

**THE REGULAR MEETING
OF THE MAYOR AND CITY COUNCIL OF BENSON, ARIZONA
HELD NOVEMBER 14, 2011 AT 7:00 P.M.
AT CITY HALL, 120 W. 6TH STREET, BENSON, ARIZONA**

CALL TO ORDER:

Vice Mayor McGoffin called the meeting to order at 7:00 p.m. with the pledge of allegiance.

Pastor Lupe Diaz, from Grace Chapel, delivered the invocation.

ROLL CALL:

Present were: Vice Mayor Lori McGoffin, Councilmembers Ron Brooks, David Lambert, Nick Maldonado, Chris Moncada and Al Sacco. Excused was Mayor Toney D. King, Sr.

EMPLOYEE RECOGNITION:

Vice Mayor McGoffin informed those in attendance of the passing of John Lodzinski on November 13, 2011 and asked that a moment of silence be observed in his memory. Vice Mayor McGoffin stated that John had served as a Planning & Zoning Commissioner for the City of Benson for 10 years before being elected to City Council where he served for 8 years and as Vice Mayor for 6 months and also served as Chairman for the Economic Development Subcommittee for 3 years and as a member of the Subcommittee until he passed away.

Vice Mayor McGoffin recognized Kurk MacGregor, Robert Tulk, Rudolfo Peralta and Jason Brown for 5 years of service with the City of Benson.

PROCLAMATION: There was a proclamation of the Mayor and Council declaring the month of November 2011 as Pancreatic Cancer Awareness Month.

PUBLIC HEARING: None.

CALL TO THE PUBLIC:

Mr. Edward Meza stated that he believes something needs to be done about the noise at the Veteran's Memorial park; he thinks it is too noisy with the train going by and the traffic on 4th Street. Mr. Meza suggested that it be moved or something. Mr. Meza then stated he had also spoken with the City Manager about putting some decals or flags on the graves of veterans so that they can be easily recognized.

Ms. Kathy Suagee stated she was here on a friendly mission and was moved by the invocation in that it spoke about lifting one another up. Ms. Suagee stated she was there in good faith to warn the Council that certain items on the agenda are in error. Ms. Suagee stated it is illegal to change zoning orders or the General Development Plan without public hearings. Ms. Suagee then stated she knew there are planned public hearings to that effect, but the agenda says the plan tonight is to adopt resolutions and declare the DRAFT Zoning Regulations and the DRAFT General Development Plan as public records. Ms. Suagee stated this is something that should happen at the end of the process after all of the input has been made and the corrections and changes have been made to the draft. Ms. Suagee stated if the Council were to pass a resolution adopting the draft, then it is the final record, only it will always say "draft" and she doesn't think that is really what the City wants to do. Ms. Suagee then stated it would be great if the Council would take those moments in the agenda to affirm the public meetings will occur before the resolution for the adoption and declaration of the public records is approved. Ms. Suagee stated to do so at the beginning of the process will really gum things up and possibly open the City up for another round of lawsuits or at least a reprimand by the Secretary of State for not doing things correctly. Ms. Suagee then stated she is urging Council to ignore the resolution on the agenda and to just go ahead and set the dates but not to pass a resolution to adopt a public record because that is what happens when it is all done.

CITY MANAGER REPORT:

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

November 15, 2011 – City Council and Planning & Zoning Workshop, 6:00 p.m., City Hall
November 16, 2011 – General Development Plan Workshop, 7:00 p.m., City Hall
November 17, 2011 – Zoning Regulations Workshop, 7:00 p.m., City Hall
November 19, 2011 – Historical Preservation Commission, 9:00 a.m., City Hall
November 22, 2011 – Community Watershed Alliance, 6:30 p.m., City Hall
November 28, 2011 – City Council Meeting, 7:00 p.m., City Hall
November 29, 2011 – General Development Plan Workshop, 7:00 p.m., City Hall
November 30, 2011 – Zoning Regulations Workshop, 7:00 p.m., City Hall

November 24 and 25, 2011 – Thanksgiving Holiday, Offices Closed

Mr. Nichols stated information on I-10 closures can be found at www.azdot.gov. Mr. Nichols corrected the place of the November 16th and 17th Workshops to be at the Benson Schools Multi-purpose room. Mr. Nichols also stated that the Benson Volunteer Fire Department will be collecting new unwrapped toys for the Annual Christmas Toy Drive on behalf of the Benson Jr. Women's Club in their efforts to provide food baskets and toys for needy families in the San Pedro Valley. Toys can be dropped off across from Safeway every Saturday between 10:00 a.m. and 2:00 p.m. until December 10th and at the Fire Department from 8:00 a.m. until 5:00 p.m., Monday through Friday until December 10th.

