

**THE REGULAR MEETING  
OF THE MAYOR AND CITY COUNCIL OF BENSON, ARIZONA  
HELD FEBRUARY 22, 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. Mayor Fenn then introduced Vice Mayor Toney King who then led those present in an observed a moment of silence.

**ROLL CALL:**

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

**EMPLOYEE RECOGNITION:** None

**PROCLAMATION:**

Mayor Fenn read a proclamation declaring March, 2010 as “Arts Month” in Benson. Mayor Fenn then presented the proclamation to Ms. Sylvia Burnside of the San Pedro River Arts Council.

**PUBLIC HEARING:** None

**CALL TO THE PUBLIC:** None

James Trail addressed Council stating he was opposed to the resolution regarding the liquor license. Mr. Trail stated he lives in the area and they already have roads that are failing with a lot of sink holes, stating that he feels any traffic that would be generated could be enormous and not only could the winery produce up to 40,000 gallons a year, they could also have a sampling room, a store and a restaurant, stating that the park was not equipped to handle that. Mr. Trail then stated there is also a City ordinance in Benson for RV parks that state any retail business not exclusively for the use of the park residents is prohibited and asked that it be enforced.

Lee Peterson addressed Council stating he also resides at Cochise Terrace and that he was in support of the resolution for the liquor license. Mr. Peterson stated he lives one house removed from the site and no one would even know it was there by looking at it, that there’s no impact on him as a resident and then encouraged Council to approve it.

Steven Butler addressed Council stating he was opposed to the resolution regarding the liquor license, that the park is a residential, gated, over 55 community and that everyone bought in the park to live in an over 55 gated community and that when he bought his property there, he had no idea there could be a licensed winery in the park. Mr. Butler then stated he wished to register his opposition.

**CITY MANAGER REPORT:**

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

- February 23, 2010 – Community Watershed Alliance, 6:30 p.m., City Hall
- March 1, 2010 – Economic Development Subcommittee, 5:15 p.m., City Hall
- March 2, 2010 – Planning & Zoning, 7:00 p.m., City Hall
- March 8, 2010 – City Council Meeting, 7:00 p.m., City Hall
- March 9, 2010 – Library Advisory Board, 4:00 p.m., City Library
- March 20, 2010 – Historic Preservation Commission, 9:00 a.m., City Hall
- March, 22, 2010 – City Council Public Hearing, 7:00 p.m., City Hall  
City Council Meeting, 7:00 p.m., City Hall
- March 23, 2010 – Community Watershed Alliance, 6:30 p.m., City Hall

March 13 – 21, 2010 – San Pedro River Arts Council presents the “Celebrate the Arts” at Cochise College, Benson Center. Most events are free and all events are open to the public. There will be free live performances, an art show, creative workshops and Kids’ Day.

## **NEW BUSINESS:**

### **1. Consent Agenda**

- 1a. Minutes of the February 8, 2010 Regular Meeting
- 1b. Resignation of Tammy Rogers from the City of Benson 4<sup>th</sup> of July Committee
- 1c. Appointment of Dick Ferdon to the City of Benson 4<sup>th</sup> of July Committee
- 1d. Resolution 11-2010 of the Mayor and Council of the City of Benson, Arizona authorizing the Chief of Police to apply for a Homeland Security Grant to fund equipment purchases
- 1e. Resolution 12-2010 of the Mayor and Council of the City of Benson, Arizona authorizing the Chief of Police to apply for a Governor’s Office of Highway Safety Grant to fund equipment purchases and overtime
- 1f. Resolution 13-2010 of the Mayor and Council of the City of Benson, Arizona authorizing the Chief of Police to apply for an Arizona Department of Homeland Security Grant to fund equipment purchases and overtime
- 1g. Resolution 14-2010 of the Mayor and Council of the City of Benson, Arizona approving an Agency Agreement with the Governor’s Office of Highway Safety to provide child safety seats to Benson residents and classes in properly using same
- 1h. Resolution 15-2010 of the Mayor and Council of the City of Benson, Arizona authorizing the Fire Chief to apply for a Governor’s Office of Highway Safety Grant to fund the purchase of extrication equipment
- 1i. Resolution 16-2010 of the Mayor and Council of the City of Benson, Arizona authorizing the Fire Chief to apply for an Arizona Department of Homeland Security Grant to fund the purchase of computer equipment
- 1j. Invoices processed for the period from February 2, 2010 through February 11, 2010

