

**THE REGULAR MEETING
OF THE MAYOR AND CITY COUNCIL OF BENSON, ARIZONA
HELD APRIL 13, 2009 AT 7:00 P.M.
AT CITY HALL, 120 W. 6TH STREET, BENSON, ARIZONA**

**MAYOR FENN
OPENED THE MEETING AT 7:04 P.M WITH
THE PLEDGE OF ALLEGIANCE.**

**PRESENT WERE: MAYOR FENN,
COUNCILMEMBERS BONCQUET, LAMBERT, LODZINSKI, McGOFFIN and SACCO
ABSENT WAS: VICE MAYOR KING**

INVOCATION:

Mayor Fenn introduced Pastor Lupe Diaz of Grace Chapel who gave the invocation.

PROCLAMATION:

Mayor Fenn read a proclamation declaring the week of April 12-18, 2009 as "National Library Week". Mayor Fenn then presented the proclamation to Janet Hearn of the Benson Library Advisory Board.

PROCLAMATION:

Mayor Fenn read a proclamation urging the citizens of Benson and the surrounding areas to support the Disabled American Veterans, Chapter 26 through the purchase of a Forget-Me-Not on the days of April 17 and April 18, 2009. Mayor Fenn then presented the proclamation to Mr. Robert Miller of the Disabled American Veterans.

**EMPLOYEE
RECOGNITION:**

None.

CALL TO THE PUBLIC:

Paul Lotsof addressed Council stating he was concerned about Ordinance 534 and why the ordinance declared an emergency. Mr. Lotsof stated Council should give the public plenty of advance notice and the emergency declaration does not do that. Mr. Lotsof then asked Council to explain the nature of the emergency when the item was addressed.

Richard Leland addressed Council stating he has heard the City has run very smoothly with Mr. Nichols at the helm and that he would like to see that continue with Council's vote to appoint Mr. Nichols as a permanent City Manager.

John Whiteside addressed Council regarding several agenda items. Mr. Whiteside's comments are incorporated in the minutes.

CONSENT AGENDA:

- 1a. Approval of Minutes of the March 23, 2009 Regular Meeting
- 1b. Processed Invoices for March 17, 2009 through April 6, 2009

Councilmember McGoffin moved to approve the Consent Agenda. Seconded by Councilmember Lambert. Motion passed 6-0.

NEW BUSINESS:

1. **Report on Arizona Rangers' Days held February 14 and 15, 2009 and request of support and sponsorship of the Benson Company of the Arizona Rangers' Arizona Ranger Days, February 13 and 14, 2010, to include requesting the use of the City logo and possible financial assistance**

Mr. Brad Cherry of the Benson Company of the Arizona Rangers addressed Council giving a report of the Territorial Ranger Days held in 2008. Mr. Cherry stated the event was attended by a crowd of 400-500 people on Saturday and there were more than 60 shooters from all across the United States participating in the Mounted Shoot event. Mr. Cherry stated the hope is to expand the event every year with the possibility of hosting a parade and expanded park celebration the entire community can enjoy. Mr. Cherry thanked the City for their donation and stated it was hoped that City can continue to support their goal of making the event bigger each year as we march toward the anniversary of statehood and the centennial celebration they would like to hold in 2012. Mayor Fenn thanked Mr. Cherry for his presentation and their service to the community and then stated Council would take their request under advisement as they address the budget process for the upcoming fiscal year.

2. **Request of financial support and sponsorship of the efforts to attract solar energy and alternative energy projects to Benson by the Southeast Arizona Economic Development Group; specifically of the March 26, 2009 workshops and the April 22, 2009 Solar 101 Program, both to be held at the Benson branch of Cochise College**

