

**THE SPECIAL MEETING
OF THE MAYOR AND CITY COUNCIL OF BENSON, ARIZONA
HELD SEPTEMBER 9, 2013, 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 6:04 p.m. with the Pledge of Allegiance. Mayor King then announced that Councilmember Brian Crafts had resigned from City Council and asked City Clerk Vicki Vivian to read Mr. Crafts' letter of resignation. The letter read:

“Honorable Mayor and Council,

It is with much soul-searching and contemplation that I have reached the decision to resign my seat on the Benson City Council. I had thought that I could make a difference in the future of Benson, promoting new business development and a positive direction for the people who elected me. However, the events of the past few weeks have proven to me that this is going to be a futile effort. It is very apparent to me now that it will be “business as usual” where the council is concerned....squabbling and in-fighting, instead of trying to reach agreements and work out our differences. Until the council can behave as mature responsible adults, this will never happen. The City Manager selection process has been a disaster, taking far too long, causing divisiveness on the council, and in the city itself, with no end result. We still do not have a City Manager, and it looks like we/you may need to start the process all over, due to the interference of outside influences. This is not the only incident, but one of many. Also, the continual harassment at Call to Public is inexcusable. It is disruptive and counter-productive to accomplishing city business.

I wish only the best for the citizens of Benson, and I am still very hopeful for the future growth and prosperity of the city. You, the Mayor and Council, have a decision to make. Do you ‘stay the course’ and accomplish nothing, or start to get over your differences and work together? The choice is yours, it’s up to you.

I regret that I have to take this step, but at this time, I see no other alternative but to step down.

Respectfully,

Brian Crafts”

ROLL CALL:

Present were: Mayor Toney D. King, Sr., Vice Mayor Al Sacco, Councilmembers Ron Brooks, Jeff Cook, Chris Moncada and Peter Wangness. Absent was Councilmember Brian Crafts.

PUBLIC HEARING: Mayor King opened the public hearing to receive comments and questions from the public regarding the current Mayor and three (3) Councilmembers’ terms, which expire in June 2015 and three (3) Councilmembers’ terms, which expire in June, 2017. Recently passed State law requires cities and towns to comply with consolidated election dates in the fall of even-numbered years beginning 2014.

City Clerk Vicki Vivian addressed Council stating the dates in the second paragraph of the public notice were incorrect; however, the balance of the notice explaining in detail the proposed changes was correct. Ms. Vivian then stated since this hearing was optional and not a legally required public hearing, the incorrect dates had no effect on the hearing. Ms. Vivian then read the public hearing notice, stating the purpose of the public hearing is to receive comments from the public regarding the current Mayor and three (3) Councilmembers’ terms, which expire in June 2015 and three (3) Councilmembers’ terms, which expire in June, 2017. Recently passed State law requires cities and towns to comply with consolidated election dates in the fall of even-numbered years beginning 2014. In order to comply with this new law, the City Councilmembers’ terms must be adjusted to allow for the election of Councilmember in the fall of even-numbered years. The City Council is currently considering the possibility of shortening the Mayor and Councilmembers’ terms by approximately

6 months or the possibility of lengthening the Mayor and Councilmembers' terms by approximately 18 months. Shortening the terms would result in the Mayor and three (3) Councilmembers' terms expiring in December, 2014 (instead of June, 2015) and three (3) Councilmembers' terms expiring in December, 2016 (instead of June, 2017). Lengthening the terms would result in the Mayor and three (3) Councilmembers' terms expiring in December, 2016 (instead of June, 2015) and three (3) Councilmembers' terms expiring in December, 2018 (instead of June, 2017). The purpose of the public hearing is to receive comments from the public regarding the terms of the Mayor and Councilmembers.

Mayor King opened the public hearing at 6:09 p.m.

Kathy Suagee read a statement advocating the shortening of the Councilmembers' terms. Ms. Suagee first stated some people who address Council are not citizens of Benson and their opinions are not the voices of Benson. Ms. Suagee then talked briefly about recall elections, adding if the Council shortened their terms, it may discourage recall elections since people could put a hold on their feelings and think about what is best for the community. Ms. Suagee then noted if Council extended their terms, she guaranteed that elements in the City will push for recalls for every Councilmember, which would prolong dissension and malice. Ms. Suagee then stated Mayor King and Vice Mayor Sacco are consulting with a non-resident and getting his direction on how to vote on City business, adding that person also has in his possession confidential documents pertaining to the recent City Manager search, asking how he came to possess those documents. Ms. Suagee then stated this isn't a very good picture of our community to present to our City Manager prospects or possible investors in Benson and asked the Council, for the sake of our community, to voluntarily reduce their terms by 6 months, adding if they do and she can see on the horizon a vote by the people within the next year, she will do her part to limit her criticism of Council actions.

