

**THE REGULAR MEETING  
OF THE MAYOR AND CITY COUNCIL OF BENSON, ARIZONA  
HELD AUGUST 25, 2014, AT 7:00 P.M.  
AT CITY HALL, 120 W. 6TH STREET, BENSON, ARIZONA**

**CALL TO ORDER:**

Mayor King called the meeting to order at 7:01 p.m. with the Pledge of the Allegiance. Mayor King then introduced Vance McVicker of the Church of Christ who offered the invocation.

**ROLL CALL:**

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

**EMPLOYEE RECOGNITION:**

Mayor King recognized both Darrell Foster and Jose Ronquillo for each having 30 years of service with the City of Benson.

**PROCLAMATION:**

Mayor King asked Councilmember Moncada to read the proclamation recognizing the Benson Unified School District's 100th anniversary.

Mayor King then asked Councilmember Cook to read the proclamation of the Mayor and Council commending Cochise College for remaining both a top local employer and a center of knowledge and ideas where student success and completion are top priorities; and celebrates its 50th anniversary. Councilmember Cook then presented the proclamation to Mr. J.D. Rottweiler, President of Cochise College, Ms. Denise Hoyos, Executive Director of the Cochise College Foundation and Ms. Barbara Richardson, Director of the Cochise College Benson Center. Mr. Rottweiler then briefly addressed the Council stating 1964 was an interesting year and on September 21 Cochise College opened its doors to 441 students, with at least 26 students taking classes in Benson and Willcox. Mr. Rottweiler stated Cochise College worked hard to serve the entire County and this year, it has served over 14,000 students, adding this phenomenal growth shows recognition of the need for higher education. Mr. Rottweiler then stated the college will be hosting some interesting celebrations and he wanted to encourage the community and the Council to participate. Mr. Rottweiler then stated in 1964 the World's Fair was in New York City, the Ford Mustang was introduced to the American public, the Beatles came to America and Cochise College opened its doors, adding the college will celebrate based around those events beginning with free concerts for the community at their campuses in Sierra Vista and Douglas, featuring "Twist & Shout – the Ultimate Beatles Experience." Mr. Rottweiler then stated there would be a number of events in Benson, Willcox and across the entire county and encouraged those present to participate, adding Ms. Hoyos has more information on those. Mr. Rottweiler stated in 2000, the college opened the Benson Center and is extremely proud to serve this part of the County. Mr. Rottweiler then stated on behalf of the governing board, faculty, staff and students, he wanted to thank the Council for their recognition and he looks forward to seeing them at some of the celebrations, adding he also looks forward to celebrating the next 50 years. Mr. Rottweiler then gave Council and City Staff present a pin commemorating their 50th anniversary.

**PUBLIC HEARING:** None

**CALL TO THE PUBLIC:**

Paul Lotsof, the manager of CAVE FM, addressed Council stating Lawley's Automotive closed its Benson location and for the first time in 60 years, there is no place in Benson to buy a new car, which is bad news for Benson. Mr. Lotsof then gave a brief history of new car dealerships in Benson, adding new car dealerships have been present in Benson continuously since the 1950s. Mr. Lotsof then spoke of the business models used

by Cholla Ford and Munday Motors to sell as many cars as they could locally, but to also go to considerable lengths to sell cars to people who lived in Tucson with ads in the Tucson yellow pages and toll-free phone numbers, adding these strategies worked quite well. Mr. Lotsof then stated in the early 1990s, the auto dealers requested a tax relief on large ticket items, arguing that people who came to buy cars, also became tourists and spent money in Benson and would also return to Benson for warranty work. Mr. Lotsof then stated this request was approved and the tax break remains in the City Code. Mr. Lotsof then stated the two new car dealerships were eventually run terribly by absentee owners who abandoned the business model to sell cars to people in Tucson. Mr. Lotsof then stated the loss of these dealerships is not major, but in his opinion, major benefits would accrue to Benson if we could attract at least one new car dealership that could be run the way the first car dealerships were run, adding not only would this bring in big bucks from the outside world, but the sales of new cars is a major source of tax revenue for the City of Benson, as well as providing good jobs. Mr. Lotsof then stated it would certainly be worthwhile to find out what it would take to get a franchise and either a local owner or an owner who would not regard Benson as a location for a satellite dealership and he thinks bringing in a new car dealership should be a high priority possibly for the Benson Economic Development Committee. Mr. Lotsof then stated the old owners of Cholla Ford and Munday Motors might serve as consultants, adding he would rate a new car dealership as a much higher priority than some new snowbird festivals.

