

**THE REGULAR MEETING
OF THE MAYOR AND CITY COUNCIL OF BENSON, ARIZONA
HELD APRIL 25, 2011 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 John Cook of the Baha'i Faith who gave the invocation.

ROLL CALL:

Present were: Mayor Mark M. Fenn, Vice Mayor John Lodzinski, Councilmembers Jo Deen Boncquet, David Lambert, Nick Maldonado, Lori McGoffin and Al Sacco.

EMPLOYEE RECOGNITION: Mayor Fenn recognized Evelyn Tinsley for 10 years of service with the City.

PROCLAMATION:

Mayor Fenn asked Councilmember Lambert to read a proclamation of the Mayor and Council declaring the first week of May, 2011, as "Youth Week". Councilmember Lambert then presented the proclamation to the Benson Elks Lodge Exalted Ruler Jerry Pollard (Esteemed Leading Knight). Mayor Fenn thanked the Elks Lodge for their work and dedication.

PUBLIC HEARING: None.

CALL TO THE PUBLIC:

Jim Grey addressed the Council stating quite a few months ago he gave some information on why he thought Benson would have to work harder to keep the RV public coming to Benson, adding he has checked with most of the RV parks and they seem to be down 10-20%, which is substantial. Mr. Grey then stated it was in part due to the State raising sales tax which contributed to Benson's 9.6% tax rate. Mr. Grey then stated he had done quite a bit of research on traffic on I-10 and feels the City should promote not individual businesses, but the entire City with our golf courses, the 12-16 RV parks and could possibly use billboards to do so. Mr. Grey then stated many people don't like RVers, but the City is healthy in part, because of them and we don't want to lose them, adding with gas prices and sales tax, we need to offer incentives for them to stay in Benson. Mr. Grey then stated he would be glad to give billboard information to the Council and felt there was not a lot of money spent on tourism and if we promoted the City right, we could get a lot more people to stop in Benson.

Charlie Taylor addressed the Council stating he was opposed to the building of an Episcopal Church on Highway 80, citing molestations that had taken place in an Episcopalian church. Mayor Fenn interrupted Mr. Taylor, telling him the Council receives comments regarding things they have jurisdiction over and if he has an issue with the zoning or building code, he can address those issues. Mr. Taylor then stated he does have an issue with the zoning of the church then continued speaking about the molestations. Mayor Fenn then interrupted Mr. Taylor again, stating he was sorry for whatever happened, but the Council would only receive comments regarding those things over which they have or will have jurisdiction. Mayor Fenn then stated the Council had nothing to do with the other issue and if Mr. Taylor would like to address zoning issues or any other building code issue, he was welcome to do so. Mr. Taylor then stated he had a problem with the zoning and building of this church since he felt they may be a danger to the community and the youth. Mayor Fenn then stated as the applicant goes through the process of applying for permits or any zoning changes, Mr. Taylor will have a venue to state his case. Mr. Taylor thanked the Council for their time.

Kathy Suagee addressed the Council regarding the City Attorney's contract, stating Council swore to do what was best for this community. Ms. Suagee then stated time after time, the attorney has made decisions

and acted on them without Council's knowledge or approval then comes to the Council asking them to sanction his actions and time after time, Council has done it. Ms. Suagee then asked if the City was being run by the City Council or the attorney. Ms. Suagee then stated at the last meeting, Council approved a new contract for the City Manager and their only discussion was over whether he should receive an extra week of vacation, yet a major change was written into the contract. Ms. Suagee then stated the contract approved paying for a private attorney to represent the City Manager in any matter having to do with City business and presumed the clause was written in by the City Attorney. Ms. Suagee then stated that is an exceedingly broad mandate, which might even be construed to mean that if the City has an action against the City Manager, the City would have to pay not only for its own attorney, but for his as well. Ms. Suagee then stated many times the Council had to go back and redo the work presented by Mr. Masee. Ms. Suagee then referred to litigation with Stagecoach Trails MHC criticizing the attorney and Council for the time spent waging this war, adding at times the attorney's actions have seemed vindictive. Ms. Suagee then stated the Council should not renew the proposed contract and there are many attorneys out there hungry for a chance to represent Benson who can get us back on the legal side of the tracks.