Mayor King stated he had never given out documents, but people could request them from the City. Ms. Suagee then countered that Mayor King needed to instruct Staff not to produce those documents and that confidential resumes should not be given out. City Clerk Vicki Vivian addressed Council stating the resumes are in the City administration office and had been emailed to all Councilmembers and other members of the City Manager Recommendation Committee and while some personal information is redacted, the records are not confidential records, adding they are public records. Ms. Suagee stated she appreciated the correction.

Mayor King then asked if there was anyone else present who wished to speak.

Councilmember Moncada stated he had spoken to a lot of people and they told him they felt the terms should be shortened and that lengthening terms would probably lead to recalls. Mayor King stated a lot of people told him the same thing. Councilmember Brooks stated if Councilmembers were doing a good job, they shouldn't have to worry about being reelected.

Councilmember Wangsness stated he didn't care either way, however at the League's meeting he recently attended, it was mentioned that most Councils were opting to lengthen their terms because the legislature's clarification was ambiguous and the language was not clear as to whether the terms could be shortened or lengthened. Mayor King commented that it was also mentioned at that meeting that regardless of how the Council decides to act, there may be lawsuits since the language was unclear. Councilmember Wangsness then stated he felt the Council needed to wait before taking action until the legislature met again, with Councilmember Moncada stating it was his understanding that the legislature was not going to address this issue again.

City Attorney Mike Masee then addressed Council stating the legislature may have special sessions, but in discussing this issue with other City Attorneys, the consensus was that they were not expecting nor desiring the legislature to take another look at it. Mr. Masee then handed out material on Senate Bill 1454, stating Section 22 addressed the implementation of consolidated elections. Mr. Masee stated these changes are only in session law and would not be integrated into the Arizona Revised Statutes, adding the bill didn't help a lot, but the implication to some extent is that lengthening terms is the preferred route; however, he didn't feel that

the law excludes shortening term lengths. Councilmember Moncada then stated he felt if the Council shortened the lengths of terms and the legislature didn't approve of it, they would notify the Council.

Council discussion then focused on when the Council should take action and when the next election would be held with City Attorney Mike Masee stating if the Council shortened their terms, the next election would be held in the fall of 2014 with the Council needing to call the election no later than April, 2014.

Vice Mayor Sacco stated he had talked to a couple of attorneys and they informed him that the law only says Council can extend terms and there is no mention of shortening them by 6 months, adding this really should be a vote by the people, not the Council. Mr. Masee stated his initial thought was to put it to the voters on a ballot, but it would have had to be done in the 2013 election cycle, adding cities and towns were advised by the League to not address the issue, since they felt the legislature would address these questions and provide answers.

Vice Mayor Sacco stated the Council should let the legislature resolve how to adjust Councilmembers' terms with Mr. Masee stating Senate Bill 1454 was the legislature's effort to address it.

Councilmember Cook stated he had gotten a couple opinions on our City codes and what stood out was that when there was the absence of wording that permits a particular action, then the authority to do that action has not been granted by code or state law. Councilmember Cook then stated whether the Council chooses one way or the other, or puts it to the people one way or the other, the authority to shorten terms doesn't appear to be in the statutes.

City Attorney Mike Masee stated one statute that allows creating staggered terms, addresses shortening or lengthening the terms to do so, adding it is somewhat ok to say there's some authority in that statute to adjust the length of terms, but added it is a bit of a stretch. Mr. Masee then stated City attorneys met last summer and discussed the legislature addressing this issue, but some City attorneys worked on their own to get their cities or towns on the required election cycle. Mr. Masee then stated Gilbert had looked at the issue for several years, adding their analysis perceived risks both ways, but their thought overall for governance purposes, was that shortening the terms was a little less risky, adding the choice really does need Council's buy-in to do so.

