City of Benson
City Council Communication

Regular Meeting **November 28, 2016**

To: Mayor and Council Agenda Item # 5

From: Vicki L. Vivian, CMC, City Clerk

Subject:

Discussion and possible action regarding Resolution 38-2016 of the Mayor and Council of the City of Benson, Arizona, prescribing standards of Financial Disclosure for Local Elected Officials

Discussion:

This past legislative session, H.B. 2429 amended the financial disclosure statement that is required for candidates and public officers. The primary change was a new category on the statement that requires reporting of certain travel-related expenses, which when reported, are exempt as a "gift" under the law. Additionally, the law no longer requires the specific names of the public officer's spouse or children to be included on the statement as long as a general description is provided and allows the public officer to provide a home or work address. Lastly, the Secretary of State is authorized to prescribe the electronic format for the local public officer's financial disclosure statements. The law is effective on January 1, 2017.

Financial Disclosure Statement – The new Financial Disclosure Statement was provided to the City Clerks last week through the League's Municipal Election Manual. The Statement reflects all the changes from H.B. 2429 in addition to the removal of the notarization requirement. While not a statutory change, the Secretary of State's Office has interpreted the law requiring a "verification" on the statement to mean that notarization is not required on this form. The Statement is provided in both English and Spanish.

Financial Disclosure Resolution – Following the Campaign Finance Training session, the issue was raised that the current financial disclosure resolution adopted several years ago by cities and towns no longer reflects the current law. The League agrees that the recent legislation necessitates an update to previously adopted resolutions (Benson's Resolution 108-83). The proposed resolution before Council contains revised language reflecting all statutory changes enacted since 2011. Pursuant to A.R.S. § 38-545, a city or town may adopt standards of financial disclosure consistent with the state's requirements and the new resolution reflects the changes that will be effective on January 1, maintaining a statement that is tailored to local public officials.

H.B. 2429 - Electronic Format – The League is waiting for guidance from the Secretary of State's Office regarding the electronic format they will prescribe although they anticipate it may be a fillable pdf version of the current form that will be posted onto each city's website or the Secretary of State's website. The League will update City Clerks when they receive information from the Secretary of State about their new process but information may not be available before the January 1 effective date so they suggest using the current process until further instructions are received from the State.

Staff Recommendation:

Approval of Resolution 38-2016

RESOLUTION 38-2016

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF BENSON, ARIZONA, PRESCRIBING STANDARDS OF FINANCIAL DISCLOSURE FOR LOCAL ELECTED OFFICIALS

WHEREAS, pursuant to the provisions of A.R.S. § 38-545, as amended, the City of Benson is required to adopt standards of financial disclosure consistent with the provisions of Title 38, Chapter 3.1, Article 1, Arizona Revised Statutes, as amended; and

WHEREAS, the Mayor and Council have determined that the standards of financial disclosure hereinafter adopted are, with respect to the City of Benson, consistent with such standards of financial disclosure within the meaning of A.R.S § 38-545.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF BENSON, COCHISE COUNTY, ARIZONA, that the following standards of financial disclosure for local elected officials are hereby adopted:

Section 1. DEFINITIONS. In this resolution, unless the context otherwise requires:

1. "Business" includes any enterprise, organization, trade, occupation or profession, whether or not operated as a legal entity or for profit, including any business trust, corporation, partnership, joint venture or sole proprietorship.

2. "Compensation" means anything of value of advantage, present or prospective, including the forgiveness of debt.

3. "Controlled business" means any business in which the local public officer or any member of his household has an ownership or beneficial interest, individually or combined, amounting to more than a fifty percent interest.

4. "Dependent business" means any business in which the local public officer or any member of his household has an ownership or beneficial interest, individually or combined, amounting to more than a fifty percent interest.

5. "Gift" includes any gratuity, special discount, favor, hospitality, service, economic opportunity, loan or other benefit received without equivalent consideration and not provided to members of the public at large. "Gift" does not include travel-related expenses that are publicly reported as required by law or political campaign contributions that are publicly reported pursuant to Title 16, Chapter 6.

