

**THE REGULAR MEETING
OF THE MAYOR AND CITY COUNCIL OF BENSON, ARIZONA
HELD JULY 14, 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 Pastor Blair who gave the invocation.

**EMPLOYEE
RECOGNITION:**

None.

CALL TO THE PUBLIC:

Katie Musselman of the Benson Butterfield Rodeo Committee spoke in support of the transfer of the liquor license at the Arena Bar. Ms. Musselman stated the rodeo was a large event and would not be able to hold the event if the transfer was not approved.

David DiPeso spoke in support of the transfer of the liquor license at the Arena Bar. Mr. DiPeso stated the Arena Bar has been an integral part of Benson, hosting the Butterfield Rodeo, the Biker Rodeo as well as many other events. Mr. DiPeso stated he felt Council should only look at zoning and regulations and let the Arizona Department of Liquor Control take care of any problems with the applicant running the bar. Mr. DiPeso then spoke on behalf of the applicants, stating they have been running the bar for 4-6 months with no problems and asking Council to support the passage of their liquor license application.

John Whiteside spoke concerning the reappointment of James Crawford to the Benson Planning & Zoning Commission stating he does not recommend Mr. Crawford's reappointment. Mr. Whiteside then spoke regarding Resolution 50-2008 stating this resolution should not contain the declaration of emergency clause. Mr. White then spoke regarding the transfer of the liquor license application, stating Council should not reverse its prior decision to not recommend the approval.

John Meeks spoke in support of the transfer of the liquor license at the Arena Bar and in support of the applicant, stating a very successful mud bog was held at the Arena which brought in 32 competitors from outside of Benson. Mr. Meeks stated the land was donated for the event and the Food Pantry was assisted through this event. Mr. Meeks stated other businesses benefit from events like this and is good for the community.

Suzi Brackahn of the Southern Arizona Harley Riders Club, stating their club is a non-profit organization that supports charities and college scholarships in all of Cochise County. Ms. Brackahn stated with the Biker Rodeo held in Benson, thousands of dollars over the last 12 years have been brought into Benson. Ms. Brackahn then stated she was there to support the transfer of the liquor license at the Arena Bar.

George Scott spoke in support of the transfer of the liquor license at the Arena Bar, stating the South East Arizona Economic Development Group supports retention and expansion of local businesses countywide. Mr. Scott then stated he would like to ask the members of the Council supported economic development subcommittee to support the retention of local businesses and the support of the Arena Bar. Mr. Scott then asked for Councilmember McGoffin's and Councilmember Tipton's support for a business that has been in Benson for over 46 years and has brought a lot events and business into town.

Allen Brackhahn, Vice President of the Southern Arizona Harley Riders spoke in support of the transfer of the liquor license.

Stephen Lowy, a prospect of the Southern Arizona Harley Riders spoke in support of the transfer of the liquor license. Mr. Lowy stated many people have been brought into Benson from surrounding areas with the Biker Rodeo which helps charities and is good for the community.

Rose Confer, a life member and the Treasurer of the Southern Arizona Harley Riders spoke stating through the Biker Rodeo held in Benson, usually 1,500 to 2,000 people are brought into Benson, which benefits the City.

Debbie Watkins a life member of the Southern Arizona Harley Riders spoke stating their club is a family oriented club and over the last 12 years have hosted Biker Runs through Benson which has brought revenues into the local businesses. Ms. Watkins stated through sponsorships, the club is able to distribute funds back into the community and that they assist many charities, including the local food bank, the boys and girls clubs in Cochise County and college scholarships. Ms. Watkins then stated she would like to see Resolution 51-2008 supported for the transfer of the liquor license at the Arena Bar.

Lavon Lohse a life member of the Southern Arizona Harley Riders spoke in support of the transfer of the liquor license at the Arena Bar. Ms. Lohse then stated she has known Mr. Walt Woods for 30 years and spoke highly of his charitable work with their club. Ms. Lohse then stated she would like to see the Council support Mr. Woods and the Arena Bar.

David Manolas of the Southern Arizona Harley Riders stated with the last Biker Run held, over \$14,000 was raised which will be going to charity. Mr. Manolas stated with the upcoming Biker Runs they have the opportunity to continue giving to charities.

Joe Pones spoke in support of Mr. Walter Woods, stating since Mr. Woods has taken over the Arena Bar, there have been more things to do in the City, with bull riding and a jumping castle for the kids and the recent mud bog event. Mr. Pones stated the community needs someone who will do something to bring events and show support for our community.

Paul Lotsof spoke regarding the liquor license application stating the issue before Council is not whether the Arena Bar is good, bad or indifferent, but is who holds the liquor license at the Arena Bar. Mr. Lotsof then spoke regarding Resolution 52-2008 stating this item was not clear enough for the public to understand and that Council should table the item.

