



# TOWN OF HUACHUCA CITY

The Sunset City

**MEETING MINUTES OF THE  
HUACHUCA CITY TOWN COUNCIL  
Work Session Meeting  
January 24th, 2024 AT 6:00 PM  
COUNCIL CHAMBERS  
500 N. GONZALES BLVD.  
HUACHUCA CITY. AZ 85616**

**A. Call to Order – Mayor**

- a. Pledge of Allegiance
- b. Roll Call and Ascertain Quorum

**Roll Call.**

**Present:** Johann Wallace, Christy Hirshberg, Cynthia Butterworth, Jeffrey Ferro, Debra Trate, Jean Smelt, Town Manager Suzanne Harvey (Not voting), Town Clerk Brandye Thorpe (not voting), Town Attorney Thomas Benavidez (Not voting).

**Absent:** Danielle Cardella.

**B. Call to the Public – Mayor A.R.S. 38-431.01**

states the Public Body may make an open call to the public during a public meeting, subject to reasonable time, place and manner restrictions, to allow individuals to address the public body on any issue within the jurisdiction of the Public Body. At the conclusion of an open call to the public, individual members of the Public Body may respond to criticism made by those who have addressed the Public Body, may ask staff to review a matter or may ask that a matter be put on a future agenda. However, members of the Public Body shall not discuss or take legal action on matters raised during an open call to the public unless the matters are properly noticed for discussion and legal action.

**C. New Business Before Council – Mayor**

Public comment will be taken at the beginning of each agenda item, after the subject has been announced by the Mayor and explained by staff. Any citizen, who wishes, may speak one time for five minutes on each agenda item before or after Council discussion. Questions from Council Members, however, may be directed to staff or a member of the public through the Mayor at any time.

**Discussion on the scope of all services provided to the Town by Southwest Building Inspection Service, Inc., including: zoning department administration, plans review, building code inspections and enforcement, blueprint/plan reviews for construction projects, inspection of existing properties to enforce adopted Town codes, serving as a point of contact for the**

**general public to provide technical construction consulting to builders, property owners and permit applicants. Following the discussion, the Council might act to direct staff to schedule future meetings for additional discussion and/or action concerning these services.**

**Motion:** Discussion on the scope of all services provided to the Town by Southwest Building Inspection Service, Inc., including: zoning department administration, plans review, building code inspections and enforcement, blueprint/plan reviews for construction projects, inspection of existing properties to enforce adopted Town codes, serving as a point of contact for the general public to provide technical construction consulting to builders, property owners and permit applicants. Following the discussion, the Council might act to direct staff to schedule future meetings for additional discussion and/or action concerning these services,  
**Action:** Discussion, **Moved by** Johann Wallace, **Seconded by** Christy Hirshberg.

**Mayor Wallace** comments that before they get started, he needs to let everybody know that this work session is not a review of the contract, or the performance thereof related to Doctor Johnson and Southwest Building Inspection Services. That they are not here to evaluate him or his efficacy or the services and how they have been provided to the Town. He also reminds them that they must keep any personal feelings out of this, this is about the Town. They need to determine what does the Town need? What's really needed, what don't we need. What are things that maybe staff can do? What staff can't do. Is there potential for maybe outsourcing some of the other items. It's about understanding the Town's needs from Building Inspection Services and the reason why Doctor Johnson is here this evening is to identify anything that he may be doing that is beyond the scope of the contract as written between the Town and Southwest Building Inspection Services that we may not have a full understanding of.

**Councilmember Ferro** commented that maybe they should start out, after any presentation or briefing, by having Doctor Johnson give them a breakdown on what he's doing that is other than stipulated in his contract so we can start looking at that first.

**Councilmember Trate** commented that she was thinking that she would like to see first what Town staff can do. Then that's a starting point because it's no use talking about it and saying "ok but we think staff should do that" were we know our staff is limited. Like in past weeks when most people were sick. Now that's a rarity, but I'm sure they've seen this, and it's been reviewed by them so they can say "ok we can do this and save the Town money, it isn't going to take us that much extra time. She agrees with wanting the same as Councilmember Ferro but thinks they should start by talking about the staff.