6. "Local public officer" means a person holding an elective office of the City of Benson.

7. "Member of household" means a local public officer's spouse and any minor child of whom the local public officer has legal custody.

8. "Travel-related Expenses" means any costs associated with transportation, food, lodging

and registration fees and other expenses directly related to travel to, or from, a meeting, conference or other event where the local public officer is participating in the local public officer's official capacity.

Section 2. DUTY TO FILE FINANCIAL DISCLOSURE STATEMENT; CONTENTS; EXCEPTIONS.

A. In addition to other statements and reports required by law, every local public officer, as a matter of public record, shall file with the City Clerk on a form prescribed by the City Clerk a verified financial disclosure statement covering the preceding calendar year ending December 31. The statement shall disclose:

1. The name and home or work address of the local public officer, whether the local public officer's spouse is a member of the local public officer's household, the number of minor children who are members of the local public officer's household and all names and addresses under which each does business. If disclosure of the identity of the local public officer's spouse or minor children otherwise be required, a local public officer may comply with the identification requirement by using the term "spouse" or "minor child," as applicable.

2. The name and address of each employer and of each other source of compensation other than gifts amounting to more than one thousand dollars received during the preceding calendar year by the local public officer and members of his household in their own names, or by any other person for the use or benefit of the local public officer or members of his household, a description of the services for which the compensation was received and the nature of the employer's business. This paragraph shall not be construed to require the disclosure of individual items of compensation that constituted a portion of the gross income of the business from which the local public officer or members of his household derived compensation.

3. For a controlled business, a description of the goods or services provided by the business, and if any single source of compensation to the business during the preceding calendar year amounts to more than ten thousand dollars and is more than twenty-five percent of the gross income of the business, the disclosure shall also include a description of the goods or services provided to the source of compensation. For a dependent business the statement shall disclose a description of the goods or services provided by the business and a description of the goods or services provided to the source of compensation from which the dependent business derived the amount of gross income described in Section 1, paragraph 4. If the source of compensation for a controlled or dependent business is a business, the statement shall disclose a description of the business activities engaged in by the source of compensation.

4. The names and addresses of all businesses and trusts in which the local public officer of members of his household, or any other person for the use or benefit of the local public officer or members of his household, had an ownership or beneficial interest of over one thousand dollars at any time during the preceding

calendar year, and the name and addresses of all businesses and trusts in which the local public officer or any member of his household held any office or had a fiduciary relationship at any time during the preceding calendar year, together with the amount or value of the interest and a description of the interest, office or relationship.

5. All real property interests and real property improvements, including specific location and approximate size, located in the City of Benson, in which the local public officer, any member of his household or a controlled or dependent business held legal title or a beneficial interest at any time during the preceding calendar year, and the value of any such interest, except that this paragraph does not apply to a real property interest and improvements thereon used as the primary personal residence or for the personal recreational use of the local public officer. If a local public officer, any member of his household or a controlled or dependent business acquired or divested any such interest during the preceding calendar year, he shall also disclose that the transaction was made and the date it occurred. If the controlled or dependent business is in the business of dealing in real property interests or improvements, disclosure need not include individual parcels or transactions as long as the aggregate value of all parcels of such property is reported.

6. The names and addresses of all creditors to whom the local public officer or members of his household, in their own names or in the name of any other person, owed a debt of more than one thousand dollars or to whom a controlled business or dependent business owed a debt of more than ten thousand dollars which was also more than thirty percent of the total business indebtedness at any time during the preceding calendar year, listing each such creditor. This paragraph shall not be construed to require the disclosure of debts owed by the local public officer or any member of his household resulting from the ordinary conduct of a business other than a controlled or dependent business. Nor shall disclosure be required of credit card transactions, retail installment contracts, debts on residences or recreational property exempt from disclosure under paragraph 5 of this subsection, debts on motor vehicles not used for commercial purposes, debts secured by cash values on life insurance or debts owed to relatives. It is sufficient disclosure of a creditor if the name and address or a person to whom payments are made is disclosed. If the local public officer, and any member of his household or a controlled or dependent business incurred or discharged a debt which is reportable under this subsection during the preceding calendar year, the report shall disclose that the transaction was made and the date it occurred.

