

**THE REGULAR MEETING
OF THE MAYOR AND CITY COUNCIL OF BENSON, ARIZONA
HELD JANUARY 23, 2012, AT 7:00 P.M.
AT CITY HALL, 120 W. 6TH STREET, BENSON, ARIZONA**

CALL TO ORDER:

Acting Mayor McGoffin called the meeting to order at 7:11 p.m. with the pledge of allegiance. Acting Mayor McGoffin introduced Pastor Lupe Diaz of the Grace Chapel who gave the invocation.

ROLL CALL:

Present were: Acting Mayor Lori McGoffin, Councilmembers Ron Brooks, David Lambert, Nick Maldonado, Chris Moncada and Al Sacco. Excused was: Mayor Toney D. King, Sr.

EMPLOYEE RECOGNITION: Vice Mayor McGoffin recognized Braulio Hammons for having 5 years of service with the City of Benson.

PROCLAMATION: None.

PUBLIC HEARING: None.

CALL TO THE PUBLIC:

Dianne Tipton addressed Council stating she wanted to share information because she feels if Council has all the information they need; it is a good tool by which they can make decisions. Ms. Tipton then stated in the Tombstone newspaper on December 16, 2011 an article came out titled "City cant use bed tax for street repair, only for promotion" adding at the December 13, 2011 regular Council meeting in Tombstone, the hotel and transient lodging bed tax ordinance was amended again with the first part of amendment to reduce the tax from 6% to 4% of the gross income for lodging or lodging stays and the second part of the amendment states all revenues received will be designated for use in promotion of the City of Tombstone. Ms. Tipton then read from the article that "City Clerk Barnes stated that a while ago in our budget dilemma, one of the things that we did was alter the bed tax from 3% to 6%. We intended that the money be allocated for various purposes other than promotion. Since then we have found there is a portion of the Arizona Revised Statutes that says the money taxed from a specific entity that isn't universal has to go in the long run for the benefit of that entity". Ms. Tipton then stated when the City Council decided to tax specifically a group, which is RVs and hotels, and did that for a specific purpose, which was designated by resolution to go to the Chamber, Council cannot change that, in her opinion; but they did, and in her opinion, it wasn't allowed by law. Ms. Tipton then stated to answer Mr. Maldonado; it hasn't really been addressed because it is viewed as being a mute issue, adding just because Council did something, doesn't mean they had the right to do it. Ms. Tipton stated she agreed when the gentleman objected to Mr. Masee saying Council could not enter into a contract, adding this statute is strictly trying to tell them as a Council, they are the ones who will decide what taxes will be passed in this community and they cannot take that right and contract it off to someone else. Ms. Tipton said that is what the statute is referring to, not to entering into a contract with the Chamber of Commerce. Ms. Tipton then asked the Council to consider what she is saying and look into it and maybe get some other legal advice.

JT Moffett addressed Council stating he would like to apologize for his earlier outburst during the worksession. Mr. Moffett then stated the issue of the Chamber funding and the use of the bed tax has become the subject of a great many citizens here in Benson lately and rightly so. Mr. Moffett stated we need to resolve this conflict and we need our Chamber. Mr. Moffett stated on Thursday this past week he hosted a forum on the matter in support of the resolution that is before Council and after the forum he was approached by City Attorney Mike Masee and was told what Mr. Moffett wanted to see done was not legal. Mr. Moffett stated besides the fact he has been counseled otherwise, he wants to know why Mr. Masee is so eager to find a way to block progress between the City and the Chamber. Mr. Moffett stated he asked Mr. Masee why he did not find a legal solution that will enable the Chamber to be funded using

the same formula the resolution was written with, but Mr. Masee very pointedly told him he had to be directed by Council to do that. Mr. Moffett then asked the Council publicly to direct Mr. Masee to find a way legally to fund the Chamber regardless of what has transpired in the past. Mr. Moffett stated this Council has the power to mold our future and have no more of the nonsense we have suffered at the hands of Councilmember Lambert on December 12. Mr. Moffett stated he wanted to bring attention to the Oaths of Office, adding the Council has an obligation to the citizens of Benson and the surrounding communities to be unbiased and ethical, stating if Council cannot be both unbiased and ethical they should not be voting. Mr. Moffett then stated the animosity created by Councilmember Lambert with the Chamber is well-known all over this community, adding there is not a citizen that has not heard about Councilmember Lambert attacking Mr. Washington and the Chamber regarding their already allocated funds. Mr. Moffett stated Councilmember Lambert has been asked to resign by so many people that he could not possibly count them. Mr. Moffett then stated Councilmember Lambert's documented efforts to embarrass and harass the Chamber are proof enough of ill will toward that organization and he cannot see how Councilmember Lambert could possibly consider himself unbiased toward the Benson Chamber of Commerce. Mr. Moffett stated with this being the case, it would be unethical for Councilmember Lambert to vote on any matter before this Council regarding or affecting the Benson Chamber of Commerce and Councilmember Lambert should recuse himself from the vote tonight or any other night regarding the bed tax and Chamber funding. Mr. Moffett then stated to vote anyway would be highly unethical and would certainly be one of the reasons documented on the recall papers, adding they now know why he has waited so long to begin the recall. Mr. Moffett stated the choice was Councilmember Lambert's, adding Councilmember Lambert has been publicly advised to recuse himself before he makes another serious blunder in Benson politics. Mr. Moffett then stated for the record, no one on the Benson Chamber of Commerce has funded anything he is doing, adding he is nobody's puppet and what he does is for the silent majority of the town.

