

**THE REGULAR MEETING  
OF THE MAYOR AND CITY COUNCIL OF BENSON, ARIZONA  
HELD AUGUST 9, 2010 AT 7:00 P.M.  
AT CITY HALL, 120 W. 6TH STREET, BENSON, ARIZONA**

**CALL TO ORDER:**

Mayor Fenn called the meeting to order at 7:00 p.m. with the pledge of allegiance. Mayor Fenn then introduced Pastor Kirk Sorenson of the First Assembly of God who offered the invocation.

**ROLL CALL:**

Present were: Mayor Mark M. Fenn, Vice Mayor Toney King, Sr. and Councilmembers Jo Deen Boncquet, John Lodzinski and Lori McGoffin. Absent were: Councilmembers David Lambert and Al Sacco.

**EMPLOYEE RECOGNITION:**

Mayor Fenn recognized Vicki Vivian for 10 years of service with the City and then recognized William "Corky" Brandt for 25 years of service with the City.

**PROCLAMATION:** None

**PUBLIC HEARING:** None

**CALL TO THE PUBLIC:**

Barbara Thompson addressed Council regarding Animal Noise Ordinance 6-1-2, asking that it be rewritten to be more specific. Ms. Thompson stated the ordinance, as written, is vague and is open to unreasonable interpretation, adding that is what is happening in her neighborhood. Ms. Thompson's comments are incorporated into the minutes. Mayor Fenn thanked Ms. Thompson for her comments and asked staff to address the Ordinance.

Dianne Tipton addressed Council regarding the filing of complaints by anonymous persons. Ms. Tipton stated she understands if someone is making a complaint regarding spousal or child abuse, that they may want to remain anonymous, but that when it comes to making complaints about people's properties, she feels the person whom the complaint is against has the right to know who is complaining. Ms. Tipton then stated if this is not put into the proper perspective, we run the risk of people being able to pursue personal vendettas. Ms. Tipton then stated she thinks this is something Council should address, adding that she made a complaint recently about a property and was asked if she wanted to remain anonymous and didn't feel that should be an option. Ms. Tipton then stated if the complaint is regarding something within someone's property or within their home, she thinks the person making the complaint should have to disclose themselves and why and how they know there is a problem. Mayor Fenn thanked Ms. Tipton for her comments.

**CITY MANAGER REPORT:**

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

- August 10, 2010 – Library Advisory Board, 4:00 p.m., Library
- August 21, 2010 – Historic Preservation Commission, 9:30 a.m., City Hall
- August 23, 2010 – City Council Meeting, 7:00 p.m., City Hall
- August 24, 2010 – Community Watershed Alliance, 6:30 p.m., City Hall

- August 7, 2010 – SEABHS New Turf Youth Alliance held their Benson Back to School Fair, Lions Park, Mr. Nichols stated he understood this event was very successful.
  
- August 14, 2010
- August 21, 2010 – San Pedro River Arts Council Art Display, Council Chambers, open from 1:00 p.m. to 4:00 p.m.
  
- August – City Pool – The pool is open Monday through Saturday from 11:00 a.m. to 5:00 p.m. and Sunday from 1:00 p.m. to 5:00 p.m. The pool will remain open weekends only after Tuesday, August 10, 2010, and will close after Labor Day Weekend. Swimming schedule is available at [www.cityofbenson.com](http://www.cityofbenson.com) under “what to do today”.
  
- August – Benson School starts Thursday, August 12th.  
  
Information on activities and camps are available at [www.cityofbenson.com](http://www.cityofbenson.com) under “what to do today”.

Mr. Nichols then stated Mr. Luis Garcia Jr. will be starting at the City of Benson as the Building Official on Tuesday, August 10. Mr. Nichols then stated in accordance with the pre-annexation agreement with San Pedro Partners and the Harlan Trust, the City has begun the annexation process for the property in the agreement and the public hearing will be held on September 13, 2010 with the annexation Ordinance tentatively being brought to the Council on September 27, 2010. Mr. Nichols then stated Councilmember John Lodzinski would hold a “Let’s Talk” session and would be available to answer any questions and hear concerns in reference to City government in the conference room at City Hall next to the Administration offices on Friday, August 20 from 8:00 – 11:00 a.m. and from 2:00 – 3:30 p.m.

Vice Mayor King then asked to say a few words and stated on Thursday, school would be starting back up and asked the general public to be careful and watch out for the kids on Thursday, adding that there would be a lot more kids walking to school in the area and again asked everyone present to please be careful, because our kids depend on drivers being careful.

