

**THE REGULAR MEETING
OF THE MAYOR AND CITY COUNCIL OF BENSON, ARIZONA
HELD APRIL 11, 2011 AT 7:00 P.M.
AT CITY HALL, 120 W. 6TH STREET, BENSON, ARIZONA**

CALL TO ORDER:

Mayor Fenn called the meeting to order at 7:00 p.m. with the pledge of allegiance.

ROLL CALL:

Present were: Mayor Mark M. Fenn, Vice Mayor John Lodzinski, Councilmembers Jo Deen Boncquet, David Lambert, Nick Maldonado, Lori McGoffin and Al Sacco.

EMPLOYEE RECOGNITION: Mayor Fenn recognized Jim Cox for 5 years of service with the City.

CALL TO THE PUBLIC:

City Clerk Vicki Vivian addressed Council concerning the 2011 General election. Ms. Vivian's comments are incorporated into the minutes.

PUBLIC HEARING: None.

PROCLAMATION:

Councilmember Lambert asked if he could make a brief statement before the proclamation was read. Councilmember Lambert then stated this proclamation meant a lot to him and his family as his grandson, Noah James Ingram, was very recently diagnosed with brain stem glioma (cancer of the brain).

Councilmember McGoffin then read a proclamation declaring the week of April 24th–30th, 2011 as Childhood Cancer Awareness Week. Mayor Fenn thanked Councilmember McGoffin and on behalf of the Council, wished Councilmember Lambert the best with his grandson. The proclamation was later presented to Councilmember Lambert.

CITY MANAGER REPORT:

City Manager Glenn Nichols then addressed Council, giving the dates of upcoming meetings and events.

April 12, 2011	–	Library Advisory Board, 4:00 p.m., Library
April 13, 2011	–	Planning & Zoning Commission, 7:00 p.m., City Hall
April 16, 2011	–	Historic Preservation Commission, 9:00 a.m., City Hall
April 18, 2011	–	City Council Retreat, 6:00 p.m., Cochise College
April 25, 2011	–	City Council Meeting, 7:00 p.m., City Hall
April 26, 2011	–	Community Watershed Alliance, 6:30 p.m., City Hall
April 28, 2011	–	Board of Adjustment, 7:00 p.m., City Hall

April 29 – May 1, 2011 – Bluegrass in the Park at Lions Park

NEW BUSINESS:

1. Consent Agenda

- 1a. Minutes of the March 28, 2011 Regular Meeting, Including Executive Session Minutes
- 1b. Memorandum of Understanding between Learning for Life and the Benson Fire Department to participate in the Exploring Program operated and maintained by Learning for Life

- 1c. Resolution 29-2011 of the Mayor and Council of the City of Benson, Arizona, designating the Patrick/Valley View and Prickly Pear/Cactus areas of the incorporated City of Benson as Arizona Colonias within Cochise County
- 1d. Resolution 30-2011 of the Mayor and Council of the City of Benson, Arizona, adopting a Fair Housing Policy making known its commitment to the principle of Fair Housing and describing actions it shall undertake to affirmatively further Fair Housing
- 1e. Invoices processed for the period from March 22, 2011 through April 4, 2011

Councilmember Sacco requested Item 1b be removed from the Consent Agenda. Councilmember Lambert moved to approve the remaining Consent Agenda. Seconded by Councilmember McGoffin. Motion passed 7-0.

Consent Agenda – Items Removed:

- 1e. Memorandum of Understanding between Learning for Life and the Benson Fire Department to participate in the Exploring Program operated and maintained by Learning for Life.