**Mayor Wallace** comments that he hopes everyone has been able to review the information. He knows they had to delay the meeting due to illness, but he hopes that everyone has had the chance to review the material. He mentions how the first attachment right after the agenda does a good job of highlighting everything that is provided to the Town by Doctor Johnson and Southwest Building Inspection Services versus what our Town Code outlines. It's a really good starting point to understand that we're getting more than just what our Town Code calls for. This is where we want to start looking at. Again, what does the Town need from a building official? We have it defined in our Code what we're looking for, so at a minimum that's what we need to get. This is a work session so we're going to hash it out. At a minimum what's in our Town Code is what we're saying we expect from a building official. Is that still accurate? Does it meet our minimum needs? Do we need to add to it? Do we need to remove things. He reminds the Council that anything they want to add to it, to put into the

Town Code, when and whoever provides those services will be expected to do that. This is where he wants to start. With what is actually in the Code as he knows it has been a while since they have been over it. He asks that the Town Code for Building Official Duties be pulled up so they can see what is in there.

While that is being pulled up, Mayor Wallace asks Manager Harvey about things she thinks Town Staff would be able to do.

**Manager Harvey** answers that the only thing she can see that the staff could do would be some of the Code Enforcement, not for buildings but for Neighborhood Preservation. This has to do with things like weeds, messy yards, and that sort of thing. She believes because we do have staff on the ground that we could do that. We would have to have some training from Doctor Johnson on it and there are some legal issues there that right now his legal takes care of all of that because you have to do things in a certain way legally to be able to hold people accountable. We could take that over but then we would have an expense of our attorney then doing the notices of violation to make sure that they're all appropriate. She also points out that they would have to take over the cost of printing, mailing, and tracking of the N.O.V.s as well as the legal reviews. We do have the people and with the proper training she does believe we are capable. We don't have anyone on staff with the expertise needed for a building official nor the ability to be able to afford to hire anybody with that expertise. After going over the duties that was the only one she thought that staff might be able to do.

**Mayor Wallace** remembered when they had to hire an independent attorney to hand PRPVS after a new law several years ago. He asked would there be a requirement; if the Town itself, independent of any outsourced or contracted entity, would they have to employ Council to, that is specifically versed in the Arizona Constitution, the United States Constitution, and Property Law Rights. Along with everything else like that. To handle these N.O. Vs if the Town decided to do that ourselves.

Attorney Benavidez answers that they wouldn't have to hire another attorney. This would be something that he can do for the Town, but they would have to have an independent Council like they do for the PRPVS.

**Mayor Wallace** comments to the Council that this would be an added cost going to Mr. Benavidez. They would just be shifting the cost from a service that entity X would provide to the Town onto our own town attorney.

**Councilmember Smelt** asked if there is something like weeds, can't we just have Mr. Benavidez write a form that we can send. She doesn't understand we they can't just have some forms that say "we've noticed your weeds.... And you have 30 days to respond".

**Mayor Wallace** comments that that's a great question and asks that Doctor Johnson explain to the Council the basic start to finish process of how he would handle a weeds issue for someone in town.

**Councilmember Smelt** commented that this is something that happens over and over again.

**Doctor Johnson** tells the Council that the first thing his company does is go and take pictures. Next, they send a curtesy letter through regular mail to the homeowner.

**Mayor Wallace** says that could be what Councilmember Smelt was asking about.

**Councilmember Smelt** commented that it could just be a blank form.

**Doctor Johnson** explains that this letter lays out what Code you're referencing. That gives them two (2) weeks to comply. There is a return date that is in the letter for when he goes out again to see if they have complied. After two (2) weeks if they do not comply after the courtesy letter then a N.O.V, which stands for Notice of Violation, goes out. This must go out by certified

mail, that gets a signed receipt from the property owner. This gets them 30 days to comply. After 30 days, if they have not complied, Doctor Johnson will try to contact them just to double check there hasn't been illness, or they haven't passed away, TDY, or some other reason to keep them from complying. From there he has several options. He can go to citation. If they communicate with him or they ask for additional time, he can grant that to them. He tells the Council that his philosophy has always been to work with the client, as much as is possible. This is why we send courtesy letters, because nobody likes to be told what to do if we're being honest. The courtesy letter is just a friendly reminder that "hey you may not be aware, but you're in violation of a City Code and if you take care of that we'd greatly appreciate that at City Hall". If they decide they want to go to N.O.V., that's fine and we'll go to N.O.V. If we cite them and want to go to a citation, then we go to a citation and we go to court, and the judge takes it from there.