CONSENT AGENDA:

- 1a. Approval of Minutes of the June 23, 2008 Worksession
- 1b. Approval of Minutes of the June 23, 2008 Regular Meeting, including Executive Session minutes
- 1c. Approval of Minutes of the June 25 2008 Special Meeting

- 1d. Application to the 2008 State Homeland Security Grant Program to complete the Police Department's P25 Project – The Upgrade of the Communication System from Analog to Digital Radios
- 1e. River Walk Trail Improvements (CIP PR 07-4) – Parking Lot Improvements
- 1f. Reappointment of James Crawford to the Benson Planning & Zoning Commission
- 1g. Reappointment of Randy Robichaud to the Benson Planning & Zoning Commission
- 1h. Reappointment of James Thelander to the Benson Planning & Zoning Commission
- 1i. Processed Invoices

Councilmember Suagee stated she would like to remove item 1f from the Consent Agenda. Councilmember McGoffin moved to approve the remaining consent agenda. Seconded by Councilmember Tipton. Motion passed 7-0.

CONSENT AGENDA – ITEMS REMOVED:

- 1f. Reappointment of James Crawford to the Benson Planning & Zoning Commission

Councilmember Suagee stated she asked for this item to be removed from the consent agenda to discuss Mr. Crawford's attendance record for the Planning & Zoning Commission meetings and after reviewing his attendance record stated she could not support his reappointment to the Planning & Zoning Commission. Councilmember McGoffin asked if anyone has spoken to Mr. Crawford regarding his attendance record. Vice Mayor King stated someone should speak to Mr. Crawford before the Council should take any action. Councilmember Lodzinski agreed stating someone from the City should speak to Mr. Crawford before any Council action. Mayor Fenn stated an admonition could be given to Mr. Crawford to try and improve his attendance. Mayor Fenn then asked Mike Lockett, Planning & Zoning Director about vacancies on boards and commissions, with Mr. Lockett stating it's hard to find people to serve on any board or commission. Councilmember Suagee asked if any advertisements were placed for board and commission appointments, with Mr. Lockett stating he would obtain that information and bring it to Council. Councilmember Suagee moved to table this item until the July 28, 2008 meeting and then commended Mr. Robichaud for his letter and credentials submitted to Council for his request to be reappointed. Seconded by Councilmember Sacco. Motion passed 7-0.

NEW BUSINESS:

- 1. **Acceptance of Donation from Meritage Homes for the Benson Volunteer Firefighters' Memorial:**

Finance Director Jim Cox addressed Council stating Meritage Homes recently sent a check for \$500.00 to help the construction of a Benson Volunteer Firefighters' Memorial. Mr. Cox stated in the Fiscal Year 2008-2009 budget, a \$5,000 revenue item and a \$5,000 expenditure item was budgeted to start the memorial. Vice Mayor King stated he felt it was an important memorial and stated if anyone would like to assist with the memorial, they could contact the City. Vice Mayor King then thanked Meritage Homes publicly and Councilmember Sacco stated he would like to see a letter sent to Meritage Homes. Vice Mayor King moved to accept the \$500.00 donation from Meritage Homes for the Benson Volunteer Firefighters' Memorial. Seconded by Councilmember Sacco. Mayor Fenn asked if a site has been decided upon for the memorial with City Manager Martin Roush stating at this time, no decision had been made. Mr. Roush stated Fire Chief Keith Spangler was going to put together a group of former and current volunteers to make recommendations to Council. Motion passed 7-0.

- 2. **Amended Court Consolidation Agreement between the City of Benson and Cochise County:**

Finance Director Jim Cox addressed Council stating the current court consolidation agreement is being amended to eliminate the City's requirement of paying for a half-time clerk. Mr. Cox stated in the Fiscal Year 2008-2009 budget, this item was budgeted in the amount of \$18,130.00 which will not be expended if the proposed amendment passes. City Manager Martin Roush stated he would like to thank the new County Manager, Mike Ortega, who felt this was the right first step to balance this agreement. Councilmember Sacco moved to approve the amendment to the Court consolidation agreement between the City of Benson and Cochise County. Seconded by Councilmember Lodzinski. Motion passed 7-0.

3. **Principal Payment of \$333,000.00 on Zions Bank Series 2005 City Lease Agreement:**

Finance Director Jim Cox addressed Council stating the City has a current one million dollar financing arrangement with Zions Bank that was used for water infrastructure improvements in conjunction with the improvements on 4th Street and for the construction of the Union Park pool. Mr. Cox stated the due date of that arrangement was July 1, 2008 and that the City has been in negotiations with Zions Bank to make a partial payment and to refinance the remaining portion of that financing arrangement. Councilmember Suagee verified with Mr. Cox that the new financing arrangement will be paid off July 1, 2010, with Mr. Cox stating the City will fund the annual payment by placing 1/12 of that payment into an interest bearing account on a monthly basis. Vice Mayor King stated this financing arrangement is an example of "good debt" and is the right thing to do. Councilmember Suagee moved to approve the principal payment of \$333,000.00 on Zions Bank Series 2005 City Lease Agreement with the expenditure coming from the Capital Projects Fund. Seconded by Vice Mayor King. Motion passed 7-0.