**CITY MANAGER REPORT:**

City Manager William Stephens stated there was a free legal seminar scheduled for tomorrow evening, however, since the election is being held the same day, the seminar has been rescheduled to Tuesday, September 23, adding the subject of the seminar will be “Tips on Employer and Employee Rights and Responsibilities.” Mr. Stephens then stated there will be 2 more seminars later in the year on October 28 and November 17, adding all 3 free legal seminars for the Benson community are being offered by Mesch, Clark & Rothschild, who the City has contracted with for the City Attorney and noted one of those sessions will be taught by the City’s Attorney, Gary Cohen.

Mr. Stephens then addressed Council, giving the dates of upcoming meetings and events.

- Tuesday, August 26, 2014 – Community Watershed Alliance, 6:30 p.m., City Hall
- Tuesday, September 2, 2014 – Planning & Zoning Worksession, 7:00 p.m., City Hall
- Monday, September 8, 2014 – City Council Meeting, 7:00 p.m., City Hall
- Tuesday, September 9, 2014 – Library Advisory Board, 4:00 p.m., City Library
- Saturday, September 20, 2014 – Historic Preservation Commission, 9:00 a.m., City Hall
- Monday, September 22, 2014 – City Council Meeting, 7:00 p.m., City Hall
- Tuesday, September 23, 2014 – Community Watershed Alliance, 6:30 p.m., City Hall
- Saturday, September 27, 2014 – Benson Airport Advisory Committee, 8:00 a.m., Hangar B9, Benson Airport
  
- Tuesday, August 26, 2014 – Primary Election Day
- Monday, September 1, 2014 – Labor Day Holiday – City Offices Closed

**NEW BUSINESS:**

1. **Discussion and possible action on the Consent Agenda**
  - 1a. Minutes of the May 16, 2014 Worksession
  - 1b. Minutes of the June 19, 2014 Special Meeting
  - 1c. Minutes of the June 23, 2014 Regular Meeting
  - 1d. Appointment of Helen Alto to the Transit Advisory Committee (TAC)
  - 1e. Appointment of Cindy Fulbright to the Transit Advisory Committee (TAC)
  - 1f. Appointment of Ryan Kooi to the Transit Advisory Committee (TAC)
  - 1g. Invoices processed for the period from August 2, 2014 through August 14, 2014

Councilmember Moncada moved to approve the Consent Agenda. Seconded by Vice Mayor Sacco. Motion passed 7-0.

2. **Discussion and possible action to purchase Firewalls and a Server for City Hall under the City's contract with Executech for \$26,377.20**

Mayor King stated the Council has been asked to table item for pending information. Councilmember Moncada moved to table this item. Seconded by Vice Mayor Sacco. Motion passed 7-0.

3. **Discussion and possible direction or action regarding City Council Policies and Procedures, and/or related provisions in the City Code**

City Clerk Vicki Vivian addressed Council stating the attached document, "Council Policies and Procedures" was brought before Council in a worksession to address basic Council proceedings, actions and expectations and at a worksession held on August 12, 2013, Council decided to hold additional worksessions as needed to address possible changes to the draft, as well as possible Code changes. Ms. Vivian then stated during the course of these worksessions, Council made changes to the Council Policies and Procedures and the City Clerk sent the changes, along with the minutes to the City Attorney for his legal review, resulting in additional changes being made to the draft, which was then presented to Council for a final review. Ms. Vivian then stated the final review was completed at the worksession held on July 28 and the document is now being brought to Council for additional direction or possible approval. Ms. Vivian then stated once Council approves the document, Staff will review Chapter 2 in the City Code and draft an ordinance with the changes needed to ensure consistency between the City Code and the approved Council Policies and Procedures, adding the ordinance will then be presented to Council for their consideration.

