City of Benson
City Council Communication

Regular Meeting **June 10, 2013**

To: Mayor and Council Agenda Item # 2

From: Jim Cox, Interim City Manager

Subject:

Discussion and possible action regarding Little Caesar's claim against the City of Benson

Discussion:

Staff requests direction from Council for any action Council may wish staff to take regarding a claim filed by Mr. Rose/Pizzarose LLC against the City.

Mr. Rose filed the attached claim form against the City on May 30, 2013. The City immediately forwarded the form to the Arizona Municipal Risk Retention Pool (AMRRP). On June 6, 2013, AMRRP sent the attached letter to Mr. Rose. The letter denied all claims against the City.

Staff agrees with the finding as expressed in the letter from AMRRP. I have done the following with regard to the incident and the claim:

1. Met with Mr. Rose to explain the claim process and actions required by him and the City to properly address his claim. That was followed by a written summary and instructions to Mr. Rose on the following day.
2. Reviewed written reports prepared by City employees and reviewed the Third Party Review Report & the analysis results of the testing of the oil.
3. Expedited all information sharing with AMRRP and Mr. Rose.

My opinion and conclusion on this matter is based on the following:

1. The written employee reports, third party review and oil analysis results are consistent with each other in all material respects. They all indicate that the oil and metal shavings found at the oven burners did not come from the gas meter.
2. If the consistent information presented above was not a true representation of the facts, then it would require a massive conspiracy amoung a large group of professional people with unblemished work records. Why would people risk their careers to commit such a false result? There is simply no incentive for such behavior.

Staff Recommendation:

Council pleasure

June 6, 2013

Stephen Rose
2601 W. Dunlap Ave. #11
Phoenix, AZ 85012

Claim Number	:	1301 3344
Member	:	City of Benson
Date of Loss	:	12-26-12

Dear Mr. Rose:

We are writing on behalf of the Arizona Municipal Risk Retention Pool, of which the City of Benson is a member.

We are in receipt of your Notice of Claim filing dated 5-30-13. We are also in receipt of a memo dated 4-4-13 you have identified as an invoice. In regard to the above-referenced matter, it is necessary to advise you that because the incident involves a governmental entity, any claims that you may have arising out of this incident, including property damage claims, must be made in compliance with Arizona law. Arizona Revised Statutes §12-821.01 requires you to serve a proper Notice of Claim within 180 days of the date your claim accrues, which is typically the date of the incident. We received a copy of your Notice of Claim filing dated 5-30-13 from the City and note it may be defective as no "sum certain" on damages has been defined. As to the sum certain, you need to list one dollar amount with no conditions.

As you know we have received a fair amount of information on this claim. The one and only important issue as we see it, is whether the City caused damage to your pizza oven. As you know we were waiting on the test results from the oil sample. I have attached a copy of that report. Based upon these results and information received from the City we are not seeing any liability. In these circumstances at this time, all claims against the City are denied.

Although we may be discussing with you, the facts of this case, and your damages, these conversations and our investigation and dealings with you do not relieve you of the requirements of A.R.S. §12-821.01. <u>You are still required to serve a timely and proper Notice of Claim if you wish to pursue any claims beyond the 180-day deadline referenced above.</u>

No action on our part, whether that action involves discussing the matter with you or resolving undisputed aspects of this matter, shall constitute a waiver of your obligation to meet the requirements of A.R.S. §12-821.01. We affirmatively do not waive any requirement under the statute, and reserve our rights to all defenses that may be available.

Sincerely,

John Maiers, CPCLA
Sr. P & C Litigation Specialist
602-368-6632

CC: Jim Cox

City of Benson Notice of Claim

120 W 6th Street. Benson, AZ 85602, (520) 720-6314

NOTICE OF CLAIM AGAINST THE CITY OF BENSON

The undersigned submits the following information and makes claim against the

City of Benson, Arizona and/or employee _____

As follows:

1. **CLAIMANT INFORMATION**

Claimant name: Stephen Rose / Pizzarose LLC

Address: 2601 W. Dunlap Ave #11

City: Phoenix State AZ Zip Code 85021

Phone # Home N/A Work/Cell 801-520-4090

Date of Birth: 6/1/72

2. **OCCURRENCE OR EVENTS GIVING RISE TO THE CLAIM**

Date of Occurrence Dec, 2012 – Present Time _____

Location of Occurrence 995 W. 4th Street Benson, AZ

Provide the specifics of the occurrence, event, act or omission that you claim caused your injury or damage.

Refer to additional files, Statements and The Gas Meter Manual of operation.

Describe how or why you believe the City or employee was at fault:

Refer to addition files, Statements and The Gas Meter Manual of Operation.

