DRAFT MINUTES
SPECIAL SESSION
MAYOR AND COUNCIL
473 S MAIN STREET, SUITE 106
MONDAY, AUGUST 18, 2014 at 4:00 p.m.

Minutes are a summary of the discussion. They are not verbatim.
Public input is placed after Council discussion to facilitate future research.

1. **Call to Order**
Mayor German called the meeting to order at 4:00 p.m.

2. **Roll Call**
Mayor German, Vice Mayor Baker, and Councilors George, German, Gordon, Jones, and Whatley

Also Present
Town Attorney Bill Sims, Town Manager Russ Martin, and Town Clerk Deborah Barber

3. **Discussion and consultation with the Town Attorney for the purpose of receiving legal advice pursuant to A.R.S. Section 38-431.03(A)(3) and to consider its position regarding possible litigation pursuant to A.R.S. 38-431.02(A)(4) regarding: employee complaint and response thereto.**
On a motion by Gordon, seconded by Jones, the Council voted unanimously to go into Executive Session for the purposes of receiving legal advice on the items as listed on the agenda.

Town Attorney Sims advised that there were about six legal issues that he needed to provide legal advice to Council in Executive Session.

Councilor Gordon wanted to let the public to know that Council is adhering to the letter of the law

Baker read a statement stating that she believed that this meeting was being held contrary to Town procedures. She requested an investigation by an outside independent authority. She explained that she would agree to go into Executive Session for legal advice only.

The Special Session was recessed at 4:04 p.m. and reconvened at 5:29 p.m.

Sims explained that he had discussed legal principles with the Council with regard to public records and the complaint.

Motion:
On a motion by Gordon, seconded by George, the Council voted unanimously to return the complaint and the Clerk's response to the Manager for him to take care of as an interdepartmental issue.

4. **Discussion and consultation with the Town Attorney for the purpose of receiving legal advice pursuant to A.R.S. Section 38-431.03(A)(3) and to consider it position regarding possible litigation pursuant to A.R.S. 38-431.02(A)(4) regarding: budgetary impacts and the allocation or recourses in order to respond to public records requests; impact on employees when Council members take actions that directly impact Town employees; the Town Code requirement to allow the Town Manager to manage the administrative affairs of the Town; the rights of members of Council to make inquiries of Town staff; the importance of holding the Town Manager accountable and the ramifications if Council members improperly interact directly with Town staff; the importance of requiring Town supervisors to supervise and manage the affairs of assigned employees); Council Policies, Rules and Procedures and Code of Ethics requirements and possible options for Town Council including the enforcement process thereof.**
On a motion by Gordon, seconded by Baker, the Council voted unanimously to proceed with an independent

investigator to investigate the following items: budgetary impacts and the allocation or recourses in order to respond to public records requests; impact on employees when Council members take actions that directly impact Town employees; the Town Code requirement to allow the Town Manager to manage the administrative affairs of the Town; the rights of members of Council to make inquiries of Town staff; the importance of holding the Town Manager accountable and the ramifications if Council members improperly interact directly with Town staff; Council Policies, Rules and Procedures and Code of Ethics requirements and possible options for Town Council including the enforcement process thereof, and directed the Manager to investigate: the importance of requiring Town supervisors to supervise and manage the affairs of assigned employees.

Motion to Amend:
A motion by Gordon, seconded by Baker to amend the motion to select an independent investigator for the identified items from a list provided by the Manager working with input from the Attorney and final recommendation from the Town Manager failed to move forward when Baker withdrew her second.

On a motion by Jones, seconded by Councilor German, the Council voted to select an independent reviewer from a list compiled by the Attorney and the Manager that is to be brought back to Council without recommendation passed, with Whatley voting no.

Discussion:
Martin advised that many of these issues had been brought to his attention that needed to be addressed and resolved at the Council level. He explained that it is important to determine if something went astray and where it went wrong. He stressed that these were issues that Council needed to address, as opposed to having the Manager address them. He strongly encouraged Council to consider an independent authority to look into them.

In response to Vice Mayor Baker's questions as to whether these were written complaints and why Council members had not seen them, Martin took full responsibility for the concerns as stated in the agenda item.

Sims recommended that Council have an independent reviewing authority investigate these issues, as well as Complaints 5, 6, and 7 as listed in the employee complaint, and come back to Council with facts and recommendations. Sims advised that he could provide a list from which Council could choose. Martin advised that he would like to provide a list of attorneys for Council consideration, as well.

