

CERTIFICATION

I hereby certify that the foregoing minutes are a true and correct copy of the minutes of the Worksession of the City Council of the City of Benson held on the 14th day of February, 2011. I further certify that the meeting was duly called and held and that a quorum was present.

Date 3-1-11

City Clerk Vicki Alvar

**THE WORKSESSION  
OF THE MAYOR AND CITY COUNCIL OF BENSON, ARIZONA  
HELD FEBRUARY 14, 2011 AT 6:00 P.M.  
AT CITY HALL, 120 W. 6TH STREET, BENSON, ARIZONA**

**CALL TO ORDER:**

Mayor Fenn called the meeting to order at 6:03 p.m. with the pledge of allegiance.

**ROLL CALL:**

Present were: Mayor Mark M. Fenn, Vice Mayor John Lodzinski, Councilmembers Jo Deen Boncquet, David Lambert, Nick Maldonado (arriving at 6:40 p.m.), Lori McGoffin and Al Sacco.

**NEW BUSINESS:**

1. **Discussion and direction on Benson City Code, Chapter 16, "Fees," to include proposed fees for services provided by the City**

City Clerk Vicki Vivian addressed Council concerning the Administrative Fees stating commercial copies and electronic copies were now added to the schedule, but the fees were the existing fees with no increases. Ms. Vivian then stated the only proposed increased fees were for Staff Time, increasing both the City Manager and the City Attorney to \$125.00 per hour, which is the hourly rate of the City Attorney, and the recording fees, which have been increased to reflect the actual cost of recording items with the County.

Building Official Luis Garcia addressed Council regarding the Building Division Fees stating the only addition to the fee schedule was the inclusion of manufactured home fees that will be charged under the Intergovernmental Agreement (IGA) the City recently approved with the Office of Manufactured Housing. Mr. Garcia then stated all other existing fees remained the same. Councilmember Sacco asked about there not being a charge for a demolition permit with Mr. Garcia stating the demolition permits are issued for informational purposes only, adding the difficulty with charging for a demolition permit is putting a value on the cost of deconstruction. Mr. Garcia then stated the only responsibility for the City at that point, is to make sure what was intended to be abated is actually abated, and there are no fees incurred by the City to be able to do that, adding all that information is ADEQ mandated. Mayor Fenn stated he personally feels not charging for a demolition permit is a good incentive for demolition to occur, adding it encourages demolition of blight properties. Mayor Fenn then asked about the fees for the manufactured home services the City now provides under the IGA referred to by Mr. Garcia, and if these fees are comparative to what the State charged, with Mr. Garcia stating with the Office of Manufactured Housing, their maximum fees were set by statute and is different from what the IGA could charge. Mr. Garcia then stated the fee paid to the State was \$127.00 for those inspections and it did not include any zoning clearance that the local jurisdictions were charging. Mr. Garcia then stated the IGA actually allows the City to charge up to \$300 for the installation inspection, but Staff recommended a \$200 fee to include the zoning clearance, to eliminate a drastic jump in the fees to install a unit. Councilmember Sacco asked about the fees for interior inspections with Mr. Garcia stating those inspections for wiring, etc. are done at the factory, with the City only performing the same installation inspection as the State does for on-site installations.

Mr. Garcia then addressed Council regarding the Planning & Zoning Fees stating this section had a little more overhaul, with the current fee schedule containing all sorts of formulas to calculate fees. Mr. Garcia then stated in the proposed fee schedule, flat fees were used and formulas were eliminated, making it easier to plan for developments accurately. Mr. Garcia then stated all the existing fees remain in the fee schedule, but are simplified now, adding there were no increases in the fees. Vice Mayor Lodzinski asked about the fee being higher on a tentative plat than a final plat with Mr. Garcia stating this was something that varied from jurisdiction to jurisdiction, but the logic for this is that the tentative plat is where the actual work occurs with the majority of the review on the tentative plat. Mr. Garcia stated the final plat is

also reviewed, but is to make sure the developer has addressed those concerns and issues raised with the tentative plat and to ensure any changes have been done correctly. Councilmember Sacco stated the last change in our fees was based on comparisons with other cities with Mr. Garcia stating the proposed fee schedule was compared to similar jurisdictions, including Sahuarita, Sierra Vista and Cochise County. Mr. Garcia stated many of those fees were higher than our fees, but we didn't want to inflate our fees and they were streamlined for simplicity purposes. Councilmember Sacco then stated there were many changes in terminology from the City Code with Mr. Garcia stating Staff is looking at the City Code right now and will be changing terminology throughout the code to be consistent.

