

CERTIFICATION

I hereby certify that the foregoing minutes are a true and correct copy of the minutes of the Regular Meeting of the City Council of the City of Benson held on the 11th day of April, 2011. I further certify that the meeting was duly called and held and that a quorum was present.

Date 4-12-11

City Clerk Vicki Vivian

**THE REGULAR MEETING
OF THE MAYOR AND CITY COUNCIL OF BENSON, ARIZONA
HELD MARCH 28, 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 Pastor Lupe Diaz of the Grace Chapel who gave the invocation.

ROLL CALL:

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

EMPLOYEE RECOGNITION: None.

PROCLAMATION:

Mayor Fenn read a proclamation declaring April 29th, 30th and May 1st, 2011 as "Benson Bluegrass in the Park Weekend." Mayor Fenn then presented the proclamation to the Benson/San Pedro Valley Chamber through Mr. Leo O'Farrell.

Mayor Fenn read a proclamation declaring April 1st and 2nd, 2011 as days set aside for the distribution of Forget-Me-Nots from the Disabled American Veterans. Mayor Fenn then presented the proclamation to Mr. Robert Miller of the DAV and thanked the veterans for their attendance and service.

PUBLIC HEARING: None.

CALL TO THE PUBLIC:

Paul Lotsof addressed the Council concerning the 2011 City elections. Mr. Lotsof's comments are incorporated into the minutes.

City Attorney Mike Masee then asked the Mayor if he could respond to the criticism made by Mr. Lotsof. Mr. Masee then stated for the record, Mr. Lotsof did not accurately put forth the entire provision of City Code Section 2-3-3 in his statement, adding Ms. Vivian is giving effect to the entire ordinance, which explicitly says that unless a candidate's name is on the Primary ballot, his name will not be on the General ballot, adding a write-in candidate's name is obviously not on the Primary ballot. Mr. Masee then stated he absolutely takes offense at any insinuation that anyone on the Council or anyone else had influenced this legal opinion, adding no one had contacted him or Ms. Vivian. Mr. Masee then stated there was no effort to play favorites; the determination was based on the express wording of the ordinance without partiality to either candidate. Mr. Masee then thanked the Mayor and Council for the opportunity to respond.

CITY MANAGER REPORT:

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

April 5, 2011	– Planning & Zoning Meeting, 7:00 p.m., City Hall
April 11, 2011	– City Council Meeting, 7:00 p.m., City Hall
April 12, 2011	– Library Advisory Board, 4:00 p.m., Library
April 16, 2011	– Historic Preservation Commission, 9:00 a.m., City Hall
April 25, 2011	– City Council Meeting, 7:00 p.m., City Hall
April 26, 2011	– Community Watershed Alliance, 6:30 p.m., City Hall

- April 2, 2011 – San Pedro Valley Little League Opening Ceremonies – The parade will begin at 9:00 a.m. at the Benson Primary School parking lot and end at Lions Park where games will be played all day. This season is dedicated to First Responders.
- April 2, 2011 – Southeastern Arizona Teen Art Competition, 1:00 p.m. – 4:00 p.m., Council Chambers
- April 3, 2011 – Southeastern Arizona Teen Art Competition Awards Ceremony, 3:00 p.m. – 5:00 p.m., Council Chambers
- April 29, 30 & May 1, 2011 – Bluegrass in the Park, Lions Park
- April 9, 2011 – Official Flag Raising at All the Kings Horses Childrens' Ranch, 9:00 a.m.

NEW BUSINESS:

1. Consent Agenda

- 1a. Minutes of the March 14, 2011 Worksession
- 1b. Minutes of the March 14, 2011 Regular Meeting
- 1c. Reappointment of Irma Bernal to the Historic Preservation Commission
- 1d. Resolution 27-2011 of the Mayor and Council of the City of Benson, Arizona, authorizing the Chief of Police to apply for an Arizona Department of Homeland Security Grant to fund Equipment Purchases and Overtime
- 1e. Invoices processed for the period from March 8, 2011 through March 21, 2011

Councilmember Sacco moved to approve the Consent Agenda. Seconded by Vice Mayor Lodzinski. Motion passed 6-0.

2. Resolution 28-2011 of the Mayor and Council of the City of Benson, Arizona, canvassing, declaring and adopting the Results of the Primary Election held on March 8, 2011

City Clerk Vicki Vivian addressed Council stating the proposed resolution complied with State law that requires the City declare an official canvass of the vote between 6 and 20 days after an election is held. Councilmember Lambert moved to approve Resolution 28-2011. Seconded by Councilmember Bonquet. Motion passed 6-0.