**NEW BUSINESS:**

**1. Consent Agenda**

- 1a. Minutes of the July 26, 2010 Regular Meeting
- 1b. Removal of David Welsh from the Benson Economic Development Subcommittee (EDSC)
- 1c. Appointment of Geoff Oldfather to Benson Economic Development Subcommittee (EDSC)
- 1d. Reappointment of Janet Hearn to the Benson Library Advisory Board
- 1e. Reappointment of Tara Davis to the Benson Library Advisory Board
- 1f. Invoices processed for the period from July 20, 2010 through August 2, 2010

Councilmember McGoffin moved to approve the Consent Agenda. Seconded by Councilmember Boncquet. Motion passed 5-0.

**2. Discussion and possible action regarding the cancellation of the August 23, 2010 Regular Council Meeting**

City Manager Glenn Nichols stated on July 26, 2010, Council discussed possibly cancelling the August 23 meeting since the League of Arizona Cities and Towns Conference is being held that week. Mr. Nichols stated there were no pressing issues at this time and the item was placed on the agenda for Council action. Councilmember Lodzinski moved to cancel the August 23, 2010 Regular Council Meeting. Seconded by Councilmember McGoffin. Motion passed 5-0. Mayor Fenn directed staff to make sure the cancellation was noticed properly.

**3. Discussion and possible action on choosing a design for the City's "Benson Area Transit" buses, and discussion and possible action on painting the existing buses**

Finance Director Jim Cox addressed Council stating that over the past year, the City has worked diligently to put together a transit system and has successfully taken the program over from Catholic Community Services (CCS) in a seamless transaction for all of our citizens. Mr. Cox then stated the City is looking forward to establishing a fixed deviated route for general public transit in the next few months. Mr. Cox then stated one of the first decisions to make is regarding the design of the transit buses, adding that the graphic designers, the painters and the bus company are part of one company that has contracts with the State and Federal Governments so the City can have the buses painted before delivery. Mr. Cox then said the name "Benson Area Transportation (BAT)" was discussed and the graphic designers submitted illustrations for the buses, adding that staff had narrowed down the illustrations to 3 choices and he would like direction from the Council concerning the choices. Mr. Cox noted the proposed blue is the same blue that is in the City logo and the suggestion is to leave the lower portion of the buses white to make repainting, if needed, very simple and less expensive. Mr. Cox then told Council that staff overwhelmingly chose the illustration with the white bats, with the reason being the bats were less ominous or menacing and are more whimsical. After Council discussion, Mr. Cox stated we could take Council's suggestions and go back to the designers and revisit the item in the near futures. Mayor Fenn asked about the routes with Mr. Cox stating the Dial-A-Ride program currently services Benson, St. David, Pomerene, Mescal and J6 and the plan for the deviated route is to head toward St. David, but that it will basically be set by demand. After further discussion concerning the designs, Council stated they would like to see more choices. Mr. Cox then encouraged Council to submit any other comments or suggestions they had to the Finance Department and he would discuss them with the graphic designers, bringing back the item to Council for action. Mr. Cox then stated the other matter in painting the buses was that the City currently has 2 vans for the programs, with one being a primary vehicle and the other being used for a few months until the City receives delivery of the new bus, at which time, it will serve as a backup vehicle. Mr. Cox asked for guidance in painting the vehicle that will serve as the backup vehicle, stating his thoughts were to spend a minimal amount, basically painting it white and adding the City logo with Council agreeing. Mr. Cox then stated the cost to paint the backup vehicle is estimated to be from \$4,200 to \$4,500.

**4. Ordinance 546 of the Mayor and Council of the City of Benson, Arizona, amending Ordinance No. 225 to allow for a minority of the Planning & Zoning Commission membership to be Non-Residents of the City**

City Manager Glenn Nichols stated on June 28, 2010 Public Works Director Brad Hamilton addressed the Council regarding the difficulty we have trying to get volunteers to serve on the various Boards and Commissions. Mr. Nichols then stated Mr. Hamilton had said it may help to adjust the membership requirements since there were numerous people that did not live in the City that were interested and may have the expertise to help us. Mr. Nichols stated at that time, the Council directed staff to pursue changing the membership requirements and the result is Ordinance 546, which requires the majority of the Commission to be City residents. Mayor Fenn asked if the Commission's ability to act would be affected if the majority of a quorum established for a meeting was not City residents. City Attorney Mike Masee stated Ordinance 546 would not affect their ability to act as long as a quorum was established, adding the ordinance did not stipulate the composition of the quorum, only the composition of the Commission.