NEW BUSINESS:

1. Consent Agenda

- 1a. Minutes of the October 10, 2011 Regular Meeting
- 1b. Appointment of Arthur Schroeder to the Benson Historic Preservation Commission
- 1c. Appointment of Arron Botts to the Board of Appeals
- 1d. Appointment of Caleb Malboeuf to the Board of Appeals
- 1e. Ratification of Fireworks Contract Addendum with Fireworks Productions of Arizona
- 1f. Resolution 62-2011 of the Mayor and Council of the City of Benson, Arizona, authorizing the City Manager to execute an Affidavit of Correction regarding the Water Crest Subdivision
- 1g. Invoices processed for the period from October 4, 2011 through November 7, 2011

Councilmember Lambert moved to approve the Consent Agenda. Seconded by Councilmember Moncada. Motion passed 6-0.

2. Donation to the Benson Shop with a Cop Program

City Manager Glenn Nichols stated during the 2011-2012 budget process, Council included a line item in the Community Enrichment section for a \$500 donation to the Benson Shop with a Cop Program and the item is now being brought forward for approval. Councilmember Lambert stated this is the second annual donation to the Shop with a Cop Program, which will take place on December 3rd this year at the Presbyterian Church, adding so far there are applications for 22 children who will be escorted to Wal-Mart by police officers. Councilmember Lambert then moved to approve the donation to the Benson Shop with a Cop Program. Seconded by Councilmember Sacco. Motion passed 6-0.

3. Memorandum of Understanding with the Cochise County Arizona Centennial Committee for the Traveling Historical Display during the State of Arizona Centennial Celebration

City Manager Glenn Nichols stated the tourism and economic development groups around the County have been working on this for some time and has put together an exhibit of life-sized County historical figures that will travel throughout Cochise County. Mr. Nichols stated the exhibit consists of 33 figures chosen by the communities in Cochise County and the MOU will allow each of the communities to have the display.

Mr. Nichols stated the City insurance carrier has been advised about this project and the City insurance will cover the display during the two periods it will be in Benson. Vice Mayor McGoffin asked how we became fortunate enough to have the exhibit stop here twice with Mr. Nichols stating credit could be given to Tourism Director Bob Nilson. Councilmember Moncada moved to approve the Memorandum of Understanding with the Cochise Centennial Committee for the Traveling Historical Display during the State of Arizona Centennial Celebration. Seconded by Councilmember Maldonado. Motion passed 6-0.

4. **Appointment of Planning & Zoning Commissioners**

GIS Manager/Planning Technician Michelle Johnson stated the Council had voted to leave the number of Planning & Zoning Commissioners at 7 residents. Ms. Johnson stated there are 4 applicants to fill 2 positions; one of which is a full term and one is a partial term. Councilmember Ron Brooks stated he understood Planning & Zoning staff had to go out and find people with Ms. Johnson answering yes. Councilmember Moncada asked if any of the applicants had specified if they preferred the full term or the partial term with Ms. Johnson stating no one had specified. Councilmember Lambert stated after reviewing the applications, he would like to make a motion to appoint Vicky Konrad for the partial term and Angel De La Torre for the full term. Councilmember Sacco seconded the motion. Motion failed 3-3 with Vice Mayor McGoffin and Councilmembers Maldonado and Moncada voting nay.

Councilmember Moncada then moved to appoint Vicky Konrad for the partial term and David Thompson for the full term. Seconded by Councilmember Maldonado. Motion passed 4-2, with Councilmembers Brooks and Sacco voting nay.

