

**THE REGULAR MEETING
OF THE MAYOR AND CITY COUNCIL OF BENSON, ARIZONA
HELD OCTOBER 11, 2010 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 Toney D. King, Sr., Councilmembers Jo Deen Boncquet, David Lambert, John Lodzinski, Lori McGoffin and Al Sacco.

EMPLOYEE RECOGNITION: Mayor Fenn recognized David Estrella for 30 years of service with the City.

PROCLAMATION:

Mayor Fenn read a proclamation declaring October 25-29, 2010, "Arizona Cities and Towns Week."

PUBLIC HEARING:

The Mayor opened the Public Hearing to receive comments from the public proposed adoption of "Appendix IV – Modifications to the Model City Tax Code for Cities and Towns in the State Collection System Performing Supplementary Local Audits" ("Appendix IV"), which amends Article 5, Administration, to the City of Benson Tax Code and Regulation 555.1 at 7:03 p.m.

Jim Grey addressed Council stating he was thankful the Council was going to take more time for this issue. Mr. Grey then stated he spent 3 hours gathering 35 signatures from businesses that were opposed to the City being able to perform audits, adding it hasn't been easy to stay in business. Mr. Grey then expressed his concern that if he spoke out against the City, a vindictive stance could be taken against him. Mr. Grey then stated a meeting had been held prior to the Council meeting and that Finance Director Jim Cox attended to try and answer some of their questions, but they felt the City should be able to target businesses for audits. Mr. Grey then stated the City budget has grown from \$10 million dollars to \$22 million dollars and the number of employees has increased, noting that other cities have been cutting back and feels businesses are under a tremendous burden and don't need to feel the burden of a threat of an audit from the City. Mr. Grey then stated the City should find another way to solve the problem if a taxpayer is not paying their taxes, such as to not issue or to revoke their business license and shut the business down until they pay their taxes. Mr. Grey then stated there is enough problems already and Council needs to find a way to make people pay their taxes without giving the City cart blanche to audit any business they want. Mr. Grey then stated he is completely opposed to this item.

Dianne Tipton addressed Council concerning this item. Her comments are incorporated into the minutes.

Don Grafues, President of the Benson/San Pedro Valley Chamber of Commerce, addressed Council stating the Chamber had been asked to take a position on this matter, but after having a meeting, they have decided not to choose a position, adding they have members who support it and members who do not. Mr. Grafues then stated the Chamber Board decided to hold a forum on October 18, from noon to 1:00 p.m. at the Benson Campus of Cochise College, adding lunch will be provided for those who attend. Mr. Grafues then stated they would like people to come, express their views and have their questions answered, inviting business owners and City staff. Mr. Grafues then stated they will hold another forum if it's needed.

Dan Barerra, owner of the Quarterhorse Motel, stated he had signed the wrong form prior to the meeting and asked to address Council. Mayor Fenn invited him to speak. Mr. Barerra then stated he was concerned

about this issue and the fact that the first time he knew of the proposed change was when he read the newspaper. Mr. Barerra stated he was at the meeting prior to the Council meeting, that Finance Director Jim Cox and newspaper reporter Thelma Grimes attended, and it was a good place to have open dialogue. Mr. Barerra then stated he is concerned about the process adding he just obtained the document proposing this change that afternoon and he is glad the Chamber is getting involved in the process to get more information out, allowing for participation which will keep the trust between the Council and business owners. Mr. Barerra then stated he has seen a lot of businesses come and go and economic times are hard, asking Council to give business owners enough time to look at the resolution and give their input. Mr. Barerra then asked if the City has the ability to audit, what will the City gain from the change and what expenses will be involved in the audit process. Mr. Barerra stated Council has due diligence to study this item, ask staff, investigate, and get information from City businesses. Mr. Barerra then stated if there are businesses operating without paying taxes, the City should be able to track them through their business licenses and asked Council to have trust in City merchants and give them some time to give Council their thoughts on this process.

Mayor Fenn then asked if there was anyone else present who wished to speak. After receiving no requests, Mayor Fenn closed the public hearing at 7:22 p.m.