Councilmember Sacco asked Fire Chief Keith Spangler about the program, with Fire Chief Spangler stating the Explorer Post is a learning experience for males and females, ages 14-20, adding there needs to be at least 5 Explorers to start the program since the Explorers elect board officers and run the Post. Chief Spangler then stated the adult advisors give education and guidance. Chief Spangler then stated the Explorers participate not only in firefighting activities, but can hold fundraisers and plan trips, among other activities. Councilmember Sacco asked about the cost to be an Explorer with Chief Spangler stating the fee is \$11.00 per year, which covers insurance for their participation. Mayor Fenn verified with Chief Spangler that the fee would register Explorers with the Scouting program and the insurance coverage would be through the Scouts. Chief Spangler confirmed this, stating the program was changed to Learning for Life, but is registered with Boy Scouts of America. Councilmember Sacco then asked how many people were interested in the program with Chief Spangler stating he had at least 4 or 5 kids talk to him about the program and there are 5 firefighters who are willing to be advisors and help with the program.

Councilmember McGoffin moved to approve Consent Agenda Item 1b. Seconded by Councilmember Lambert. Motion passed 7-0.

2. Update, discussion and possible action regarding a City sponsored community event to be held in Benson in support of cancer research and treatment

Councilmember McGoffin addressed the Council stating she has met twice with Recreation/Tourism Assistant Laura Parkin, Thelma Grimes and Lindsay Arnold and they have come up with ideas for an event, the “Benson CAT Walk,” (Cancer Awareness Trek) to be held on September 24, 2011 at Lions Park. Councilmember McGoffin stated participants can walk circles around Lions Park and for every circle, they will get a bead that can be used to make a memory bracelet or necklace. Councilmember McGoffin then stated they are looking at pre-registration fees of \$10.00 and registration fees the day of the CAT Walk of \$15.00, adding they are hoping to purchase t-shirts and different colored wristbands the participants can choose indicating which cancer they are supporting. Councilmember McGoffin stated the event will start at 9:00 a.m., hopefully wrap up around 1:00 p.m., with clean up around 3:00 p.m., thinking if they raise enough money, they will have a band and a really good fun day for the community to get out, enjoy themselves and do something for a good cause. Councilmember McGoffin then stated Ms. Grimes is working on letters regarding other sponsorships and booths at the park, but wasn’t sure about the City’s letterhead and logo use. Councilmember McGoffin then stated the sponsorship she is requesting from the City is insurance under the City’s policy and the use of the City’s logo for sponsorship and letters soliciting other sponsors and donations, adding they are hoping to raise enough funds so the City can use in kind resources to cover its sponsorship and won’t need to contribute financially. City Attorney Mike Massee then addressed the Council stating Councilmember McGoffin was not requesting any City funds at this time, but a proper motion could be made for the official sponsorship by the City of Benson with the use of the City logo, insurance coverage and in kind assistance. Vice Mayor Lodzinski asked if there were any

other sponsors for the event with Councilmember McGoffin stating they haven't sent out any letters yet, but will be seeking other sponsors. Councilmember Sacco moved for the City to sponsor the event. Seconded by Vice Mayor Lodzinski. Councilmember Lambert amended the motion to include the use of the City's logo and stationery. Councilmember Sacco and Vice Mayor Lodzinski indicated they were amenable to the amendment. Motion passed 7-0. Mayor Fenn thanked Councilmember McGoffin for her work on this event.

3. **Resolution 31-2011 of the Mayor and Council of the City of Benson, Arizona, approving an Agreement with B & D Air Conditioning, Inc. for Energy Efficiency HVAC Retrofit Project, AZBS-EECBG # RO16-10-02 Grant**