7. The identification and amount of each debt exceeding one thousand dollars owed at any time during the preceding calendar year to the local public officer and member of his household in their own names, or to any other person for the use or benefit of the local public officer or any member of his household. The disclosure shall include the identification and amount of each debt exceeding ten thousand dollars to a controlled business or dependent business which was also more than thirty percent of the total indebtedness to the business at any time during the preceding calendar

year. This paragraph shall not be construed to require the disclosure of debts from the ordinary conduct of a business other than a controlled or dependent business. If the local public officer, any member of his household or a controlled or dependent business incurred or discharged a debt which is reportable under this subsection during the preceding year, the report shall disclose that the transaction was made and the date it occurred.

8. The name of each source of any gift, or accumulated gifts from a single source, of more than five hundred dollars received by the local public officer and members of his household in their own names during the preceding calendar year, or by any other person for the use or benefit of the local public officer or any member of his household except gifts received by will or by virtue of intestate succession, or received by way of distribution from any intervivos or testamentary trust established by a spouse or by an ancestor, of gifts received from any other member of the household or relatives to the second degree of consanguinity. Travel-related expenses and political campaign contributions shall not be construed as gifts if otherwise publicly reported as required by law.

9. A list of all business licenses issued, by the City of Benson, or by any other governmental agency which requires for its issuance the consideration of the application for such license by the City Council of the City of Benson, to, held by or in which the local public officer or any member of his household had an interest at any time during the preceding calendar year, including the name in which the license was issued, the type of business and its location.

10. A list of all bonds, together with their value, issued by the City of Benson, any industrial development authority of the City or any nonprofit corporation organized or authorized by the City held at any time during the preceding calendar year by the local public officer or any member of his household, which bonds issued by a single entity had a value in excess of one thousand dollars. If the local public officer or any member of his household acquired or divested any bonds during the preceding calendar year which are reportable under this paragraph, the fact that the transaction occurred and the date shall also be shown.

11. The name of each meeting, conference or other event where the local public officer is participating in the public officer's official capacity if travel-related expenses of one thousand dollars or more were incurred on behalf of the local public officer and the travel-related expenses are not paid by the local public officer.

B. If an amount or value is required to be reported pursuant to this section, it is sufficient to report whether the amount or value of the equity interest falls within:

1. Category 1, one thousand dollars to twenty-five thousand dollars.

2. Category 2, more than twenty-five thousand dollars to one hundred thousand dollars.

3. Category 3, more than one hundred thousand dollars.

C. This section does not require the disclosure of any information that is privileged by law.

D. The statement required to be filed pursuant to subsection A shall be filed by all persons who qualified as local public officers at any time during the preceding calendar year on or before January 31 of each year, with the exceptions that a local public officer appointed to fill a vacancy shall, within sixty days following his taking of such office, file a financial disclosure statement covering as his annual period the twelve month period ending with the last full month prior to the date of his taking office, and a local public officer whose final term expires less than thirty-one days into the immediately following calendar year may file the local public officer's final financial disclosure at the same time as the disclosure for the last immediately preceding year.

E. The City Clerk shall prepare written guidelines, forms and samples for completing the financial disclosure statement required by this section. A copy of the guidelines, forms and samples shall be distributed to each local public officer and shall be made available to each candidate required to file a financial disclosure statement pursuant to Section 3 of this resolution.

F. Any statements that are required to be filed by a local public officer pursuant to this resolution adopted pursuant to A.R.S. § 38-545 may be filed in an electronic format as prescribed by the secretary of state.

Section 3. DUTY TO FILE FINANCIAL DISCLOSURE STATEMENT BY CANDIDATE FOR LOCAL PUBLIC OFFICE. A candidate for local public office as specified in Section 1, paragraph 6, shall file a financial disclosure statement covering the preceding twelve month period and containing the information described in Section 2 on a form prescribed by the City Clerk at the time of filing nomination papers.