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

### **2. Request of support and sponsorship of the San Pedro River Arts Council for the “Celebrate the Arts” celebration being held March 13-21, 2010**

Mayor Fenn asked if Ms. Sylvia Burnside of the San Pedro River Arts Council would like to address the City Council. Ms. Burnside then addressed Council stating this is probably one of the larger events that will be held in the City of Benson, that the Arts Council has been working on it for about a year and that they think it’s going to be a terrific event and hopes that the City Council will all be there at one event or another. Ms. Burnside then stated Cochise College has partnered with the Arts Council every step of the way; donating the building and paying for a couple of events. Ms. Burnside then stated the visual art show will pay for itself by those who enter the show. Ms. Burnside then commented on individual events noting that it will start out with a jazz band on the 13th, food from St. David and Benson culinary groups, and an address by Dr. Rottweiler of Cochise College. Ms. Burnside then said many other events during the week and that they will end with Mariachi Aztlan de Pueblo High School, a mariachi Band from Tucson, who recently played at the Tucson Symphony Orchestra. Ms. Burnside then stated the Arts Council is asking for the City Council’s support for this event, and that they hope it will become an annual event. Ms. Burnside then told the City Council that the Arts Council appreciates very much the support the City Council has given them this year and in years past when they were the City’s Arts Commission.

Councilmember Sacco then asked if the Arts Council asked for sponsorships from the business community with Ms. Burnside stating they had received \$500.00 grants from both Wal-Mart and Touchstone Energy, that the Chamber of Commerce is supporting in-kind services, with advertising and assistance with marketing. Councilmember Boncquet asked for the balance in the budget for such sponsorships, with City Manager Glenn Nichols stating there was approximately \$5,100 in the community enrichment fund. Councilmember Lodzinski then asked if there were any funds left in the Arts Commission budget with Mr.

Nichols stating the Arts Commission budget had been expended by the Arts Commission prior to their change to the San Pedro River Arts Council, with only a \$12.00 balance remaining and that any contribution the City Council approved would now come from the community enrichment budget. Councilmember Lodzinski stated this event brings culture and new experiences to the community and moved to allocate \$500.00 from the community enrichment budget to support this event. Seconded by Councilmember Boncquet. Councilmember Lambert stated he likes the fact that the event lasts 8 days and will encompass two complete weekends and all week in between allowing for participation from people with different schedules. Motion passed 7-0.

3. **Resolution 17-2010 of the Mayor and Council of the City of Benson, Arizona recommending approval of the new license for a Type 13 (Domestic Farm Winery) liquor license at 1030 S. Barrel Cactus Ridge, #155, Benson, Arizona**