Public Works Director Brad Hamilton addressed Council stating approximately 6-8 months ago, the City received this grant as part of the American Recovery and Reinvestment Act, (ARRA) funds. Mr. Hamilton then stated the first project was to add VFDs to the water wells, which was now completed, then he bid out the remaining funds in the grant to replace air conditioning units in the Police/Fire Station and the Library, adding the units at the Police/Fire Station are over 20 years old and he believes the unit at the Library is even older. Mr. Hamilton then stated the City can save quite a bit of electricity by updating these units. Vice Mayor Lodzinski asked if the units were gas fired or electric with Mr. Hamilton indicating they were gas fired heat and electric A/C. Mayor Fenn asked if the project was to just replace the unit or if there would be any duct work with Mr. Hamilton stating there won't be any duct work unless they discover a problem when they remove the old unit. Mr. Hamilton then stated the new units include an economizer and programmable, lockable thermostats. Councilmember Sacco asked how many bids were received with Mr. Hamilton stating three bids came in with B & D Air Conditioning, at \$25,585.00 being approximately \$3,000 and \$10,000 lower than the others. Vice Mayor Lodzinski asked about the amount of funding left in the grant with Mr. Hamilton stating he may look at processing a change order for the installation of an additional unit at the Library in order to utilize the remaining funds in the grant. Councilmember Lambert asked about the SEER rating on the new units with Mr. Hamilton stating they will be at least 14 SEER which is the current standard and they are replacing units that are probably around 7 SEER. Councilmember Lambert then moved to approve Resolution 31-2011. Seconded by Councilmember McGoffin. Mayor Fenn then stated he was abstaining from the vote since he has had past business dealings with this company, and although he does not presently, he may in the future. Motion passed 6-0, with Mayor Fenn abstaining.

4. **Resolution 32-2011 of the Mayor and Council of the City of Benson, Arizona, recommending approval of the Interim Permit and Person Transfer for a Type 06 (Bar) Liquor License at the City of Benson San Pedro Golf Course**

City Clerk Vicki Vivian addressed Council stating the City of Benson/San Pedro Golf Course has applied for a liquor license and procedures have been followed with no written arguments being received in favor of or opposed to the issuance of the license. Ms. Vivian then stated it was now at the point where the local governing body of the city or town enters an order recommending approval or disapproval and once Council made a recommendation, she would forward the proper documents to the Arizona Department of Liquor Licenses & Controls. Councilmember Lambert asked about the City Council approving their own application with Ms. Vivian stating the Council makes a recommendation, but the approval of the transfer is up to the Department of Liquor Licenses & Controls. Mayor Fenn verified the license was a transfer from the previous owner and was part of the acceptance of the golf course with no fee being paid for the license, with Ms. Vivian adding the only cost to the City was the minimal transfer fee paid to the State with the application. Vice Mayor Lodzinski moved to approve Resolution 32-2011. Seconded by Councilmember Maldonado. Motion passed 7-0.

5. **Discussion and possible action approving final transfer and acceptance of the San Pedro Golf Course**

City Attorney Mike Masee addressed Council stating last October the Council was presented with two golf course donation agreements and in the Council packet for this meeting was a copy of the Special Warranty Deed that has been executed and recorded at the end of 2010 for tax purposes. Mr. Masee then stated with