5. **Discussion and possible direction on the possible purchase of a New Water Tender Fire Apparatus, with the State Forestry Division, as a revenue source**

Fire Chief Keith Spangler stated he had been tasked with trying to find revenue sources for the Fire Department. Chief Spangler then stated he was in Alpine after the Wallow fire and noticed tenders from Idaho and Wyoming which got him wondering what kind of revenue these trucks bring in. Chief Spangler stated when he got back into town he inquired with Tombstone, St. David, Mescal and Elfrida and they all make exceedingly good revenue from having their tenders out on these wildland fires. Chief Spangler then stated the plan would be to purchase a tender and have it available on a State Contract with the State Forestry Division and when there is an incident they would call and see if it was available. Chief Spangler stated the assignments are 2 weeks long and at the end of 2 weeks the firefighters could choose to stay another 2 weeks or return home and rotate another 2 firefighters out. Chief Spangler stated one difference between a tender and a brush truck is the brush truck takes 4 people and the tender only takes 2 people and also the training is more intense for brush truck operators. Chief Spangler stated he did check with other departments to see what they paid for their tenders and then contacted the company that builds the tenders and was advised that they run \$162,000 to \$163,000. Chief Spangler stated he spoke with City Manager Glenn Nichols and Finance Director Jim Cox and advised them he would like to put this as a Capital Improvement Project (CIP) for the next budget and both of them thought it was a good idea. Chief Spangler then stated he was advised by Mr. Cox that the money in the truck fund is earning about 1% interest and we could take that money and buy a tender and start earning revenue, which could then be put back into CIP projects for equipment and although the money was not in the budget this year, the money could be reallocated to the truck fund to make it happen in this budget year. Chief Spangler stated the goal is to see if Council would like him to go forward with this and maybe get a Request for Proposals (RFP) and then bring it back to Council for approval. Chief Spangler stated ideally, if it moves forward, the purchase of the truck and training could be completed in order to be ready for wildland fire season in May. Councilmember Maldonado asked if the firefighters would be paid by the Forest Service with Chief Spangler stating they would be paid a daily rate by the State Forestry Division. Councilmember Sacco asked if Chief Spangler was asking for permission to go out with an RFP with Chief Spangler stating he is asking for direction. Councilmember Brooks asked if we had a water tender right now with Chief Spangler stating we do, however it is not set up for wildland assignments. Councilmember Brooks asked where we would find the funding for this with Chief Spangler stating there is a truck fund. Councilmember Brooks asked if it would be our own volunteers working these fires with Chief Spangler stating yes and it would be

for at least 2 weeks at a time. Councilmember Maldonado stated he thought this was a good idea and that any time we can make revenue with equipment we have on hand it is a good thing. Councilmember Brooks asked if there would be additional insurance costs with Chief Spangler stating personnel costs would be under workman's compensation and vehicle insurance would be under the City policy. Councilmember Moncada asked Chief Spangler to bring back the amount that potentially could be made from this tender with Chief Spangler stating he believes it is \$128 per hour and he would check on it.

Councilmember Lambert moved to allow Chief Spangler to put out an RFP so that it may be purchased ahead of time so that training can be completed in time for the May season. Seconded by Councilmember Sacco. Motion passed 6-0.

6. **Resolution 63-2011 of the Mayor and Council of the City of Benson, Arizona, authorizing the Fire Chief to purchase a Ford F-550 Crew Cab from the State Contract**

Fire Chief Keith Spangler stated this is a budgeted item, CIP07-1 and he is looking for approval to purchase a Ford F-550 Crew Cab in order to start building a brush truck. Chief Spangler stated this would replace the current 3/4 ton pickup which is overweight and does not allow them to carry needed equipment or personnel for a brush fire. The new truck has room for 5 crew members, seat belts and air conditioning and will allow equipment and 250 gallons of water to be carried. Councilmember Maldonado asked what would happen to the current 3/4 ton truck with Chief Spangler stating it will be a station truck to use if anyone has to go to training. Chief Spangler stated the Fire Department is in need of a truck that can go to the scene and can carry hoses which are very heavy, adding they are in need of a truck they can take to the scene and load all of the 5 inch hose which weighs about 200 pounds per 100 feet. Councilmember Brooks asked if the Fire Department had a Fast Attack with Chief Spangler stating when the truck was purchased back in the 1980's they were called Quick Attacks and was used to quickly contain structure fires and is now a brush truck because it does not carry enough water. Councilmember Brooks asked how much water it needs to carry with Chief Spangler stating it needs to carry 250 gallons. Councilmember Sacco asked if there was an RFP for this truck with Chief Spangler stating there was not, as it is being purchased under the State Contract with Sanderson Ford. Councilmember Sacco stated this had already been funded at \$90,000 with Chief Spangler confirming it had. Councilmember Brooks moved to approve Resolution 63-2011. Seconded by Councilmember Maldonado. Motion passed 6-0.