3. Information on the Economic Development Subcommittee's creation of an Economic Development Liaison

Vice Mayor and EDSC Chairman John Lodzinski addressed Council stating the EDSC had discussed the need to have a central contact point for people showing an interest in putting a development project in Benson, adding too many contacts could be just as damaging as no contact at all. Chairman Lodzinski then stated the EDSC created a role summary for an Economic Development Liaison, soon to be appointed by EDSC, who would not be a City employee, but would be the contact person leads could be referred to ensuring there would be on-going communication with anyone interested in developing in Benson. Chairman Lodzinski then stated some of the duties would be to make sure people are getting the information they want and to coordinate meetings between parties, adding some people come in with their own agent that does this for them, but the EDSC wanted to make sure no one slipped by because we weren't responsive. Mayor Fenn then clarified this person could or could not come from within the ranks of the City and could be any citizen at large with Chairman Lodzinski confirming and adding the EDSC is looking at Mr. Geoff Oldfather, who is an EDSC member and works at Arizona Generation & Transmission, adding Mr. Oldfather is assigned several jobs, one of which is to assist with community development and he may have an associate the EDSC could use as an alternate, as well as someone from Sulphur Springs Valley Electric Cooperative that also has the same duty toward community development. Mayor Fenn then stated this item was for informational purposes only and thanked Chairman Lodzinski and the EDSC for their work and for bringing this item forward.

4. **Update on the City Staff's approach to Medical Marijuana Dispensaries**

Mayor Fenn stated the Council had discussed this issue at a worksession with the Planning & Zoning Commission and Building Official Luis Garcia, who was going to present this item, was unable to attend this meeting. Mayor Fenn then moved to table the item. Seconded by Councilmember Lambert. Motion passed 6-0.

5. **Review of City Finances with emphasis on February, 2011, financial results and the City's financial position at February 28, 2011 and discussion of sales tax revenues and projected future net revenues**

Finance Director Jim Cox addressed Council stating the sales tax collections being reviewed are from December, 2010 sales with the results of all other operations being up-to-date through February 28. Mr. Cox then addressed citywide financial highlights, stating unrestricted cash balances are remaining constant from \$2.3 million to \$2.4 million and are expected to stay that way through the next 3 months. Mr. Cox then stated the City's fund balances increased by \$50,000 during the month of February, but were still down a total of \$184,000 year-to-date, adding it was very similar to this time in the previous year. Mr. Cox then stated trend wise the City is very similar to 2010, except for the addition of the golf course the City didn't have last year. Mr. Cox then addressed citywide financial results, stating revenues are up \$10,000 year-to-date and personnel costs are up \$71,000 year-to-date, adding this is primarily due to the golf course which has incurred \$112,000 worth of personnel costs. Mr. Cox then stated the transit fund is up \$44,000 year-to-date, adding it and the golf course fund are both new funds this year. Mr. Cox then stated operating costs are down \$11,000 year-to-date, adding again, the City is very similar to last year, and noting the capital costs have increased, primarily due to the \$168,000 pavement project and the \$108,000 golf course improvements, which were to re-stabilize the building, refurbish the facilities and get the course ready to open.

Mr. Cox then moved to the General Fund stating revenues are down \$197,000 year-to-date, and although the City sales tax took a little tumble in the month of February, it was still up \$42,000 year-to-date. Mr. Cox then stated State Shared Revenues, as expected, were down \$101,000 year-to-date, rental income was down \$44,000 year-to-date due to a large refund given for rent collected in error and building permits were very low compared to last year. Mr. Cox then stated expenditures decreased, with personnel costs down \$36,000 year-to-date and other costs down \$157,000 year-to-date which just about balance out the \$197,000 decrease in revenues. Mr. Cox then stated the fund balance was up \$38,000 for the month of February, but still down \$260,000 year-to-date, adding it is right in line with where the City was last year.

Mr. Cox then addressed the Enterprise Funds, stating the presentation included a mistake that the gas fund was down \$27,000 for the month of February, but was really up \$27,000 for that month, adding it was still down \$16,000 year-to-date. Mr. Cox then stated the month of March reflects gas usage in February, which should put the gas fund in positive territory and will be slightly ahead of last year at the same time. Mr. Cox then stated the water fund was down \$1,000 in February, but was overall up \$13,000 year-to-date and was very encouraging since there were \$77,000 worth of capital improvements included in those totals. Mr. Cox then stated the wastewater fund is up \$10,000 for the month of February and was up \$81,000 year-to-date, which was also very encouraging, but noted the need to recognize \$79,000 of the \$81,000 came from a special wastewater project with Apache Nitrogen, earning income without a lot of extra expenses.

