

**THE REGULAR MEETING
OF THE MAYOR AND CITY COUNCIL OF BENSON, ARIZONA
HELD SEPTEMBER 8, 2008 AT 7:00 P.M.
AT CITY HALL, 120 W. 6TH STREET, BENSON, ARIZONA**

**MAYOR FENN
OPENED THE MEETING AT 7:00 P.M WITH
THE PLEDGE OF ALLEGIANCE.**

**PRESENT WERE: MAYOR FENN, VICE MAYOR KING,
COUNCILMEMBERS LODZINSKI, McGOFFIN, SACCO, SUAGEE and TIPTON**

INVOCATION:

Mayor Fenn introduced Father Benedict who gave the invocation.

**EMPLOYEE
RECOGNITION:**

None.

CALL TO THE PUBLIC:

Bobbie Kuhn addressed Council stating the City has been laboring in a chaotic atmosphere and that a City functions effectively when its leader has integrity, levelheadedness, fairness and is open to its employees. Ms. Kuhn then stated Glenn Nichols is this person who has much training dealing with people and understands working in a bureaucracy, understands the limits of his authority, his boundaries and dedication and loyalty both up and down the lines of authority. Ms. Kuhn then referred to the City Code stating the City Manager shall take orders or instructions from the Council only when expressed at a duly convened meeting of the Council, either a work session, special meeting or regular meeting and no individual Councilmember may otherwise give any orders or instructions to the City Manager except for the purpose of inquiry. Ms. Kuhn then stated if there was no Council task or directive, there could be no insubordination. Ms. Kuhn then stated she had spoken to several employees regarding the change in atmosphere since Mr. Nichols took over stating they were now pleased to go to work and there was no secrecy or fits of unjust temper. Ms. Kuhn then stated it was time to move forward.

Patricia Rogers addressed Council stating the recent election was mainly a referendum of change; a message from the public directed to the Council and the City government to engage for the betterment of the City of Benson, its residents and future residents to return to civility in all transactions and interactions. Ms. Rogers stated the former City Manager created an atmosphere of fear and intimidation for many of the staff. Ms. Rogers then stated the decision of the Council to terminate Mr. Roush was supported in total by A.R.S. § 9-303 that states the Council can terminate the City Manager for cause or no cause. Ms. Rogers then stated the biggest issue facing Council is understanding the roles of the Mayor, Councilmembers and the City Manager, stating the Council can direct the activities of the City staff only through the City Manager, not as individuals. Ms. Rogers then stated the City Council cannot hire or fire any employee other than the City Manager, stating Resolution 52-2008 is not only not necessary, but also invalidates policies and procedures and puts City and employees at risk. Ms. Rogers then stated it is the Interim City Manager Glenn Nichols' job to guide, intervene and discipline the staff, stating Councilmembers must go through the Interim City Manager if they have a request of staff. Ms. Rogers stated the new City Manager should be one who can heal the community and its associates, both inside and out of the community, and instill confidence and security once again among the staff. Ms. Rogers then stated she felt Mark Fenn has done a great deal for the

community as an individual, a business man and as a Mayor. Ms. Rogers then asked Council to support the Butterfield Rodeo, stating they do a great job.

Lori McGoffin then addressed Council stating she was frustrated that a tire was slashed on her car in front of her house. Ms. McGoffin then stated Vice Mayor King's tire was also slashed in the front of his house. Ms. McGoffin then asked if the public had any problems with her or her decisions, that they come to her to discuss it, rather than taking it out on her personal property. Ms. McGoffin then stated the juvenile behavior needed to stop and the City needed to move forward.

Heather Floyd addressed Council regarding the Butterfield Rodeo Committee's request. Ms. Floyd stated she appreciated Council taking the time to listen to their request and would address Council during the appropriate agenda item.

John Whiteside addressed Council concerning the vision each Councilmember has for the City of Benson. Mr. Whiteside suggested that Council learn the vision for Benson each candidate for City Manager has and to make that component a major factor in their choice for City Manager. Mr. Whiteside then informed Council of a conversation he had with former City Manager, Martin Roush concerning annexations, development and private property owner's rights. Mr. Whiteside expressed concern for the over-drafted water aquifer and overdevelopment.

CONSENT AGENDA:

- 1a. Approval of Minutes of the August 11, 2008 Regular Meeting
- 1b. Approval of Minutes of the August 25, 2008 Regular Meeting
- 1c. Reappointment of Judith Francis to the Benson Arts Commission
- 1d. Appointment of Shryl Miles to the Benson Arts Commission
- 1e. Appointment of Janet Hearn to the Benson Library Advisory Board
- 1f. Processed Invoices for August 5, 2008 through August 15, 2008
- 1g. Processed Invoices for August 16, 2008 through August 29, 2008

Councilmember McGoffin moved to approve the Consent Agenda. Seconded by Councilmember Sacco. Motion passed 7-0.