7. **Resolution 64-2011 of the Mayor and Council of the City of Benson, Arizona, declaring as a public record that certain document filed with the City Clerk and entitled "DRAFT OF 2012 CITY OF BENSON ZONING REGULATIONS"**

Building Official Luis Garcia stated the intent of this item is to declare this document a public record and by doing so we are able to post this document in numerous locations and make it more available than any previous adoptions with additional citizen review, prior to the public hearings. Mr. Garcia added this is a draft copy and is not enforceable and is solely for viewing purposes. City Attorney Michael Masee stated the resolution is simply declaring the draft document a public record and does not have any effect of force of law; it doesn't make it in any way something anyone at the City can rely on or attempt to enforce and as Mr. Garcia mentioned, the sole usefulness of this resolution is to have the document on file with the Clerk's Office and online to answer any questions about the draft proposals. Mr. Masee then stated this is not something that is required and that public outreach could be done without this being declared, however this will add a layer of formality and document where the process started. Mr. Masee then stated at the end of the process the final document will be brought back to Council, that is after the public hearings and receiving of public comments and after all changes have been made. Mr. Masee stated at that time the final document will be adopted by reference and declared a public record with a different name and 3 copies will remain on file. Mr. Masee stated a document that is adopted by reference helps minimize publication costs. Councilmember Sacco asked if it is not necessary then why it is being done with Mr. Garcia stating the intent of the item is to be able to formalize the process and to record a date of Council direction to Staff to take this action and declare it a public document. Councilmember Sacco asked if it was an emergency with Mr. Garcia stating it is to support the intent to get the information out for public viewing. Councilmember Sacco stated he doesn't believe that it is necessary and that they shouldn't

approve a document that has not been through the whole process. Councilmember Lambert asked Mr. Masee if there was any validity to former Councilwoman Kathy Suagee's allegations that this would be illegal. Mr. Masee stated in his opinion it is not illegal and he feels he has made it clear that this step is not required but is not prohibited and is being done on recommendation of Staff.

Councilmember Sacco moved to wait until it is necessary. Seconded by Councilmember Brooks. Motion failed with 2-4 with Vice Mayor McGoffin and Councilmembers Lambert, Maldonado and Moncada voting nay. Councilmember Lambert then moved to approve Resolution 64-2011. Seconded by Councilmember Moncada. Motion passed 4-2, with Councilmembers Brooks and Sacco voting nay.

8. **Resolution 65-2011 of the Mayor and Council of the City of Benson, Arizona, declaring as a public record that certain document filed with the City Clerk and entitled "DRAFT OF CITY OF BENSON GENERAL DEVELOPMENT PLAN"**