5. **Following the executive session, if convened, the Town Council may convene in open session and direct the Town Manager to take such steps as may be necessary to address Council concerns and/or to take such action as may be permitted by the Town Code to enforce such policies.**
On a motion by Gordon, seconded by Jones, the Council voted unanimously to include Employee Complaints 5, 6, & 7 in the independent investigation. (Note: the complaint and response are attached and become a permanent part of the record.)

Discussion:
Martin asked that Council include the employee complaint issues in the investigation.

Sims cautioned Council that by referring the complaint to the manager, it becomes a public document. He stated that he believed the complaint and the response were now a public record and should be released as such.

6. **Adjournment**
On a motion by Baker, seconded by Gordon, the meeting was adjourned at 5:52 p.m.

_____
Charles German, Mayor

_____
Deborah Barber, Town Clerk

CERTIFICATION

I hereby certify that the foregoing Minutes are a true and accurate accounting of the actions and/or discussion of the Mayor and Common Council of the Town of Camp Verde during the Special Session of the Town Council of Camp Verde, Arizona, held on August 18, 2014. I further certify that the meeting was duly called and held, and that a quorum was present.

Dated this _____ day of _____, 2013.

_____

Deborah Barber, Town Clerk

July 30, 2014

To: Russ Martin, Town Manager

Re: Employee Complaint and Town Council Concerns

Cheri Wischmeyer and certain members of the Town Council have submitted numerous public records requests, both verbally and written through the Town Clerk's office. These request include targeted employee's pay, performance, disciplinary, background, polygraph, and job qualifications.

I am sure as a council you will see these request as we do, as blatant harassment and employee headhunting. The targeted employees in these requests and of the Camp Verde Marshal's Office see these requests as threatening and the cause of a hostile work environment. At this point some employees are questioning their job security and others are in constant fear of becoming the next target. Not to mention, some of the requests, provided information, and activities are in violation of Town Code, Town Record Management Policies, and Town Council Policies, Rules, and Procedure.

These unnecessary and unjustified request have cost the town and the citizens of Camp Verde countless hours of employee time and have distracted them from their normal job duties. Numerous employees in various departments have researched, copied, and, scanned thousands of documents to fulfill the requests of one individual. To make matters worse, the town had no chance of recouping any of these expenses due to the fact, not a dime was charged for any of the public records requests.

Complaint #1

By providing Wischmeyer with countless free town records, the purpose stated in the Town of Camp Verde Records Management Policy is being disregarded.
Ref: section 7 (A) to *"maximize cost recovery, and ensure the appropriate distribution of monies received in connection with providing public records"*.

Furthermore Wischmeyer, to avoid record request fees, has been given the right to bring in her own scanner/copier to make personal copies of town records.

Complaint #2

Numerous employee documents and employee file content have been requested by Councilor Jakie Baker and Carol German. Some of these records have been released without being provided to the rest of the council and without the knowledge of the Town Manager. This action

is a direct violation of Town Council Policies, Rules, and Procedure section 15.5 (B) *Materials supplied to a Council Member in response to a request will be made available to all members of the Council so that all have equal access to information.*

Two specific employee's pre-employment backgrounds were requested by Council member Carol German and were requested with the intention to be given to an ex-employee of the Marshal's Office.

Complaint # 3

Employee files have also been released to Cheri Wischmeyer against the provisions in the Town of Camp Verde Records Management Policy section 7 "Records Request for Personnel Files and Evaluation" *The Town's general policy is to keep personnel records confidential in order to preserve the employee's privacy rights. The Town will review a request for personnel files to determine whether the request is made pursuant to a matter of public interest, such as a claim letter, written complaint, criminal investigation, litigation, or an allegation involving misconduct of a public employee.*

Complaint # 4

Town Council members have been able to verbally request personnel file information from the town clerk, with no documentation of what was requested or what was provide. These acts are in contrary to Town of Camp Verde Records Management Policy section (B) *The Town of Camp Verde, as a public body, and its officers are responsible for maintaining records reasonably necessary or appropriate to preserve an accurate record of their activities.*

This type of activity also violates the Town Council Policies, Rules, and Procedure section 15.5 (B) *Questions of Town staff and/or requests for additional background information should be directed through the Town Manager, Town Clerk or Department Heads, or the Department Head's designee. The Town Manager should be copied on any request.* Most importantly, this activities violate Town Code section 3-2-2 (B) 1. *Records. The clerk shall keep a true and correct record of all business transacted by the Council and any other records that either pertain to the business of the Town or that the Council directs. The clerk shall number, plainly label, and file separately in a suitable manner all resolutions, notices, deeds, surveys, leases, paid and unpaid vouchers, inventories, letters, orders, and other documents of whatever nature.*

These undocumented and non-traceable requests give the appearance of council's attempt to become involved or circumvent the Town Manager in personnel matters, or the plotting of the demise of certain employees.