Mayor Fenn stated he served on the Board of the Southeast Arizona Economic Development Group and that he would not be participating in this item. Mayor Fenn then stated George Scott, Director of the Southeast Arizona Economic Development Group would be addressing Council. Mr. Scott stated the Southeast Arizona Economic Development Group was a non-profit organization, which worked with Benson and Cochise County to bring new businesses and new opportunities to the people of Cochise County. Mr. Scott stated on March 26, the Southeast Arizona Economic Development Group hosted two workshops at Cochise College in Benson to inform people about the opportunities for residential and commercial use of solar energy. Mr. Scott then stated on April 22, another workshop, in conjunction with Congresswoman Gabrielle Giffords would be held on solar energy. Mr. Scott stated these workshops are free and for the public to gain information on solar energy. Mr. Scott stated the Southeast Arizona Economic Development Group was seeking sponsorship of these events from the City in the amount of \$500.00 to offset the costs of workshops. Finance Director Jim Cox addressed Council stating in the Community Enrichment budget, there was a balance of \$2,652.00 available. Councilmember McGoffin asked about the attendance of the March 26 workshops with Mr. Scott stating the morning workshop for residents had approximately 20 residents; and approximately 40 people at the afternoon workshop, which was for people to learn about the commercial business opportunities and requirements. Mr. Scott then stated the upcoming April 22 workshop was free and that they expected more people, asking those interested to reserve a space at the workshop by April 19, since space is limited. Councilmember McGoffin moved to sponsor the Southeast Arizona Economic Development Group workshops held on March 26, 2009 and on April 22, 2009 with a financial contribution in the amount of \$500.00 for the purpose of stimulating economic development in the City. Seconded by Councilmember Sacco. Motion passed 5-0 with Mayor Fenn abstaining.

3. **Discussion regarding the Butterfield Plaza; to include presentation on status of repairs by engineer, Michael McMillan of Brown & Associates**

Michael McMillan, Brown & Associates addressed Council giving a report on the status of repairs at Butterfield Plaza. Mr. McMillan stated repair of the sewer, water and gas lines and inspection and testing of these items is complete and approved, excluding 577 W. 4th Street; as built documents from the plumbing contractor have been submitted and returned for correction and modification; backfilling of the exterior foundation and compaction and testing by special inspection is complete; closure and final material placement (asphalt) is also complete; interior repairs are in progress within each suite of retails A, B & C area; the masonry block interior shear walls have been installed and approved; tie-in of the roof diaphragm to the masonry shear walls is complete with some clarifications from the structural engineer still outstanding; the roof is also been dried in in those areas where it had to be torn off; Ace Hardware has all repairs complete; special inspections for the structural repairs are on-going; the building has been deemed safe by the structural engineer of record; shoring and bracing has been removed as approved by the structural engineer of record. Councilmember Sacco verified Kaiser Engineering considered the building safe with Mr. McMillan stating that was correct. Councilmember Lodzinski asked about the Beijing Restaurant with Mr. McMillan stating they were in the process of testing plumbing and gas lines and were in the process of cleaning up the restaurant as well as bringing the kitchen up to code and should be reopen within a couple of weeks. Councilmember Lambert asked which retail center was located in 577 W. 4th Street with Mr. McMillan stating that suite was previously the occupied by the Dollar Store. Mr. McMillan stated no repairs or lifting was done at the back wall of that suite, but testing was completed on all the plumbing as required by the soils engineer throughout the entire building. Councilmember Sacco asked about the estimated completion date with Mr. McMillan stating the structural repairs should be completed by the end of the week, but that there was still some interior slab repairs to complete for the suites that are occupied, stating when the back wall was lifted, the slabs did not lift with it and therefore, needs to be repaired. Councilmember Lambert then asked why the repairs have taken almost a year, when it was originally estimated to take 20 days. Mr. McMillan stated a lot of it had to do with the pace of the contractor and that there were communication difficulties between the contractor and the structural engineer. Mr. McMillan stated when working on an old building, it's a search and discovery and as problems and issues are located, they have to be addressed, which can delay a project. Mr. McMillan then stated the contractor sets the pace of the project, stating one estimate to work on Ace Hardware was proposed to take 20 days, with a newer contracting completing the project in 8 days. Mr. McMillan then stated the building would continue to be monitored on a regular basis.

4. **Resolution 26-2009 of the Mayor and Council of the City of Benson, Arizona, declaring as public records: the International Building Code, 2006 ed., as amended; the International Residential Code, 2006 ed., as amended; the International Mechanical Code, 2006 ed., as amended; the National Electrical Code, 2005 ed., as amended; the International Plumbing Code, 2006 ed., as amended; the International Fuel Gas Code, 2006 ed., as amended; the International Fire Code, 2006 ed., as amended; the International Energy Conservation Code, 2006 ed., as amended; the International Existing Building Code, 2006 ed., as amended; the International Code Council Electrical Code – Administrative Provisions, 2006 ed., as amended; and the Uniform Code for the Abatement of Dangerous Buildings, 1997 ed., as amended**

Fire Chief Keith Spangler and Michael McMillan addressed Council stating the resolution adopts the building and fire codes discussed during Council worksessions with the exceptions of two changes; one for the sprinkler exception provision adding Class I occupancy (Institutional), the second change done on the advice of the City Attorney adding the 1997 Abatement of Dangerous Buildings Code. Councilmember Sacco moved to approve Resolution 26-2009. Seconded by Councilmember McGoffin. Motion passed 6-0.