CALL TO THE PUBLIC:

Dianne Tipton addressed Council regarding the scheduled Executive Session, stating while Council does have the right to go into an Executive Session and can express their feelings, before they commit the taxpayers to pay the bill, they must take a vote and issue a directive. Ms. Tipton stated the attorney for Stagecoach Trails has asked the proceedings to be open and has been denied. Ms. Tipton then stated there has never been a directive given to the City Attorney, which is not following proper procedure and suggested Council rethink what they are doing and to become more transparent in how they are treating her, her son and his mobile home park. Ms. Tipton then stated when Council goes into the Executive Session, they need to remember the conversation is not to go beyond what is on the agenda. Mayor Fenn then stated the Executive Session had been scheduled to allow Council to discuss any new information and since there wasn't any, the Executive Session would not be held.

Richard Busselle addressed Council stating he was there to say something good. Mr. Busselle then stated everyone was excited about taxes, but some good things about taxes are that they pay for the streets, the fire dept., the police dept., improvements in the water service and employees that benefit Benson citizens. Mr. Busselle then stated taxes do one thing: they buy civilization and without taxes, we don't have civilization, therefore when it comes time to pay your taxes, pay them with a smile.

George Scott addressed Council regarding Ordinance 550. Mr. Scott stated this project has been in the works for quite some time and encouraged Council to follow through with the project, adding it's a good project and we need to move the City forward to be ready when the economy turns around. Mr. Scott then stated with the new interchange at Highway 90, this project will be a nice component, will be good for business and thinks the Council should move forward approving the project.

CITY MANAGER REPORT:

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

October 16, 2010 – Historic Preservation Commission, 9:30 a.m., City Hall
October 19, 2010 – Library Advisory Board, 4:00 p.m., Library
October 25, 2010 – City Council Meeting, 7:00 p.m., City Hall
October 26, 2010 – Community Watershed Alliance, 6:30 p.m., City Hall

Mr. Nichols noted the normally scheduled Library Advisory Board meeting had been rescheduled for October 19, 2010.

NEW BUSINESS:

1. Consent Agenda

- 1a. Minutes of the September 27, 2010 Regular Meeting
- 1b. Invoices processed for the period from September 21, 2010 through October 4, 2010

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

2. Participation in Benson's Shop with a Cop Program

Councilmember David Lambert addressed Council stating he had previously been approached by Denise Celetano from All the Kings Horses Children's Ranch and requested this item to be placed on the agenda for Council action. Councilmember Lambert then read a letter submitted by Ms. Celetano, which thanked Council for putting this item on the agenda and that she had enthusiastic responses from the Benson Chief of Police, the Arizona Rangers, the Sheriffs Department and the Department of Public Safety (DPS), including the district commander. The letter continued, noting the event would be held on December 4, 2010 and the census is agreeable with an early morning event with Ms. Celetano seeking support from the new owners of the Horseshoe café, by feeding the children and officers that day. She has also sought the support of the local Lion's Club has offered to assist with feeding the children and officers and should have a response from them in the next few weeks. The letter indicated the maximum number of participating officers may be 18, which would result in assisting 18 children with a gift card from Wal-Mart. The amount needed to be raised would then be \$1,800.00 and \$1,100.00 has been raised, including a large donation from Wal-Mart. Next year, Ms. Celetano will have a few fund raising events and will be keeping the Bank of America account open all year for donations. Ms. Celetano's letter then read if the program is as successful as she hopes, her intent is to increase the amount of children that can participate in this program. The children selected will be from the Benson area, with Anna Lucore of the All the Kings Horses Children's Ranch in charge of that department. The letter concluded by thanking the Council for considering a donation to the first Benson's Shop with a Cop program. Councilmember Lambert then stated when Ms. Celetano had approached him, they had discussed being able to put this program on in Benson, but with it being so late in the year and with donations being down, they needed a little help. Councilmember Lambert then presented a video on the Shop with a Cop program. Councilmember Lambert then stated he had spoken to Finance Director Jim Cox about the community enrichment budget and had spoken to Chief of Police Paul Moncada who confirmed Tucson's success with the program. Councilmember Lambert stated both Mr. Moncada and Ms. Celetano were present for any questions Council may have. Councilmember Lambert then introduced Jerry Pollard from the Benson Elks Lodge #2853. Mr. Pollard addressed Council stating on behalf of the Benevolent and Protective Order of Elks and Benson Lodge #2853, they would like to donate \$50.00 to the program, adding "Children's laughter is what we're after". Councilmember Lambert then moved to donate \$500.00 from the community enrichment fund to the Benson's Shop with a Cop program to ensure at least 15 to 18 children are able to participate this year. Mayor Fenn then asked if this donation would be the first donation from the community enrichment fund in the current fiscal year with Mr. Cox confirming it would be the first expenditure in the community enrichment budget, which was funded in the budget for \$8,000.00. Councilmember Lambert's motion was seconded by Councilmember McGoffin. Motion passed 7-0.