Complaint # 5

Recently, in a regular Town Council meeting, Councilor German falsely accused the Town Marshal (employee of the town) of violating town code and wanted her criminally cited and disciplined. This is again a violation of Town Council Policies, Rules, and Procedure 15.5 (D) *Council should never express concerns about the performance of a Town employee in public, to the employee directly, or to the employee's manager. Misdirected comments could violate the Town's personnel rules and limit the Town's ability to deal fairly and efficiently with personnel matters. Comments about staff performance should only be made to the Town Manager through private correspondence or conversation.*

Complaint # 6

Recently, in a civil court hearing a local known felon testified under oath that "Vice Mayor" Baker assisted him in verifying information on the activities of an employee and provided him with guidance in his effort to discredit this potential ex-employee of the Marshal's Office. The known felon (Michael Dunegan) also testified that he was communicating with the Vice Mayor through her personal cell phone.

Complaint # 7

Conflict of interest and nepotism between the Vice Mayer and Town Clerk. It is known that the Town Clerk and the Vice Mayor are mother and daughter. This relationship constitutes numerous Town Code violations.

Per Town Code Section 3-2-1.I (A) *For a temporary absence or disability of the Town Manager, the Town Marshal will serve as Acting Town Manager. If the Town Marshal is not available, the Town Clerk will serve as Acting Manager. (The acting Manager is under the direct supervision of the Council)*

Per Town Code Section 3-2-1.I (B) *For a vacancy in the position, the Acting Town Manager shall be appointed by resolution of the Council*

Town Code Section 3-2-1 (C) *Eligibility. No member of the Council, their spouse or relatives to the first degree shall be eligible for appointment as Town Manager until one year has elapsed after such Council member shall have ceased to be a member of the Council.*

Town Code Section 3-2-1 (B) 6 & 8
6. Election Official. The clerk shall be the Town election official and perform those duties required by state statute and as directed by the Council. (the town clerk is a direct subordinate of the council)

8. Administrative Duties. The clerk shall perform those administrative responsibilities and duties that are conferred upon the clerk by the Council

Based on the above alleged violations, we, the employees, perceive these acts to be an attempt to discredit and undermine the town and its employees.

We beg of you as council members, to cease and prohibit the release of pending request for employee information, until an official investigation can be completed in reference to the listed allegations.

Through this complaint, we are also requesting a written response of the findings.

Respectfully submitted,

D Martin

J. Zwak

Steve Butler

S. Ganes

DB Grant

O. Ferrelez

Neal Lanning

David Freeman

Donald Caldwell

Julie M. Scott

Lana M. Stine

RYINTEROFFICE MEMORANDUM

TO:	RUSS MARTIN, TOWN MANAGER
FROM:	DEBBIE BARBER, TOWN CLERK
SUBJECT:	RESPONSE TO COMPLAINT
DATE:	AUGUST 14, 2014
CC:	BILL SIMS, TOWN ATTORNEY

Russ,

I am responding to the complaint because the majority of the complaints are specifically directed to the performance of the Clerk's Office. In reference to the complaint dated July 30, 2014 filed by CVMO employees Darby Martin, Jennifer Zwak, Steve Butler, Steve Ganis, Bruce Girnt, Oscar Berrelez, Neal Lanning, David Freeman, Donald Caldwell, Julie Scott, and Lana Stine, I have the following responses:

Complaint #1

"By providing Wischmeyer with countless free town records, the purpose stated in the Town of Camp Verde Records Management policy is disregarded. Ref: Section 7(A) to maximize cost recovery and ensure the appropriate distribution of monies received in connection with providing public records."

Response:

This allegation is false. Resolution 2013-895 that sets the fees for FY13-14 does not set fees for electronic copies. As I have explained on numerous occasions both to staff and to Council, it is much more cost effective to scan a record, store it, and transmit the record digitally than it is to create a paper record that must be stored in a filing cabinet. Digital copies take less staff time, saves an enormous amount on our paper and copier costs, allows us to have quick access to the record for future requests, and allows us to manage destruction schedules accurately without requiring additional floor space. Clerk's Office staff encourage all persons requesting public information to accept it electronically, noting that there are no fees attached.

By this point in time, all departments should have their records stored and indexed electronically to maximize cost savings to the Town and to provide immediate access to public documents.