5. **Ordinance 532 of the Mayor and Council of the City of Benson, Arizona, amending the Benson City Code, Chapter 7, "Building," by adopting all of the above-referenced uniform building codes**

Councilmember Sacco moved to approve Ordinance 532. Seconded by Councilmember McGoffin. Motion passed 6-0.

6. Presentation and possible action regarding proposed new City of Benson official logo

Finance Director Jim Cox addressed Council stating the City logo has been a topic of discussion for several years, since the City's current logo is difficult to reproduce and is quite expensive due to the intricate design and multiple colors. Mr. Cox stated the City licenses the current logo, and therefore would have to pay a licensing fee if the logo were to be used on items for resale. Mr. Cox then stated after a file was located containing some proposed logos and gathering comments from City staff, he came up with three logos for Council to consider. Mr. Cox then stated it would be beneficial to the City to own our own logo and that at the current time, there would be no incremental costs to implement the new logo. Mayor Fenn then confirmed that eventually everything, including vehicles, letterhead, etc. would have the new logo. Discussion was then had regarding the three logos presented to Council and the addition of the year the City was established; stating it would be reasonable to use the date on the State signs recognizing Benson in 1880. Council then directed Mr. Cox to research the issue of the date to use and the addition of the date on the logo before bringing the item back to Council on April 27, 2009.

7. Presentation and discussion on the Capital Improvement Plan FY 2009-2013

Finance Director Jim Cox addressed Council giving a brief power point presentation on the Capital Improvement Plan (CIP). Mr. Cox stated due to budget constraints, the City would not be holding a CIP Open House, would be moving CIP projects back with minimal additions to CIP projects. Mr. Cox stated a CIP project results in the acquisition of an asset that costs more than \$10,000.00 and has a useful life of more than 3 years. Mr. Cox then summarized how CIP projects are funded stating it was important to match funding sources with the expenditures of CIP projects, stating good funding sources would be the 4% construction sales tax, impact fees, grants and long-term debt. Mr. Cox then gave Council an update on CIP projects that have been completely or partially completed in the current fiscal year. Mr. Cox then stated there were four new projects added to the CIP that included the purchase of 2 trucks for the Fire Department, the state required permitting renewal process for the wastewater treatment plant, which must be done every 5 years and the SKP Well Arsenic removal project. Mr. Cox stated the arsenic removal project would cost approximately \$250,000.00 and would only be looked at if grants were available. Mr. Cox then stated other projects would be put on hold unless the funds were available and the City felt more secure in its financial condition.

8. Discussion and possible action on an audit proposal for the fiscal years ended June 30, 2009, 2010 and 2011 from Colby and Powell, PLC, the City's current audit firm

Finance Director Jim Cox addressed Council stating by agreeing to the 3 year audit proposal with Colby & Powell, PLC, the City would save money by locking in a price for the audits that required to be performed annually. Mr. Cox stated informal estimates from other auditing firms are approximately \$25,000 to \$35,000 annually, with Colby & Powell's proposal being \$16,800 annually. Mr. Cox then recommended Council act favorably on the proposal. Councilmember McGoffin verified with Mr. Cox that the proposal did not require advertising for proposals under the City's procurement code, with Mr. Cox stating the proposal fell under the procurement requirements. Councilmember Lambert then moved to approve the audit proposal for the fiscal years ended June 30, 2009, 2010 and 2011 from Colby and Powell, PLC. Seconded by Councilmember Sacco. Motion passed 6-0.

