

**THE REGULAR MEETING
OF THE MAYOR AND CITY COUNCIL OF BENSON, ARIZONA
HELD OCTOBER 26, 2009 AT 7:00 P.M.
AT CITY HALL, 120 W. 6TH STREET, BENSON, ARIZONA**

**MAYOR FENN
OPENED THE MEETING AT 7:00 P.M. WITH
THE PLEDGE OF ALLEGIANCE.**

**PRESENT WERE: MAYOR MARK M. FENN, VICE MAYOR TONEY KING, SR.
COUNCILMEMBERS JO DEEN BONCQUET, DAVID LAMBERT, JOHN LODZINSKI,
LORI McGOFFIN and AL SACCO**

INVOCATION:

Mayor Fenn introduced Nandus "Robbie" Robinson from the Church of Christ who offered the invocation.

**EMPLOYEE
RECOGNITION:**

None.

PROCLAMATION:

Mayor Fenn read a proclamation declaring November, 2009, "Live in Benson? Shop in Benson!" month. Mayor Fenn then presented the proclamation to Benson/San Pedro Valley Chamber of Commerce Director Robert Mucci.

CALL TO THE PUBLIC:

Kevin Dirksen addressed Council stating he was concerned about property that was a fire hazard problem and an eyesore. Mr. Dirksen stated this property is part of the birding trail and that from what he understands, it may no longer be City property, but that he would like something done about it. Mr. Dirksen stated that on Friday night, people were out on the property and that there had been a bonfire, stating it was not a matter of if, but of when, there will be a problem. Mr. Dirksen invited Council to view the property and then thanked them for their consideration.

Sylvia Burnside of the San Pedro River Arts Council addressed Council stating she first came to the City Council in regards to starting the Benson Arts Commission in 2006, which was officially created on January 22, 2007. Ms. Burnside stated she was present tonight to see the dissolution of the commission and its transition to a new status as a 501C3 non-profit, the San Pedro River Arts Council. Ms. Burnside stated the Arts Commission had gone through a number of stages and had arrived at the conclusion to part with the City as it became clear that their mission to bring the arts to this part of Cochise County would have to expand beyond the limits of the City of Benson. Ms. Burnside then thanked previous City Manager Boyd Kraemer for putting forth the original idea of an arts commission and George Scott, then-Mayor of the City and the Councilmembers who were in place at that time, numerous City staff, the Arizona Commission on the Arts, and many more for their help and efforts. Ms. Burnside stated they still have much to do to fulfill their obligation to their mission and that they will be seeking new board members and outside funding, stating they were confident that even in this economy, that artists will always be out there and they can, with help, bring the pleasures that they provide to this area. Ms. Burnside then stated she wanted to personally thank Mayor Fenn, all of City Council and City Manger Glenn Nichols for supporting their need

for funding and for making the decision to consciously support their efforts to bring the arts to Benson and the surrounding area. Ms. Burnside then stated she would also like to thank them for allowing the Arts Commission to use the chamber walls for displays of art work and that as the San Pedro River Arts Council, they hope to continue the display, changing out the exhibits every couple of months and that they hope there will soon be a permanent hanging system to enable more diverse displays. Ms. Burnside stated the Arts Commission's years under the City had been a good beginning and as the San Pedro River Arts Council, they look forward to proving the City Council made a wise choice for the arts.

Robert Mucci, Benson/San Pedro Valley Chamber of Commerce Director, stated he wanted to take this opportunity to thank everyone in the City for their assistance in putting on Butterfield Days, stating without the City's assistance and the assistance of its numerous employees, the celebration wouldn't happen. Mr. Mucci stated there was a great turnout with lots of good comments and that his goal for the celebration next year is to be bigger and better. Mr. Mucci then stated in relation to the upcoming "Live in Benson? Shop in Benson" campaign, that according to the 3/50 project, for every \$100.00 that is spent in Benson with an independent business, \$68.00 returns to the community in taxes, payroll taxes and other expenditures by the people who receive that money, which is very important to our community. Mr. Mucci stated he will be urging Chamber members to join the 3/50 project which says that if 3 people shop in 3 locally owned, independent businesses and spend \$50.00 each month, it would generate \$42.6 billion dollars in revenue. Mr. Mucci then stated he would like to encourage people in Benson to shop locally.

Dianne Tipton addressed Council concerning the recent agreements to purchase property located at 100 W. 6th Street and 117 W. 5th Street in Benson, Arizona. Ms. Tipton's comments are incorporated into the minutes.

CITY MANAGER REPORT:

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

- October 27, 2009 – Citizen Review Session on the proposed amendments to the Zoning Regulations regarding the addition of an enforcement clause, 6:00 p.m., City Hall
Community Watershed Alliance, 6:30 p.m., City Hall
- November 2, 2009 – Economic Development Subcommittee, 5:15 p.m., City Hall
- November 3, 2009 – Planning & Zoning Public Hearing on the proposed amendments to the Zoning Regulations regarding the addition of an enforcement clause, 7:00 p.m., City Hall
Planning & Zoning Public Hearing on the proposed major amendments to the General Development Plan, 7:00 p.m., City Hall
Planning & Zoning Meeting, 7:00 p.m., City Hall
- November 9, 2009 – City Council Public Hearing on the proposed amendments to the Zoning Regulations regarding the addition of an enforcement clause, 7:00 p.m., City Hall
City Council Meeting, 7:00 p.m., City Hall
- November 10, 2009 – Library Advisory Board, 4:00 p.m., Library
- November 21, 2009 – Historic Preservation Commission, 9:00 a.m., City Hall
- November 23, 2009 – City Council Public Hearing on the proposed major amendments to the General Development Plan, 7:00 p.m., City Hall
City Council Meeting, 7:00 p.m., City Hall
- November 24, 2009 – Community Watershed Alliance, 6:30 p.m., City Hall

- October 31, 2009 – Halloween Night – The City of Benson Parks and Recreation Department has teamed up with the Benson Junior Women's Club and the Benson Firemates for fun Halloween Festivities at the Benson Fire Station
- November 11, 2009 – HOLIDAY, City Offices Closed
- November 26-27, 2009–HOLIDAY, City Offices Closed

CONSENT AGENDA:

- 1a. Approval of Minutes of the October 8, 2009 City Council Retreat
- 1b. Approval of Minutes of the October 12, 2009 Regular Meeting
- 1c. Resolution 64-2009 of the Mayor and Council of the City of Benson, Arizona, appointing a City Tax Collector
- 1d. Invoices Processed for the period from October 3, 2009 through October 19, 2009

Councilmember McGoffin moved to approve the Consent Agenda. Seconded by Councilmember Boncquet. Motion passed 7-0.