Vice Mayor King and Councilmember Lodzinski asked about the Planning & Zoning bylaws with Mr. Masee stating State law says Council, by ordinance, will determine the makeup, including the qualifications, of the Commission and when Council conflicts the bylaws, the Ordinance takes control as a matter of hierarchy. Mr. Masee then stated if there is any particular bylaw or provision that seems inconsistent with Council majority, Council can overrule it with an order or an ordinance, adding there was a grant of delegation from Council to the Planning & Zoning Commission allowing them to take the authority to write their own bylaws, but at any time the Council could withdraw that delegation. Mr. Masee then added as a matter of housekeeping, the bylaws should be addressed, but the Commission would not be able to override Council. Councilmember McGoffin stated she thought it was a great idea,

stating if there are people in the general area that want to serve but don't live in the City limits, it doesn't mean they don't have roots here, they don't do business here and they don't have ties here. Councilmember McGoffin then moved to approve Ordinance 546. Seconded by Councilmember Boncquet. Motion passed 5-0.

5. **Resolution 51-2010 of the Mayor and Council of the City of Benson, Arizona approving a Special Warranty Deed and Maintenance and Access Easement Agreement with Wal-Mart Stores, Inc.**

City Attorney Mike Masee addressed Council stating the Development Agreement the City entered into with Wal-Mart contemplates that some land would be transferred to the City, adding that the land is not completely contiguous, but is divided into 4 parcels, each with its own independent legal description. Mr. Masee then stated the City has been complying with the terms in the Development Agreement and for Wal-Mart to do the same; they needed to transfer ownership of the parcels to the City. Mr. Masee stated the Development Agreement does stipulate continuing obligations on the part of Wal-Mart as to 3 of the parcels, Parcel 1, which is a landscaping island, and Parcels 2 and 4, which are primarily used for retention/detention basins, adding that the Development Agreement contemplates that Wal-Mart will continue to maintain the parcels even after the transfer of the ownership. Mr. Masee then stated the Special Warranty Deed is going to transfer title of the parcels to the City, but the Maintenance and Access Easement Agreement states Wal-Mart will have non-exclusive access to the parcels so they can maintain the detention basins and the landscaping. Mr. Masee stated he had been working on the Agreement and Wal-Mart's attorney did agree to the revisions he made, however, after the agreement was submitted to the City Clerk's office for the Council packet, Wal-Mart's attorney realized it didn't contain the access easement for the truck turnaround, so Wal-Mart's engineer submitted a diagram which will be added to Exhibit C. Mr. Masee then stated other than the diagram, which is a general depiction of where the truck turnaround is, there was no further legal description, adding it is clear that the truck turnaround is to be maintained by Wal-Mart and will remain available for their use even after the title is transferred to the City.

Councilmember Lodzinski asked about the alleyway running along the north side of Parcel 3 that leads to Quarterhorse with discussion on access and whether the portion of Parcel 3 is usable. Mayor Fenn questioned whether it could be used to develop anything with the width, the way the retention basin is fenced off and with the property to the north. Discussion then centered on the property directly east of the smaller strip mall with Council directing staff to clarify the responsibility for it. City Manager Glenn Nichols confirmed this property was where the large retention basin is and stated the alley way is access for residents as well as the access for maintenance. Mr. Nichols then stated starting on Sunset Cactus, looking at the entrance road that connects to the alley, where the pavement ends is not a continued developed roadway, adding that there was a sign in place to block the remaining area off. Mayor Fenn then stated that of the 4 parcels, Parcel 3 has some potential, with some open space that could be developed somehow and Parcel 1 has development potential besides being a landscaped island, asking if there were any restrictions should the City decided to sell it as a PAD in the future with Mr. Masee stating if that were to happen, the City would probably absolve Wal-Mart from any further obligation on their part as far as maintenance and get back from them the easement for maintenance purposes.

Mayor Fenn then asked if Wal-Mart's maintenance responsibility was permanent with City Attorney Mike Masee confirming so, stating the Development Agreement contemplated the maintenance responsibility to be perpetual, adding however, there is some possibility that if the City wanted to develop Parcel 4 in conjunction with Parcel 3, the Development Agreement contemplates that that retention basin may, through engineering, be incorporated into the larger retention basin that is immediately to the north east there, but that it would be the City's responsibility and at the City's cost to do that relocation. Councilmember McGoffin moved to approve Resolution 51-2010. Seconded by Councilmember Lodzinski. Motion passed 4-0 with Vice Mayor King abstaining.