Section 4. This resolution shall become effective on the 31st day of December, 2016.

PASSED AND ADOPTED BY THE MAYOR AND COUNCIL OF THE CITY OF BENSON, COCHISE COUNTY, ARIZONA, this 28th day of November, 2016.

_____
TONEY D. KING, SR., Mayor

ATTEST:

_____
VICKI L. VIVIAN, CMC, City Clerk

APPROVED AS TO FORM:

_____
MESCH CLARK ROTHSCHILD
By Gary J. Cohen
City's Attorney

Conference Engrossed

State of Arizona
House of Representatives
Fifty-second Legislature
Second Regular Session
2016

CHAPTER 196

HOUSE BILL 2429

AN ACT

AMENDING SECTION 38-541, ARIZONA REVISED STATUTES; AMENDING SECTION 38-542, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2014, CHAPTER 149, SECTION 1; RELATING TO FINANCIAL DISCLOSURE.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 38-541, Arizona Revised Statutes, is amended to read:

38-541. Definitions

In this chapter, unless the context otherwise requires:

1. "Business" includes any enterprise, organization, trade, occupation or profession, whether or not operated as a legal entity or for profit, including any business trust, corporation, partnership, joint venture or sole proprietorship.

2. "Compensation" means anything of value or advantage, present or prospective, including the forgiveness of debt.

3. "Controlled business" means any business in which the public officer or any member of his household has an ownership or beneficial interest, individually or combined, amounting to more than a fifty ~~per cent~~ PERCENT interest.

4. "Dependent business" means any business in which the public officer or any member of his household has an ownership or beneficial interest, individually or combined, amounting to more than a ten ~~per cent~~ PERCENT interest, and during the preceding calendar year the business received from a single source more than ten thousand dollars and more than fifty ~~per cent~~ PERCENT of its gross income.

5. "Gift" includes any gratuity, special discount, favor, hospitality, service, economic opportunity, loan or other benefit received without equivalent consideration and not provided to members of the public at large. GIFT DOES NOT INCLUDE:

(a) TRAVEL-RELATED EXPENSES THAT ARE PUBLICLY REPORTED PURSUANT TO THIS ARTICLE.

(b) POLITICAL CAMPAIGN CONTRIBUTIONS THAT ARE PUBLICLY REPORTED PURSUANT TO TITLE 16, CHAPTER 6.

6. "Local public officer" means a person holding an elective office of an incorporated city or town, a county or a groundwater replenishment district established under title 48, chapter 27.

7. "Member of household" means a public officer's spouse and any minor child of whom the public officer has legal custody.

8. "Public officer" means a member of the legislature and any judge of the court of appeals or the superior court, or a person holding an elective office the constituency of which embraces the entire geographical limits of this state. Members of Congress are not public officers as defined in this paragraph.

9. "TRAVEL-RELATED EXPENSES" MEANS ANY COSTS ASSOCIATED WITH TRANSPORTATION, FOOD, LODGING AND REGISTRATION FEES AND OTHER EXPENSES DIRECTLY RELATED TO TRAVEL TO OR FROM A MEETING, CONFERENCE OR OTHER EVENT WHERE THE PUBLIC OFFICER IS PARTICIPATING IN THE PUBLIC OFFICER'S OFFICIAL CAPACITY.

Sec. 2. Section 38-542, Arizona Revised Statutes, as amended by Laws 2014, chapter 149, section 1, is amended to read:

38-542. Duty to file financial disclosure statement; contents; exceptions

A. In addition to other statements and reports required by law, every public officer, as a matter of public record, shall file with the secretary of state on a form prescribed by the secretary of state a verified financial disclosure statement covering the preceding calendar year. The statement shall disclose:

1. The name and HOME OR WORK address of the public officer ~~and each member of his household~~, WHETHER THE PUBLIC OFFICER'S SPOUSE IS A MEMBER OF THE PUBLIC OFFICER'S HOUSEHOLD, THE NUMBER OF MINOR CHILDREN WHO ARE MEMBERS OF THE PUBLIC OFFICER'S HOUSEHOLD and all names and addresses under which each does business. IF DISCLOSURE OF THE IDENTITY OF THE PUBLIC OFFICER'S SPOUSE OR MINOR CHILD WOULD OTHERWISE BE REQUIRED, A PUBLIC OFFICER MAY COMPLY WITH THE IDENTIFICATION REQUIREMENT BY USING THE TERM "SPOUSE" OR "MINOR CHILD", AS APPLICABLE.