NEW BUSINESS:

1. Permission for the establishment of a committee under the direction of the Public Works Director to organize and plan a 10-year celebration of the Benson Municipal Airport's existence in early 2010

Public Works Director Brad Hamilton addressed Council stating he was approached by several airport enthusiasts about planning a celebration for the 10-year anniversary of the opening of the airport. Mr. Hamilton stated he thought it was a good idea, but wanted to obtain Council permission to move forward with it. Mr. Hamilton stated the committee would, with staff, plan an event and bring the event back to Council for approval. Councilmember Al Sacco asked if the committee would all be citizens of Benson, with Mr. Hamilton stating the committee would be made of the people that are active at the airport, stating they are volunteering their time not only to plan the event, but to hold the event. Councilmember Lodzinski then stated the airport is a regional airport serving not only Benson, but east Tucson, Cascabel, Dagoon, Tombstone enabling the City to obtain funding and other support through federal and state agencies. Mr. Hamilton agreed, stating the Benson airport has a wide area it draws from. Councilmember Lodzinski moved to approve the formation of a committee under the direction of the Public Works Director. Seconded by Councilmember Lambert. Motion passed 7-0.

2. Information regarding the Birding Trail Grant cancellation

City Manager Glenn Nichols addressed Council stating in 2007, the City of Benson applied for and received a grant from the U.S. Fish & Wildlife Service for establishing the San Pedro River Habitat Project, the Birding Trail, along the San Pedro River and began the process of developing this area with the grant funding. Mr. Nichols stated this area was in the area where the lease was established for the San Pedro Golf Course and that during the process of developing the Birding Trail, a law suit was filed by Mr. Tom Hartley dealing with what the City was to provide to the golf course in the original lease agreement. Mr. Nichols stated that Mr. Hartley won the suit and the negotiated settlement gave the property included in the lease agreement to Mr. Hartley, which included the property that the Birding Trail was situated on. Mr. Nichols stated the grant agreement provided funds for work on property owned by the City. Mr. Nichols then stated contact was made with Mr. Hartley through his attorney about the problem with the Birding Trail land by Mr. Masee, the City Attorney, stating the answer received from Mr. Hartley's attorney was that the piece of property in question was included in the negotiated settlement. Mr. Nichols then stated that due to the property now belonging to Mr. Hartley, he determined that the City of Benson was required to cancel the grant and return the funds that had been provided to this point. Mr. Nichols stated there was a lot of contact with US Fish & Wildlife on why the grant wasn't completed and the possibility of extending the time for it to be completed, but the City no longer owned the land. Mr. Nichols stated at that point the City had spent \$7,817.68 that had been reimbursed by US Fish & Wildlife, and we then informed them that the City couldn't move forward with the grant and returned the funds given to the City so far. Mr. Nichols then stated that Kinder-Morgan had also given \$5,000.00 to the City to address Tamarisk issues, stating that contribution was also returned. Mr. Nichols then stated when he spoke to US Fish & Wildlife, they understood and told him that in the future if the City had any good projects that they could help with, that they would like the City to re-apply. Mayor Fenn stated most of the Council had been apprised of this and asked if Council had any questions. After no questions being asked, Mayor Fenn stated Mr. Dirksen may

wish to speak with Mr. Hamilton, who could explain the status of the property that Mr. Dirksen had expressed concerns over during the call to the public.

3. **Presentation and discussion of the results of the Transportation Feasibility Study for Senior Transportation and Public Transportation Service**

Jim Cox addressed Council regarding the current transportation provided for elderly and disabled persons on an on-call basis with Catholic Community Services (CCS) stating they currently provide 1 vehicle that served approximately 7,600 passengers in the past year. Mr. Cox stated a concern has been raised because CCS may be forced, due to budgetary constraints, to cancel this service within the next year or so and that as a result, City staff met with the Arizona Department of Transportation's (ADOT) planning department about resources that could possibly be available for communities to provide transit services. Mr. Cox stated the ADOT Rural Transportation Program, funded by the Federal Transit Administration (FTA) is currently providing funding to 18 rural communities that are similar to ours in Arizona. Mr. Cox stated ADOT met with us and outlined some things the City could do and offered to provide assistance from Ostrander Consulting, Inc. free of charge to the City to prepare a preliminary transit feasibility review and implementation plan. Mr. Cox then introduced Ms. Amy Ostrander who was at the meeting to present the results of the study and stated Mr. Sam Chavez, Rural Public Transportation Program Manager for ADOT and Ms. Teri Kennedy, Transit Planning Program Manager for ADOT, as well as Ms. Connie Gastelin, Project Manager for Transportation for CCS were also present.