Complaint #2

"Numerous employee documents and employee file content have been requested by Councilor Ja(c)kie Baker and Carol German. Some of these records have been released without being provided to the rest of the council and without the knowledge of the Town Manager. This action is a direct violation of Town Council Policies, Rules, and Procedure section 15.5(B) Materials supplied to a Council Member in response to a request <u>will be</u> made available to all member of the Council so that all have equal access to information.

Two specific employees pre-employment backgrounds were requested by Council member Carol German and were requested with the intention to be given to an ex-employee of the Marshal's Office."

Response:

The portion of the complaint relating to material not being distributed to all Council members is correct. Staff informed me that this policy had not been followed because certain Council members had advised that they did not want to be copied on all information. Several Council members have asked me on more than one occasion why they were getting information. We discussed this at length in two retreats and it was evident during the discussion that the majority of Council no longer wanted everything that other Council members got. Based on these facts, I do not feel that any sort of disciplinary action for my staff is required. However, they have been instructed to follow written policy from this point forward. This includes ALL written policies. We will no longer take verbal instruction to deviate from any Council policy.

As for the second part of this complaint, Councilor German has never requested 'pre-employment backgrounds', but rather, requested background checks. According to our records, you advised the Deputy Clerk that this request had been withdrawn. The information that she requested was not provided to her through our office. I cannot speak to Councilor German's intent.

Vice Mayor Baker has never requested information on a specific employee, so this statement in the complaint is untrue.

Complaint #3

"Employee files have also been released to Cheri Wischmeyer against the provisions in the Town of Camp Verde Records Management Policy section 7 "Records Request for Personnel Files and Evaluation" The Town's general policy is to keep personnel records confidential in order to preserve the employee's privacy rights. The Town will review a request for personnel files to determine whether the request is made pursuant to a matter of public interest, such as a claim letter, written complaint, criminal investigation, litigation, or an allegation involving misconduct of a public employee."

Response:

As I have explained to Marshal Gardner, state law trumps the Town's written policies. Many laws have changed since Council approved the Records Management Manual. This Manual and others need to be updated. In the meantime, we are required to follow state statutes. The Town Attorney has affirmed this requirement as well. Failing to follow state statutes could have serious repercussions and subject the Town to liability.

Complaint #4

"Town Council members have been able to verbally request personnel file information from the town clerk, with no documentation of what was requested or what was provide [sic]: These acts are in contrary to Town of Verde Records Management Policy section (B) The Town of Camp Verde, as a public body, and its officers are responsible for maintain records reasonable necessary or appropriate to preserve an accurate record of their activities.

This type of activity also violates the Town Council Policies, Rules, and Procedure section 15.5 (B) Questions of Town staff and/or requests for additional background information should be directed through the Town Manager, Town Clerk or Department Heads, or the Department Head's designee. The Town Manager should be copied on any request. Most importantly, this activities violate Town Code section 3-2-2(B) 1. Records The Clerk shall keep a true and correct record of all business transacted by the Council and any other records that either pertain to the business of the Town or that the Council directs. The clerk shall number, plainly label, and file separately in a suitable manner all resolutions, notices, deeds, surveys, leases, paid and unpaid vouchers, inventories, letters, orders, and other documents of whatever nature.

These undocumented and non-traceable requests give the appearance of council's attempt to become involved or circumvent the Town Manager in personnel matters, or the plotting of the demise of certain employees."

Response:

When elected as a public official, the Public Officer does not give up his or her rights as an American citizen. Every citizen has a right to access public information. Our policies allow department heads to determine if a written request is necessary. In our department, where we serve as liaisons between the public and their governing bodies, it is our policy to be as open, transparent, and accommodating as possible in order to foster trust in the government. Based on this philosophy that has been in place since I began as Deputy Clerk in 1996 and that has been applied equally to all, I have determined that verbal requests are sufficient, except in cases where a substantial amount of information is requested. This written requirement does not apply to staff or Council members. Moreover, in my nearly 25 years of employment with the Town, we have NEVER required a Council member to make a written request for anything because they are the policy makers.

Council policies were not violated, as the requests came through the Town Clerk. Further, the Town Code Section 3-2-2.B.2 states: "Public Inspection of Records. The clerk shall keep convenient for public inspection all public reports and public documents under the control of the clerk, as provided by state statute."

There are no written policies or state statutes that require the Clerk's Office to create a record each time a person requests information, whether it comes from a citizen, a staff member, or a Council member. If there were such a requirement, we would not have sufficient staffing or filing space. I have also explained this to Marshal Gardner in detail and had the Town Attorney weigh in. Therefore, there are no undocumented records as stated above.