Councilmember Cook stated the draft reads that a Councilmember shall vote for or against the measure unless they are disqualified from voting and then stated from time to time, there are reasons to not vote for or against a particular item, adding an aye vote or a nay vote would reflect poorly in either way and distort the reason for the vote. Councilmember Cook then stated there have been times he has not voted and when this happened, he gave his reasons for not voting. Councilmember Cook then stated he has talked to several Councilmembers who have said that every Councilmember needs to be on the record because the public needs to know how the Councilmember feels and he thinks that is a phony argument because he has explained his position when he has abstained. Councilmember Cook then stated in Section VIII – Motions, G – Abstention, it reads that a voluntary abstention shall count as an aye vote, which means if he abstained again, his vote would be stolen as an aye vote. Councilmember Cook then stated he has thought this through and absolutely every argument that can be made to substantiate that an abstention should count as an aye vote, could be made to support the belief that it should count as a nay vote. Councilmember Cook then stated he sees the proposed language as simply stealing votes and the policies and procedures, which he recalls will be put into the City Code, will be used to do so. Councilmember Cook then stated he now understands that certain people want to control other people and steal votes, adding politics does that, but since he has been on the Council, he has resisted political pressure and he will resist it again, stating that if the Council moves forward with this language, they can count on him being very public and vocal about using and hiding behind an administrative procedure to steal votes.

Councilmember Wangsness stated he has a problem forcing someone to vote against their principles and he doesn't think the Council should be doing that or that an abstention should automatically count as an aye vote. Councilmember Wangsness then stated he thought the Council should go back to another worksession to hash this issue out.

Councilmember Brooks stated he would like to propose letting a Councilmember abstain, adding he still thinks the public is entitled to his vote, but if the Council is going to have a big problem with the language, then it could be changed to allow a Councilmember to abstain. Councilmember Brooks then stated the abstaining Councilmember may have been the deciding vote on an issue, but if that Councilmember abstains, he then gives up the right to vote on the issue, adding he still thinks the abstaining Councilmember should have to specify why they are abstaining because the public is entitled to know why they are not going to vote. Councilmember Brooks continued, stating he believes the Councilmembers are elected to make decisions, whether they like them or not, adding there are a lot of hard decisions and a lot of issues he voted on that he

didn't really want to vote on, but he had to. Councilmember Brooks then stated if he didn't agree with what others had to say, he would explain his position before voting, so the public knew that he didn't really want anything to do with the issue, but that he was going to do the best he could from his position.

Councilmember Moncada stated he thought the Councilmembers all needed to vote on issues, adding they all have to make tough decisions and maybe sometimes they would prefer not to vote, but the public is owed a decision. Councilmember Moncada then stated an example would be the budget the Council just passed, adding it was a difficult budget in an election year and most of the Council is up for reelection. Councilmember Moncada then stated if the majority of the Council decided to vote present because they didn't want to be on the record for or against the budget because they didn't like it, then the City wouldn't have a budget, adding the budget is not something that can just wait. Councilmember Moncada then stated he thought a mechanism was needed requiring Councilmembers to vote, adding it's one thing when only 1 Councilmember decides not to vote because they don't like the options in front of them, but it's another thing when there are 3 or 4 Councilmembers saying they're not going to vote because they don't like the options. Councilmember Moncada then stated a Councilmember can state their position but at the end of the day, they should vote, adding the proposed language will count an abstention as an aye vote and he thinks it needs to remain because the public deserves a yes or no vote. Councilmember Moncada then stated, again, a Councilmember can explain their position, but at the end of the day, the Councilmembers are paid to do a job and that requires voting, even on difficult issues. Councilmember Moncada then stated this proposed language requires a Councilmember to vote and he doesn't think it is stealing a vote. Councilmember Moncada then stated he understands what Councilmember Cook is saying, and while part of him agrees with Councilmember Cook, it's one thing when there is 1 Councilmember abstaining, but it's another thing when there are 2 or 3 Councilmembers who are more worried about their political future and not being on the record on a tough decision, adding this can really hold up the City.