Building Official Luis Garcia stated this is a draft edition and is not enforceable it is for viewing purposes of the public. Councilmember Brooks made a motion to deny Resolution 65-2011 until there is further information available. Seconded by Councilmember Sacco. Motion failed with 4 no votes and 2 yes votes. Motion failed 2-4 with Vice Mayor McGoffin and Councilmembers Lambert, Maldonado and Moncada voting nay. Councilmember Moncada then moved to approve Resolution 65-2011. Seconded by Councilmember Lambert. Councilmember Lambert then stated the reason the documents were not printed was because there are so many pages to review and to save on paper. Councilmember Sacco asked if there will be workshops on this with Mr. Garcia stating workshops would be on November 16 and 17, 2011 at the school to review the documents in public forum. Councilmember Sacco stated he has asked for this before and is going to ask again for a mark up of the changes to be shown and given to Council, adding he doesn't believe a Councilman should have to go through the draft document and the current document to know what the changes are; he needs a roadmap of the changes and has never been given one. Vice Mayor McGoffin stated the draft is a 4" thick document and it would be better for Councilmember Sacco to sit down with Luis and go over the changes as too much time would be spent doing a markup of a 300 page document. Recalled Councilwoman Kathy Suagee shouted from audience that it is the job of Council to look at the document. Vice Mayor McGoffin asked if she would like to be removed while Councilmember Lambert asked the officer to come forward; Ms. Suagee then left the meeting. Councilmember Sacco asked how you know what you are voting on if you don't know what the changes are with Vice Mayor McGoffin stating if you have questions, you should go and talk with Staff. Councilmember Brooks stated when there are such large matters as this he would like to have the documents a couple of weeks ahead of time and that is why he is not prepared to vote on the document and he is not aware of the process and is not able to research this with the short amount of time given. Councilmember Sacco stated this is only to adopt the document as a public record and nothing else with Vice Mayor McGoffin stating that is correct it is so the public has access to it. Mr. Garcia stated this process will also be extended out until about February before it comes back to the Planning & Zoning Commission so there will be an extensive lead time and any dialogue leading up to the changes at the end of the process will be put out as early as possible for viewing purposes. Councilmember Brooks asked when the update is due with Mr. Garcia stating that the updates to the zoning regulations are at our leisure and Staff is still working on the General Development Plan and it will go to the voters, adding it needs to be submitted by end of June in order to get on the ballot. Councilmember Lambert stated he was looking at the CD that was provided to Council and he noticed some of it is redlined or highlighted to show changes, he then asked as we get closer to the final document, if the Council could get a hard copy at least 30 days in advance so that they can review it, with Mr. Garcia stating it would be done. Motion then passed 5-1, with Councilmember Brooks voting nay.

9. **Resolution 66-2011 of the Mayor and Council of the City of Benson, Arizona, approving and authorizing the donation of Real Property within the City of Benson to the City**

City Manager Glenn Nichols stated Mr. Dan Barch had contacted him in October to see if the City would accept the donation of parcel 123-23-210, lots 1-16 as shown on the map, adding parcel number 123-23-011 was already donated and accepted by the City last year. Mr. Nichols stated he checked with Public Works and was advised the property could possibly be used for utility easements in the future. Mr.

Nichols stated the property has been checked with Cochise County and there are no back taxes or holds on the property and all that would be required would be a deed to be drawn up and be signed by the parties. Mr. Nichols stated the total size is a little less than 1.2 acres. Councilmember Maldonado asked if this easement would affect the tenants at the apartment complex on Pearl Street with Mr. Nichols stating it would not. Councilmember Lambert stated about 2 years ago the owner of this property wanted the City to come and clear the trees on the corner, and asked if the City was going to clear those trees. Mr. Nichols responded that after the land is deeded to the City it can be looked at. Councilmember Brooks asked if there are any run-off problems with Mr. Nichols stating he has discussed this with Public Works and there are no problems. Councilmember Brooks reconfirmed there will be a small loss of taxes with Mr. Nichols stating that is correct. Councilmember Moncada moved to approve Resolution 66-2011. Seconded by Councilmember Lambert. Motion passed 6-0.

10. **Resolution 67-2011 of the Mayor and Council of the City of Benson, Arizona, approving a contract for the purchase of Real Property within the City of Benson and authorizing the City Manager to execute same**