John Whiteside addressed the Council regarding the City Attorney's contract, stating he initially recommended Mr. Masee for the City Attorney without having the opportunity to talk to him, as his application and resume looked most applicable at that time, but he must withdraw his recommendation. Mr. Whiteside then stated it is the function of the City Attorney to protect the Council, even against itself, and it is not the function of the City Attorney to join and lead the Council in a vendetta which appears probable to cost Benson or its insurance pool over \$325,000 when they lose the next appeal, which they will. Mr. Whiteside then stated he advised early on to cut the losses when we could have gotten out for \$50,000, adding we are in a recession and don't need this expense. Mr. Whiteside then thanked the Council for their time and attention.

Luis Garcia addressed the Council regarding Building Safety Month, 2011 which is May, 2011 and is sponsored by the International Code Council who created our adopted building safety code, the most widely used fire prevention code in the nation. Mr. Garcia then stated the City of Benson is a member of the International Code Council and will be participating this year, adding building safety was first observed in 1980 as Building Safety Week and has grown to Building Safety Month. Mr. Garcia then stated this year is going to highlight energy and green building, disaster safety and mitigation, fire safety and awareness and backyard safety with the theme being "International Celebration of Safe and Sensible Structures." Mr. Garcia then stated information can be obtained at the building department or the International Code Council website, www.iccsafe.org. Mr. Garcia then thanked Council for their time.

CITY MANAGER REPORT:

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

- April 26, 2011 – Community Watershed Alliance, 6:30 p.m., City Hall
- April 28, 2011 – Board of Adjustment, 7:00 p.m., City Hall
- April 29, 2011 – Training for National Weather Service Participation, 6:00-8:30 p.m., City Hall
- May 3, 2011 – Planning & Zoning Commission, 7:00 p.m., City Hall
- May 9, 2011 – City Council Meeting, 7:00 p.m., City Hall
- May 10, 2011 – Library Advisory Board, 4:00 p.m., City Library
- May 21, 2011 – Historic Preservation Commission, 9:00 a.m., City Hall
- May 23, 2011 – City Council Public Hearing and Meeting, 7:00 p.m., Cochise College
- May 24, 2011 – Community Watershed Alliance, 6:30 p.m., City Hall

Mr. Nichols then stated a schedule of upcoming budget worksessions had been given to the Council with the first worksession to be held on May 5, 2011.

- All Saturdays – San Pedro River Arts Council has chambers open 1:00-4:00 p.m., to view the current photography exhibit
- May 17, 2011 – General Election Day
- May 30, 2011 – HOLIDAY – City Offices Closed

Mayor Fenn asked about the May 23, 2011 City Council Public Hearing with City Clerk Vicki Vivian stating the subject would be a rezoning application made by Whetstone Partners.

NEW BUSINESS:

1. Consent Agenda

- 1a. Minutes of the April 11, 2011 Regular Meeting
- 1b. Invoices processed for the period from April 5, 2011 through April 18, 2011

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

2. Presentation of Certificate of Recognition in Memory of L.E. Brown

Mayor Fenn asked Councilmember McGoffin to address this item. Councilmember McGoffin then stated she had known L.E. and Arlene Brown for approximately 10 years and Mr. Brown was very involved in the community, founding the Benson Community Food Bank and serving as the Executive Director from September, 2005 to September 2010. Councilmember McGoffin then stated Mr. Brown's goal was to see that no one went hungry within this community and he originated such programs as the Diabetics Food Boxes, the Commodities Food Program on the third Wednesday and the 60 Plus Food Boxes for seniors over 60 years of age, as well as the Emergency Food Boxes for families and individuals that had fallen on hard times. Councilmember McGoffin then stated Mr. Brown enjoyed knowing he was doing something good for the community. Councilmember McGoffin then presented a certificate of recognition to Mr. Brown's wife, Arlene Brown and his daughter, Linda Anderson, stating a certificate of recognition will also be placed in the Benson Food Bank. Mrs. Arlene Brown received a standing ovation and stated if her husband were here, he would be very proud and thanked Council for this honor. Mayor Fenn thanked Councilmember McGoffin and then thanked Mrs. Brown for accepting the certificate in honor of Mr. L.E. Brown.

