest dovetails with the Financial Disclosure forms the candidates and Councilmembers have to fill out each year. Mr. Masee then stated the forms are very narrow and very deep and are designed to elicit any hidden interest one might have in any type of business or property that exists here in the City with the idea being if you are co-owner or silent partner of some sort in a business that does business or has contracts with the City. Mr. Masee stated he wanted to point out the City has had another type of form they have used in the past, which he has modified to be a Declaration of Personal Interest. Mr. Masee stated the statutes say a public officer shall make the interest known and shall refrain from voting on any of those types of decisions when conflicts arise and when it says that Councilmembers shall make the interest known, this form is designed to make it known ahead of time. Mr. Masee stated the current Declaration of Conflict reads, "I am hereby declaring I have a conflict," and that statement really requires a discussion with the City Attorney. Mr. Masee stated what has happened over the past couple of years is that in the middle of a meeting there will be a declaration where a Councilmember will say they may have a conflict and while that is making it known, it is asking him to make the legal analysis right on the spot. Mr. Masee stated what he has done is that instead of making the form an absolute declaration of a conflict, he has made it to say there is a pecuniary interest or that a close relative, as defined by statute, has an interest. Mr. Masee stated to make this process a little more user friendly, for Council as well as Staff, he asked them to take time to list their close relatives that may have interests in doing business with the City, that way if something was coming up on the agenda, such as a franchise agreement, it would be known ahead of time. Mr. Masee stated the form now is a little broader than it has been; however, it is a little less declaratory as far as making it insistent there is a conflict. Councilmember Maldonado asked if Mr. Masee was stating it shouldn't be discussed in a meeting or it needed to be declared before the meeting as well as during the meeting. Mr. Masee stated he would like the form filled out before the meeting so Staff may reach out to the Councilmember if a possible conflict is determined, so informed judgments can be made. Mr. Masee then stated if the form is filled out, the requirement of making the conflict known is met, and added the statutes say the Councilmember should be

leaving the dais and not participating in the Council discussion other than as a member of the public, so if something has been declared a conflict, it does not mean that one has to be quiet on the matter, just that it could only be done from the podium as a member of the public. Councilmember Sacco asked when a conflict is declared if a form has to be filled out or could the conflict be declared during the meeting verbally. Mr. Massee stated a form doesn't have to be completed or signed, but it would be a better practice in putting together a better process that allows for a better legal analysis. Councilmember Sacco stated it used to be that it was a conflict if there was a monetary value and wanted to know if that still applied. Mr. Massee replied the statutes state it applies if it is a proprietary or pecuniary interest. Mr. Massee stated Councilmember Sacco was correct and the bottom line is dollars and what type of decision might be coming in front of the City Council that might affect Councilmembers and their bottom line. Mr. Massee stated it was not specific to the Councilmember personally; it could also include brothers and sisters, parents, children, etc., that type of interest is imputed to the Councilmember. Mayor King asked what would happen if right before the meeting, the conflict was discovered and was then brought up at the meeting. Mr. Massee stated it would be a good opportunity to call a short recess to get a quick analysis on the situation to determine if there really was a conflict. Mr. Massee stated this is an area of law that has some specific exemptions, such as being a member of a non-profit board, such as a food bank, adding the lease for the food bank, due to their non-profit status, would not cause conflict.

Audience member Dianne Tipton interrupted and asked if she could say something. Mr. Massee advised Mayor King it would be his call, adding time is short and he would prefer comments wait until he is finished. Ms. Tipton continued asking if Mr. Maldonado's employment in a manufactured home park is a conflict of interest in regards to Stagecoach Trails. Mr. Massee stated he didn't want to get into that discussion right then because it was not an item that he was intending to discuss. Councilmember Ron Brooks stated he had attended the Council orientation in Phoenix recently and was told if a Councilmember has a conflict of interest, the Councilmember should get up and leave the dais during that discussion. Mr. Massee stated once the Councilmember leaves the dais they are entitled to speak to the Council as a member of the public. Councilmember Sacco stated he believed the Councilmember should have to leave the room while the discussion is going on. Mr. Massee stated there is no need to leave the room. Mayor King then stated he had been lead to believe if a Councilmember steps down into the audience, they cannot speak. Mr. Massee stated this Council holds the Call to the Public at the beginning of the meeting and when the agenda item comes up there is generally not any more discussion from the public. Audience member Kathy Suagee interrupted asking if she could make a point, stating if a person is on the Council and is excluded from the discussion, it makes no sense that he can talk to other Councilmembers before the meeting and she believes it is not legal either. Councilmember Moncada stated at the League of Cities training they were advised they do not have to leave the dais and do have the right to speak at the Call to the Public. Mr. Brooks stated that is what he recalls also, however he believes the public will be more confident if the Councilmember leaves the dais. Mr. Massee stated he thinks the best practice is to make the declaration and then leave the dais and at that time may be a member of the public and speak but not vote. Mr. Massee stated he is not willing to answer the audience at this point. Audience member Tipton interrupted stating she would like the Council to address the issue of Councilmember Maldonado's possible conflict of interest. Councilmember Brooks asked Mr. Massee to take a look into the matter. Mr. Massee stated that he would, adding this issue has come up in the past where the previous Mayor had a business in town that was in the development industry and the question of a conflict was brought up then, and the law is very clear and states it has to be something more than a general expectation. Mr. Massee stated he also included as a handout, an Attorney General opinion where a spouse of a board member was employed and the board member was advised not to participate in the budget, as it is a conflict. Mayor King then stated time is running out and this needs to be brought back to another meeting with the answers to the questions that have been asked.

Mr. Massee agreed then stated the next topic of this meeting is City Code Chapter 3, Article 3-3 which is also part of the hand outs. Mr. Massee stated the purpose behind this ordinance is it adopts the Council/Manager form of government in which the Council is the legislative body and the Manager is over day-to-day administrative issues. Mr. Massee stated if there are questions or an interest, going to the City Manager is the correct thing to do. Mr. Massee then stated any correspondence to Staff should have the City Manager copied in, adding again, the City Manager is in charge of day-to-day operations. Mr. Massee

stated the Council may have unlimited access to the City Attorney and the City Clerk and that the chain of command should be respected as a professional courtesy. Mayor King thanked Mr. Massee for the information and stated another meeting would probably be needed for follow up.

ADJOURNMENT:

Mayor King moved to adjourn at 6:55 p.m. Seconded by Councilmember Lambert. Motion passed 6-0.

Toney D. King, Sr., Mayor

ATTEST:

Vicki L. Vivian, CMC, City Clerk