City Manager Glenn Nichols stated on October 10, 2011 the City Council directed him to negotiate a price for property located on the corner of 6th Street, just east of City Hall. Mr. Nichols stated the property owner was asking \$52,000 for the property and he made a counter offer of \$25,000 which was rejected. Mr. Nichols stated a few days later, the owner came back and accepted the counter offer. Mr. Nichols stated he is bringing this forward now for Council approval and the total closing costs for a \$25,000 cash escrow would be \$593.50. Councilmember Brooks stated he thought there was originally a different offer discussed. Councilmember Maldonado asked Mr. Nichols if he had first offered \$20,000 for the property with Mr. Nichols stating that he thought the final decision was made to offer \$25,000 but he could be wrong. Councilmember Brooks stated there is a certain amount of abatement involved even though City crews could demolish the home there is still a cost to anyone who buys the property and you have to put a value on that and if you add that to the price of the property it goes up a little ways. Mr. Brooks then suggested that the item be tabled. Councilmember Lambert stated his recollection of the meeting was that \$20,000 would be offered with a maximum of \$25,000. Councilmember Lambert moved to approve Resolution 67-2011. Seconded by Councilmember Moncada. Motion passed 4-2, with Councilmembers Brooks and Sacco voting nay.

11. **Discussion and possible action regarding the City Employee Holiday Bonus**

Vice Mayor McGoffin stated since her husband works for the City of Benson she will be abstaining from this item. Vice Mayor McGoffin asked Councilmember Lambert to preside over the meeting for this item. City Manager Glenn Nichols stated that during the holiday time of year the City Council gives direction on how to thank Staff for their service to the City of Benson. Mr. Nichols stated during these continuing difficult economic times, the ability to provide cost of living increases or merit increases has not been possible. Mr. Nichols stated Staff appreciates that they have a job and continues to provide excellent service to the community even though most all of the different departments are down employees. Mr. Nichols stated in recent years, the City Council has recognized Staff's service with additional holiday time off usually around Christmas and New Years with essential services still being covered. Mr. Nichols stated one recommendation would be to add a day to Christmas and New Years so this could be the adding of December 23rd before Christmas so this would give employees an extra day off to spend time with their families, and the same for New Years time. Councilmember Sacco stated he didn't think Mr. Nichols meant to use the term 'bonus' with Mr. Nichols stating he did not and it has just been a term used, but is really just recognition for the employees. Councilmember Brooks stated he feels Councilmember Moncada should abstain from this item. City Attorney Michael Masee stated the conflict of interest statute refers to any sibling or parent that would be imputed to the Councilmember, so he recommended Councilmember Moncada should declare the conflict as well. Councilmember Moncada stated he would abstain as well. Councilmember Sacco asked if this would be treated as a gift with Mr. Masee stating a gift is where public funds would be given to someone for which there is no receipt of benefit back to the City, however this is a wage or hours issue to which the City will be given the benefit back over the course of the year by the employees service and this passes the gift clause. Councilmember Sacco asked if this passes if there will

be a resolution. Mr. Masee stated this could be a verbal motion to have the City Manager allow the additional time off consistent with the needs of the City. Councilmember Sacco stated he is concerned again with this being a gift even though it has been done in the past, he is not objecting, he is just concerned with legal issues. Mr. Masee stated there are times such as with a retirement when a modest amount of money has been given to someone and those types of gifts do pass the gift clause even though you are getting no further service from this person, so giving one extra day of vacation time and maintaining service of the employee will pass the gift clause. Councilmember Sacco asked if this scheduling issue should have been taken care of earlier when the schedule was established, before the holidays. Mr. Nichols stated this is how it has been handled in the past and this is over and above what is in our HR Policy for holidays and is up to Council discretion as an additional Holiday. Mr. Masee stated it is his opinion there is no legal impediment in the Council's discretion if this is recognition of the hard work of employees and recognition of years without cost of living adjustment; it is just a modest recognition. Councilmember Lambert stated in the past, full-time employees received 8 hours of pay and part-time employees received 4 hours and Mr. Nichols would be taking care of scheduling those days to make sure it is fair to emergency personnel who have to work on those days.

Councilmember Brooks moved to approve the Employee Holiday the Friday before Christmas and the Friday before New Years. Seconded by Councilmember Sacco. Motion passed 4-0 with Vice Mayor McGoffin and Councilmember Moncada abstaining.

DEPARTMENT REPORTS: None

ADJOURNMENT:

Councilmember Moncada moved to adjourn at 8:14 p.m. Seconded by Councilmember Sacco. Motion passed 6-0.

Toney D. King, Sr., Mayor

ATTEST:

Vicki L. Vivian, CMC, City Clerk