Senior Library Assistant Kelly Jeter then addressed Council concerning the Library Fees stating there have been no changes to what is currently being charged. After going over the fees, Councilmember Lambert asked at what point the library decides to replace a damaged or lost item with Ms. Jeter stating the staff will look at how often the item is checked out and if it can be borrowed from another library in determining replacement.

Chief of Police Paul Moncada addressed Council concerning the Police Department fees stating the only change is the increase of the animal control quarantine fee from \$7.00 per day, which was established in 1993, to \$10.00 per day. Chief Moncada stated he could answer any questions concerning the remaining fees. Mayor Fenn asked if the fees were sufficient to cover our costs with Chief Moncada confirming they are.

Public Works Director Brad Hamilton then addressed Council concerning the Fee Schedule for Public Works stating it now contains the cemetery fees, which are what is currently charged. Mr. Hamilton then stated the remaining fees are the same, with the exception of the Subdivision Recording, the Substitute Assurance Agreements and the Release of Assurances, adding there is now a fee on top of the actual expense of recording these items. Mr. Hamilton then stated in answer to Council's earlier question regarding Staff Time fees in the Administrative Fee schedule, he has used those administrative rates to charge for his time in grants, when it's applicable. Mayor Fenn stated he had the same question for Mr. Hamilton, asking if the fees were sufficient to cover our costs. Mr. Hamilton stated looking at recent projects, we're balancing about what we spend on outside review with what we're taking in, so there wasn't a need to change the fees at this time. Mayor Fenn then asked about the cost for outside review with Mr. Hamilton stating the fees take outside review into account, adding some projects are a little more complicated and it's a little more expensive, while others are simpler, but it seems to be balancing out. Mayor Fenn asked about what the City spends on outside review vs. what we collect with Mr. Hamilton stating anytime we use a third party reviewer, the cost is covered in the fees.

City Manager Glenn Nichols addressed Council concerning the proposed Recreation Fee schedule stating there are no changes in the pool fees or in the Recreational programs and camps. Mr. Nichols stated the fee for the programs is to cover the expense of supplies and could be adjusted if supplies were found to be more expensive. Mr. Nichols then stated there is also no change to the Community Center rental costs. Mr. Nichols then stated proposed new fees include ramada rentals, field rentals for tournaments and private use and lighting costs for the sand lot and the softball, little league and soccer fields. Mr. Nichols stated if these fees are approved by Council, he would recommend they be implemented on July 1, 2011 with the new fiscal year. Mr. Nichols then stated the ramada would be rented in 4 hour increments and the charge to rent a field would only be charged for extra or outside tournaments or for private use, not to the leagues that are currently in place. Mr. Nichols then stated the lighting fees would be charged for all groups or leagues who wish to use the fields and will be paid at the time they give the City a schedule. Mr. Nichols stated in the first year of requiring the leagues to pay for the lighting of the fields, it is recommended to charge them 60% of the actual lighting costs with the costs for lighting the fields to be reexamined each year and changes recommended, if needed. Mr. Nichols stated the leagues should pay for the lights entirely at some point, noting the City will still water, mow, line and maintain the fields. Mayor Fenn asked if something would be posted on the ramada with rental information and fees and if non-profits would be charged for the ramada use with Mr. Nichols stating those who reserve the ramada receive a permit and when the parks department is involved in City functions, there won't be a rental charge. Mayor Fenn asked about the field rentals for tournaments and verified this will not be charged to leagues for the regular tournaments, but are for extra tournaments or for those tournaments brought in

from outside the City. Mayor Fenn then asked if the lighting fees were going to affect Little League this year with Mr. Nichols stating the proposed fees would be in effect on July 1, 2011 and the Little League has been informed of the proposed charge. Councilmember Lambert asked why there was such a difference in lighting costs for the softball and little league fields with Public Works Director Brad Hamilton explaining the different types of lights use different amounts of electricity. Mr. Hamilton then stated to calculate the cost of lighting a field; he measured amperage and voltage multiplied to determine wattage multiplied by the kilowatt hour rate SSVEC charges the City. Councilmember Lambert stated there had been talk over the years of changing the lights to a more efficient type of light using grant funding, with Mr. Hamilton stating he hasn't seen any type of grant that would cover the cost for newer lighting systems, but it may be something to look at in the future, to see if it would save enough electricity to pay for changing out the lights.