Kathy Suagee addressed Council stating she wanted to address two things, first agenda item #9 which is an important issue to the community and something she is sure everyone would like to stay and hear, asking why the item is last and why it always happens with important issues for the community that many people are interested in, adding she thinks it is very rude to the public and urged Council to move it up so people can go home. Ms. Suagee then stated she wanted to read something on the issue of the bed tax, adding she would first like to state we have two very good emissaries for Benson in the community, one is the Benson Chamber of Commerce which has had its ups and down with changes in staff, but has been there with sincere people who deserve our support and the other is Bob Nilson and the Benson Visitors Center. Ms. Suagee then stated Bob has probably brought more notice of outside areas to Benson and more publicity and goodwill than any other person she can think of, adding let's not forget that tourism includes the visitor center and all of the funds collected should go to those entities. Ms. Suagee then read from Arizona Revised Statutes, Section 9-500.06 stating if a city or town establishes a discriminatory transaction privilege tax, in other words a bed tax, or increases its existing tax on hospitality industry business, the proceeds of any increase above the existing discriminatory transaction privilege tax shall be used exclusively by the city for the promotion of tourism and for purposes of expenditures by a city or town for promotion of tourism to include contracts between the city or town and nonprofit organizations or associations for the promotion of tourism by the non-profit organization or association. Ms. Suagee then stated this is the law and it should be used to interpret what Council should be doing, adding any other opinions contrary to the statutes are not a legal mandate.

Nancy Iverson addressed Council stating she has owned the Sahara Motel for 31 years and she wished to inform Council truthfully how the bed tax came about. Ms. Iverson then stated she was contacted about it in 1988 by Pamela Harlan, who was one of the residents that was seriously attempting to keep the Chamber alive and the group had gone to the City Council for help in finding some way to make the Chamber survive. Ms. Iverson then stated the suggestion was to somehow get visitors to pay for it so the 2% bed tax came about and it was suggested that it would only be on RV dwellers and motel dwellers. Ms. Iverson stated this was agreed to on the condition that the funding collected was to go to the Chamber and was to be used for the promotion of tourism, adding the idea passed and the motel and RV park owners now expected tourism in our town to be enhanced, since they had no reason to believe the Council would not be honest enough to go by what was agreed upon, however the Council saw how many dollars the bed tax was bringing in and they decided to divvy out some money and then make the Chamber beg for the rest. Ms. Iverson then stated the Councils have used this money as they have desired and this was not the original

intention at all, adding isn't it strange how each Council passes motions to fit their criteria. Ms. Iverson then stated if the money had been used as intended Marc Washington and the other Chamber Directors could have this town buzzing with people who would be bringing dollars in every weekend just as Tombstone and Bisbee are. Ms. Iverson then asked the Council to think of the happy business owners who pay their paychecks and collect the bed tax, which should only be used for the purpose of tourism. Ms. Iverson then stated most of the Councilmembers are not business owners who depend on tourism for their income or paycheck so it may not seem to be a concern to any of them, however they might think about the town having no tourism or any money from the tourists, adding any of the Councilmembers or City employees could possibly lose their jobs. Ms. Iverson then asked the Council to please remember they are each elected by the people to represent the best interest of all people including RV and motel dwellers, adding Council must, as an elected official, put personal agendas aside as there is no I in we the people of this community. Ms. Iverson then stated Council must realize our town is the benefactor of the RV and motel dwellers and we must keep them coming to our area as they help us all to have a better living.