6. **Resolution 52-2010 of the Mayor and Council of the City of Benson, Arizona, authorizing the Mayor to execute an Intergovernmental Agreement with the State of Arizona to fund the City's Section 5311 Rural Public Transportation Program**

Finance Director Jim Cox addressed Council stating this item is the Intergovernmental Agreement between the State and the City, adding almost all of the transit funds we are receiving in grants, in the amount of approximately \$600,000, are flow through funds that come from the Federal Government to the State Government and then are passed to the City for our transit operations. Vice Mayor King moved to approve Resolution 52-2010. Seconded by Councilmember Boncquet. Motion passed 5-0.

**DEPARTMENT REPORTS:** None

**ADJOURNMENT:**

Councilmember McGoffin moved to adjourn at 7:50 p.m. Seconded by Vice Mayor King. Motion passed 5-0.

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Mark M. Fenn, Mayor

ATTEST:

\_\_\_\_\_  
Vicki L. Vivian, CMC, City Clerk

August 9, 2010

City of Benson  
Mayor  
City Council Members  
City Manager

We are here tonight to ask that animal noise ordinance (6-1-2) which reads:  
***It is unlawful to harbor or keep any animals which disturb the peace by loud noises at any time of day or night...*** be rewritten to be more specific.

We submit that the ordinance as written is vague and open to unreasonable interpretation. This is what is happening in our neighborhood.

Our neighbor across the street at 234 La Cuesta Drive uses the vagueness of the current ordinance as a tool to harass us. He complains about our dogs barking constantly, even if they bark one or two "arfs". Really, this is not an exaggeration! Surveys taken by Animal Control have entries made by him that corroborate this.

Our dogs do not bark any more than what is normally accepted by a reasonable person. But our neighbor does not think they should **ever** bark: at the mail truck, the garbage truck, the UPS or Fedex trucks, at stray dogs that wander into our neighborhood or other animals such as rabbits and javelina. Barking at these or any other event is a reason for our neighbor to call Animal Control or the City Police Department. He calls them constantly. **This is an abuse of public services.**

We have made concessions to keep our dogs from "disturbing" him. We have fenced off an area inside our already fenced back yard that confines our dogs to about 40% of the yard. This keeps them directly behind our house where any noise they make is muffled by the house. We thought "surely this will stop his complaining". It has not. He has called Animal Control even after our new fence was installed.

His letter to this council dated July 12, 2010 cites an incident in April of this year where a Benson officer responded to one of his complaints. He says "after he left, they continued to bark for approximately one more hour". This is a total fabrication of the truth. The dogs were locked in the house by the Animal Control Officer at our request as we were not home at the time. The dogs did not bark anymore that night... and the man knows this. Obviously he feels the need to embellish the truth to make his case.

As for the recording that was presented with his letter of July 12, 2010. **If it really is a recording of our dogs**, we feel it was more likely taped on Sunday, April 11, 2010 at 3:58 p.m. directly behind our house. Our neighbor was hiking behind our house and inciting our dogs to bark at him. He hikes there most Sunday afternoons.

On the day we moved into our house in March of 2009, this man made it very clear that he has a hatred for dogs. After he asked us if we had a dog he said to us "I'de like to get a cat, a cougar, so I could train it to kill dogs".

We believe nothing short of getting rid of our dogs would stop this neighbor's complaints. Even then he would most likely just move his vendetta back to one of the other dog owners in the neighborhood. According to the long time residents on our street, he has complained to Animal Control for **years** about their dogs. We are just his newest victims.

The way the current ordinance is written, the officers are required to respond to his complaints. Most of the time they arrive to find no barking and usually not even dogs outside. This is because our dogs will bark a few times and then quit. The officers are caught in a dilemma of having to respond to his complaints because of how the ordinance reads but they usually find no disturbance. **Again, this type if irresponsible interpretation of the ordinance is an abuse of public services.**

We are grateful for Animal Control's efforts to try to mediate the situation. However, their hands seem to be tied by the vagueness of ordinance 6-1-2.

He has asked that the ordinance be enforced "exactly as written". I doubt the intent of the ordinance is that dogs are not allowed to bark **ever**. There are times when barking dogs alert the neighborhood to dangers and situations we all want to know about. I hope you can see our point of wanting a more defined ordinance; one that addresses actual disturbances, not one that can be used to carry out unreasonable control of a neighborhood.

La Cuesta Drive is a very quiet street. About half of the people on the street own dogs. We are all responsible pet owners and we keep our dogs under control. Not one other neighbor has complained about our dogs.

Your consideration of our request to make the animal noise ordinance more specific and less susceptible to improper use is greatly appreciated. It would go a long way to solve long-standing neighborhood tension.

Thank you for letting us tell our side of the story.

Sincerely,



David and Barbara Thompson  
237 E LaCuesta Drive  
Benson, AZ 85602

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