that recording, the property, which basically consists of the greens of the golf course, listed as Parcels A through H, transferred to the City and no taxes will be assessed to those parcels for 2011. Mr. Massee then stated while the property had been transferred, escrow hasn't closed and Staff was now asking for authority to close escrow. Mr. Massee then spoke about title insurance, stating since all the property leased to AGS for the golf course was previously owned by the City, Staff did not think it was necessary to purchase title insurance, adding the face value of the land donated to the City as recited in the donation agreement is \$12.5 million and a title insurance policy for that amount would cost approximately \$8,500.00, noting there appears to be very little risk in taking this property back. Mr. Massee then stated since the City isn't spending \$12.5 million, there isn't a need for the City to have that amount of consideration covered in insurance, and if anything, an insurance policy should just cover the amounts the City would be actually investing as far as any kind of improvements to the property. Mr. Massee then stated the City is taking the property, as the Special Warranty Deed says, subject to the matters of record that are in the recorder's office and are listed on the title policy, adding these are mostly easements, but there is one financial instrument that had been recorded previously by the City, which is a mortgage that has been paid off, but a release has not been signed or recorded. Mr. Massee then stated this would need to be done to clear the title, but the City could close escrow, taking the title subject to that financial instrument. Mayor Fenn asked about the status of the financial instrument with Mr. Massee stating he had been working with Finance Director Jim Cox on this issue, adding the City has records to show the loan was paid off pursuant to the terms of the note and the City is entitled to a release of that note, but a release wasn't signed or if it was signed, it was not recorded and now, as the result of the death of the beneficiary and the presence of an estate the City will be dealing with, it will take a bit of time and effort to get the release taken care of. Mr. Massee then stated the note does encumber, to some extent, some of the land AGS retains title of, adding prior to their ability to develop the land and convey good titles to lots; this is something they would demand the City clear up. Councilmember Sacco asked if we knew about the instruments at the time the golf course was donated and if it were normal to close escrow subject to an instrument with Mr. Massee stating the instrument came up in the title report as part of opening escrow and while it may not be normal to close escrow subject to an instrument, in this case, it was certainly understandable. Councilmember Sacco asked how long it would take to get the release with Mr. Massee stating it would depend on whether the City has cooperation from the estate. Mayor Fenn asked if this is something that could be covered under some type of a title policy with Mr. Massee stating this would be an exception to a title policy, since it's a matter of record and since it's something the City has in its control to release, adding the City can wait to close and can keep escrow open for the time it might take to obtain a release, since it wouldn't be a problem, as far as the operation or ownership of the golf course goes. Councilmember Sacco then asked about the easements with Mr. Massee stating the donation agreement for the real estate indicates that the City and the donor will mutually cooperate to make sure everyone gets recorded the easements they need, and for access purposes, what is contemplated, is recording new easements, giving for example, the property that the City owns from the transfer of the greens, AGS has reserved, as much as they've understood their need, certain access easements over certain areas, but if it turns out, in the course of the development process, additional easements are necessary for them to be able to fully access the property they've retained, then the City would allow them to take an easement. Mr. Massee then stated the other easement they are contemplating receiving from the City would be an easement for the internal road that would go across part of the City's wastewater treatment plant parcel they would need to do in order to access the far southeast portion of the area they're planning on developing. Mayor Fenn asked if those easements could be with consideration with Mr. Massee stating AGS would pay the consideration of fair market value. Mayor Fenn then confirmed the mortgage release is the only financial instrument with Mr. Massee stating that was correct and from what he has been told, the City's records clearly show the loan was paid and the City is entitled to a release, but obtaining a release would be dependant on the cooperation, to some extent, of the heir and estate representative and if there was no cooperation, the City would have to basically move forward with some sort of title action. Mayor Fenn asked if any of the property in question was part of the actual usable golf course fairways or greens with Mr. Massee stating the note does encumber some of the golf course greens and some of the property that remains under the ownership of AGS. Councilmember McGoffin asked about the date of the mortgage, verifying the City had taken this loan out prior to leasing or conveying the property to AGS as part of the settlement agreement with Mr. Massee confirming this, adding whether we close escrow or not, is, at this point, somewhat of a technicality, but Staff would need Council's permission to close, and whether the time

is taken to clear the financial instrument up before closing escrow or after, it's something that does need to be done. Vice Mayor Lodzinski then asked if Mr. Hartley (AGS) would join any action the City had to take if we ran into resistance from the estate with Mr. Massee stating he had not run the idea by Mr. Hartley's attorney, but he would because Mr. Hartley would certainly benefit from it as well. Mayor Fenn then stated he thinks the City should take advantage of the time now to clear up the financial instrument, get more clarity on where the property is and how it encumbers the golf course, should some other issue arise. Vice Mayor Lodzinski and Councilmember Sacco agreed. Mayor Fenn then moved to table the transfer and acceptance of the San Pedro Golf Course. Seconded by Vice Mayor Lodzinski. Motion passed 7-0. Mayor Fenn then stated hopefully, we will have more information at the next Council meeting with Mr. Massee stating he will have communication with the heir and/or the estate representative to see how much cooperation there may be and will be able to let Council know what the options are at that time. Mayor Fenn then asked if anyone had come forward making a claim on the note with Mr. Massee stating no one had. Councilmember Maldonado then reminded Mr. Massee to look into Mr. Hartley's assistance, if the City has to take action of some sort regarding the release of the note.