Councilmember Cook then stated if the Council were voting on the budget and he abstained and the result of the vote was a tie, it is clear that the Council would have to go back into another session and would have to work it out until there was a majority vote on it. Councilmember Cook then stated the argument to support counting the abstention as an aye vote is disingenuous, adding every argument supporting for that position can also be made to count the abstention as a nay vote with Councilmember Moncada stating he didn't care which way an abstention was counted, but that the abstaining Councilmember should vote and the proposed language causes that. Councilmember Cook then stated the proposed language is not essential, adding he is the only one who has voluntarily abstained and he felt the language was directed at him, noting he has explained every one of his abstentions. Councilmember Cook then stated if it ever comes to some issue that can't get passed, it would be taken back into a worksession to address the reasons it failed and then brought up in another Council meeting, adding the Council shouldn't just steal someone's vote because there are consequences for stealing someone's vote.

Councilmember Wangsness then stated he had a problem with the proposed language also, adding he doesn't think there has been a problem with multiple abstentions and if there is someone who is just going to abstain on multiple issues, they would still have to answer to their voting public. Councilmember Wangsness then stated he thinks it is a really bad idea trying to force the vote in one direction or another for an abstaining Councilmember. Councilmember Brooks stated it wouldn't really be stealing a vote, since the abstaining Councilmember is giving their vote up when they abstain. Councilmember Cook stated he was giving up his vote, but the proposed language that counts an abstention as an aye vote, the Council is stealing the vote. Councilmember Brooks stated when there is a decision to be made, a Councilmember's job is to vote, but since this is such a big issue, the Council doesn't have to decide this tonight, adding the Council could direct Staff to see what other cities do in this situation.

Councilmember Cook stated not only does the U.S. Senate allow abstentions, but the U.S. House of Representatives does also and even the President of the United States does this by allowing a bill to become law without his signature. Councilmember Cook then stated the Council is trying to punish him and some Councilmembers are arrogant enough to think they have the power to steal his vote, adding he is the only one this language is directed toward.

Councilmember Brooks stated he would contest that statement, adding this all really boils down to the hiring of non-critical staff, noting Councilmember Cook was against that and he understands that. Councilmember Brooks then stated Councilmember Cook made his point on that issue, but the Council still has to work together as a Council regardless, adding there are a lot of things Councilmember Brooks doesn't like, but he is part of the Council and he has to make the best decisions he can. Councilmember Brooks then stated he thinks a Councilmember has a responsibility to their constituents and whether they like the issue or not, he doesn't see why a Councilmember should not vote, adding the Councilmember could still make a statement explaining his position. Councilmember Brooks then stated a Councilmember should make the best decision they can, but what Councilmember Cook was doing with his abstention was protesting the original decision, and there's no place for that in this meeting, adding the Council has already moved past that. Councilmember Brooks then stated he would go along with the language that's proposed, but if the Council would like, they could table this issue and have Staff look into what other cities do in this situation.

Councilmember Cook then stated he was not going to counter Councilmember Brooks' position, but he did want to point out for the members in the audience that it is the City Manager's job to hire everyone other than the City Manager and the City Attorney and that this Council inserted itself into doing the hiring and firing and in the case Councilmember Brooks was referring to, the hiring of a seasonal part-time dishwasher. Councilmember Cook then stated he felt that an aye or a no vote was the worst vote for any person to see any Councilmember make.