RECEIVED MAY 30 2013 4:30pm CITY OF BENSON

City of Benson

120 W. 6th Street, Benson, Arizona 85602 520-586-2245

If this was a vehicle accident, state what road or highway the accident occurred on _____

Your vehicle license number _____

Year _____ Make _____ Model _____

The license of the City/Town vehicle _____

Name of the City/Town driver _____

Was a police report filed? Yes ☐ No ☐ I Don't Know ☐

Police agency involved _____

N/A

3. **DESCRIPTION OF PROPERTY DAMAGE AND INJURIES**

Describe the property that was damaged

Refer to invoice, Statements and additional files.

Dollar amount for which you would settle your property damage claim: $ refer to invoice

Describe the personal injuries suffered

refer to invoice

Dollar amount for which you would settle your personal injury claim $ refer to invoice

(Attach receipts, or other documentation of the amounts claimed. Attach medical reports where available).

Total amount for which you would settle all property damage and personal injury claims relating to this incident: $ refer to invoice and Statements

RECEIVED
MAY 30 2013
4:30pm CITY OF BENSON 2

City of Benson Notice of Claim

120 W 6th Street. Benson, AZ 85602, (520) 720-6314

4. **WITNESSES**

List all witnesses, with their name(s), address and phone #:

Rafael Carrillo, 90 E 3rd St Suite F, Douglas AZ 85607 (520)227-4018
Reid Stinnett / Mystic Builders, Taylor, AZ (928)243-2780
Jason Brown / City of Benson Employee
Ray Johnson (Radio Shack) 995 W. 4th Street D Benson AZ (520)586-2998

5. Are there any additional comments, details or information you want us to consider in responding to your claim?

refer to additional statements, files and the manual for the gas meter.

6. By signing, you verify the information presented in this claim is true to the best of your knowledge and belief.

Signature May 30, 2013 Date

7. Notice of Claim received by:

Vicki L Vivian VICKI L. VIVIAN, 5-30-13 4:30 pm
Name Date Time

Please fill in ALL INFORMATION requested above or your notice of claim may be deemed defective. All notices must be signed and dated. The City must also indicate above, the date and time received.

THE ARIZONA MUNICIPAL RISK RETENTION POOL AND SOUTHWEST RISK SERVICES ARE NOT AUTHORIZED AGENTS TO RECEIVE ANY NOTICE OF CLAIM UNDER A.R.S. §12-821.01. ALL NOTICES OF CLAIM MUST BE LEGALLY SERVED ON THE TOWN OR CITY AND, ON EACH INDIVIDUAL WHOM YOU CLAIM TO BE RESPONSIBLE FOR YOUR INJURIES OR DAMAGES.

THIS FORM WAS CREATED FOR YOUR CONVENIENCE. HOWEVER, THE TOWN OR CITY THAT IS PARTY TO THIS MATTER DOES NOT WAIVE ANY OF ITS RIGHTS OR DEFENSES FOR YOUR FAILURE TO COMPLY WITH ALL NOTICE OF CLAIM REQUIREMENTS ESTABLISHED BY ARIZONA STATUTE AND LAW. UNDER A.R.S. §12-821.01, YOU ARE REQUIRED TO STATE YOUR DAMAGES WITH A SPECIFIC DOLLAR AMOUNT FOR WHICH YOU WILL SETTLE YOUR CLAIM AND, TO SUPPORT THAT AMOUNT WITH EVIDENCE. YOUR NOTICE OF CLAIM WILL BE DEEMED DEFECTIVE WITHOUT THIS INFORMATION.

RECEIVED
MAY 30 2013
4:30 pm
CITY OF BENSON

4/4/13

To Whom It May Concern:

The following is a list of expenses and losses that were due to the negligent behavior of certain employees of The City of Benson. The incident was of course the pouring of red oil into Little Caesars' gas line. Sadly because certain individuals chose to hide and conceal this information rather than bring this to our attention, it has turned into a much bigger problem than it needed to be.

ITEMIZED LIST OF EXPENDETURES AND LOSSES

Loss of Product	$1,291.20	
Loss of Profits	$3,316.16	
Lodging	$1,527.89	
Oven Repairs	$2,328.55	
Additional Oven Repairs (Still Pending)		*($1,025.55)
Cost of New Gas Line (Still Pending)		*($3,884.00)
Cost of Gas Meter and Installation	$1,960.23	
Total Cost Currently Incurred	$10,424.03	
*Additional Pending Costs		*($4,909.55)
Total Cost	**$15,333.58**	

Note, the list above does not include: cost of meals, mileage, wasted labor, lost sleep, doctor bills nor defamation of character.