Ms. Ostrander then addressed Council stating CCS is currently providing the bus service to the elderly and that in the course of her study she had met with CCS Executive Director Charles Fischer and with Connie Gastelin, stating that CCS had every intention of continuing this service, which is still being provided in both Bisbee and Douglas. Ms. Ostrander then stated the current service is operated with limited hours and is also operated without any of the Federal Transit Administration (FTA) funds which mean that, by its funding source, it's limited to serve only elderly and persons with disability. Ms. Ostrander then stated the opportunity now with ADOT funding is to expand the funding base with the FTA Section 5311 Grant Program. Ms. Ostrander stated this grant program opens transit service to the general public as opposed to being limited to persons with disabilities and seniors, that in Arizona, this program is administered by ADOT and that 18 communities statewide currently participate in this program. Ms. Ostrander stated in the SEAGO area, the bus services of Sierra Vista, Douglas and Bisbee are all supported by the Section 5311 program, stating it was important to note that the program has a long history and is a very stable grant program. Ms. Ostrander stated this funding source would require the transit service be open to the general public. Ms. Ostrander stated in the current local funding, CCS has \$64,000 in local funds with \$40,000 coming from the Title 3 Senior Program and \$24,000 coming from the City of Benson, which shows the City can provide transit service for \$65,800. Ms. Ostrander said her study shows how that funding can be leveraged with federal money from the 5311 program, stating with the 5311 program funding is available for administration, operations and also is available for capital funding and that the City could leverage local funds to provide \$168,000 worth of transit service. Ms. Ostrander added other revenue in her study, which is definitely available, stating the City could have a fare for the general public. Ms. Ostrander then stated there is additional funding available in other FTA programs such as Section 5317 funding and when we have those additional funds, we could expand the transit service from 1 vehicle to 2 vehicles. Ms. Ostrander stated she had a preliminary suggestion of having the first vehicle from 6:30 to 11:00 a.m. and from 1:00 to 6:00 p.m. which would serve work hours and possibly provide some trips up to the college, with the second vehicle still providing the service that it currently provides, commonly known as "Dial a Ride". Ms. Ostrander stressed that if funding from Section 5311 were used, the transit service would need to be open to the general public; that we could continue to serve seniors and persons with disabilities, but that the service would be required to expand to others of the general public for any purpose. Ms. Ostrander then asked Council if they had any questions.

Mayor Fenn stated he had the understanding that CCS would continue to provide transit service this year and then would not be able to continue the service. Ms. Ostrander stated that CCS has been able to commit to working to maintain the transportation programs in the SEAGO area, that they are still actively working

in Douglas and Bisbee, are currently providing services that are open only to the elderly and those with disabilities in Willcox and Elfrida and that they want very much to continue to provide service in Benson. Ms. Connie Gastelin of CCS stated in the past month, the community hospital in Willcox took over the program since CCS can't afford it due to funding cutbacks. Ms. Gastelin stated CCS was planning on terminating the service in Benson in June, but then committed to give Benson a full year to come up with a plan for the transit service.

Ms. Ostrander stated if the City chose to enter into the 5311 program, they needed to be aware that there are other opportunities to provide transit service, which includes hiring and training the driver team, maintaining the vehicles, scheduling rides, the paper work, all of which are currently being provided by CCS. Ms. Ostrander stated if CCS was not available to do this, the City needed to be aware that there are other alternatives, stating Sierra Vista includes the transit program as part of the public works department and the people in the program are City employees. Ms. Ostrander stated in Show Low a contract transportation services provider is hired, adding that it was obvious that CCS was well known and respected in the area and would be the first choice, but that if they weren't available, Douglas and Bisbee along with other places can put out an Request for Proposal (RFP) for the program, or that the City could start the program in-house, stating there were different ways to organize transit service.

Mayor Fenn then asked about the grant application and if the funding could be available next year with Ms. Ostrander stating the grant application would need to be submitted in January, 2010 and would be awarded on October 1, 2010. Mayor Fenn then asked if the City would need to increase our annual contribution of \$24,000 to leverage the funding, with Mr. Cox stating the plan is based on the City's contribution remaining at \$24,000. Ms. Ostrander confirmed that the proposal says the City will not add any new matching funds, stating there were also the SEAGO Title 3 funds participating in this proposal, and that the SEAGO transportation person knows the strategy of the proposal and was in agreement that their funds from the Title 3 program will remain committed. Mayor Fenn stated he had spoken to them and that they were very committed in assisting the transit program and that there were 2 vehicles coming to the City from Sierra Vista, at no cost to the City.

Vice Mayor King then asked if the City chose to and was successful with the Section 5317 funding if it would mean the transit program would be open to more people, with Ms. Ostrander stating the transit program would be required to be open to the community. Vice Mayor King then asked if the program would have bus stops set up around town or if a bus would travel to people, with Ms. Ostrander stating Council would identify the areas for bus stops and there could be what is called a "deviated fixed route" which means the first vehicle would have a limited number of bus stops that it would go to at certain times, enabling people to utilize the bus schedule and people could then ask the bus to deviate from the route to deliver them home. Ms. Ostrander stated the second vehicle would continue to provide the "Dial a Ride" program like it does now, stating that who that program is made available to is a local policy decision made by Council, stating Council could define seniors at age 62 or 65, and that Council has flexibility in that decision. Ms. Ostrander then stated Council can also set the fare, but that she set it at \$1.00 for planning purposes and that in many places, a deviated stop is charged \$2.00, adding again that this is set by local policy. Ms. Ostrander then stated other programs, such as Section 5316 for job access to get people to work and Section 5317 to expand mobility for persons with some sort of disability are good programs, but that they don't have the track record or longevity that Section 5311 does, and while they're excellent programs and when the City is in the program, they definitely want to apply for them, but that she thinks it's prudent not to plan on them as the baseline program. Ms. Ostrander stated if the City can get them in the future and wants to expand our transit service, that's when we would want to let those programs come into play.

Mayor Fenn then stated Council appreciated the information and wanted to make sure from Council to Staff that we're on track for this as far as the grant timing in January.

4. **Resolution 65-2009 of the Mayor and Council of the City of Benson, Arizona, approving an Agency Agreement with the Governor's Office of Highway Safety to receive assistance in providing Child**

Safety Seats to Benson residents and classes in properly using same

Fire Chief Keith Spangler addressed Council stating this resolution approves an agreement with the Governor's Office of Highway Safety (GOHS) to supply car seats to the public. Chief Spangler stated those who receive a citation from local law enforcement, can pay \$25.00, take the car seat class, receive a car seat and can then have their citation removed. Chief Spangler stated for those who do not have a car seat, they can also pay \$25.00, take the car seat class and receive a car seat. Chief Spangler stated all classes will be done with certified technicians and that there are currently two certified car seat technicians in the Fire Department, who have been the driving force in getting this program back in place. Chief Spangler stated the Fire Department would offer 1 class each month and that he would serve as the administrator of the program with the certified technicians presenting the classes. Chief Spangler stated this program had been put into place a couple of years ago with both GOHS and Health Care Innovations (HCI) supplying car seats, but there were no agreements left in place and there were no reports sent to Health Care Innovations, resulting in funds being discontinued. Chief Spangler stated once the program is up and running, we may see funding reinstated from HCI. Vice Mayor King moved to approve Resolution 65-2009. Seconded by Councilmember Sacco. Motion passed 7-0.