4. **Resolution 50-2008 of the Mayor and Council of the City of Benson, Arizona, approving and authorizing the Execution and Delivery of a Series 2008 City Lease, a Trust Agreement, and an Obligation Purchase Agreement; approving the Execution and Delivery of not to exceed \$750,000 Principal Amount of Excise Tax Revenue Refunding Obligations, Series 2008, evidencing a Proportionate Interest of the Owners thereof in Lease Payments under the Series 2008 City Lease the sale thereof to the Purchaser thereof pursuant to the Obligation Purchase Agreement; authorizing the taking of all other actions necessary to the consummation of the transactions contemplated by this Resolution and Declaring an Emergency:**

Finance Director Jim Cox addressed Council stating this financial agreement was essentially the same as the previous Series 2005 financial agreement, with the exception of the interest rate of 4.75% up from 3.85%, which is favorable in the economic environment. Councilmember Suagee verified the document would be completed prior to the closing date of July 22, 2008. Vice Mayor King thanked Mr. Cox and his staff for the work on this item. Councilmember McGoffin moved to approve Resolution 5-2008. Seconded by Councilmember Lodzinski. Motion passed 7-0.

5. **Resolution 51-2008 of the Mayor and Council of the City of Benson, Arizona, recommending approval of the interim permit and person transfer for a Type 06 (bar) liquor license at the Arena Bar:**

Mr. Dennis Breen, the applicant's representative asked to address Council. Mr. Breen asked Council to reconsider the application stating the application that is submitted to the Arizona Department of Liquor Licenses and Controls required disclosures that are far in excess of what they use as the standard of application, which is to go back 5 years. Mr. Breen then stated Council is being asked to make a recommendation to the state authority to allow the City to identify things that are not disclosed. Mr. Breen then stated both DUIs that were mentioned in the previous meetings were dismissed and would not be grounds for the state to refuse the application. Mr. Breen then stated the injury to the Arena Bar would be the delay, since the temporary permit expires August 25 and the Arena Bar may have to be shut down while the

process continues, resulting in financial injury to the business owner as well as the impact on the community with events. Mr. Breen then stated one of the applicant's criminal record was from thirty years ago, that was regarding a financial case and since that time, the applicant has not had any problems, developed good business sense, invested in the Arena. Mr. Breen stated the standard Council is using is not the standard the state uses. Mr. Breen then asked Council to reconsider the application and recommend approval at the state level.

Vice Mayor King then spoke stating he had been considering this issue since the last Council meeting. Vice Mayor King then stated he felt the past was the past, that Council reacted before understanding the entire issue and that Council should reconsider this application and recommend approval.

Councilmember Suagee then stated she felt Council may have overstepped their boundaries in their previous decision, but stated she was still concerned that there was no liquor law training course completed by the applicants and would hope that training would be done in the near future. Councilmember Suagee then stated she had contacted a previous employer of one of the applicants and received a recommendation for the character of Mr. Daniel Woods and with the recommendation of Ms. Lohse for Mr. Walter Woods, moved to approve the liquor license for the Arena Bar. Councilmember Suagee also thanked the Southern Arizona Harley Riders for their support of the Boys & Girls Club and other groups in Benson. Seconded by Vice Mayor King.

City Attorney Christopher Wencker then addressed Council clarifying Council's action is not to approve the liquor license, but to approving recommending transfer of the liquor license to the applicant to the Arizona Department of Liquor Licenses and Control. Councilmember Suagee then amended her motion to recommend to the liquor board that Council approval the license transfer. Seconded by Vice Mayor King.

Councilmember Tipton then thanked the audience and those who do so much for the community stating she did not want to have them leave with the impression that they could not continue these things without alcohol. Councilmember Tipton then stated the information presented to Council was given to them for a reason and consideration, stating she still had concerns. Councilmember Tipton then reiterated charity events and supporting local businesses have nothing to do with alcohol and then stated there are other ways to bring alcohol onto the premises for special events. Councilmember Tipton then stated her understanding was that Council was making a recommendation on whether or not Council agrees on giving the applicants a liquor license and that the ultimate decision will come from the State of Arizona.

Councilmember McGoffin spoke stating she received several phone calls from people who supported her decision not to recommend the transfer telling her that over the last weekend there was underage consumption and other issues; therefore she would stand behind her decision.