3. Recognition Program for Employee's Service Anniversaries in 5 year increments

City Manager Glenn Nichols addressed Council stating this item had been discussed at the Council retreat held last year and after reviewing several options, such as monetary gifts, catalogue gifts and time off, it was determined the best method would be an award of paid time off with each 5 years of service resulting in a one-time award of 8 hours, noting an employee with 5 years of service would be awarded 8 hours and an employee with 10 years of service would be awarded 16 hours. Mr. Nichols stated this time would be

required to be used within 6 months of the employee's anniversary. Mr. Nichols then stated this would recognize employees, but would not be a monetary award and then requested the program to be retroactive to July 1, 2010 to include those employees whose anniversaries had occurred in the current fiscal year. Councilmember Lodzinski asked if there was a limit on the amount of regular vacation that could be accrued by employees with Mr. Nichols stating there was and this time could be kept separate and would need to be used within 6 months of the anniversary. Councilmember McGoffin asked about employees being able to take time off when there is limited staff with Mr. Nichols stating with the cross training that has been implemented, and employee's cooperation in the program, it should be possible. Councilmember Lodzinski moved to approve the recognition program for employee's service anniversaries with the award of 8 hours for each 5 years of service as proposed. Seconded by Councilmember Lambert. Motion passed 6-0, with Councilmember McGoffin abstaining.

4. **Trust Assurance Agreement to Construct Subdivision Improvements with Water Crest Associates, LLC for Water Crest Subdivision, Lots 13 through 48 and 50 through 53**

Public Works Director Brad Hamilton addressed Council stating he would like to discuss this item and the next item at the same time since they are related, adding this item is the establishment of a new trust due to a change in ownership and trust companies and the following item is the dissolution of the old trusts. Mr. Hamilton then confirmed all the conditions remain the same with the exception of the parties. Ms. Kim Lockhart of Pioneer Title then stated the trust assurance agreement should only include Lots 13 through 48 and 50 through 52, as stated in the legal description with Mr. Hamilton confirming the legal description in the trust assurance agreement was correct and did not include Lot 53. Councilmember McGoffin moved to approve the trust assurance agreement to construct subdivision improvements with Water Crest Associates, LLC for Water Crest Subdivision, Lots 13 through 48 and Lots 50 through 52. Seconded by Councilmember Lodzinski. Motion passed 7-0.

5. **Resolution 63-2010 of the Mayor and Council of the City of Benson, Arizona, authorizing the release of Assurances for the Subdivision known as Water Crest, Lots 1 through 53, Blocks 1 and 2, Common Areas A and B**

Public Works Director Brad Hamilton addressed Council stating this was full release from the old trust assurance agreements, noting there had been some partial releases in the past. Discussion was had regarding the release of Lot 53 with both Ms. Kim Lockhart and Mr. Hamilton stating the release of Lot 53 was not needed at this time. Councilmember Lambert moved to approve Resolution 63-2010 with the amendment to show the release of assurances for the subdivision known as Water Crest, Lots 1 through 52, Blocks 1 and 2, Common Areas A and B. Seconded by Councilmember McGoffin. Motion passed 7-0.