2. The name and address of each employer and of each other source of compensation other than gifts amounting to more than one thousand dollars received during the preceding calendar year by the public officer and members of his household in their own names, or by any other person for the use or benefit of the public officer or members of his household, a description of the services for which the compensation was received and the nature of the employer's business. This paragraph shall not be construed to require the disclosure of individual items of compensation that constituted a portion of the gross income of the business from which the public officer or members of his household derived compensation.

3. For a controlled business, a description of the goods or services provided by the business, and if any single source of compensation to the business during the preceding calendar year amounts to more than ten thousand dollars and is more than twenty-five ~~per cent~~ PERCENT of the gross income of the business, the disclosure shall also include a description of the goods or services provided to the source of compensation. For a dependent business the statement shall disclose a description of the goods or services provided by the business and a description of the goods or services provided to the source of compensation from which the dependent business derived the amount of gross income described in section 38-541, paragraph 4. If the source of compensation for a controlled or dependent business is a business, the statement shall disclose a description of the business activities engaged in by the source of compensation.

4. The names and addresses of all businesses and trusts in which the public officer or members of his household, or any other person for the use or benefit of the public officer or members of his household, had an ownership or beneficial interest of over one thousand dollars at any time during the preceding calendar year, and the names and addresses of all businesses and trusts in which the public officer or any member of his household held any office or had a fiduciary relationship at any time during

the preceding calendar year, together with the amount or value of the interest and a description of the interest, office or relationship.

5. All Arizona real property interests and real property improvements, including specific location and approximate size, in which the public officer, any member of his household or a controlled or dependent business held legal title or a beneficial interest at any time during the preceding calendar year, and the value of any such interest, except that this paragraph does not apply to a real property interest and improvements thereon used as the primary personal residence or for the personal recreational use of the public officer. If a public officer, any member of his household or a controlled or dependent business acquired or divested any such interest during the preceding calendar year, he shall also disclose that the transaction was made and the date it occurred. If the controlled or dependent business is in the business of dealing in real property interests or improvements, disclosure need not include individual parcels or transactions as long as the aggregate value of all parcels of such property is reported.

6. The names and addresses of all creditors to whom the public officer or members of his household, in their own names or in the name of any other person, owed a debt of more than one thousand dollars or to whom a controlled business or a dependent business owed a debt of more than ten thousand dollars which was also more than thirty ~~per cent~~ PERCENT of the total business indebtedness at any time during the preceding calendar year, listing each such creditor. This paragraph shall not be construed to require the disclosure of debts owed by the public officer or any member of his household resulting from the ordinary conduct of a business other than a controlled or dependent business nor shall disclosure be required of credit card transactions, retail installment contracts, debts on residences or recreational property exempt from disclosure under paragraph 5 of this subsection, debts on motor vehicles not used for commercial purposes, debts secured by cash values on life insurance or debts owed to relatives. It is sufficient disclosure of a creditor if the name and address of a person to whom payments are made is disclosed. If the public officer, any member of his household or a controlled or dependent business incurred or discharged a debt which is reportable under this subsection during the preceding calendar year, the report shall disclose that the transaction was made and the date it occurred.