3. Review of City Finances with emphasis on March, 2011, financial results and the City's financial position at March 31, 2011 and discussion of sales tax revenues and projected future net revenues

Finance Director Jim Cox addressed Council stating he would be reviewing what transpired during the month of March, 2011. Mr. Cox then began with citywide financial highlights, stating our unrestricted cash position increased a little by \$180,000 to approximately \$2.4 million, but that balance will begin diminishing a little as we have some large debt payments coming up in the next couple of months. Mr. Cox then stated fund balances overall Citywide increased by \$48,000 during March, but were still down by \$56,000 year-to-date compared with being down \$138,000 in 2010, adding we are very close to where we were a year ago. Mr. Cox then stated trend wise, March, 2011 is similar to 2010, except now the City has a couple of new wildcards in the mix; the golf course and the transit operations, and he will try to explain how they affect the citywide balances as he goes through the figures. Mr. Cox then stated overall, the City's revenues are up \$254,000 year-to-date compared to 2010 and that is on revenues of \$7.6 million year-to-date and then added the City would be down about \$350,000 if we take out the revenues related to transit and the golf course. Mr. Cox then stated personnel costs year-to-date are up \$90,000 and are due primarily to the golf course and some to transit, noting the golf course year-to-date personnel costs are \$148,000 and the transit year-to-date personnel costs are \$51,000. Mr. Cox then stated if we were comparing year to year directly, we'd be down by about \$100,000 on our personnel costs. Mr. Cox then stated our operating costs year-to-date are up \$3,000, so we're really exactly where we were last year. Mr. Cox then stated our capital costs are up this year by about \$450,000 due to the pavement project we ran last fall, the capital expenditures at the golf course in the amount of \$112,000 and \$128,000 in the transit fund, which was the payment for our first new bus.

Mr. Cox then moved to the General fund stating revenues are down \$260,000 year-to-date and as we'll see when we get into the budget, during this next month, the budget for next year is going to look just like this year, we're going to be down again due to what's going on at the State level. Mr. Cox then stated the reason for the downturn is City sales tax, adding our collections were down \$18,000 for the month of March and are now in a negative position compared to last year on a year-to-date basis, which is disturbing. Mr. Cox then stated the State revenue sharing is down \$109,000 and it will be down \$200,000 year-to-date at this time next year. Mr. Cox then added rent is down \$44,000 because of a large refund of rental payments we had received in error and police revenue is down \$56,000, primarily due to reimbursements from Stone Garden. Mr. Cox then addressed expenditures in the General fund stating personnel costs were down \$47,000 year-to-date, adding we didn't cut any employees, but reallocated some employees' time into other funds, like the transit fund and the golf course fund. Mr. Cox then stated other costs are down \$150,000 year-to-date, adding how we've balanced our lower revenues is with lower expenditures. Mr. Cox then stated the fund balance was up \$11,000 for the month of March, but was still down \$250,000 year-to-date, adding our overall fund balance is \$44,000 less as compared to last year.

Mr. Cox then addressed the Enterprise funds, stating the gas fund is down \$13,000 for the month of March and is disturbingly down \$29,000 year-to-date, adding staff will be recommending to Council shortly that a rate study be done on gas as well as all other utilities and everyone can see why. Mr. Cox then stated the water fund is up \$11,000 for March and up \$25,000 year-to-date and noted that includes the \$77,000 worth of capital improvements to the Jennella well. Mr. Cox then stated the wastewater fund looks fairly healthy being up \$5,000 for March and up \$86,000 year-to-date, but noted that was due to a special project with Apache Nitrogen that yielded an extra \$80,000 in revenue, adding hopefully we will do the same thing next year, but we can not count on it. Mayor Fenn asked about the gas fund sales with Mr. Cox stating gas volume was down overall but our operating costs stay the same regardless of whether we're selling gas or not selling gas.

Mr. Cox then moved to the transit fund stating it was down \$10,000 year-to-date, but grants cover all of our costs and reimbursements have a delay of 30-45 days, so this is merely a timing issue. Mr. Cox then stated as of today, all 3 buses have arrived; we have hired and trained 2 new drivers for a total of 3 drivers to operate both our Dial-A-Ride service and the fixed deviated route service. Mr. Cox then stated the fixed deviated route service started April 4, with 100 riders in the first 10 days, but in the past 10 days, we averaged 27 riders a day, noting the number of riders is gradually growing as people in the community get used to the new bus route. Mr. Cox then stated we have received a lot of positive comments about the service with Councilmember McGoffin stating her daughter recently rode the bus and was telling everyone how great it was. Mr. Cox then stated that was good to hear from our young people and stated the City is going to work on a project with the school to teach younger children how to ride the bus and the rules and regulations, adding he is looking forward to that and the transit system has been a very nice addition to the community.