**Councilmember Smelt** asks Doctor Johnson if this is something the Police do if it gets to a citation.

**Doctor Johnson** answers that he has citation powers, but they are not set up with the Court system here, so he chooses to use the police department to send that citation out. Usually what happens is we send out a well-dressed uniform officer, they come out with a citation to cite you for the violation. The Officer is aware of the courtesy letter that notes the violation and timeframe, correspondence, lack of correspondence. They cite them and for it to get a court date they report to Margret and then they report to that date and stand with the judge. A judge will take it from there.

**Mayor Pro Tem Hirshberg** asks how many times have we done that, put somebody through to a judge. In say an average year.

**Doctor Johnson** answers with his company track record it is 98% of not citing. Here he has only had an individual cited three times.

**Councilmember Butterworth** asks if that was recently or in the past.

**Doctor Johnson** answers that that case is in the past.

**Manager Harvey** comments that she knows of a few cases that had to be cited this year.

**Doctor Johnson** answers that there are some citations coming up for some folks who are not complying, it's a very low number.

**Councilmember Smelt** asked Doctor Johnson to explain how he has the power to do that. Is that something that we have written in our Town Code or is it because you are licensed.

**Doctor Johnson** explains that it is in the Town Code. He also explains that he operates in five (5) different chapters of the Code. The citation for weeds is covered under chapter 16, which is the Neighborhood Preservation Code. When a Code Official is appointed, that's done by your City Manager, and the process that Doctor Johnson has gone through he has been granted citation powers. He has never felt like he needed to enact them with Margret.

**Councilmember Smelt** asked if it was State law or our Code that says that it has to go out certified mail. Why can't it go out certificate of mailing? Why does it have to be certified?

**Doctor Johnson** answered that they send them certified so that they have positive confirmation that the property owner did receive it.

**Councilmember Smelt** asks if they would have the same thing with a certificate of mailing, which is a whole lot cheaper than certified and then if they don't sign for the letter you're stuck in nowhere. Is that part of the Code or a State law?

**Doctor Johnson** answers that as that's a legal question Mr. Benavidez would probably be better suited to answer that.

**Manager Harvey** asked if Mr. Benavidez had heard the question.

**Attorney Benavidez** answers yes and that he believes it is in the Town Code. He doesn't believe it is in a State Statute.

**Councilmember Smelt** comments that she didn't think she either. Next, she asks for clarification that our City Manager can appoint someone to do these things, it's not because of Doctor Johnson's education and qualifications. It's an authority our City Manager gave Doctor Johnson.

**Doctor Johnson** explains that it was written in chapter 16. That when his company wrote that part of the Code for the Town, they wrote that in. The City Manager's first choice is the Building Official if they chose to do another appointment to someone else to do "Town Code Enforcement" she has that authorization to do that in chapter 16.

**Mayor Wallace** comments that he didn't know what Certificate of Mailing was, so he just looked it up. He can see the benefit to the Certified Mail, and he can see Councilmember Smelt's point. They have had an instance before when certified mail was sent, and it was sent back even though we know it was delivered because it was never signed for because the individual was very familiar with this type of mail.

**Councilmember Smelt** comments that this is exactly what she was saying. And a certificate of mailing proves that you mailed it.

**Mayor Wallace** comments that it proves that you sent it, it does not prove that it was ever delivered. So that's the key difference. Even with sending something certified mail. It gets delivered. The person can refuse to sign for it, so they attempted delivery, they refused signature, and it gets returned. So that's the difference that he sees where with a certificate of mailing it just says, "yes I mailed this". He does understand her concern from a cost perspective.

**Councilmember Smelt** comments that she's just saying that if they are doing the same thing week after week for somebody for weeds, she knows you can only do it every 10 business days, it just seems silly for some of these minor offenses. She understands completely if it's a big thing.

**Mayor Wallace** replies that he gets where she's coming from completely, but where he is with it is whether it's minor or not, we need to handle everything the same.

Councilmember Smelt agrees with him.

Mayor Wallace mentions there was one instance where certified mail was being sent, it was not being signed for and was being returned. That was still sufficient enough to go to court and it was good enough for the judge to order certain clean up activities in this town.

**Councilmember Smelt** asks if that is called abatement?

**Mayor Wallace** answers that abatement is if the Town pays for it and that they abated their own properties. He explains that there was a court order that this individual had to clean stuff up.

**Councilmember Smelt** asks for clarification that we can't go onto somebody's property, that there is no way we can "make them" do anything. That we can't go on their property, if someone is living there, we can't go on their property and cut their grass. We can't do that, but we can fine them.