NEW BUSINESS:

1. **Benson Butterfield Rodeo Committee Request for assistance by loaning the committee bleachers, providing and assisting with the setup of serpentine fencing and becoming a Sponsor for the Benson Butterfield Rodeo**

Heather Floyd of the Benson Butterfield Rodeo Committee addressed Council regarding this request. Ms. Floyd stated the Committee is happy to be working with Mr. Walter Woods at the Arena where the rodeo will be held. Ms. Floyd thanked Council for their assistance in the past, and then requested the loan of bleachers and serpentine fencing and City labor for the setup. Ms. Floyd then stated the sponsorship request was larger than past sponsorships due to the difficult time the Committee has had in securing major sponsors for the event this year.

After discussion, Councilmember Lodzinski moved to approve the \$3,000 sponsorship of the rodeo citing community benefit of increased business for local businesses and a quality of life activity. Seconded by Councilmember McGoffin. City Attorney Thomas Benavidez asked if the Council would like to act on the balance of the Committee's request for bleachers and fencing. Councilmember Lodzinski then amended his motion to include the loaning of bleachers and providing and assisting with the setup of serpentine fencing. Seconded by Councilmember McGoffin. Motion passed 7-0.

2. **Benson Arts Commission's submittal of a grant application to the Arizona Commission of the Arts for a Cultural Inventory**

Sylvia Burnside, Benson Arts Commission addressed Council stating the cultural inventory is a tool to assist cities and towns gather information about cultural resources currently available in their communities and develop future cultural opportunities. Ms. Burnside then stated the benefits of this inventory will aid the Commission in planning and administering to the community's artistic needs. Councilmember Suagee commended the Arts Commission for moving forward with the cultural inventory; then moved to approve the submittal of the grant application to the Arizona Commission of the Arts for a Cultural Inventory in whatever amount was needed for the grant. Seconded by Councilmember McGoffin. Motion passed 7-0.

3. **Resolution 53-2008 of the Mayor and Council of the City of Benson, Arizona, approving the Arena Bar as an Additional Wagering Facility for Off-Track Pari-Mutuel Wagering for Turf Paradise Race Course**

Mr. Walter Woods addressed Council stating he would like to resume off-track wagering at the Arena Bar. City Clerk Vicki Vivian addressed Council stating Resolution 56-2006 was passed in November, 2006 approving the Arena Bar as an additional wagering facility for off-track pari-mutuel wagering for a period of one year. Council then passed Resolution 16-2007 in May, 2007 changing the authorization to a company that ran the off-track wagering from May to September. Since the temporary approval expired, no off-track wagering has been in place and the original requestor, Turf Paradise Race Course is seeking Council approval to resume operations until May, 2009. Councilmember McGoffin moved to approve Resolution 53-2008. Seconded by Vice Mayor King. Motion passed 4-3 with Councilmembers Suagee, Tipton and Mayor Fenn voting nay.

4. **Resolution 54-2008 of the Mayor and Council of the City of Benson, Arizona, appointing Fire Chief Keith Spangler as the Emergency Services Coordinator for the City of Benson**

Fire Chief Keith Spangler addressed Council stating the position is currently held in the Police Department, but most Emergency Services Coordinator positions are within Fire Departments if there is not a specific Emergency Services Department within the jurisdiction. Fire Chief Spangler then thanked the City's public works department, police department, fire department and all other agencies that assisted with the recent emergency situation on 4th Street. Councilmember Tipton suggested utilizing the radio station to get emergency information out to the public, with Fire Chief Spangler stating it will be addressed in the new emergency services plan to pursue community notification through various means. Councilmember Tipton then moved to approve Resolution 54-2008. Seconded by Councilmember Suagee. Motion passed 7-0.

5. **Discussion and possible action regarding the third party investigation report by Mary Judge Ryan about allegations of conflicts of interest and misconduct on the part of the Mayor, Mark M. Fenn**

Councilmember Sacco moved to table the item until the newly elected Councilmembers were seated. Councilmember Suagee stated she would not like to table this item since the newly elected Councilmembers would know little about the issue; the public had waited to have the item aired and that the Mayor had stated he welcomed the chance to address it publicly. Councilmember Suagee then stated if the Council did not move forward, she assured them it would still move forward. Motion died for lack of a second. Councilmember Tipton then addressed Council stating the process that a third party investigation was requested and approved by Council. Councilmember Tipton then stated she had met with Mayor Fenn prior to the

investigation being requested by herself and Councilmember Suagee. Councilmember Tipton then read excerpts from the report given to Council by the third party investigator, Mary Judge Ryan. Councilmember Tipton then stated it was never the intention or the responsibility of herself or Councilmember Suagee to conduct an investigation, but to merely ask that one be done. Councilmember Tipton then stated the attempts at misleading the public and forcing a recall of Ms. Suagee and herself was successful, but it would not allow Mayor Fenn or anyone else to escape the long arm of the law, stating the Council must act accordingly or lose all credibility as a Council. Councilmember Tipton then stated the report was in the hands of the Attorney General's office and suggested that Mayor Fenn, the Council and the community take this situation very seriously as they moved forward.