9. Resolution 27-2009 of the Mayor and the City Council of Benson, Arizona, declaring as a public record that certain document entitled "Benson Plant List"

Interim City Manager Glenn Nichols addressed Council stating the Planning & Zoning Commission discussed the development of a list of plants, shrubs, trees, vines, cacti, etc. that are recommended for use in new commercial buildings and subdivision common areas to encourage desert flora landscaping in Benson to conserve water. Mr. Nichols then stated at the November 10, 2008 Council meeting, staff sought direction from Council, which was to obtain pictures to assist with the public's perception of the plants on the proposed list and to bring back the item for Council action. Mr. Nichols stated that City Clerk Vicki Vivian contacted the Arizona Department of Water Resources to obtain pictures and it was suggested that Benson have a specific plant list created to address Benson's climate through the University of Arizona South Cooperative Extension Water Wise Program, which was completed at no charge. Mr. Nichols stated the Benson Plant list was now before Council for action. Mayor Fenn then verified the Benson Plant List would be a recommended list giving guidelines to follow. Councilmember Boncquet moved to approve Resolution 27-2009. Seconded by Councilmember McGoffin. Motion passed 6-0.

10. **Ordinance 533 of the Mayor and City Council of the City of Benson, Arizona, amending the Benson City Code, Chapter 14, "Subdivision Regulations," by adopting a list of recommended plants for use in the City of Benson**

Councilmember Sacco moved to approve Ordinance 533. Seconded by Councilmember Lambert. Motion passed 6-0.

11. **Resolution 28-2009 of the Mayor and City Council of the City of Benson, Arizona, declaring as a Public Record that Certain Document entitled "Amendment to Chapter 16, Article 16-4, Section 16-4-15(B)" dated April 13, 2009**

Public Works Director Brad Hamilton addressed stating on April 23, 2007 Mayor and Council were presented three maps for a possible in-fill area, which has lower impact fees to encourage development. Mr. Hamilton stated at that time Council selected Map #3 and that staff prepared a map, legal description, resolution and ordinance that encompass the basic area that map, with slight changes to allow the legal description to be in ¼- ¼- ¼ section format. Mr. Hamilton stated this allowed staff to prepare the map and legal description without the need of retaining a land surveyor to prepare the map using bearings and distances. Mayor Fenn confirmed this in-fill area had substantially lower impact fees of \$500.00; that the in-fill area had been in place, but we now had a map that matched the legal presentation. Mayor Fenn then asked about the potential problem of some lots being in and out of the in-fill area, with Mr. Hamilton stating they are working with the GIS system to be able to determine in feet the lots that are in and out, with the location of the majority of the lot making the determination. Mr. Hamilton then stated they would address each issue as it came up but did not see it being a problem. Councilmember McGoffin moved to approve Resolution 28-2009. Seconded by Councilmember Boncquet. Motion passed 6-0.

12. **Ordinance 534 of the Mayor and City Council of the City of Benson, Arizona, amending the Benson City Code, Chapter 16, "Fee Schedule," Article 16-4, "Development Impact Fees (Existing)," Section 16-4-15(B) "In-Fill Incentive Development Fee," repealing all Resolutions, Ordinances, and Rules of the City of Benson in conflict therewith; establishing penalties; and declaring an emergency**

Mayor Fenn stated the emergency declaration in the ordinance was to allow the previously approved in-fill map to be put into place immediately. Councilmember Boncquet moved to approve Ordinance 534. Seconded by Councilmember Lambert. Motion passed 6-0.

EXECUTIVE SESSION: As per A.R.S. §38-431.03 (A)(1), (3) & (4), Discussion or consideration of employment, assignment, appointment, promotion, salaries, or resignation of a public officer, appointee or employee of the City. The Council will discuss and consider the appointment and employment

contract of the Interim City Manager and the City Manager, and may receive legal advice and give instructions to the City Attorney

Councilmember McGoffin moved to enter in Executive Session with the City Council, Interim City Manager, City Attorney, and City Clerk at 8:16 p.m. Seconded by Councilmember Lambert. Motion passed 6-0.

Council reconvened at 8:33 p.m.