Councilmember Lodzinski stated this liquor license was unique since it allowed for alcohol outside of the building and he was concerned about controlling alcohol consumption. Mr. Breen then spoke to Council stating that the Department of Liquor Licenses and Controls should regulate that, however, if the City passed other ordinances, the applicant would then comply with local laws. Mr. Breen then stated if a new location for a liquor license were before Council, these issues could be addressed; however, the issue before Council was just the transfer of the existing license, as is.

Vice Mayor King then spoke stating he has observed events at the Arena Bar and that if others observed underage consumption or other issues, the police department should be notified instead of Council.

Councilmember Tipton then spoke stating the issue is that the track record the City has is not with the new owners and when new owners apply for a liquor license the Council is given information to consider and when feedback is received, even though it may be negative, Council should still examine and consider all information. Councilmember Tipton then reminded the public that the Council only has the power to recommend or not recommend a liquor license transfer to the state department.

Councilmember Suagee then asked about the liquor law training course, with Mr. Breen stating it would be completed. Motion passed 5-2 with Councilmembers Tipton and McGoffin voting nay.

EXECUTIVE SESSION: Pursuant to A.R.S. section 38-431.03 (A)(3) for legal advice from the City Attorney concerning the recent Butterfield Plaza condemnation and the extension of time for repairs granted to the property owner

Councilmember McGoffin moved to enter into executive session with the City Attorneys, Mike Lockett, the City Manager, the City Clerk, and the two representatives from Brown & Associates and the Council at 8:07 p.m. Seconded by Councilmember Tipton. Motion passed 7-0.

Council then reconvened into the Regular Meeting at 8:49 p.m.

6. **Update and discussion regarding the recent Butterfield Plaza condemnation and the extension of time for repairs granted to the property owner; to include correspondence between the City and the property owner and between the City and the Plaza's tenants:**

Building Official Mike Lockett stated Brown & Associates have been taking the lead on the condemnation and would like to give a presentation to Council. Mike Brown, Brown & Associates addressed Council stating the process on this project was moving along, with plans for the foundation repair being received on July 8, 2008, and are currently in review. Mr. Brown stated the shoring on the back of the property has been completed for approximately 120 feet with the interior shores maintained and periodically observed by the engineer of record, Rick Kaiser of Kaiser Engineering. Mr. Brown stated when the back shores were installed, the engineer of record stated the building was structurally sound. Mr. Brown stated they are now looking forward to completing the plan review, getting comments back to the engineer for revisions, clarifications, justifications or calculations then getting a timeline and process and procedures for how the repair remediation will be completed with regards to public protection, utilities and other issues. Mr. Brown then stated Mr. Kaiser is informing the City on a weekly basis of any updates and would be the point of contact for the property. Mayor Fenn then verified the Council would be informed of updates through the Building Department.

EXECUTIVE SESSION: Pursuant to A.R.S. section 38-431.03 (A)(3) for legal advice from the City Attorney concerning request for public release of City Attorney's work descriptions on billing invoices

Councilmember McGoffin moved to enter into executive session with the City Council, the City Manager, the City Attorney, and the City Clerk at 8:55 p.m. Seconded by Vice Mayor King. Motion passed 7-0.

Council then reconvened into the Regular Meeting at 9:07 p.m.

7. **Authorization for public release of City Attorney's work descriptions on billing invoices:**

Councilmember Tipton moved to approve the release of the City Attorney's work descriptions on billing invoices. Seconded by Councilmember McGoffin. Motion passed 7-0.

City Attorney Christopher Wencker then stated his office will take the Council action as a waiver of the attorney-client privilege, if applicable, to the documents provided to Council, in so far as the release is required.

CITY MANAGER REPORT:

City Manager Martin Roush gave the Council a memo and calendar indicating the upcoming City meetings:

July 15, 2008 – Citizen Review Session, 7:00 p.m., City Hall
– Planning & Zoning Special Meeting, 7:30 p.m., City Hall

July 19, 2008 – Arts Commission Meeting, 9:00 a.m., City Hall
– Library Advisory Board Meeting, 4:00 p.m., City Hall

July 28, 2008 – City Council Meeting, 7:00 p.m., City Hall

Mr. Roush stated the City’s free Summer Reading Program is on Thursdays, at City Hall. Mr. Roush stated the program was successful, but we would like more participants to continue the program.

Vice Mayor King stated he would be on vacation from July 24 through August 5, 2008.

COUNCIL DIRECTIVES:

None.

DEPARTMENT REPORTS:

None.

ADJOURNMENT:

Councilmember McGoffin moved to adjourn at 9:09 p.m. Seconded by Councilmember Tipton. Motion passed 7-0.

Mark M. Fenn, Mayor

ATTEST:

Vicki L. Vivian, City Clerk