5. **Resolution 66-2009 of the Mayor and Council of the City of Benson, Arizona, approving an agreement with the Arizona Department of Homeland Security for a grant award pursuant to Operation Stone Garden and authorizing the Chief of Police to execute same**

Chief of Police Paul Moncada addressed Council stating the Benson Police Department has been awarded \$57,500.00 for overtime and mileage to work Operation Stone Garden, which is a program administered by the Arizona Department of Homeland Security to pay for officers to work overtime shifts for the purpose of interdiction of illegal drugs, undocumented aliens and any other criminal activity. Chief Moncada then stated this is the first of three inter-connected grant agreements before Council that requires three separate signed Intergovernmental Agreements (IGA). Chief Moncada then stated these grants require no match from the City and that we have been participating in this program for approximately 4 years. Chief Moncada then stated there are participants all along southern Arizona and the program is available to any agencies in counties that touch the Mexican border. Chief Moncada then stated the Police Department prepares an annual budget for mileage and overtime which determines the department's allotted amount of funding. Chief Moncada then stated this amount is placed into an account that the City draws from on a monthly basis, based on actual overtime and mileage. Councilmember Lodzinski verified that when officers are seen working outside the City limits, they are usually working this detail. Councilmember Boncquet moved to approve Resolution 66-2009. Seconded by Vice Mayor King. Motion passed 7-0.

6. **Resolution 67-2009 of the Mayor and Council of the City of Benson, Arizona, approving an agreement with the Arizona Department of Homeland Security for a grant award pursuant to Operation Stone Garden and authorizing the Chief of Police to execute same**

Chief of Police Paul Moncada addressed Council stating this grant agreement is under the same program, but is in the amount of \$8,250.00 for equipment to work Operation Stone Garden, stating the equipment will be binoculars and thermal imaging, night vision equipment. Councilmember Lambert moved to approve Resolution 67-2009. Seconded by Councilmember Lodzinski. Motion passed 7-0.

7. **Resolution 68-2009 of the Mayor and Council of the City of Benson, Arizona, approving an agreement with the Arizona Department of Homeland Security for a grant award pursuant to Operation Stone Garden and authorizing the Chief of Police to execute same**

Chief of Police Paul Moncada addressed Council stating this grant agreement is in the amount of \$30,000.00 for equipment to work Operation Stone Garden and has been earmarked by the Department of Homeland Security to purchase a mobile license plate reader, which will assist with stolen vehicles or vehicles of interest for a specific reason. Chief Moncada stated information on those vehicles is put into a database and that the license plate reader will read license plates by camera and then automatically search

the database. Chief Moncada stated this is a mobile unit which can be moved from one vehicle to another. Mayor Fenn asked if these grants are competitive with Chief Moncada stating all requests have to be justified and produce statistics that show a benefit of the program. Councilmember Sacco moved to approve Resolution 68-2009. Seconded by Councilmember Bonquet. Motion passed 7-0.

8. **Ordinance 539 of the Mayor and City Council of the City of Benson, Arizona, amending the Benson City Code, Chapter 18 “Boards, Commissions and Committees,” deleting Article 18-6 “Benson Arts Commission” and any references thereto**

City Manager Glenn Nichols addressed Council stating that Ms. Sylvia Burnside spoke during the call to the public concerning the San Pedro River Arts Council, formerly known as the Benson Arts Commission, which has now formed a 501C3 organization to continue their cause as an independent organization. Mr. Nichols then stated this ordinance will remove the Benson Arts Commission from the City Code. Mr. Nichols stated Ms. Burnside thanked the City for the support they received and asked for continued support of the arts, including the art displayed in the Council chambers. Mayor Fenn then thanked Ms. Burnside, stating Council appreciated the Arts Commission and their work in keeping the arts alive and wished them success in their new status. Councilmember McGoffin moved to approve Ordinance 539. Seconded by Councilmember Sacco. Motion passed 7-0.

9. **Resolution 69-2009 of the Mayor and City Council of the City of Benson, Arizona, declaring as a Public Record that Certain Document entitled “Amended Chapter 15, “Cemetery”, dated October 26, 2009”**

Public Works Director Brad Hamilton addressed Council stating about 2 ½ years ago, when Cheri Shull came to work as the Deputy City Clerk, she started to work on the cemetery records. Mr. Hamilton then stated when Ms. Shull went to work in the Public Works department; the cemetery was transferred to the Public Works department also. Mr. Hamilton then stated he utilized the American Public Works Association Guidelines on managing municipal cemeteries and that the City has been working toward those guidelines as procedures are established for the cemetery. Mr. Hamilton then stated the City Code needed to be changed to match the guidelines. Councilmember Sacco asked if this would replace the City Code, Chapter 15 with City Attorney Michael Masee indicating the proposed new chapter would replace the current version of Chapter 15, if the ordinance is adopted as presented. Councilmember Lodzinski asked if the process was in the wrong order and if Council should approve the ordinance approving the document before declaring the document a public record. City Attorney Michael Masee stated the process the City is utilizing is to adopt the amended chapter by reference and in order to do so, the document, in this case, “Amended Chapter 15, “Cemetery”, dated October 26, 2009” must first be declared a public document by resolution with three copies of the document on file with the City Clerk’s office and then an ordinance can be approved adopting the document by reference. Councilmember Sacco asked if the resolution should refer to the ordinance, with Mr. Masee stating the resolution is a procedural point, stating the ordinance refers to “that certain document entitled “Amended Chapter 15, “Cemetery”, dated October 26, 2009”, three (3) copies of which are on file in the office of the City Clerk of the City of Benson, Arizona, said document having been made a public record by Resolution 69-2009” is hereby adopted by reference, which allows the City to save the expense of publishing the contents of the entire document when the ordinance is published as required by law.