City Manager Glenn Nichols then addressed Council stating these fees were all the fees from Chapter 16 of the City Code and included some new fee schedules that had not been in the City Code. Mr. Nichols then stated as staff reviews the City Code, more fees will be brought back as they are addressed, allowing all the fees to be in one location of the Code.

2. **Presentation on Appendix IV – Modifications to the Model City Tax Code for Cities and Towns in the State Collection System Performing Supplementary Local Audits**

City Manager Glenn Nichols stated Finance Director Jim Cox would be addressing Council concerning this item.

Finance Director Jim Cox then addressed Council stating this item had been previously discussed at a Council meeting and the Chamber of Commerce also sponsored a public forum on the subject. Mr. Cox then stated Staff is recommending the adoption of Appendix IV to the Model City Tax Code, which is a new Article 5, the administrative area of the code. Mr. Cox then stated in essence, the change is how non-compliance of tax issues are administered, adding currently the State of Arizona handles non-compliance, with the new Appendix bringing it back to a local level, where the City can monitor non-compliance itself, can hire an outside third party to do it or can still use the State.

Mr. Cox then stated one of the reasons we are looking at this is due to budget cuts at the State level, the State has been unable to respond as they have in the past to the City's recommendations of compliance issues we would like to have them look into as well as the overall review and compliance on a City by City, taxpayer by taxpayer basis. Mr. Cox then stated the second reason this is being looked at, and is every bit as important as the first reason, is compliance. Mr. Cox then stated he would like to use the analogy of home rule, which allows the City to set its own annual budget as opposed to allowing the State to set the budget for us. Mr. Cox then stated in this issue, the City would become more participatory in the compliance issues, bringing it back to a local level, which means the City can be more effective and more user-friendly. Mr. Cox then stated the City can be more effective because we know the businesses, we know the people, and can therefore be more effective in dealing with compliance issues. Mr. Cox then stated the City is much more user-friendly, because we, as a City administration, care about our businesses; we want them to succeed and work with them to help them succeed, instead of a State Auditor coming down from Phoenix and the business they may be auditing or discussing compliance issues with is just another number to them. Mr. Cox stated for these reasons, Staff is recommending the adoption of Appendix IV.

Councilmember Sacco stated 42 other cities have adopted Appendix IV, but what other cities have done should not influence our decision, adding that he had a few questions. Councilmember Sacco then asked how many requests for audits we have submitted to the State and what the results were, with Mr. Cox estimating there were at least 12 different situations that we have asked the State to take the next step and go further with, but none have moved forward in the past 2 years. Mr. Cox then stated his office inquires on issues approximately every 2 months and are told there has been no movement on the cases. Councilmember Sacco asked Mr. Cox the number of delinquencies the City had, with Mr. Cox stating he couldn't determine the number because unless an audit is conducted, and taxes are found to be owed, he couldn't determine there was a delinquency. Mr. Cox then stated he could tell Council there are issues,

but without an audit of the books, he can't give an amount a business would owe. Councilmember Sacco stated this was something we should determine before proceeding with this item and Council should know how big of a problem it is, with Mr. Cox stating he could tell Council that it was a large problem. Mr. Cox then explained that every month his office analyzes taxes, and can spot unusual patterns in tax payments, adding sometimes, the problem is explainable and in knowing the business, in not looking just at numbers, but in looking to what is going on regarding that business, Staff can usually identify what happened. Mr. Cox then stated if there is a question and Staff can't come up internally with a logical answer to it, they send a letter to the taxpayer, explaining why the question is being asked and follow up with the business owner. Mr. Cox then stated 9 out of 10 situations are satisfied at the first letter level, with the taxpayer responding with an answer such as his business was shut down that month, etc. Mr. Cox then stated 1 of 10 cases, however, they get no response and his staff sends a second letter, followed by a final notice, which says we really hate to do this, we would rather deal with you on a local level, we're on your side, we'll help you through whatever situation you have, but if we don't get any response, we have no choice but to turn the issue over to the State authorities. Mr. Cox then stated when this happens, that is where the issue is ending at this point in time. Mr. Cox then stated the City has a tax code that we're not able to complete enforcement on. Councilmember Sacco stated he was attempting to grasp how big the problem is, with Mr. Cox stating this would require him to quantify something that he can't quantify without looking at business books and records. Councilmember Sacco then stated Staff is asking Council to approve the transfer of the responsibility of audits to the City from the State without knowing this. Mr. Cox answered stating Staff is asking for a shared responsibility, adding with the adoption of the Model City Tax Code, in 1998 we had an IGA with the State government where we turned over our authority to audit and apparently, it worked ok for awhile, but it is not working now. Mr. Cox stated the City still has taxing authority, but has no practical means to enforce the tax code and what Staff is asking Council to consider is to allow local staff to take the next step of enforcement if we are unable to resolve a tax issue. Mr. Cox then stated, right now, if we're unable to resolve a tax issue, nothing happens; we turn it over to the State and as a practical matter, they do nothing with it.