It is evident that the complainants are misinterpreting the word "Council" in this context, believing that Council refers to an individual member, as opposed to the correct definition of the Council as a whole governing body. Records of the Council are kept and indexed in accordance with the Town Code, policies, and statutes.

There was an underline emphasis under the word 'orders'. I would like to make it absolutely clear that at no time has any Council member ever given us an order. An order would not be a record unless it was given in a duly convened meeting as the governing body.

I would like to point out at this time that though you might not have received copies, both Virginia and I have verbally informed you of most, if not all of the requests. From this point on, you will receive copies of every request that Council members make.

Complaint #5

"Recently, in a regular Town Council meeting, Councilor German falsely accused the Town Marshal (employee of the town) of violating town code and wanted her criminally cited and disciplined. This is again a violation of Town Council Policies, Rules, and Procedure 15.5 (d) Council should never express concerns about the performance of a Town employee in public, to the employee directly, or to the employee's manager. Misdirected comments could violate the Town's personnel rules and limit the Town's ability to deal fairly and efficiently with personnel matters. Comments about staff performance should only be made to the Town Manager through private correspondence or conversation."

Response:

Though this complaint is directed at Councilor German, I feel the need to clarify that the record reflects that Councilor German clearly stated in her discussion that she was not talking about Marshal Gardner's performance and that she was quite pleased with what she had accomplished in a short time. German explained that she was unhappy that Gardner chose to move outside the Town limits without a Council waiver. The video and minutes are available online.

This is not a false accusation, as her decision to live outside the Town limits without Council approval was a violation of Town Code Section 3-2-4.

Complaint #6

"Recently, in a civil court hearing a local known felon testified under oath that "Vice Mayor" Baker assisted him in verifying information on the activities of an employee and provided him with guidance in his effort to discredit this potential ex-employee of the Marshal's Office. The known felon (Michael Dunegan) also testified that he was communicating with the Vice Mayor through her personal cell phone."

Response:

After hearing this same information from Darby Martin on that fateful day that all this information came to light and that I relayed to you, I listened to the entire recording of the court proceedings. Every statement in Complaint #6 is a blatant lie.

Complaint #7

Conflict of Interest and nepotism between the Vice Mayer [sic] and Town Clerk. It is known that the Town Clerk and Vice Mayor are mother and daughter. This relationship constitutes numerous Town Code Violations. The complainants cite Town Code, Sections 3-2-1.I (A) Acting Town Manager; 3-2-1.I(B) Acting Town Manager appointment; 3-2-1(C) Town Manager Eligibility; 3-2-1(B) 6 & 8 Election Official and Administrative Duties.

Response:

This complaint appears to be one of complete disrespect and disregard of both my position as an officer of the Town and that of the office held by my mother. These allegations are not only false, but also harmful to my career. I have been an employee of the Town for almost 25 years. My mother has been a Council member for 14 years. Do the complainants not consider that if there were something untoward going on, it would have been settled long before now? I have a friend in Gila Bend who is the Clerk and her husband is the Vice Mayor. It is not illegal to have a relative on the Council, nor does it rise to the level of a charge of nepotism.

I am not a direct report to, or subordinate of the Council.

The Acting Town Manager has limited authority and is appointed by Council Resolution when there is no Manager. I have never been "appointed" as Acting Town Manager, but if I were and I received additional compensation, my mother would not be allowed to vote. Remember, she is but one of seven members and because of our relationship, she would not be permitted to vote on anything that directly related to me alone.

The Acting Town Manager and the Town Manager are two different positions with differing authorities.

The references to "as directed by Council and conferred upon the Clerk" are references to State Statutes wherein the Clerk takes on the duties that are performed by the Secretary of State. This in no way implies that the Clerk is a subordinate of the Council.

It is clear that the complainants do not understand the charge of nepotism. For example, my mother is allowed to vote on the budget because it does not apply solely to me. Yet, she voted against the budget that included a raise for me. Therefore, I do not understand how serving in our respective positions with all the safeguards put in place by ARS could possibly be construed as nepotism or a conflict of interest. Her vote on the budget was not a benefit to me, financial or otherwise.

Finally, the complainants have requested that Council prohibit the release of pending requests for employee information until an official investigation can be completed in reference to these allegations. Please note that Council lacks the statutory authority to prohibit the release of public information in a prompt manner. (ARS §39-121.01.D.1 & E)

In closing, I noticed that though the complaint letter was addressed to you, they plead for Council intervention for relief from these perceived wrong doings. Thus, I would really appreciate it if you would send this response to all of Council so that they might consider both sides of the story.

Thank you.

Debbie Barber