Mayor King stated he believed the Council should shorten the terms, but if the issue needed to go to the voters, then he was willing to do that, with Councilmember Moncada stating there was no time to put the issue to the voters since the next election cycle would be in the fall of 2014. Councilmember Brooks stated he felt shortening the Council terms would give a benefit to the voters with Council concurring.

Councilmember Cook stated if the Council took a tentative action to shorten terms and if enough cities and towns did the same thing, the legislature may act to be explicit to provide that authority, adding he was fine with shortening terms. Councilmember Brooks stated the Council could wait to address it until the second meeting in January with Councilmember Wangsness adding the Council could always make the action subject to legislative changes.

Interim City Manager Jim Cox stated the issue could be scheduled for a future meeting and if Council chose to shorten the terms, they could certainly come back and change it if the legislature would say it could not be done. Vice Mayor Sacco then stated he had talked to someone in the legislature a few days ago and it doesn't look like the legislature is going to address the issue. Vice Mayor Sacco then stated again, he doesn't think this is a Council decision, but should be put to the voters. Councilmember Moncada agreed, but stated again, there isn't time to put the issue to the voters with Vice Mayor Sacco asking why the Council is in such a hurry to address the issue. Councilmember Moncada stated the issue is State-mandated and must be addressed before the 2014 election.

Ms. Suagee asked Mayor King if she could address Council and after being given permission, stated as an English teacher, she thinks if the legislature came back and said, 'to clarify things, you may extend the terms,'

that it makes sense that what they were thinking before that, was the terms would be shortened. Ms. Suagee then stated she didn't think there would be any disagreement in the legislature that the original intent was for cities find a way to come into the legislature's election schedule and the thought was shortening terms was the practical way to do it; however, people then began questioning if the terms could be extended and the legislature addressed the issue by adding cities and towns may extend terms. Ms. Suagee then stated since the language doesn't say cities and towns must extend terms, she would interpret the language as giving permission to either shorten or lengthen the terms.

City Clerk Vicki Vivian then addressed Council stating at the last meeting, Council decided to hold the public hearing and to schedule action addressing the issue at the September 23 Council meeting. Ms. Vivian then stated Council was welcome to delay action to either the end of the year, or the second meeting in January, adding the only effect is giving members of the public less time to consider running for Council. Councilmember Moncada stated he would prefer to address the issue sooner rather than later, adding there isn't a reason to wait with Councilmember Brooks agreeing, adding if the Council were to get new information from the legislature, the Council could always revisit the issue at a later meeting. Mayor King also agreed, saying the Council should move forward now to shorten terms. Council then directed Staff to prepare the necessary documentation for Council to take action at the September 23, 2013 Council meeting, with Ms. Vivian stating she would do so and would also watch for legislative action regarding consolidates elections, adding if anything should change, she would bring it to Council's attention. Councilmember Wangsness asked if Council would have a copy written up for the Council to review it, with Ms. Vivian stating the ordinance would be prepared and have a legal review completed and would then be placed in the Council packet for Council to review.

A member of the public asked how Councilmember Crafts' vacancy would be filled with City Attorney Mike Massee stating the Mayor should conclude the public hearing before discussing the Council vacancy. Mayor King then asked if anyone present would like to make any other comments. After receiving no further requests to speak, Mayor King closed the public hearing at 6:36 p.m.

Mayor King then stated Council would appoint someone to fill the vacancy created by Councilmember Crafts' resignation. City Clerk Vicki Vivian then addressed the Council stating the last resignation on Council was in 2010 when Mayor King had to resign in order to run for Mayor. Ms. Vivian then stated at that time, the Council directed Ms. Vivian to prepare an audio advertisement placed on the local radio station and an advertisement to be placed in the local newspaper, as well as posting an advertisement in the City's posting locations and at City Hall. Ms. Vivian then stated Staff collected applications, consisting of an application and an affidavit of qualification, which were then presented to Council for their consideration and appointment to the vacant position.

A member of the public asked what would happen if the ordinance addressing Council terms was a 3-3 vote with Councilmember Moncada stating it was another good reason to address the issue as soon as possible, giving Council more time to address it, if needed.

NEW BUSINESS:

None

ADJOURNMENT:

Councilmember Moncada moved to adjourn at 6:38. Seconded by Vice Mayor Sacco. Motion passed 6-0.

Toney D. King, Sr., Mayor

ATTEST:

Vicki L. Vivian, CMC, City Clerk