Councilmember Sacco then asked about the audits being conducted in-house or by contracting them out and the cost of the audits, with Mr. Cox stating audits would be contracted with an outside firm and the cost of audits would depend on the nature of the engagement, but it would be a fee that would be agreed upon in advance. Mr. Cox then stated based on discussions had with Al Holler of Al Holler & Associates, who performs contract auditing for 22 Arizona cities, the average audit costs approximately \$5,000, but it's difficult to give a figure for audits, because depending on the size of the business, such as Wal-Mart or a small local business, the cost of the audit would be very different.

City Attorney Mike Masee asked if he could address the Council when there was an opportunity, with Mayor Fenn asking him to address them. Mr. Masee then stated there is an anomalous situation now in the current adopted version of the Model City Tax Code in Benson, regarding the definition of the tax collector, which is the City Council or their designee or agent, adding the City Council has authorized the tax collector to be the finance director. Mr. Masee then stated there is administrative authority that is designated in the current tax code, in Section 545B, specifically administrative discretion vested in the tax collector, authorizing him to make estimates, so when a tax return is not being filed, the tax collector is authorized to estimate due taxes. Mr. Masee then stated he has worked with Mr. Cox in the exercise of his discretion to make estimates based on reports from previous months, previous years and things like that. Mr. Masee then stated this is what a tax collector should be allowed to do, but the problem that exists now in the tax code, is when a taxpayer wants to dispute the estimates and take that matter up to a higher authority, the current administrative review process under Section 570A, is to go through the State review process through the State's hearing office the Department of Revenue has. Mr. Masee then stated this is completely anomalous, in his opinion, to have the local tax collector exercise authority and then when the taxpayer wants to appeal, it must be done with the Department of Revenue appeal process and the Department of Revenue, which didn't determine an estimate will question why it's being appealed through their office.

Mr. Masee then stated under the proposed change, in the new Section 570, there will be an authorized version from the League of Arizona Cities & Towns, from the people who wrote the Model City Tax Code, of an administrative process for the taxpayer to review the tax collector's decision, which is first to

hold an informal conference, and if that doesn't resolve the issue, then an administrative petition gets filed. Mr. Massee then stated the City is responsible for obtaining a hearing officer that will come to Benson, to hear and decide the matter, adding right now, there is no provision that the City is going to get an outside hearing officer and have the hearing held in Benson, as opposed in going through the State review process. Mr. Massee then stated, in his opinion, the code as it's written right now, is inconsistent in the sense that it vests certain discretion in the local tax collector and doesn't create a taxpayer friendly administrative review process if the local taxpayer believes he hasn't been fairly treated by the tax collector. Mr. Massee then stated Council needs to keep in mind, that if we're going to vest discretion and authority in our local tax collector, which is already what the code does, then we should have an administrative process that reflects that and makes sense for what the realities are, that we would, through the City of Phoenix, basically take their designated hearing officers, and have the case heard.

Finance Director Jim Cox then stated he agreed with the City Attorney and the code is inconsistent within itself. Mr. Cox then stated the reality is that we can go through all the tax analysis in the world and he can work up what the taxpayer owes and they can just choose to ignore it, adding we then can refer it to the State and it gets buried in a black hole, which means we have no effective enforcement. Mr. Cox then stated it means he is wasting time in looking at and analyzing taxes and trying to collect a fair amount for the City to try and keep the playing field level for all businesses in the City, if we have no ability to enforce or take issues to the next logical step, reiterating, the City has a tax code that we can't, from a practical standpoint, enforce.

Councilmember Maldonado then addressed Council stating the owner of the manufactured home park he manages, didn't realize there were taxes he must collect and went back into his own records starting when he purchased the park, coming back to the City and paying approximately \$12,000-\$15,000. Mr. Cox thanked Councilmember Maldonado for his comment stating this is an example of the 9 out of 10 cases that are rectified, but if someone chooses to ignore the City and chooses not to pay their taxes, they can. Mr. Cox then stated this is a harsh reality, because there are no enforcement steps the City can take. Mr. Cox then stated he is not doing his job if he doesn't bring this issue to Council's attention and say we have a very serious situation, which does involve a lot of dollars.