Mr. Cox then addressed the golf course fund stating it is up \$47,000 year-to-date, since we took over November 1 and that includes the capital expenditures of \$125,000 which was primarily to refurbish club house and the restaurant. Mr. Cox then stated the restaurant has been fully open for 2 months and the golf course is operating right at or just below break even, however, there will be real challenges ahead of us as we move into the slow summer months. Mr. Cox then stated they are looking at different marketing activities to try to attract more people into the city during the summer months.

Mr. Cox then addressed sales tax saying in looking at retail sales tax, it appears the State may have bottomed out and is in a very modest recovery mode, while the City seems to be going the other direction, although not by a lot, he doesn't like the trend he is seeing. Mr. Cox then stated the City sales tax collections show no year over year growth for 5 months in a row now, with the regular transaction privilege tax collections down \$18,000 for the month of March which is the largest decrease he has seen since he's has been with the City. Mr. Cox then stated he is pleased with the transit system which is well organized and operating exactly as we expected and the golf course is also doing as expected, but as he mentioned earlier, there will be upcoming challenges that will require a lot of innovation and hard work. Mr. Cox then stated overall, the City is performing exactly as we performed last year and as we probably will perform during the next year. Mr. Cox then reviewed the sales tax analysis beginning with total City tax

collections, which include construction sales tax, transaction privilege tax and bed tax, stating unfortunately, this year is not very encouraging. Mr. Cox then stated construction sales tax is our most non-performing tax at this point in time, with the level of construction very low and bed tax now show several months in a row of lower collections than we've had in any of the prior 3 years. Mr. Cox then reviewed transaction privilege tax collections by themselves, stating they don't show a very pretty picture, and are down, not terribly, but the line is below the last 3 years and that in and of itself is disturbing, adding we haven't seen this until just the past 5 months. Conversely, Mr. Cox said, the State had 28 months in a row of year over year decreases in sales tax collections, but over the past 5 months, collections have been slightly better than they were the prior year which indicates that we're seeing some movement in the State, but not in the City. Mr. Cox then stated on the bright side, sales tax collections this month appear to have rebounded a little and asked if there were any questions he could answer. Mayor Fenn thanked Mr. Cox for his presentation.

EXECUTIVE SESSION: As per A.R.S. §38-431.03(A)(1), for discussion or consideration of employment, assignment, appointment, promotion, demotion, dismissal, salaries, disciplining or resignation of a public officer, appointee or employee of any public body, specifically, the City Attorney

Councilmember McGoffin moved to enter into an executive session with the City Council, City Manager, City Attorney and the City Clerk at 7:40 p.m. Seconded by Councilmember Lambert. Vice Mayor Lodzinski asked if it would be appropriate to have the Council elect attend the executive session. City Attorney Mike Masee stated the open meeting law limited executive session participants to current Councilmembers and other people who are deemed necessary. Motion then passed 7-0.

Council reconvened at 8:18 p.m.

4. Review, discussion and possible action regarding approval and renewal of Municipal Legal Services Contract for the City Attorney, Michael Masee

Councilmember Sacco stated he thought in all fairness to the new Council, they should not take any action on the contract and then moved to table this item until the new Councilmembers are seated in June. Mayor Fenn asked if there was a second. Motion then died for lack of a second. Councilmember Lambert then moved to approve the contract as presented. Seconded by Councilmember Boncquet. Councilmember Lambert then noted a clause in the contract that says with a 60 day notice, either the Council or the attorney could terminate the contract. Mayor Fenn then noted the fee schedule or compensation is the same as the contract was in the previous year. Councilmember McGoffin then noted Mr. Masee removed his retainer fee and will only bill the City on an hourly basis, so if we don't reach the previous retainer fee, he will only bill for the time he spends on City issues. Motion passed 6-1 with Councilmember Sacco voting nay.

DEPARTMENT REPORTS: None

ADJOURNMENT:

Councilmember McGoffin moved to adjourn at 8:30 p.m. Seconded by Vice Mayor Lodzinski. Motion passed 7-0.

Mark M. Fenn, Mayor

ATTEST:

Vicki L. Vivian, CMC, City Clerk