13. Discussion and possible action regarding the City Manager vacancy, possible appointment of a City Manager and approval of an employment contract with Glenn Nichols

Mayor Fenn opened the item for discussion. Councilmember Lodzinski stated in Cities and businesses that it was common practice to alternate outside recruitment and promoting from within for City Managers, Police Chiefs and Fire Chiefs. Councilmember Lodzinski then stated the City's 2 previous City Managers were from outside and that it was reasonable at this time to promote from within. Councilmember Lodzinski then moved to appoint Glenn Nichols as the City Manager under the proposed contract. Seconded by Councilmember Sacco. Mayor Fenn then stated he agreed with Councilmember Lodzinski's comments, but that he also felt fortunate that the City had a qualified individual who was able to step into this position from within the City organization and that he appreciated the work that Mr. Nichols has done to act as the Interim City Manager. Mayor Fenn then stated he felt the title "Interim" City Manager, caused Mr. Nichols to not completely move forward in the position, but by appointing him as City Manager, Mr. Nichols could move fully forward. Motion passed 6-0. Mayor and Council then congratulated Mr. Nichols.

EXECUTIVE SESSION: As per A.R.S. §38-431.03 (A)(1), (3) & (4), Discussion or consideration of employment, assignment, appointment, promotion, demotion, dismissal, salaries, or resignation of a public officer, appointee or employee of the City. The Council will discuss and consider the appointment and employment of the Acting Police Chief, the Police Chief and the Police support services/administrative Lieutenant and may receive legal advice and give instructions to the City Attorney

Councilmember McGoffin stated after consulting with the City Attorney, it was determined she did not have a conflict of interest, but that she would be abstaining from the executive discussion and action. Councilmember Lambert then moved to enter in Executive Session with the City Council, City Manager, City Attorney, and City Clerk at 8:36 p.m. Seconded by Councilmember Sacco. Motion passed 5-0 with Councilmember McGoffin abstaining.

Council reconvened at 8:49 p.m.

14. Discussion and possible action regarding the appointment of an Acting Police Chief or a Police

Mayor Fenn opened the item for discussion. Councilmember Bonquet stated she felt we should pursue the option of having an Acting Police Chief at the discretion as the City Manager and look to filling the position of Police Chief within 6 months. Mayor Fenn then stated there was discussion and recommendation to appoint Lieutenant Paul Moncada as the Acting Police Chief, begin an active search within 3 months to advertise the position for a full-time Police Chief and look to be hiring a full-time Police Chief within 6 months and moved to do so. Seconded by Councilmember Lodzinski. Motion passed 5-0 with Councilmember McGoffin abstaining.

15. Ordinance 535 of the Mayor and Council of the City of Benson, Arizona, amending the Benson City Code, Chapter 3 "Administration," Section 3-2-1 (B) "Manager," changing the requirement that the City Manager reside within the City's corporate limits to require that the City Manager reside within two miles of the City's corporate limits

Mayor Fenn opened the item for discussion. Councilmember Lodzinski stated since Mr. Nichols lived within 2 miles of the City limits for nearly 10 years, it was not prudent to request him to move at this time. Councilmember Lodzinski then moved to approve Ordinance 535. Seconded by Councilmember Boncquet. Motion passed 6-0.

CITY MANAGER REPORT:

City Manager Glenn Nichols stated the Benson Arts Commission's Cultural Community Inventory had been completed and was available at City Hall. Mr. Nichols then stated the Coronado Resource Conservation and Development Area's 2008 Report was included in the Council's extra reading.

Mr. Nichols then informed Council with upcoming events:

- April 18, 2009 – “Stuff the Van” for the Community Food Pantry sponsored by the Benson/San Pedro Valley Chamber of Commerce, 8 a.m. – 4:00 p.m.
- April 19, 2009 – First Annual Celebration of Earth Day sponsored by the San Pedro Arts & Historical Society, 3-6 p.m., 5th Street & San Pedro
- April 24-26, 2009 – Bluegrass in the Park, Lions Park

City Manager Glenn Nichols then addressed Council with upcoming meetings:

- April 14, 2009 – Arts Commission Meeting, 2:00 p.m., City Hall
- Library Advisory Board Meeting – cancelled
- April 18, 2009 – Historic Preservation Commission Meeting, 9:00 a.m., City Hall
- April 27, 2009 – Council Meeting, 7:00 p.m., City Hall
- April 28, 2009 – Community Water Alliance, 6:30 p.m., City Hall

COUNCIL DIRECTIVES:

None.

DEPARTMENT REPORTS:

None.

ADJOURNMENT:

Councilmember McGoffin moved to adjourn at 8:55 p.m. Seconded by Councilmember Lodzinski. Motion passed 6-0.

Mark M. Fenn, Mayor

ATTEST:

Vicki L. Vivian, City Clerk