Mr. Cox then stated the transit fund was down \$9,000 year-to-date, but added the grants we receive cover all the costs related to the transit fund including all capital costs and the reason there is a negative number right now is due to the delay between expenses and reimbursements. Mr. Cox then stated the first transit bus has been delivered and during the next month or so, 2 more will be delivered, adding one bus will be dedicated to our fixed deviated route transit and the other will be dedicated to Dial-A-Ride services, giving the City a full stable of buses to continue those services. Mr. Cox then stated the new fixed route starts on April 4, with 2 new drivers hired, trained and ready to go.

Mr. Cox then stated in the golf course fund, revenues have exceeded expenditures by \$38,000 year-to-date, which includes the recent capital expenditures of \$125,000. Mr. Cox then reminded Council and those present, the City is receiving monthly donations from Arizona Golf Systems which is keeping us ahead of

the game. Mr. Cox then stated operationally speaking, the golf course is completely open with the restaurant fully opened for business and doing quite well. Mr. Cox then stated the golf course is operating above break even right now, but noted the upcoming challenges of some organizational and management adjustments, and the biggest challenge to minimize summer losses, adding there aren't any snowbirds to depend on in the summer and it's a quite a challenge to minimize operating losses during the summer months, but they are working on it.

Mr. Cox then addressed the sales tax analysis, saying the State appears to have bottomed out and for the past 3 months, is showing signs of a very modest recovery, but at the other end of the spectrum, the City collections show no year over year growth for the past several months. Mr. Cox then stated the City is down only a small amount, but by comparison, the City had 22 months prior to this where each month, on a year over year basis, the City did slightly better and now is doing slightly lower. Mr. Cox then stated the transit system is organized and is operating exactly as expected, adding it was very important to note the transit system is being funded by grant money and no money is coming out of the general fund to pay for transit activities. Mr. Cox then stated the golf course is also performing as expected; adding as he mentioned earlier, there will be significant on-going challenges, but it is operating as expected and again noted, the golf course operates on its own cash basis with no draw at all against the general fund and it won't ever draw against the general fund. Mr. Cox then stated overall, the City is performing at just about the same level as last year.

Mr. Cox then stated the City sales tax collections have decreased, citing the primary reason they are so low is the construction sales tax collections have been almost non-existent. Mr. Cox then stated general fund sales tax collections which do not include construction sales tax, show that we're much closer to where we were in the past several years, but are still down approximately \$16,000 this past month from where we were a year ago. Mr. Cox then stated our trend has been slightly down for 3, almost 4 months now, but not down significantly, and bed tax collections were down over 40% from last year with no easy explanation why. Mr. Cox then stated City transaction privilege tax collections only, look much like the overall general fund, and show clearly that while the City is running not too much different from prior years, it is definitely below the prior years for the past 4 months. Mr. Cox then said the State appears to have bottomed out and the sales tax numbers are moving up a little bit. Mr. Cox then stated if you looked at the State sales tax collection chart vs. the City sales tax collection chart, you could see the City is down a little bit and the State is up a little bit and have been for the third month in a row, adding it is encouraging on the State side but a little discouraging on the City side. Mr. Cox then stated he is not ready to say there's something terrible going on, but it is a disturbing trend and he would rather see the City ahead of last year. Mr. Cox then asked if there were any questions.

Vice Mayor Lodzinski asked if the City had gotten any official census figures and how it will affect our future collections in shared revenues from the State with Mr. Cox stating the new census figure put the City at a population of approximately 5,107, which is only slightly above where we were in the last census. Mr. Cox then stated it means our relative share of State shared revenues that are tied into our population are probably going to decrease very slightly because, while our population has increased, it has not increased as much as the rest of Arizona has increased. Mr. Cox then stated that is not as disturbing as the outright cuts the City is receiving and is projected to receive from the State as a result of the current budget crisis at the State level, adding the numbers are still being decided on but they looked bad initially and were getting worse as the legislature gets closer and closer to actually passing their budget. Mayor Fenn thanked Mr. Cox for the information.

EXECUTIVE SESSION: Pursuant to A.R.S. §38-431.03 (A)(3) & (4), for discussion or consultation for legal advice with the attorney or attorneys of the public body regarding the City's position and to instruct its attorney(s) regarding pending litigation, Stagecoach Trails Mobile Home Court (MHC) vs. the City of Benson, Arizona, et. al.

Councilmember Lambert moved to enter into an executive session with the City Council, City Manager, City Attorney and outside counsel, Litigation Attorney Jeff Murray by phone and the City Clerk at 7:32 p.m. Seconded by Councilmember Boncquet. Motion passed 6-0.

Council reconvened at 8:05 p.m.