Vice Mayor Sacco stated he was concerned and would like further clarification on "stealing a vote," adding he would like to have a legal opinion.

City Attorney Gary Cohen stated the proposed language regarding the effect of when one can excuse themselves or declare a conflict and the effect of abstaining was, at one point, the consensus of the Council, adding he did some research into another jurisdiction in Arizona and found language to accomplish this. Mr. Cohen then stated it was not his job to debate policy reasons, adding how the Council wants to address this issue is up to them, but noted if they wanted to declare that an abstention is an aye vote, the proposed language accomplishes that. Mr. Cohen then stated if the Council decided to do something different, he could also draft that language, adding this is a policy matter for the Council to decide and he would be happy to draft language consistent with their decision.

Vice Mayor Sacco stated he could appreciate the concern about this item, but to bring in the U.S. Senate and the House of Representatives is a far different deal than what the Council is talking about here and he didn't understand Councilmember Cook's concern about having his vote stolen, adding he didn't think anyone on this Council has any intention of stealing any Councilmember's vote.

Councilmember Cook stated he thinks that everyone who agrees to the proposed language regarding an abstention being counted as an aye vote has the intention of stealing his vote, adding he has been the only Councilmember who has abstained from voting so far. Councilmember Cook then stated the proposed language is special, targeted, and is seemingly a political vendetta type of wording to put into the policies and procedures to affect only him. Councilmember Cook then stated he considers it to be the height of arrogance to try and grab more power than the U.S. Senate or the House of Representatives have.

Vice Mayor Sacco stated the Council are all elected to do their jobs and he doesn't like the use of the words, "stealing votes," adding no one is stealing anyone's vote. Vice Mayor Sacco then stated each Councilmember was an adult and was elected to represent the City of Benson and could make up their own mind.

Councilmember Boyle then moved to strike that particular sentence from the paragraph in Section VIII – Motions, G – Abstention, and allow the natural course of events take place. Councilmember Boyle then stated if Councilmember Cook or any other Councilmember doesn't want to vote on a particular item and it concerns the public to see their representative up here is not doing his job, then when the election time comes, they will take care of it, but in the meantime, if this is going to cause this kind of grief, he would ask for that motion, adding he does see why a Councilmember should be able to abstain, other than for just a conflict of interest, giving for example, a moral disagreement. Motion seconded by Councilmember Wangsness. Mayor King asked if there was any further discussion with City Clerk Vicki Vivian requesting Councilmember Boyle to

please clarify which sentence he was referring to. Councilmember Boyle stated the sentence he was referring to read, “A voluntary abstention shall count as an “aye” vote unless excused by an announced appearance of or an actual conflict of interest, or unless the matter involves the Council Member’s personal or official conduct, business interest or property.”

Councilmember Wangsness asked what should be done with the first sentence in Section VIII – Motions, G – Abstention, since it reads, “No member of the Council shall be excused from voting...” unless there is a conflict of interest or the appearance of a conflict of interest with Mr. Cohen stating this is an important document the Council has spent a lot of time on and rather than try to create language unexpectedly, he would suggest for the Council to either decide what effect an abstention is by a vote and direct him to draft language consistent with that decision or to go back to another worksession to focus on this issue and go from there.

Councilmember Boyle then withdrew his motion, stating his intention was to expedite this by removing the one sentence, but since there is more to it than that, he would withdraw his motion.

Councilmember Cook then stated he had read the first sentence in Section VIII – Motions, F – Voting over and over which reads, “Any Council Member at a meeting when a motion comes up for a vote shall vote for or against the measure unless he/she is disqualified from voting, for reasons such as the matter involves the Council Member’s personal or official conduct, business interest, or property, or there is an actual or appearance of a conflict of interest or abstains” and he thought by removing the one sentence that Councilmember Boyle suggested, does fix the problem.

Councilmember Wangsness suggested changing the first sentence in Section VIII – Motions, G – Abstention, from, “ 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” to “A member of the Council may be excused from voting...”