6. Update on the City Staff's approach to Medical Marijuana Dispensaries

Building Official Luis Garcia addressed Council stating at the joint worksession with the Council and Planning & Zoning Commission, direction was given to Staff regarding the location where medical marijuana use would be appropriate, adding those two identified zoning districts were the Industrial Zoning District and the Rural Transitional Zoning District. Mr. Garcia then stated the appropriate way to accomplish this regulation would be through zoning regulation adoption, however Staff is currently working on a major update of the zoning regulations and with the timetables of the Arizona Department of Health Services, Staff's position is to put an actual ordinance in place for medical marijuana during the entire zoning regulation update. Mr. Garcia then stated in the meantime, what that means, is that it's Staff's position that medical marijuana use, both cultivation and dispensaries, are not appropriate in any of the zoning districts by use of right, so in any zoning district currently in the City of Benson, they would be subject to a conditional use permit process which would include a citizen review as well as the Planning & Zoning Commission hearing, allowing for ample citizen input at that time. Mayor Fenn asked if an applicant would be directed to the conditional use permit process or would be told to wait until the zoning was changed, with Mr. Garcia stating there would be no wait process, since we do have zoning regulations adopted, however, in the current zoning regulations, it would not be appropriate in any of our zoning districts, so it would automatically be put into the process of a conditional use permit. Mr. Garcia then stated it would really accomplish the same thing and at that point the Planning & Zoning Commission would be able to put any of their requirements, such as operation of hours, etc. onto the application, as a condition of the approval, if that would be the outcome. Mayor Fenn then confirmed with Mr. Garcia that a city must allow an application for such a facility to move forward, with Mr. Garcia stating the act that was passed actually states that a city can only provide reasonable regulations to govern its use. Mr. Garcia then stated the city has no applications currently, since they would still be in the State application process at this point. Mayor Fenn then stated this item was only an update with no action and asked the Council if they had any questions. Vice Mayor Lodzinski asked if Staff had any more information on how the dispensaries would be dispersed among the Community Health Assessment Areas (CHAA) with Mr. Garcia stating there is no new information; the dispensary licenses were still going to be dispersed among the CHAAs. Mr. Garcia then stated the Benson area is located in a CHAA with Cascabel, Pomerene and outlying areas up to the county line, so it's a good possibility that a dispensary would be located within that CHAA, but whether it would be in the incorporated City of Benson remains to be seen.

7. Discussion and possible action regarding the City Manager's Contract

Mayor Fenn stated approximately a month ago the Council held an executive session to review Mr. Nichols employment and this item is for action on his contract, adding the proposed contract leaves the salary the same, with no increase, but changes the renewal to a two-year term, instead of a one-year term and includes 1 additional week of paid vacation time for a total of 5 weeks of paid vacation per year. Councilmember McGoffin asked Mr. Nichols how many weeks of vacation he would get as a regular City employee with Mr. Nichols stating he would receive 4 weeks each year, adding vacation is accrued at rates based on an

employee's years of service and he had been with the City over 11 years. Councilmember Sacco asked Mr. Nichols if in lieu of a salary raise, he was requesting an extra week of vacation, with Mr. Nichols stating he did not ask for a salary increase, but did request the extra vacation time. Councilmember Lambert moved to approve the employment agreement between City Manager Glenn Nichols and the City of Benson. Seconded by Councilmember Maldonado. Mayor Fenn then stated he appreciated working with Mr. Nichols for the last couple of years, he appreciates his openness and responsiveness, has seen Mr. Nichols interact with the public and has been pleased with his responses and feels it's worthy of renewing the contract. Motion then passed 5-2 with Councilmember McGoffin stating she thinks Mr. Nichols is doing an excellent job, however, none of the other employees are getting anything more, so she doesn't think it's fair to approve an extra week, adding all the employees are also doing a great job, voting nay and with Councilmember Sacco voting nay.