7. The identification and amount of each debt exceeding one thousand dollars owed at any time during the preceding calendar year to the public officer and members of his household in their own names, or to any other person for the use or benefit of the public officer or any member of his household. The disclosure shall include the identification and amount of each debt exceeding ten thousand dollars to a controlled business or dependent business which was also more than thirty ~~per cent~~ PERCENT of the total indebtedness to the business at any time during the preceding calendar year. This paragraph shall not be construed to require the disclosure of

debts from the ordinary conduct of a business other than a controlled or dependent business. If the public officer, any member of his household or a controlled or dependent business incurred or discharged a debt which is reportable under this subsection during the preceding year, the report shall disclose that the transaction was made and the date it occurred.

8. The name of each source of any gift, or accumulated gifts from a single source, of more than five hundred dollars received by the public officer and members of his household in their own names during the preceding calendar year, or by any other person for the use or benefit of the public officer or any member of his household except gifts received by will or by virtue of intestate succession, or received by way of distribution from any inter vivos or testamentary trust established by a spouse or by an ancestor, or gifts received from any other member of the household or relatives to the second degree of consanguinity. ~~Political campaign contributions shall not be construed as gifts if otherwise publicly reported as political campaign contributions as required by law.~~

9. A list of all business licenses issued to, held by or in which the public officer or any member of his household had an interest at any time during the preceding calendar year, including the name in which the license was issued, the type of business and its location.

10. A list of all bonds, together with their value, issued by this state or any political subdivision of this state and held at any time during the preceding calendar year by the public officer or any member of his household, which bonds issued by a single entity had a value in excess of one thousand dollars. If the public officer or any member of his household acquired or divested any bonds during the preceding calendar year which are reportable under this paragraph, the fact that the transaction occurred and the date shall also be shown.

11. THE NAME OF EACH MEETING, CONFERENCE OR OTHER EVENT WHERE THE PUBLIC OFFICER IS PARTICIPATING IN THE PUBLIC OFFICER'S OFFICIAL CAPACITY IF TRAVEL-RELATED EXPENSES OF ONE THOUSAND DOLLARS OR MORE WERE INCURRED ON BEHALF OF THE PUBLIC OFFICER AND THE TRAVEL-RELATED EXPENSES ARE NOT PAID BY THE PUBLIC OFFICER.

B. If an amount or value is required to be reported pursuant to this section, it is sufficient to report whether the amount or value of the equity interest falls within:

1. Category 1, one thousand dollars to twenty-five thousand dollars.

2. Category 2, more than twenty-five thousand dollars to one hundred thousand dollars.

3. Category 3, more than one hundred thousand dollars.

C. This section does not require the disclosure of any information that is privileged by law.

D. The statement required to be filed pursuant to subsection A shall be filed by all persons who qualified as public officers at any time during the preceding calendar year on or before January 31 of each year with the exceptions that a public officer appointed to fill a vacancy shall, within

sixty days following his taking of such office, file a financial disclosure statement covering as his annual period the twelve month period ending with the last full month prior to the date of his taking office, and a public officer whose final term expires less than thirty-one days into the immediately following calendar year may file the public officer's final financial disclosure at the same time as the disclosure for the last immediately preceding year.

E. The secretary of state shall prepare written guidelines, forms and samples for completing the financial disclosure statement required by this section. A copy of the guidelines, forms and samples shall be distributed to each public officer and shall be made available to each candidate required to file a financial disclosure statement pursuant to section 38-543.

F. Beginning January 1, 2017, the statement required to be filed in subsection D of this section may be filed by the public officer in a form prescribed by the secretary of state that includes authorization for future filings to be submitted in an electronic format. Any subsequent filings required to be filed in subsection D of this section may be filed in an electronic format as prescribed by the secretary of state. BEGINNING JANUARY 1, 2017, ANY STATEMENTS THAT ARE REQUIRED TO BE FILED BY A LOCAL PUBLIC OFFICER PURSUANT TO AN ORDINANCE, RULE, RESOLUTION OR REGULATION ADOPTED PURSUANT TO SECTION 38-545 MAY BE FILED IN AN ELECTRONIC FORMAT AS PRESCRIBED BY THE SECRETARY OF STATE.

Sec. 3. Effective date

This act is effective from and after December 31, 2016.

APPROVED BY THE GOVERNOR MAY 11, 2016.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 11, 2016.