City Manager Glenn Nichols addressed Council stating on August 10, 2009 Council passed Resolution 54-2009 recommending approval of the new license for a Type 13 (Domestic Farm Winery) liquor license at 1030 S. Barrel Cactus Ridge, #155, Benson, Arizona. Since then, the license application was withdrawn and Mr. Gary Kessler had now applied for a Type 13 (Domestic Farm Winery) liquor license at the same location and that procedures had been followed according to ARS §4-201, with no written arguments in favor of or opposed to the issuance of the license being received. Mr. Nichols then stated we were now at the step where the “governing body of the City or Town shall then enter an order recommending approval or disapproval within sixty days after filing of the application” and that once Council makes a recommendation, the City Clerk will forward the proper documents to the Arizona Department of Liquor Licenses & Control. Mayor Fenn then stated as a reminder, the City Council does not have the final say on the application, but gives a recommendation to the State Department of Liquor Licenses & Control, who makes the final determination. Mayor Fenn then opened the item for discussion. Vice Mayor King asked about the City ordinance brought up in the call to the public. City Attorney Mike Masee stated the City ordinance that relates to RV parks is in the Planning & Zoning Regulations, Section 16-A-6, “Prohibited Uses” and states, “1. Truck campers that are removed from the truck and 2. Any retail business not for the exclusive use of the park residents.” Mr. Masee then stated that retail business as written in this provision, is where the retail activity is located at the location or address and that the applicant is here and can address and explain that he is not going to conduct a retail activity at this location; he will be conducting fermenting and bottling, and since he is not planning on conducting retail sales there, his planned operation is not going to run afoul of that provision. The applicant, Mr. Gary Kessler then addressed Council stating he will be making the wine at the address on the application and then will deliver it to Turquoise Hills Golf & RV where it will be sold and that there will be no sales on the premises. Vice Mayor King asked about the amount of wine the license will allow to be produced with Mr. Kessler stating the annual production must be more than 200 gallons and less than 40,000 gallons, but that he doesn’t anticipate anywhere near the maximum. Councilmember Sacco asked about the name of the business and if it was an L.L.C. or a sole proprietorship with Mr. Kessler stating it was currently a sole proprietorship, but that he is looking at forming an L.L.C. Councilmember Sacco verified that Mr. Kessler will be leasing the equipment and facility, with Mr. Kessler answering he will be leasing the facility and then transporting the wine to Turquoise Hills Golf & RV. Mayor Fenn asked about the production and the transportation of the product with Mr. Kessler stating in the beginning he would make deliveries a couple times a month, but that demand would then dictate the future. Mayor Fenn asked about the mode of transportation with Mr. Kessler stating he has a small pick up that he will be using for delivery; anticipating that he will deliver 6-8 cases at a time. Councilmember Sacco then asked about the posting notice of the liquor license with City Clerk Vicki Vivian replying that the hearing notice is required to be posted for a period of twenty days in a conspicuous place on the front of the premises where the business is proposed to be conducted, stating this was done on the most visible window of the premises as well as another notice being posted in the barn; which was an additional posting attempting to notify and inform the public. Ms. Vivian then stated the notice has the date and location of the public hearing, the City’s address and phone number for any questions and asking for written comments in favor of or in opposition to the license application. Councilmember Sacco then asked about Section 16 of the Planning & Zoning Regulations prohibiting any retail business not for the exclusive use of the park residents, stating he disagrees with the City Attorney over the definition of the restriction and asked Mr. Masee for his interpretation of a retail business. City Attorney Mike Masee answered that the language of the zoning

code is looking at uses and types of activities, so something that would be a retail business would have to look and act like a retail business, conducting retail sales at that location. Mr. Masee then stated the description we have from the applicant is that that will not happen, but even if the license is approved from the state and he started conducting his operations, if at any point, he does conduct retail sales at that location, it would be a violation stating that just because the license may be issued, it does not give him carte blanche as far as what will be done at that location; Mr. Kessler would still have to comply with the City's zoning code. Councilmember Sacco then asked Mr. Kessler how many gallons he would be producing with Mr. Kessler stating it would depend on demand, but that he can't imagine producing more than 1,000 gallons a year, again stating that it will be determined by demand. Councilmember Sacco asked if the wine was going to be sold at the golf course at the bar or as retail with Mr. Kessler answering that he understood it will be available in the bar and restaurant and if there were to be any retail sales, it would be up to Turquoise Hills. Councilmember Sacco then stated Mr. Kessler should be aware of the county and city rental tax and that if the license is approved by the state, Mr. Kessler would need to obtain a city business license. Councilmember Lambert asked if Turquoise Hills Golf & RV will be the only retail outlet with Mr. Kessler stating it was the only outlet at this time, but that if in the future if a wine made from Prickly Pear became popular and he found a novelty store in Benson or a nearby store that sold Prickly Pear products, he may try to use them as another outlet. Mr. Kessler then stated if sales were very successful, he would like to try other golf courses in the area and sees this venture as something to promote Benson. Councilmember Lambert then stated he had talked to several people in Cochise Terrace and that since there is so little activity at the location, some of them don't realize there is a winery there noting that if it did generate a lot more traffic, it may be a problem in the future. Mr. Kessler stated he will be delivering the wine and doesn't anticipate much addition to traffic, since he would be delivering once or twice a month in his vehicle. Councilmember Sacco then asked if there would be trucks coming in delivering supplies with Mr. Kessler answering that he does not anticipate quantities being large enough to bring supplies in, that he will be getting the supplies himself. Councilmember Lambert then asked how long the process took from start to finish to make a bottle of wine. Mr. George Neff, who will be leasing the facility to Mr. Kessler, addressed Council stating the process takes approximately 3 months to bottle wine. Councilmember Lambert asked if Mr. Neff would be involved in this proposed venture with Mr. Neff stating his involvement will be limited to teaching Mr. Kessler the process. Mr. Neff then stated he currently makes 200 gallons a year and that to make 500 gallons a year would be stretching the limits of the equipment. Vice Mayor King stated he would like to clarify and restate that there will be no buying or selling in the park, the site will only be used for production, the only traffic will be Mr. Kessler and any retail sales will be through Turquoise Hills Golf & RV with the possibility of another location in the future, but that there will be no sales at the location. Mr. Kessler verified that is correct. Councilmember Lodzinski asked if the Planning & Zoning Commission needed to be involved in the process with Mr. Nichols stating that when the application was received, it was reviewed and verified that the proposed use does comply with the current zoning, which is commercial. Councilmember Boncquet then stated the Resolution is identified on the agenda as Resolution 16-2010, but was actually Resolution 17-2010 as printed on the resolution. Councilmember McGoffin then stated the application is basically a change of hands since the proposed use was the same with only a different applicant and that Council has approved a recommendation before. Councilmember Sacco said that due to his residency in Cochise Terrace, he would abstain from voting. City Attorney Mike Masee stated the issues regarding conflict of interest relate to a direct significant interest, and that by simply sharing residence in the surrounding area, Councilmember Sacco would have no significant interest more than any other person in that area, stating Councilmember Sacco would have no conflict. Mayor Fenn then verified that the previous application applying for a state license was withdrawn and therefore never issued by the state. Mayor Fenn then asked if there was a motion regarding this item. Councilmember McGoffin then moved to approve Resolution 17-2010. Councilmember Lambert stated after speaking to several residents in the park and receiving their comments on the winery, he had decided to second the motion. Motion passed 5-1 with Councilmember Boncquet voting nay and Councilmember Sacco abstaining.