6. **Ordinance 550 of the Mayor and Council of the City of Benson, Arizona, extending and increasing the Corporate Limits of the City of Benson, Cochise County, Arizona, pursuant to the provisions of Title 9, Chapter 4, Article 7, Arizona Revised Statutes and Amendments thereto, by annexing thereto certain territory contiguous to the existing City limits of the City of Benson, approximately 115 acres located west of State Route 90 and south of Interstate 10, Assessors Tax Parcels 124-01-010F, 124-01-010D and 124-01-010G**

City Manager Glenn Nichols stated Resolution 24-2007 directed Staff to proceed with the annexing of the 115 acres owned by San Pedro Partners, the Harlan Trust and the McDonald family, stating since that time, San Pedro Partners had acquired the McDonald property. Mr. Nichols then stated this ordinance is the final step in the annexation of the 115 acres, which is located west of State Route 90 and south of Interstate 10. Mr. Nichols then stated the property will meet the City's zoning of Rural Transitional (RT) and all the requirements have been fulfilled with the most recent action being a public hearing held at the Council meeting on September 27, 2010. Mayor Fenn then stated this property should be familiar to the Council and public and stated the ordinance, if approved, would formally annex the 115 acres as described. Mayor Fenn then asked if there were any questions from the Council. Councilmember Lodzinski asked if the 20' strip of land running along the east side of the property would be excluded in the annexation with Mr.

Nichols stating it would be excluded. Councilmember Sacco asked City Attorney Mike Massee if the exclusion of the 20' strip would meet the requirements of A.R.S. § 9-471 with Mr. Massee stating it did. Mayor Fenn then stated he believed the City had received confirmation from the County Attorney that it would meet the requirements. City Attorney Mike Massee then stated from his understanding the County Attorney has weighed in on this matter as far as the issue of a potential County island, stating technically, the 20' strip of land prevents the creation of a County island, and for that reason, is important. Mayor Fenn then stated he understands the remaining property owners plan to petition the City for annexation at some point in the future. Councilmember McGoffin moved to approve Ordinance 550. Seconded by Mayor Fenn. Motion passed 7-0.

7. **Review of City Finances with emphasis on August, 2010, financial results and the City's financial position at August 31, 2010**

Finance Director Jim Cox addressed Council stating this presentation would not include any sales tax information since the August sales tax receipts were discussed at a previous Council meeting. Mr. Cox then began with citywide financial highlights, stating cash balances are up \$26,000 to \$2.9 million of unrestricted cash, adding he expected the cash balance to decrease over the next 4 months until the City begins getting receipts from our winter visitors.

Mr. Cox then stated the citywide fund balances increased by \$14,000 ending August, but were still down \$90,000 year-to-date, adding it is very close to where the City was last year at this same time, noting in trends, the numbers are very similar to 2009-2010 which were also very similar to 2008-2009.

Mr. Cox then addressed citywide financial results, stating City revenues increased by \$8,000 compared to August, 2009, and again compared to 2009, were down \$9,000 year-to-date, adding out of almost a million dollars, the difference was miniscule.

Mr. Cox then stated personnel expenditures were down \$41,000 year-to-date, due to timing and was almost identical to last year. Mr. Cox stated other costs were up \$54,000, due again, to timing issues. Mr. Cox then stated the City's debt payments were down by \$354,000, but was strictly due to the fact the Zion's payment this year was part of the bond proceeds. Mr. Cox then stated capital costs increased by \$50,000 due to the replacement of the Jennella Well, noting the equipment has been purchased, but not installed yet.

Mr. Cox then addressed the General Fund stating revenues were down \$34,000 ending in August, and down \$21,000 year-to-date, but on the positive side, the City sales taxes were up \$23,000 for the month of August, which is 5% ahead of last year, year-to-date. On the negative side, State shared revenues were down \$28,000 which is permanent and will continue to decrease each month. Mr. Cox then stated building permits were down \$22,000 compared to last year. Mr. Cox then addressed the expenditure side, stating personnel costs were down \$40,000 year-to-date, citing timing and other costs were down \$14,000 year-to-date, also due to timing. Mr. Cox then stated fund balances were up \$12,000 for the month of August, but were still down \$101,000 year-to-date, which is just slightly better than we were last year.

Mr. Cox then addressed the enterprise funds, stating the Gas Fund is down \$28,000 in August and down \$35,000 year-to-date which is very comparable to 2009, adding this is the time of the year when we incur the same costs in gas, but don't have the corresponding revenue due to the weather. Mr. Cox then stated the Water Fund is down \$11,000 for the month of August and down \$9,000 year-to-date, but asked Council to keep in mind that figure included the \$53,000 capital improvement on Jennella Well. Mr. Cox then stated the Wastewater Fund is up \$21,000 for August and up \$16,000 year-to-date which is very similar to where we were last year at this time.