Mayor Fenn then asked about the revisions of the proposed Chapter 15 with Public Works Director Brad Hamilton stating the proposed changes would make the cemetery the responsibility of Public Works, creates a cemetery administrator that he would appoint to take care of the cemetery records and that it gives the Public Works Director the authority to establish the rules for the cemetery. Mayor Fenn then verified the rules are basically the same rules the City has always had in place. Mr. Hamilton then stated he would like to ask Council to remove the cemetery plot fee from the proposed chapter, so that the fee can be added to Chapter 16, “Fee Schedule” of the City Code, keeping all the fees in one chapter.

Councilmember Sacco asked about the changes in the proposed chapter with Mr. Hamilton stating the

changes were basically administrative, giving as an example, that if someone purchased a plot and wished to transfer it to someone else, they would now have to come into the office and transfer it, which will assist with accurate records of plot ownership. Councilmember Sacco then stated he does have questions and that there are some items he doesn't agree with, asking if it should be discussed now or as part of the next agenda item. City Attorney Michael Masee stated the resolution simply declares the document to be a public document, which is a preliminary step in adopting it, but that it can be addressed substantively in the next agenda item.

Councilmember Lambert stated he had some comments on the cemetery rules, beginning with Rule 2, stating there should be an exception for service animals to be on the property. Councilmember Lambert then spoke about Rule 10, regarding permitting firearms, asking if that rule would violate the CCW right-to-carry rights. City Attorney Michael Masee stated he felt it would not violate those rights as long as it was properly posted that the cemetery was declared a weapons free area. Mr. Masee then stated one of the things the proposed chapter changes is that it grants rules writing authority to the Public Works Director and that the proposed rules were given to Council for informative purposes, stating that Council is not directly adopting those rules in either Agenda Item 9 or in Agenda Item 10.

Councilmember McGoffin moved to approve Resolution 69-2009. Seconded by Councilmember Lambert. Motion passed 7-0.

10. Ordinance 540 of the Mayor and City Council of the City of Benson, Arizona, amending the Benson City Code, Chapter 15 "Cemetery," deleting Chapter 15 in its Entirety and Replacing with "Amended Chapter 15, "Cemetery", dated October 26, 2009"

Mayor Fenn asked if the substance of the ordinance was to be addressed at this time, with City Attorney Michael Masee indicating the substance of the ordinance is the subject of this agenda item and that if there are issues or concerns regarding the substance of what has been presented as a public document, now is the time to have a discussion on that. Councilmember Sacco then stated he would like to begin with Section 15-1-1 paragraph F and asked what infractions this paragraph was referring to. City Attorney Michael Masee stated any infraction of Chapter 15 or of the rules adopted by the Public Works Director could then be enforced as an infraction of the City Code. Mr. Masee then stated the ordinance is vesting administrative authority in the Public Works Director to establish the rules following Council guidelines for the content and purpose of the rules, referring to Section 15-1-1(B). Councilmember Sacco then verified the price of the lot does not include any service or maintenance, with Mr. Hamilton stating that was correct. Councilmember Sacco then asked if a deed to the plot will be issued with Mr. Hamilton stating once a plot is paid for, the City issues a certificate, which is stamped and sealed by a notary at the City and the information and document is maintained by the City.

Councilmember Sacco then discussed Section 15-1-2(D) which addresses the ownership of a plot reverting back to the City after 50 years, if the plot has not been used. Mr. Hamilton stated the City would make all efforts to contact the plot owner before transferring ownership back to the City, stating in many instances, there are plots that were purchased in the 1940s or 1950s that have not been used and as it is now, the City can't do anything with them. City Attorney Michael Masee stated that as the situation is now, there are certain plots that the City has records of having been purchased, but the City can't locate anyone that has anything to do with the plot. Mr. Masee then stated in property law, there is a principal that allows for abandonment of ownership of real property and this proposed chapter creates specific framework during which it would be presumed that the earlier purchaser had abandoned the plot and it allows the City to make effective use of the property. Mr. Masee then stated before the City can exercise that option, the administration must first make reasonable efforts to contact the owner or the next of kin of the owner and with that having been done, the City can move to exercise dominion over that parcel, stating the only other alternative is that the cemetery could have usable plots that could never be used.

Councilmember Sacco then discussed Section 15-1-3(A) asking if the City had any standards of what a suitable monument may be. Mr. Hamilton stated there were no standards currently in place and that the

City would not be choosing the type of headstone, but will now be notified before a headstone is placed, so the City can relocate the plot and make sure the headstone is placed correctly. Mr. Hamilton then stated if a headstone was going to be purchased from a mortuary, it would probably be considered appropriate, stating his concern would be for stability and placement on the proper plot.

Councilmember Sacco then discussed Section 15-1-3(E) stating the minimum should be 5' of dirt to cover all caskets and urns. Public Works Director Brad Hamilton stated that could be changed at Council's pleasure. Councilmember McGoffin moved to approve Ordinance 540, changing the word "three" to the word "five" in Section 15-1-3(E). Seconded by Councilmember Lodzinski. City Attorney Michael Masseur then addressed Council stating since Councilmember McGoffin's motion contained a substance change of the proposed chapter that has been made a public record by the previous resolution, and that if as a result of the discussion, there was indeed, a sense that Council wanted to amend that document, that Council should modify the document and declare the modified document as the public record, stating that the motion should be to move to amend the document that has been declared to be a public record by striking the word "three" and adding the word "five" in Section 15-1-3(E). So moved by Councilmember McGoffin. Seconded by Councilmember Lodzinski. Public Works Director Brad Hamilton asked about the fee for a plot being removed with Councilmember McGoffin amending her motion to also include removing the reference to the price of a plot in Section 15-1-2(A). Amended motion seconded by Councilmember Lodzinski. Vice Mayor King asked for Councilmember McGoffin to restate her motion with Councilmember McGoffin stating she moved to amend the document that has been declared a public record by removing the reference to the price of a plot in Section 15-2-2(A) and to strike the word "three" and replace it with the word "five" in Section 15-1-3(E). Motion passed 7-0.

Councilmember McGoffin then moved to approve Ordinance 540. Seconded by Councilmember Lodzinski. Motion passed 7-0.