6. **Discussion and possible action to direct staff in regards to Stagecoach Trails Mobile Home Court**

Mayor Fenn stated last week the City was ruled against in the litigation of the judgment filed for attorney fees in this case and it was up to the Council to decide how to address that. Councilmember Lambert moved to ratify the notice to appeal that was dated March 25, 2011 and all subsequent rulings prior to that. City Attorney Mike Masee then addressed Council stating he wanted to inform the Council and members of the public, that a judgment had been entered against the City on March 24 and on March 25 he filed a notice of appeal. Mr. Masee then stated the issue before Council is to ratify or not ratify that notice of appeal. Mayor Fenn then stated he wanted those present to have the information that the Council had moved to appeal the case before, but had withdrawn that notice of appeal pending the final judgment, and were now basically revisiting the item of whether the Council wanted to continue with that appeal action now that the final judgment had been awarded. Motion was then seconded by Councilmember Bonquet. Motion passed 5-1 with Councilmember Sacco voting nay.

DEPARTMENT REPORTS: None

ADJOURNMENT:

Councilmember Lambert moved to adjourn at 8:08 p.m. Seconded by Vice Mayor Lodzinski. Motion passed 6-0.



Mark M. Fenn, Mayor

ATTEST:



Vicki L. Vivian, CMC, City Clerk

CALL TO PUBLIC FOR MARCH 28, 2011

I'm Paul Lotsof and I manage CAVE-FM which is located at 156 W. Fifth Street. I'd like to offer a few comments pertaining to the forthcoming General Election and the ballot pertaining to that election.

This election appears unique in that it is being handled in a way that is unprecedented. No relevant laws or ordinances have changed in the last 28 years but we seem to have some new interpretations from our City Clerk and City Attorney and one can only wonder what has prompted these changes.

There are two controversial matters: The first is Ms Vivian's assertion that a candidate who ran in the primary as a write-in has no claim to having his name on the ballot of the General Election even though your ordinance seems to indicate otherwise. The second is the notion that new write-ins are acceptable in the General. Benson went from partisan to non-partisan elections in about 1983. I'm quite confident that since then there has never been a candidate who ran in the general election who hadn't run in the primary.

Benson's ordinances that pertain to the handling of primary and general elections are written in a confusing way with run-on sentences that aren't easy reading so I can understand how they might be misunderstood. A little research shows that Benson's ordinances are shared with about two dozen other cities and towns in Arizona, and they are almost identical to model ordinances recommended by the Arizona League of Cities and Towns. So any problem that Benson's ordinance might present would be shared with all the other municipalities that have the identical wording. Thus when Ms Vivian suggests that Benson's ordinance conflicts with state law (which is what she is suggesting), that same problem would affect all the other cities and towns.

Specifically, let's take a brief look at Ordinance 2-3-3-C which reads in part, "Candidates to be placed on the ballot at the general municipal election shall be those not elected at the primary election and shall be equal in number to twice the number to be elected to any given office". Since there is one seat that wasn't filled in the primary election, that means that the names of two candidates need to be placed on the ballot. The two highest vote getters in the primary who were not elected in the primary were Patty Lambert and Ron Brooks. Therefore, according to the ordinance, Lambert and Brooks get placed on the ballot of the general. Placed on the ballot means named on the ballot. The ordinance continues that "Persons who receive the highest number of votes for the respective offices at such first election shall be the only candidates at such second election." That would preclude new write-ins who failed to participate in the primary. But Ms Vivian thinks that clause conflicts with a state statute 16-312 which was enacted in 1973. Maybe she's right but one can only wonder why the League's attorney who wrote the ordinance never noticed the conflict and why nobody associated with all the other cities and towns ever called the matter to the League's attention and why the recommended wording has never been substantially changed in all these years.

Ms Vivian also has come up with a novel new interpretation of the purpose of the primary election. She says that the primary can lead to a candidate not being successfully nominated and

that is apparently what she thinks happened to Mr. Brooks. He wasn't successfully nominated which is why he must now again run as a write-in.

In actuality, way back in 1966 a State Appeals Court established in no uncertain terms that if a write-in candidate "received sufficient number of votes his name will then be placed on general election ballot".

The obvious purpose of Ms Vivian's decisions relative to the General Election is to use creative new legal interpretations to rig the election for the benefit of Mrs. Lambert.

Creative new interpretation of laws and codes have become a hallmark of Benson's present regime and that is the main reason why later this evening you will be discussing what to do about a \$225,000 judgement.

Improper handing of elections is a very serious matter and can lead to some severe consequences including giving Benson the very bad image of being a town full of corruption.

My suggestion is that you immediately get a second legal opinion from a well respected attorney who has no personal interest in Benson politics. Time is running short as important deadlines are fast approaching. Elections are at the very essence of American democracy and this matter must be handled both legally and according to the highest standards of ethics. I trust that you'll do the right thing right away. Thank you.