**Mayor Wallace** comments, stating he hopes Mr. Benavidez will correct him if he is wrong, that there have been reports of where code enforcement has been attempted, it has not been complied, and cities have gone in and cleaned it up and they send a bill for it.

**Manager Harvey** comments that this would incur a significant legal expense which is why we have not done it. She asks if Mr. Benavidez would like to weigh in on this.

**Mr. Benavidez** replies that sure we have powers of forced abatement, we do, but if we have property owners in place we would have to go and get a court order before we would go on to someone's property. Our abatement activities are usually done on properties that are vacant.

**Councilmember Smelt** asks if we have anything in our Code for fining people.

Many people answer yes.

**Councilmember Smelt** asks why aren't we doing that.

**Attorney Benavidez** answers that it goes through the court system.

**Councilmember Smelt** replies exactly!

**Councilmember Trate** comments that it has to go through the steps.

**Mayor Pro Tem Hirshberg** replied it hasn't gone that far yet.

**Mayor Wallace** comments that it has to go through the steps, that we can't just open up with "here, you have to give the Town \$500 because you have tall weeds." That's why Doctor Johnson was going through the process that he follows was a courtesy letter, send certified mail, and if it gets to the point that we have to bring it to the courts then those fees are going to source that," hey, you need to do this and you're going to pay this fine."

**Councilmember Smelt** comments that she just can't believe that with as many things as are going on in a residential area that we have, that we shouldn't have gotten to that point before now.

**Mayor Wallace** replies that what he's hearing what she says but he's going to continue the conversation and gives the floor back to Doctor Johnson.

**Doctor Johnson** comments a quick thought on the subject, that just because it goes to court does not mean that the work gets done. That is up to the judge. He tells them that he has been in court on a couple of cases here in town where the judge has fined the individual per our Code. It's a Civil of things on strike one, Civil of things on strike two, and Criminal on strike three. But the judge would always fine them, never order them to do the work so they would go out the door, pay the clerk, and go home.

**Manager Harvey** comments that they could also be given another extension, and that this is also another issue. This is something that we cannot control. This is the judge's prerogative, and the judge can decide when they listen to the person, "you know what, they had all these adverse things. We're going to give them another 30 days." She knows this happens. It isn't all relying on our Code Enforcement Officer or on us. Once it goes to the court system, that is an entirely separate part of the government, and it is the judge's judgement that is used. Just like if you get a speeding ticket, just like if any of us end up in court. It is the judge that has the final say so. They apply the law but they also apply there judgement as here are the reasons why and she's only mentioning this to provide some clarity on what actually happens in the courtrooms.

**Attorney Benavidez** tells the council that code enforcement is really tricky in Arizona. Arizona is a pro- private property rights state. So, when the Government comes in and starts telling people what they can do with their trash, what they can do with their weeds, how high their fence can be, and all of that stuff. By the time it gets into court, the courts don't really solute a lot of it. It's really difficult to do. These may seem really simple but they're not and it's very easy for these property owners to make claims that they're being picked on for one reason or another. Or as a matter of fact, all your code enforcement cases happen to disproportionately

affect senior citizens or people of color and then you're in trouble. Even though you had the best of intentions of just trying to keep the Town clean and looking good. It's not easy. There have been all kinds of high-level court cases in Arizona and other states where property owners have successfully asserted several theories to stop towns from enforcing their laws. It's hard.

**Mayor Wallace** comments that it is, and the easiest way to look at our Town Code or any law for that matter is that they are there to let the people who want to do the right thing know what they can and can't do. That's one. Another thing is that they are there so that we know how to address those folks that don't want to do the right thing and don't really care. So, it sets expectations on what you can and can't do without encroaching too heavily on somebodies' property. But it also gives the Town or State the avenue they need to enforce those laws and code that exists to maintain the property or whatever the case may be. Laws are really there for guidance.

25.52

#### **D. Adjournment**

**Motion:** To Adjourn, **Action:** Adjourn, **Moved by** Johann Wallace, **Seconded by** .  
Motion passed unanimously.

Approved by Mayor Johann R. Wallace on February 8th, 2024.

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Mr. Johann R. Wallace  
Mayor

Attest: \_\_\_\_\_  
Ms. Brandye Thorpe,  
Town Clerk

Seal:

#### **Certification**

I hereby certify that the foregoing is a true and correct copy of the Minutes of the Meeting for the Huachuca City Town Council held on October 26, 2023. I further certify that the meeting was duly called and a quorum was present.

Ms. Brandye Thorpe,  
Town Clerk