11. Resolution 70-2009 of the Mayor and City Council of the City of Benson, Arizona, approving two contracts for the purchase of real property within the City of Benson and authorizing the City Manager to execute the same

City Manager Glenn Nichols addressed Council stating it had been brought to Council's attention that the SPUDS disclosure report was not included with the contract for the property on 6th Street. Mr. Nichols then stated he had given Council additional information that was provided by the property owner. Mr. Nichols then stated before the City could use the property, a survey would have to be completed to see if there are additional asbestos considerations inside the property. Mayor Fenn then opened the item for discussion. Councilmember Boncquet asked if there was any idea of what it would take to abate the property, with Mr. Nichols stating we would have to go out to get a bid and that there was no direct plan to do that at this point, but that it would have to be done before we would occupy the building. Mr. Nichols then stated the property owner tested parts of the building but that he did not have a survey conducted nor is he interested in conducting a survey. Councilmember Lodzinski asked how much the survey cost on the previous City Hall with Public Works Director Brad Hamilton stating that cost was \$1350.00, but with that building, there were a lot of different materials that had signs of asbestos, stating he felt a survey on the property on 6th Street would not cost as much. Councilmember Lodzinski agreed, estimating a survey would cost approximately \$500.00-600.00. Mayor Fenn stated he was concerned the SPDS disclosure report wasn't provided with the agreement for the property on 6th Street when it was provided with the agreement for the vacant property on 5th Street. Mayor Fenn then asked if there were any thoughts on addressing the asbestos as part of remodeling, with City Manager Glenn Nichols stating there were some considerations on what would need to be done before we occupied the building, citing plumbing and electrical issues and that there was no heat. Mayor Fenn then asked about a further discount or concession, with Mr. Nichols indicating the property owner had not offered a lower price. Mayor Fenn then stated Council needed to decide if they wanted to move forward with this resolution which approved both contracts and asked for Council to give their opinions.

Councilmember Sacco stated he didn't think they should move forward with the purchases since they didn't

know what the cost will be to abate the asbestos. Councilmember Lodzinski then moved to table the item until the City has a survey conducted, with Vice Mayor King asking if he could add that after a survey is conducted, the City should go back to the property owner and see if he will come down on his price. Vice Mayor King stated the item should then be brought back to Council. Mayor Fenn stated he would like to clarify that the City was approached by the seller and his realtor, that the City did not enter into a contract with the real estate agent, that the broker was not representing the City and that the seller would be the only one to pay a commission on the transaction. Councilmember Boncquet then seconded the motion made by Councilmember Lodzinski. Motion passed 7-0.

12. **Resolution 71-2009 of the Mayor and Council of the City of Benson, Arizona, approving and adopting the Human Resources Administrative Policy, Dated October, 2009, establishing policies and procedures for the personnel of the City of Benson**

City Manager Glenn Nichols addressed Council stating approximately a year ago in July, City staff, including himself, Gilda Gomez, Melissa Tibbitts, Melissa Quiroz, Previous City Attorney Thomas Benavidez, current City Attorney Michael Masse as well as a labor lawyer, began working on the Human Resources (HR) Administrative Policy. Mr. Nichols stated the new policy was concise and to the point on issues they felt should be included in the document and that the format was adjusted so that if a section of the policy needs to be revised, it will only require an update of that section, instead of the entire document. Mr. Nichols then stated once approved, the HR analyst and he will have a direct meeting with department heads and supervisors, followed by a meeting with each department employee, adding that each employee will be given the policy in a binder to allow for changes and updates. Mr. Nichols then stated it will be the responsibility of the City to provide employees with up-to-date information and the employees' responsibility to keep their policy book updated.

Councilmember Boncquet asked about employee orientation with City Manager Glenn Nichols stating employee orientation was now addressed in a Standard Operating Procedure (SOP) in the Human Resources Department. Councilmember Boncquet then discussed the attendance policy, stating she felt it was too general and that it didn't hold people accountable. City Manager Glenn Nichols stated administration will now make department heads responsible for tracking attendance, but that the HR analyst also tracks and looks for instances that need to be addressed. Councilmember Boncquet questioned why there wasn't a general policy that addresses everyone the same, outlining levels of discipline, with Mr. Nichols indicating the policy for attendance was not specific, but that there were procedures in place for progressive disciplining. City Attorney Michael Masee then addressed Council stating that a lot of thought went into the policy and that some noted criticisms of the old policy were that it both said too much and too little. Mr. Masee stated that in some areas, it's critical to be specific, but that when something is very specific, there is no flexibility. Mr. Masee then stated the attendance policy does say that 2 consecutive days of absence without calling in to your supervisor will be considered a voluntary resignation and that it talks about the need to keep your immediate supervisor informed if you're not going to be able to be at work that day and that failure on the part of the employee to comply with this regulation shall be cause for disciplinary action. Mr. Masee then stated this notifies the employee that attendance is a critical aspect of employment with the City and failure to maintain a proper attendance profile would open the employee to disciplinary action. Mr. Masee stated if specificity is desired, it can be placed in the policy, but for flexibility purposes and to not create a document that presents an obstacle to proper administration of the workforce was the goal of the policy. Mr. Masee then stated he felt the policy was appropriate and that in certain instances, too strict can be restrictive.

Councilmember Boncquet stated the City needed to be fair to all employees and that she felt we should have something more defining in the attendance area. Mr. Nichols stated the City doesn't currently have a great problem with attendance. City Attorney Michael Masee stated the whole tone of the policy is to bring attention to these areas and to allow management to do other progressive type action on an administrative basis such as counseling, a letter of reprimand, which under this policy is not considered formal discipline, before moving to formal discipline steps. Mr. Masee stated he felt the policy puts the employee on notice that improper attendance on the employee's part can be a basis for discipline, but at the

same time, it does not necessarily mandate discipline to be the first step to be taken in the situation. Mr. Masee then stated it was a balancing act of how much specificity to place in the policy, and that if Council would like more specificity in the attendance area, staff could address it. Councilmember Boncquet then stated she agreed that specificity can be difficult and that she understood that attendance was not an issue now, but if it became an issue in the future, she felt the policy would need to be addressed. City Manager Glenn Nichols stated changes to the policy could be made as needed.