4. **Review of City Finances with emphasis on January, 2010, financial results, the City's financial position at January 31, 2010, sales tax collections through January, 2010, and discussion of future City Finances**

Finance Director Jim Cox addressed Council stating if he could summarize, he would say the City's

financial picture was more of the same, that he spent a week with his colleagues from across the state and most would envy him being able to say that this month was very much like last month, which is very much like the 3 months before it and that it appears that we're beginning to ease out of the recession on a local level.

Mr. Cox then began with citywide financial highlights, stating the cash balances are unchanged at \$2.3 million of unrestricted cash and those balances should increase over the next 5 months up to the fiscal year end, since these are our higher revenue months for sales tax collections.

Mr. Cox then stated the citywide fund balances decreased by \$60,000 in December and decreased \$486,000 year-to-date, but that included in that amount is debt pay down of \$360,000 to Zions Bank along with an "extra" payroll in the month of January.

Trend wise, Mr. Cox said we will start seeing positive fund balances on a month by month basis over the next 5 months, but thinks we'll still be slightly negative at year end.

Mr. Cox then addressed citywide financial results, stating City revenues increased by \$7,000 for the month of January, but were still down by \$811,000 year-to-date, which on the surface would be concerning, but that when it was looked at, the City was down \$211,000 in construction sales tax which are used for capital improvements; \$246,000 in grants which was principally due to the large construction project at the airport last year; and \$201,000 in gas revenues, citing the warmer weather, resulting in lower use and the lower price for gas being directionally proportional to gas revenues.

Personnel costs were addressed next with Mr. Cox stating they are flat year to year and the difference will be within a few thousand dollars at the end of the year. Mr. Cox then stated in summary, the City has adopted a recessionary mode for the last two fiscal years and it's reflected in our financial statements, stating we've kept our expenses at the minimum in both years.

Mr. Cox then addressed the summary of all City funds, which includes the general fund and the enterprise funds, stating general fund revenues were up \$25,000 for the month of January, but were still down \$131,000 year-to-date, stating it was due to the City not going into recession last year until the months of October and November, so the City had some good pre-recession months we're comparing to and that we'll see monthly comparisons going forward being positive when we compare year to year.

Mr. Cox then continued with personnel expenditures stating at fiscal year end, they would be flat. Mr. Cox stated the general fund balance was down \$102,000 in January, which was expected since we had an additional expense of \$100,000 for the additional payroll in the month. Mr. Cox then stated the fund balance will probably be slightly negative in the general fund at year end, although it will probably be positive on a month by month basis over the next several months.