Councilmember Brooks stated he didn’t think this was ever going to come up again and he thought the Council was opening up a can of worms. Councilmember Brooks then stated if a Councilmember doesn’t like the issue, they can state it for the record and then vote on the issue and just move on, adding people will hear the Councilmember’s position and understand. Councilmember Brooks then stated unless there is a conflict of interest, he feels the public is entitled to a vote.

Mr. Cohen then stated he would like to point out that Section VIII – Motions, F – Voting, and G – Abstention work together and suggested the Council voting to direct him to craft language that the effect of an abstention is whatever they would like it to be, adding he can then do so and present the language in a final draft for Council to consider.

Councilmember Brooks moved to approve the language as is. Motion died for lack of a second.

Councilmember Boyle then moved to instruct the City Attorney to make those changes the Council discussed to allow for abstentions. Mr. Cohen stated he understood the motion was that the effect of an abstention would be neither an aye vote nor a no vote with Councilmember Boyle confirming that was correct. Seconded by Councilmember Cook. Motion passed 6-1 with Councilmember Brooks voting nay. Councilmember Brooks then asked if the Council was approving entire document with Councilmember Moncada stating the Council just sent it back for the change in language and it will come back to the Council for approval. Mr. Cohen then noted the final draft for Council consideration will only have the issue of abstentions changed and everything else will remain as it is now.

4. **Discussion and possible action regarding the purchase of grass seed from Helena Chemical, utilizing the City of Yuma’s Request for Proposals for grass seed through the Strategic Alliance for Volume Expenditures (SAVE) Cooperative Purchasing Agreement**

City Manager William Stephens stated each year the golf course is reseeded for winter and in order to do that, the City needs to purchase grass seed, adding the best price was found utilizing the SAVE cooperative

purchasing agreement to piggyback on a contract that was negotiated by the City of Yuma. Mr. Stephens then stated since the purchase exceeded the City Manager's authority of \$20,000, the purchase was brought to Council for their consideration. Mr. Stephens then stated the same grass seed could be used to establish a grass cross runway at the airport, adding the City would utilize in-house expertise from the golf course to create the grass runway that will be used by skid plate type UASs and UAVs.

Councilmember Boyle verified with Mr. Stephens that the purchase was in the current budget. Councilmember Wangsness then asked about freight cost with Mr. Stephens stating the according to the quote, the freight was included in the purchase price. Councilmember Cook stated when he saw this item and the purchase price of approximately \$27,000, he did some research and found that this was about the same price the City paid last year and the year before that, adding he was in favor of the purchase. Councilmember Brooks asked about any guarantees on the grass seed with Mr. Stephens stating the City of Yuma is using this contractor and has had no problems, but noted there are no guarantees it will live further than its life cycle, adding the golf course will have to be reseeded for the summer. Councilmember Brooks then asked if the grass seed for the airport would be another purchase at the same unit price with Mr. Stephens stating he had spoken to the groundskeeper at the golf course, who looked at the proposed grass runway and indicated it should be no problem to create it. Mr. Stephens then stated Staff is in the process of getting water to the site before anything else is done. City Clerk Vicki Vivian then stated there would be no additional grass seed purchase, adding some of the grass seed from this purchase would be utilized for the airport project.

Councilmember Brooks then moved to approve the purchase of grass seed from Helena Chemical, utilizing the City of Yuma's Request for Proposals for grass seed through the Strategic Alliance for Volume Expenditures (SAVE) Cooperative Purchasing Agreement. Seconded by Councilmember Moncada. Motion passed 7-0.

**DEPARTMENT REPORTS:** No comments from Council.

**ADJOURNMENT:**

Councilmember Moncada moved to adjourn at 7:58 p.m. Seconded by Councilmember Boyle. Motion passed 7-0.

ATTEST:

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Toney D. King, Sr., Mayor

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Vicki L. Vivian, CMC, City Clerk