Councilmember Boncquet then asked if the only drug testing the City required was for cause, with City Manager Glenn Nichols stating the City at one time did random drug testing citywide, but was recently put on notice that we can no longer perform random drug testing, and that it would now only pertain to people that were attached to any emergency services to do with gas. City Attorney Michael Masee stated there was a case out of the City of Mesa challenging random drug testing of public safety employees and that the court said in that case, the City had to have suspicion and can't require random drug testing. Councilmember Boncquet asked if the City required pre-employment drug screening with the City Manager stating that the City does and that it was part of the Human Resources responsibility. Councilmember Lodzinski asked if the drug testing still applied to the City's CDL drivers with Mr. Nichols indicating it did.

Vice Mayor King then stated this HR manual was easy to understand and was very direct. Vice Mayor King stated he was very proud of the hard work that was put into the policy and asked if staff will be addressing each department head and employee. Mr. Nichols indicated they would and that an acknowledgement would be signed by each employee and placed in their files. Vice Mayor King then stated the policy was easy to go through and locate items he was interested in, adding that staff did an excellent job. City Manager Glenn Nichols thanked staff, stating they really pushed forward to have this completed.

Councilmember Sacco asked about independent medical examinations and protecting the medical reports, with City Manager Glenn Nichols stating some departments required a medical report, but those and any other medical records, by law, must be kept in a separate file and they are not public records. Mr. Nichols stated Arizona Post does an audit to verify this has been done. Vice Mayor King stated this was a federal law and that no one was allowed access to those records except HR or their designee. Councilmember Sacco then asked if this should be referenced in the policy with City Attorney Michael Masee stating that there are certain rules and laws that govern how the City operates in multiple areas, but when the law is more like an SOP, the decision was made to omit it, but when it has to do with a provision that impacts employee rights, the basis on which an employee is going to be compensated or work rules, those were referenced. Mr. Masee then stated staff could go back and address these in the policy if Council so desired, but that the employee manual wasn't designed to manage specific duties that were going to be encompassed within the role of an HR office.

Councilmember Lodzinski then discussed the appeals commission, asking if this would eliminate the requirement of hiring a hearing officer. City Attorney Michael Masee stated the appeals commission would take the place of the hearing procedure and that while State law requires counties have an employee merit commission, many cities have citizen commissions, which not only save the City money, but that the idea of appealing the decision to the body that incorporates the standards of the community is another benefit. Mr. Masee then stated he thinks it serves a good purpose, is a little less formal and is appropriate.

Councilmember McGoffin referred to Section 10.1 on page 24 asking if cashing out vacation would no longer be allowed, stating that in the past, employees were allowed to cash out vacation as long as they had used 80 hours of vacation in the last 12 months. City Manager Glenn Nichols stated the City Manager would make that decision and that 40 hours would be the maximum amount an employee could request payment for.

Mayor Fenn stated he appreciated the work and that it sounds like the policy is the result of a good balance of protection between the City and the employee. City Attorney Michael Masee stated in his opinion, the

policy reflects a lot of hard work on the part of a lot of people and that it is head and shoulders above what exists right now. Mr. Masee said some statements in the current policy are incorrect under current law and they did their best to correct those misstatements, as well as trying to make the policy more user-friendly and understandable. Mr. Masee stated that while the policy is better than what we have now, it will continue to be a work in progress, stating that as we learn from experience the areas that may require modification, we will come back to Council to amend the policy to make it a better document.

Councilmember Lambert commended staff for their work and then moved to approve Resolution 71-2009. Seconded by Vice Mayor King. Motion passed 7-0.

13. **Review of City Finances with emphasis on September, 2009, financial results, the City's financial positions at September 30, 2009, sales tax collections through September, 2009, and discussion of future City finances**

Finance Director Jim Cox addressed Council stating that he would present a quick look at the highlights for September and that he presented the City tax collections for September at the last Council meeting. Mr. Cox then stated the City's unrestricted cash balance had decreased during the month of September to \$2.4 million, stating this was seasonal, historically one of the City's leanest cash flow months and it was to be expected. Mr. Cox then stated fund balances decreased by \$76,000 during the month of September and \$448,000 year-to-date, but that we needed to keep in mind that \$362,000 of the \$448,000 was used to pay down debt. Mr. Cox then stated trend wise, the City was continuing to bounce right along the bottom of the curve and that it was ok, that the City survived and will continue to survive if things don't change too much. Mr. Cox then spoke about City revenues, stating citywide revenues decreased by \$511,000 during September, which was solely due to the fact that a year ago, the City had an unusual revenue of \$520,000 in airport grants. Mr. Cox then stated the City's personnel costs are down \$68,000 year-to-date, due to an unusual transaction a year ago, stating our personnel costs year-to-year are flat. Mr. Cox then stated other costs are down \$33,000 for the month of September and down \$15,000 year-to-date, noting that this is the first month where we have a full comparison of really tightening our belts and trying to hold things down, stating September of last year was the first month we really tightened our belts and it shows, adding that September of last year and September of this year were almost identical.

Mr. Cox then addressed the General Fund stating general fund revenues were down \$10,000 for the month of September compared to last year and down \$54,000 year-to-date which is entirely due to decreases in State shared revenues. Mr. Cox then stated the good news was that the City transaction privilege tax collections for the month of September were \$9,000 greater than they were last September and that it is the first time in 12 months that we've been able to look back and see that. Mr. Cox then spoke about expenditures in the General Fund stating personnel costs were down due an unusual happening last year, and that other costs are down \$64,000 or 19%, year-to-date, but that he thinks those decreases are due to timing. Mr. Cox then stated the fund balance for September went negative \$44,000 and that it's down \$148,000 year-to-date, but that compared to last year, the City is not doing too bad, considering this is a slow time of year, stating he's pleased with where we are. Mr. Cox then addressed the Enterprise funds, stating the gas fund is where it's expected since the City isn't selling gas due to the weather, but is incurring all the costs, stating it's down \$73,000 year-to-date and that we should see that begin to change next month. Mr. Cox stated the water fund is up \$4,000 for the month of September and up \$63,000 year-to-date, stating again, this was due to the weather. Mr. Cox then stated the wastewater fund was just above breakeven, which is what we would expect.