Councilmember Lodzinski stated he had faith in the Attorney General and if there was something that needed to be done, the Attorney General would do it and Council needed to move on with other City business.

Councilmember Suagee then moved that the City Council direct the City Attorney to draft a resolution affirming with the Attorney General's office that the City of Benson wants this matter to move forward toward its natural resolution. Seconded by Councilmember Tipton. Councilmember Suagee then stated that a resolution would show the Attorney General that the City of Benson understands the gravity of the situation and wants the Attorney General to move forward with the matter. Councilmember Suagee stated the Attorney General's office would look at this situation regardless, but that it would look better for the City if the City Council stated they wanted the Attorney General's office to look at the matter.

Vice Mayor King questioned the City Attorney regarding support for further investigation, with Mr. Benavidez stating he had no personal knowledge of whether the Attorney General was looking into this matter, but that nothing that the Council would do would change whether his office would or would not look into the matter. Mr. Benavidez then stated Council could take whatever action Council deemed appropriate.

Councilmember Suagee then stated the Attorney General did have the matter in their office but was waiting until the third party investigation was completed. Councilmember Suagee then stated the third party investigator's duty was to the City, so the action was forwarded to the Attorney General by other means. Councilmember Suagee then reaffirmed her motion stating for the good of the City she moved for Council to ask Mr. Benavidez to draft a resolution stating Council's support further investigation to its natural resolution.

Councilmember Sacco stated he felt a resolution was not necessary and that Council did not need to tell the Attorney General how to do his job. Councilmember Sacco then stated he was in the process of drafting a letter to the third party investigator regarding the quoting of several court cases that he felt were in error. Councilmember Sacco then stated he felt no action should be taken until the third party investigator corrected some of those errors.

City Attorney Thomas Benavidez then stated he felt the Mayor should not participate in the discussion or decision-making of the Council with respect to what should be done with the report.

Vice Mayor King stated he did not feel a resolution was needed since the matter was at the Attorney General's office already.

Councilmember McGoffin then asked the City Attorney if it was a possibility for the Attorney General's office to send the matter back to Council for action. Mr. Benavidez stated in the event of that occurrence, Council could deal with it at that time. Mr. Benavidez then stated that if a public body thought one of their own had committed any misconduct, the Council could do a rebuke or censure of some kind, otherwise, as the third party investigator stated, for the most part,

it's a political process, with the recall mechanism, terms and voting, which is for the public to do something about the matter. Mr. Benavidez then stated if the Attorney General looked at the case, he felt it would be highly unlikely the case would come back to Council for action.

Councilmember Tipton then withdrew her second, stating she was not happy with the motion on the floor. Councilmember Tipton then stated in the past, she had gotten assurances from Mayor Fenn to not be involved and yet he was, and questioned whether or not he would keep his word. Councilmember Tipton stated these serious concerns needed to be addressed.

Councilmember Suagee then withdrew her motion. Councilmember Suagee then stated that a white-collar crime instead of a blue-collar crime should not change the attitude that we have. Councilmember Suagee then stated she would leave the matter to the Council.

ADJOURNMENT:

Councilmember McGoffin then made a motion to adjourn the meeting at 8:16 p.m. Seconded by Vice Mayor King. Motion passed 4-3 with Councilmembers Lodzinski, Suagee and Tipton voting nay.

EXECUTIVE SESSION: Pursuant to A.R.S. section 38-431.03 (A)(3) & (4) for consultation for legal advice with the City Attorney concerning the recent dismissal (termination) of the former City Manager, Martin Roush, and to instruct the Attorney concerning the City's position with respect to settlement discussions to avoid litigation

6. Possible action to instruct the City Attorney concerning the termination of the former City Manager, Martin Roush

EXECUTIVE SESSION: Pursuant to A.R.S. section 38-431.03 (A)(1) for discussion concerning the employment performance of the Interim City Manager, Glenn Nichols, with respect to alleged insubordination and impropriety toward a City Councilmember and mishandling of public records (Mary Judge Ryan's report)

7. Possible action to reprimand the Interim City Manager

CITY MANAGER REPORT:

None.

COUNCIL DIRECTIVES:

None.

DEPARTMENT REPORTS:

None.

ADJOURNMENT:

SEE ABOVE ACTION AFTER NEW BUSINESS ITEM 5.

Mark M. Fenn, Mayor

ATTEST:

Vicki L. Vivian, City Clerk