Mr. Cox then addressed the enterprise funds, stating the Gas Fund is up \$37,000 for January but was still down \$28,000 year-to-date and that those numbers would turn around dramatically in the next two months, since they are the heavy gas usage months. Mr. Cox then stated the Water Fund was down \$15,000 for January, but that there was an unusual water well repair and that the fund was still up \$91,000 year-to-date and would probably be slightly positive at year end. The Wastewater Fund is slightly negative for January, but is still positive year-to-date, which includes a \$14,000 rehabilitation to our settling ponds at the treatment plant in the past month.

Mr. Cox then stated in summary, the City's general fund revenues were right on budget, but are 5% below last year and hopefully a year from now, he'll be saying the same thing, noting this is due to our lower state shared revenues.

Mr. Cox stated cash balances for two years now remain at breakeven levels and that the City is not dipping into reserves for any operating expenditures, with the exception of debt payments, that are rapidly coming to an end.

Mr. Cox then spoke about City sales tax collections that were up 4% in January, which was the sales month of November and that it's a trend that has been going on for a couple of months, stating with the preliminary results for February, it leads him to believe that this is beyond an anomaly and is definitely a trend now. Councilmember Sacco asked if it will go into the negative once the winter visitors leave Benson. Mr. Cox stated it will not go negative compared to last year, but certainly the sales tax collections for the months of May and June will be much lower than the months of January and February, which are the sales months of November and December.

Mr. Cox then stated that contrary to what's happening at the City level, state sales tax revenues continue to slide and we do get a percentage of those state sales tax revenues, which are down 5% for January and he doesn't see an end in sight for this on a state level. All this points to the fact that as we look at the national numbers, we're beginning to see some signs of a very weak recovery at the national level that are becoming more and more consistent as the months go on, but he doesn't see it at the state level yet and thinks only the most optimistic economists see any signs of recovery at the state level. Mr. Cox then stated he is working on the new budget for FY2010-2011 and that it's going to be very similar to what we are seeing now and for the past year, with the notable exception being decreased revenue from the state of approximately 14%, so the City will be adjusting our spending to match the downturn in revenue we will see from the state.

Mr. Cox then briefly continued addressing City Tax Collections, including Sales Tax, Construction Tax and Bed Tax collections stating in City sales tax collections, the City is beginning to climb above what we did last year and that it is a very positive sign for the City. Mr. Cox stated the General Fund sales tax collections are also right on track with last year and show the same slight gain compared to last year and that the construction sales tax collections, by its nature, goes up and down, but that the important thing is that the City is holding right where we were last year, except for one unusual month. Mr. Cox then stated bed taxes are very close to last year, but still slightly lower than the previous two years. Mr. Cox stated the area that seems to have weathered the recession quite well is restaurants and bar sales and that they are doing better than they have the prior two years. Mr. Cox then compared the City sales tax collections to state tax collections, and stated the City went into a recession, but bottomed out and signs indicate the City is starting to climb out of it, but that on the state level, the state is still in a deep recession with the only encouraging thing being that January of this year compared to January of last year was less bad than December of 2009 compared to December of 2008, and that while it was looking better, it was still below the recession of last year.

Mayor Fenn then said he understood that in March, more detailed analysis of ideas that staff is generating regarding the budget would be brought to Council. Mr. Cox stated he was completing a projection of what will happen between now and the end of the fiscal year, a preliminary budget for FY 2010-2011 and a contingency budget which reflects a 25% reduction in both revenues and expenses compared to last year, stating he does not expect a 25% reduction by any stretch of the imagination, but that he feels we need to think about it in the event we do have a serious dip into another recession and that he is looking at presenting that on March 8, stating he hopes to be able to make that deadline.

#### **DEPARTMENT REPORTS:**

Mayor Fenn thanked the Department Heads for their reports in the Council packet.

#### **ADJOURNMENT:**

Councilmember Sacco moved to adjourn at 7:53 p.m. Seconded by Vice Mayor King. Motion passed 7-0.

---

Mark M. Fenn, Mayor

ATTEST:

---

Vicki L. Vivian, CMC, City Clerk