City of Benson
City Council Communication

Regular Meeting **January 28, 2013**

To: Mayor and Council Agenda Item # 4

From: Luis Garcia Jr., CBO, CSBA, Building Official/ Zoning Administrator

Subject:

Ordinance 563 of the Mayor and Council of the City of Benson, Arizona, adopting Amended City Code Chapter 7 “Development Services” and new City Code Chapter 7.1 “Administrative Hearings”; deleting current City Code Chapter 7 “Building” and Article 9-2 “Public Nuisances and Property Maintenance”; and creating a penalty for violations thereof

Discussion:

As noted in the previous item; any change to the City Code must be adopted by an ordinance, which must be published in accordance with State law requirements. However, when a change to the City Code is quite lengthy, there is a provision that enables a City to adopt the provisions of a code or a public record without setting forth such provisions in the ordinance; enacting “by reference”. The previous item presented to Council, Resolution 4-2013, declared the documents, entitled "Amended Chapter 7, ‘Development Services’” and “Chapter 7.1 ‘Administrative Hearings’”, dated January 28, 2013 as a public record. Council may now adopt Ordinance 563, which will enact the City Code change.

Staff Recommendation:

Approval of Ordinance 563

ORDINANCE 563

AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE CITY OF BENSON, ARIZONA, ADOPTING AMENDED CITY CODE CHAPTER 7 "DEVELOPMENT SERVICES" AND NEW CITY CODE CHAPTER 7.1 "ADMINISTRATIVE HEARINGS"; DELETING CURRENT CITY CODE CHAPTER 7 "BUILDING" AND ARTICLE 9-2 "PUBLIC NUISANCES AND PROPERTY MAINTENANCE"; AND CREATING A PENALTY FOR VIOLATIONS THEREOF

WHEREAS, the City of Benson has adopted a City Code to regulate certain conduct and enhance efficient administration of the City; and

WHEREAS, amended City Code Chapter 7, "Development Services", three copies of which are on file with the City Clerk and have been declared public records by City of Benson Resolution 4-2013, substantially improves and updates the current City Code Chapter 7, "Building", by, among other things, incorporating recent statutes into the City Code, creating a standardized model for enforcement proceedings, and adopting minimum standards for property maintenance; and

WHEREAS, new City Code Chapter 7.1 "Administrative Hearings" creates an alternative means of enforcement via administrative hearings, in addition to current options of civil or criminal municipal court proceedings; and

WHEREAS, with the adoption of amended Chapter 7 and new Chapter 7.1, current City Code Article 9-2 "Public Nuisances and Property Maintenance" and current Chapter 7 "Building" are rendered superfluous.

NOW, THEREFORE, BE IT ORDAINED by the Mayor and Council of the City of Benson, Arizona, as follows:

Section 1: That those certain documents entitled "Amended Chapter 7, 'Development Services'" and "Chapter 7.1, 'Administrative Hearings'", both dated January 28, 2013, three (3) copies of which are on file in the office of the City Clerk of the City of Benson, Arizona, said documents having been made public records by Resolution 4-2013 of the City of Benson, Arizona, ARE HEREBY ADOPTED, PASSED AND APPROVED BY REFERENCE, and made a part hereof as if fully set forth in this Ordinance.

Section 2: The penalty provision of this Ordinance is found in Chapter 7, Article 7-5-2, of the City Code, and reads as follows:

A. Any person who commits an unlawful act shall be subject to prosecution as set forth herein, and upon entry of a finding of

responsible or a guilty verdict, shall be subject to the penalties of this Chapter.

B. Any person who commits an unlawful act shall be guilty of a Class 2 misdemeanor, and upon conviction shall be punishable by a fine not to exceed seven hundred fifty dollars.

C. Any habitual offender as defined in Section 7-5-1(F) above, who commits an unlawful act shall be guilty of a Class 1 misdemeanor, and upon conviction shall be punishable by a fine not to exceed two thousand five hundred dollars or by imprisonment for a period not to exceed three months, or by both.

D. As an alternative to criminal prosecution, the Director of Development Services may file a civil complaint in the City Magistrate Court, and any person found civilly responsible for an unlawful act shall be subject to fines of not less than fifty dollars ($50) nor more than one hundred fifty dollars ($150) per violation.

E. As an alternative to a criminal or civil action filed in the City Magistrate Court, the Director of Development Services or designee may issue a citation to any person responsible for any unlawful act and proceed to an administrative hearing pursuant to Chapter 7.1, subjecting the person cited to the sanctions set forth therein.

F. If the violation has not been cured or abated by the time of entry of judgment in a civil action, then in addition to any fine imposed, a judgment shall include an injunction to cure or abate the violation by a date certain. The City Magistrate shall maintain continuing jurisdiction of the action to enforce the injunction according to law, including but not limited to additional daily fines and/or granting an abatement warrant upon motion by the City.

G. Each day that a violation continues shall be a separate offense punishable as prescribed by law.

Section 3: The Table of Contents and headings and sections of the City Code shall be amended to reflect the amended Chapter 7's internal section headings and numbering.

Section 4: All ordinances and parts of ordinances in conflict with the provisions of this Ordinance are hereby repealed to the extent of any such conflict.

Section 5: This ordinance shall take effect thirty days after adoption.

Section 6: The City Clerk is directed to publish the text of this Ordinance in the San Pedro Valley News Sun for two (2) consecutive weeks after its effective date, and further to post a copy of this Ordinance in three (3) or more public places within the City

PASSED AND ADOPTED BY THE MAYOR AND COUNCIL OF THE CITY OF BENSON, ARIZONA, this 28th day of January, 2013.

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TONEY D. KING Sr., Mayor

ATTEST:

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VICKI L. VIVIAN, CMC, City Clerk

APPROVED AS TO FORM:

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MICHAEL J. MASSEE, City Attorney

Published in the San Pedro Valley News Sun for two (2) consecutive weeks with the date of first publication being on the 6th of February, 2013