Mr. Cox then addressed the future stating as he mentioned earlier, local sales tax revenues showed the first positive year-to-year comparison in 12 months and he will be following the figures very closely, stating that it is too soon to call it a trend, but it is nonetheless encouraging. Mr. Cox then stated the State shared revenues are down \$63,000 year-to-date and will continue to slide as they are locked in and there is certainly no indication of any kind of recovery at the State level. Mr. Cox then stated the City's response to these times is to continue to control expenditures as closely as possible, stating the City can continue to survive in this economic climate, if we have no large unexpected expenses.

Mr. Cox then stated that the City Council had looked at the detailed tax collection numbers at the last Council meeting, but that he was presenting an analysis of local and state tax collections, stating the City seems to be doing better than our sister cities and better than the State as a whole. Mr. Cox then stated the City sales tax collections for 2007-2008 were good and that Council could see from the figures that the recession was starting in 2008-2009 and that in 2009-2010 we see that so far we're doing almost exactly what we did last year at this time. Mr. Cox stated it appears that we're at the bottom and are staying even with where we were last year. Mr. Cox then addressed the state tax collections, with the collections in 2007-2008 being good, but that we could see from the figures that the state sales tax collections went down in 2008-2009 and that the decline is continuing in 2009-2010. Mr. Cox then stated when you compare the City to the State, it's clear that the City is doing better than most cities in the state and certainly better than the State as a whole.

Mayor Fenn then stated that Council appreciated the update on the City's finances and the bit of encouraging news.

COUNCIL DIRECTIVES:

None.

DEPARTMENT REPORTS:

None.

ADJOURNMENT:

Councilmember McGoffin moved to adjourn at 9:17 p.m. Seconded by Councilmember Lodzinski. Motion passed 7-0.

Mark M. Fenn, Mayor

ATTEST:

Vicki L. Vivian, City Clerk

October 26, 2009

Good evening Mayor and council,

My name is Dianne Tipton and I live in Benson.

I wish to address the council this evening concerning the recent agreement to purchase the property located at 100 W. 6th Street and the property located at 117 W 5th Street.

I met with Mr. Nichols on Friday and shared this information with him and he has assured me that he will bring up this issue tonight with all of you as well and that he will ask for this item to be tabled until the issues can be resolved. I am making that same request at this time.

Mr. Nichols can disclose to you what prior information he had concerning these issues before he brought the purchase of the property before the council and where he got that information and I am sure that he will.

I have several concerns, the most important of which is that the property at 100 W. 6th Street is or has been full of asbestos. Asbestos left undisturbed runs a low risk but, when the removal of asbestos is attempted by a non professional it can be lethal. According to statements made to me this is exactly what has been done in this case.

The asbestos may be flying free within the structure and within any system such as heating or cooling. It is also my understanding that there is still, asbestos within the building walls on the outside. In many older buildings even the water lines, insulation and the wrappings on wires may be made of asbestos therefore any plans to upgrade the building may intrude into these areas and must be considered, concerning safety and the purchase price of the property and building. No one should enter that building without it being fully inspected for asbestos contamination.

During the time the asbestos was being removed the fibers may have even contaminated areas around the outside of the building.

AZ law requires sellers to disclose and several years ago AZ Association of Realtors got together and developed a document called SPUDS, which all reputable realtors give to their sellers, to fill out, disclosing any and all issues with the house or property that have **EVER** occurred in the **PAST** or are present at the time of the sale. Failure of the seller to disclose could result in a very expensive law suit for both the seller and buyer as well as health issues. In these two sales Mr. Di Peso is the realtor of record representing both the buyer and the seller which is never a good idea however he did provide a SPUDS form, from his office to the seller for the property on 5th street which is a vacant lot. On, the SPUDS form there is a specific section that addresses the question of the presents of asbestos and I assume it was the seller that clearly marked, that

there was none, which would be expected on a vacant lot. However, no SPUDS form was filled out on the property at 100 W. 6th Street.

In speaking with Mr. Di Peso at the last council meeting he did tell me that he was personally aware of the asbestos contamination in the building on 6th Street and yet it seems that the buyer either did not receive a SPUDS disclose form from Mr. Di Peso as he did on the other property or that he simply chose not to disclose it. I questioned Mr. DiPeso about why there was no SPUDS statement and he told me he wasn't the realtor for the seller and yet the documents clearly show that he is. In either case, Mr. Di Peso was aware of the presence of the asbestos and since he is also representing the buyer, he should have disclosed it to the council personally. Why didn't he? This is one reason why a realtor should not represent both the buyer and seller. In this instance the Buyers interests were not protected. Why not?

I would also like to note that the amounts on both contracts presented to you tonight are incorrect according to the signed acceptance offers and the amounts presented to council and approved at the last council meeting. They are wrong in favor of the city. It appears that these documents were written by Di Peso Realty. In this case the seller's interests have been compromised, and neither the buyer, nor seller, has had very good representation in my opinion. Again the realtor shouldn't be representing both the buyer and the seller though it is not illegal in does create an ethical problem and the rejection of the sale would profoundly affect Mr. Di Peso's bottom line and he would benefit most for the sale to go through.

There is also a disclosure within both sales documents that say that Mr. Di Peso will be paid a commission by both the buyer and the seller, if this is so then what amount is being paid to Mr. Di Peso by the city and where is that disclosed. I think that the city would be better served if the city attorney Mr. Massey acted on behalf of the city concerning these sales and not Mr. Di Peso. After all this is one reason we pay Mr. Massey. No commission should be paid to Mr. Di Peso at all by the city.

Because these disclosures were not made available to the council before they were asked to vote and make a decision to purchase that could profoundly affect the health and wellbeing of many and could result in endless lawsuits against the City of Benson, the decision to purchase the property should be rescinded because there will be additional expense that the city will incur due to the asbestos as it did when they dismantled the old city hall, but, the most important consideration should be the safety of city staff and any workers, residents or others that may have any reason to enter that building.

The value of the property should be reconsidered and all precautions should be taken to avoid contamination to anyone.

I would like to request that this statement be made part of the record.