Mr. Cox then gave a summary, stating overall; it was more of the same, noting the City has had 10 consecutive months of modest sales tax revenue growth which was a good thing. Mr. Cox stated on the State side, they're still trending down, which is a little scary. Mr. Cox then stated the City's balance sheet is much stronger as a result of the bond issue, adding we have generated \$2.4 million additional cash

reserves that are restricted for capital improvements, but does make the City's balance sheet look very strong. Mr. Cox then stated the slight increase the City is seeing in sales tax revenues comes close to offsetting the decline we had have in State shared revenues and is why we are coming close to balancing the General Fund and if the City can keep that up, he'll be very happy. Councilmember Lambert asked if Mr. Cox has thought about giving a financial presentation on a quarterly basis instead of a monthly basis, since there are no changes and the City is on track. Councilmember Lambert then stated if Mr. Cox saw something come up that Council needs to be apprised of, it could be placed on an agenda. Councilmember Sacco stated he preferred a monthly presentation, stating if a problem is encountered, the Council is informed quickly, instead of waiting until the end of a quarter. Councilmember McGoffin stated she would prefer a quarterly presentation also. Councilmember Lodzinski stated the Council does receive detailed financial reports every month, but would agree that a monthly presentation would benefit the public also. Mayor Fenn stated his encouragement would be to streamline the monthly presentation. Mr. Cox stated he could do that and then added he would present a streamlined presentation for the month of September at the next Council meeting and Council could comment on the condensed format.

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.

Mayor Fenn stated, as mentioned earlier, the executive session would not be held.

DEPARTMENT REPORTS: None

ADJOURNMENT:

Vice Mayor King moved to adjourn at 8:00 p.m. Seconded by Councilmember McGoffin. Motion passed 7-0.

Mark M. Fenn, Mayor

ATTEST:

Vicki L. Vivian, CMC, City Clerk

Good evening Mayor and council,

My name is Dianne Tipton and I wish to address the issue before you tonight concerning the tax code on behalf of my son Jay Kendrick and myself.

Whether or not the City of Benson conducts its own audits is really irrelevant to me. However, this appears to be just one more in a long line of many code reinterpretations of a city code to suit the moment and really has nothing to do with expedience.

This, code change along with many other recent code changes, screams out to new businesses and families looking to locate in Benson to stay away.

What appears to be fun for the City Attorney and Council is making a LOUD statement to the rest of the local community and especially business owners and surrounding communities that Benson City Council cares nothing for the tax payers and exercises poor judgment while making decisions to spend their hard earned money.

What is important concerning this code, however, is that when ever this City is going to be enforcing any code, that it be done with fairness and without prejudice or bias and is not fueled by a vendetta and supported by the silence of those who are motivated by fear.

I also have a grave concern that our City Finance Director Jim Cox, may be violating the confidentiality laws concerning personal tax information. That, accompanied with his statement to the News Sun that if this code is passed there is one particular business they will use it on, should alarm everyone.

I believe this sudden and urgent request to amend the tax code is the newest direction this city council wants to take in their pursuit of harassment of me, my son Jay Kendrick and his park Stagecoach Trails.

This council with one exception has willingly allowed Mr. Masee and Mr. Nichols to carry on one of the most blatant harassments and abuses of power most people will ever witness in their lifetime, and it has been done with absolutely no concern or thought of what their personal vendetta is costing the tax payers with no end in sight.

Collecting more taxes to give away to your city attorney to harass local business owners doesn't seem like a well thought out plan to me.

Keeping the code the way it is will insure fairness and respect for privacy and will prevent any further potential harassment of business owners by some appointed individual that cannot be trusted. So it takes time for the state to act upon a request. I think the wait is worth the assurance that all will be treated fairly and without prejudice. So, if you decide to adapt this code, we ask that you put into place everything necessary to assure all that will be affected, that the person or entity chosen for the enforcement of this code will be independent of the city staff, reputable, qualified, accompanied by proper credentials supporting their abilities and experience with hearings allowing the public to watch the choice process and someone with no stake in the game or a personal vendetta to pursue.

I can only guess that some strategic move suggested by Mr. Masee is what has necessitated the rush to amend this code.

On behalf of myself and my son, Jay Kendrick who is out of town or would have been here tonight I thank you for your attention.