EXECUTIVE SESSION: Pursuant to A.R.S. §38-431.03 (A)(3) & (4), for discussion or consultation for legal advice with the attorney or attorneys of the public body regarding the City's position and to instruct its attorney(s) regarding pending litigation, Stagecoach Trails Mobile Home Court (MHC) vs. the City of Benson, Arizona, et. al.

Councilmember Lambert stated after speaking with the City Attorney, there was no additional information requiring an executive session at this time, moving to adjourn at 7:50 p.m. Seconded by Councilmember McGoffin. Motion passed 7-0.

8. Discussion and possible action to direct staff in regards to Stagecoach Trails Mobile Home Court

The meeting was adjourned as stated under Executive Session.

DEPARTMENT REPORTS: None

ADJOURNMENT:

As stated under Executive Session, Councilmember Lambert moved to adjourn at 7:50 p.m. Seconded by Councilmember McGoffin. Motion passed 7-0.

Mark M. Fenn, Mayor

ATTEST:

Vicki L. Vivian, CMC, City Clerk

The General Election will be held on May 17, 2011. As you are aware, I've been reviewing the question of whether to place Mr. Brooks' name on the General Election ballot as a candidate for the remaining open City Council seat.

As an initial matter, the office of the City Clerk has seen its duty to apply the relevant ordinance, City Code Section 2-3-3(C), as it is written, unless it creates a conflict with State law. Neither the express language of this ordinance nor any State statute appears to directly create a procedure to place a write-in candidate's name on the General Election ballot. However, in the last week or so since Mr. Brooks first contacted me with his demand to have his name on the ballot, the City Attorney, Mr. Michael Masee and I have had an opportunity to speak with the Arizona Elections Director and Mr. Masee has sought input from his fellow city attorneys, many of whom work for jurisdictions that have also adopted similar ordinance language.

There appears to be a consensus that this particular ordinance, contrary to the general rules for construing a statute or ordinance, is not to be read too literally. The consensus among public attorneys is that this provision, in spite of the absence of express language creating a procedure for nominating write-in candidates, does allow for a write-in candidate's name to be on the General Election ballot if he or she is within the top two vote-getters in the Primary Election. Therefore, upon further consideration of this important legal question, and upon the advice of the City Attorney and the Chief Civil Deputy County Attorney, I have made the decision to follow the consensus of legal opinion that Mr. Brooks' name should be on the General Election ballot, as well as the publicity pamphlet. I have contacted Mr. Brooks and informed him as such.

As an aside, after the election I will be asking the City Council to consider an amendment to this particular ordinance to clarify that a write-in candidate may be nominated in the Primary Election if he or she is within the top group of candidates for the offices to be contested at the General Election. My office has never disagreed with this result from a policy perspective; it just does not seem to be clear from the ordinance language itself that this is what must be done. Thus, it would appear to be an obvious improvement to the ordinance to clearly set forth this process and have one that will avoid this controversy in the future.

For City residents wishing to participate in the election process, they must be registered to vote. The deadline for voter registration for the May election is April 18, 2011.

The election will be held not only to elect the remaining open City Council seat, but to enable registered voters to cast their ballots on the referendum regarding Ordinance 550, the recent annexation of approximately 115 acres located west of State Route 90 and south of Interstate 10. This issue will be placed on the ballot as Proposition 401. A franchise agreement with Sulphur Springs Valley Electric Cooperative which was approved by Council on January 24, 2011, will also be placed on the General Election ballot, as Proposition 402.

Vicki Vivian, CMC
City Clerk