Mayor Fenn then recognized Jim Grey, stating he know Mr. Grey has been interested in this item and gave him a few minutes to address Council.

Mr. Grey then addressed Council stating Mr. Cox said sending letters works 90% of the time and 90% results sounds good to him. Mr. Grey then stated he had talked to almost all the businesses in town, and he hasn't heard one business in support of the transfer of power to a City official to audit businesses. Mr. Grey then stated when all this started, he asked Mr. Cox what kind of communication he had with the State and was told it was all phone calls. Mr. Grey then stated this is a small town, and to him, being a business person, this item is anti-business and it is the wrong philosophy to take. Mr. Grey then stated if the City gets results with letters most of the time, if we get 90%, we ought to be satisfied. Mr. Cox asked Mr. Grey if he would be happy if his competition chose not to pay his taxes and was able to increase his profit level. Mr. Grey stated that would not be his problem, it would be the State's problem and he was just relaying information from the business community and from the chamber that he supports and with all the taxes he pays into this town, he thinks Council is setting a wrong precedence to transfer the power to the City and somebody that can be vindictive to individuals that speak out in the community.

Mayor Fenn then stated he did not think Mr. Grey's comment was justified at all. Mr. Cox then excused himself from the meeting. Mayor Fenn then stated as a businessman himself, he would like to know that other people who are in the same profession he is are paying their fair share, and he would like to know there is enforcement available, whether it's at the local level or the State level. Mayor Fenn then stated he takes offense to the comment regarding the City using this power to be vindictive, stating the comment assumes way too much with no proof at all. Mayor Fenn then stated as a matter of procedure, he supports the language that's in the model city tax code that we would adopt to take care of the anomalies that occur, adding the City may not have come up against them at this point, but this would lay some groundwork, so that when it does occur, we're prepared for it. Mayor Fenn then stated if the procedure isn't adopted, the City could later be accused of not cleaning up the code to take care of it now, adding it

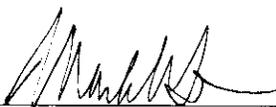
seems if Council goes one way, they can't win, and if they go the other way, they can't win. Mayor Fenn then stated he supports this amendment as a business man, noting Mr. Grey didn't call him when he contacted businesses and Mr. Grey knows he supports it. Mr. Grey then stated he had spoken to Mayor Fenn about businesses being upset over the amendment with Mayor Fenn stating he still didn't understand why a business would be upset. Mr. Grey then stated businesses have the State to contend with and he felt there had not been any communication between the City and the State. Mayor Fenn then stated he knows first hand, Mr. Cox and his staff have done a great job at being user-friendly, adding there had been some cases with taxpayers that Mr. Cox could have sent them immediately to the State, but instead, sent out letters to the businesses and noted it does bring results 9 out of 10 times, adding while that is a great record, there shouldn't be this feeling that just because the City wants to clean up the language in the code, that we're scheming some devious plot to be vindictive against someone; it's just not true. Mayor Fenn then stated this item is for discussion only.

City Manager Glenn Nichols asked if he could make a brief statement. Mr. Nichols then stated the City of Benson, has always, since the Model City Tax code has been enacted, had the authority to request an audit. Mr. Nichols then stated the only thing we're trying to do is add the ability to perform an audit internally or to be able to hire a firm, other than the State to perform an audit, because now the only place it can go is to the State. Mr. Nichols then restated the proposed amendment would give the City the authority to choose to use an outside tax auditing business to perform audits, because the State doesn't have, at this point, the ability to respond to our audit requests because of the continuous cuts in their budget.

Councilmember Sacco asked if we were talking about changing our current IGA with Mr. Nichols stating we are only looking at changing the tax code to give the City the ability to go to another auditor. Mayor Fenn then stated he appreciated everyone's comments and appreciated Mr. Grey's passion and understands what he's saying, but at the same time, there is the need to have some trust the City's going to continue to do what they've been doing and know that when they do need to rely on the code, it's there and will back the City up.

**ADJOURNMENT:**

Councilmember Sacco moved to adjourn at 6:58 p.m. Seconded by Councilmember McGoffin. Motion passed 7-0.

  
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Mark M. Fenn, Mayor

ATTEST:

  
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Vicki L. Vivian, CMC, City Clerk