Jim Grey addressed Council stating he thinks there was a really good discussion at the worksession before the meeting. Mr. Grey then stated he was a little peeved on what the City Attorney had to say, but there is an old saying that if you have a law and have 10 different attorneys look at it, you will get 10 different opinions and he believes that. Mr. Grey then stated he agrees with what Councilmember Brooks said that he went to the City Attorney and said find a way to get this done and instead Mr. Masee came back with a way that said it can't be done. Mr. Grey stated when the election for City Council came up the ordinance was pretty cut and dry when he read it and the City Attorney disagreed so they went to the Secretary of States who gave the opinion that Mr. Brooks should be on the general ballot, then the Assistant Attorney General for the State of Arizona agreed that Mr. Brooks should be on the general ballot and after being put on the ballot, Councilmember Brooks was elected. Mr. Grey then stated there are many opinions, which is why Council has to get a second opinion, asking the Council to do what is right and get it done so the Chamber doesn't have to beg for money every year. Mr. Grey then stated as far as the City Attorney goes, he thinks Council should decide if Mr. Masee is doing more harm or more good to the City of Benson at a fair cost and if he is doing more harm, get rid of him and if he is doing more good, keep him, adding that's a decision Council has to make.

Mr. Tom Fitzgerald addressed Council stating he would like to echo what Jim Grey said and at the same time he has a different viewpoint about the City, adding it has changed a lot since Wal-Mart came here with hoards of people and he is not happy there are hoards of people since it is not helping him any. Mr. Fitzgerald then stated he has tried to get some services and point out some issues where the code is not being followed and he gets ignored, adding he has an instance where he made a police report and the policeman just lied and said his car is not registered to him, but is registered to a lady in St. David. Mr. Fitzgerald then stated he hopes the Council will make the right decision tonight when they go into the executive session so the people of Benson will come to them and congratulate them on their correct decision. Mr. Fitzgerald then stated he doesn't even have friends here now because they think he is on someone else's team and the Council never explained to the people of Benson why they hired Mr. Masee except to go after Dianne Tipton and Jay Kendrick, adding he doesn't see any reason since there were 12 other applicants. Mr. Fitzgerald then stated the Council was now overcompensating and buying expensive equipment they say they have a fund for and he doesn't feel comfortable with the legal opinions he is getting from city hall, adding he hopes Council can come to the right decision now.

Mr. Don Buchanan addressed Council stating he has sat and listened, adding he came back to Benson after 35 years, he pays property taxes on his property and really wanted to live here but he would like to see changes, stating he gets tired of people griping and complaining and if they want to change things, they should get up there and do the hard job the Council does. Mr. Buchanan then stated he can't because he doesn't live in the City limits, but he thinks it's time for people to be positive and try to solve problems, adding he suspects the problem with the Chamber can be solved pretty easily and he thinks the attorney is wrong, admitting he read 30 seconds in Article 9 so he must be an expert. Mr. Buchanan then stated he gets tired of the negativity and stated there are bullies involved in the issue, adding he thinks the biggest bully is J.T. Moffett and he gets tired of hearing about him. Mr. Buchanan then stated he would read from an email Mr. Moffett sent him during Joe Knoblock's election campaign. Acting Mayor McGoffin asked if it had to do with a Council issue, with Mr. Buchanan stating it imputes the motives of some people, adding some

people are bullies and he thinks the information Council is getting is from a bully. Mr. Buchanan then stated he would cut it short since he was not allowed to say what he wanted, but that when he was a child he was bullied by an older child because he was big and clumsy. Mr. Buchanan then stated his dad gave him good advice, saying the next time he was bullied, he should pick up a stick and hit the bully, adding he did that and was not bullied again. Mr. Buchanan then stated he thinks Council needs to use a verbal stick to get rid of the bullies.

Chad Jones addressed Council stating he keeps reading in the paper about the bed tax and the feud between the Chamber of Commerce and Councilmember Lambert, adding he thinks the solution is simple; the Chamber puts on events that bring in tourists, the tourists stay in the hotels, motels and RV parks, who collect the bed tax, therefore the Chamber helps bring in the bed tax. Mr. Jones stated he doesn't think the Chamber should have to jump through hoops or be subject to an attack and interrogation to get money they helped earn. Mr. Jones then stated the Chamber also promotes business in Benson which helps promote growth in Benson which also promotes the growth of the citizens of Benson who elected the Council to be their voice. Mr. Jones stated the Chamber enables citizens of Benson to better their lives which in turn betters Benson. Mr. Jones stated the business that the Chamber is trying to bring that most catches his eye is the Department of Defense jobs because since moving to Benson 6 years ago he hasn't had a job challenge him the way he was challenged while he served in the Navy, adding another reason these jobs interest him is the salaries that come with them. Mr. Jones stated he and his wife currently each make \$15,000 a year and with 4 children, they live paycheck to paycheck, adding he is not alone, there are a lot of people in Benson struggling the way his family does; they are the ones waiting tables, flipping burgers and pushing carts in the Wal-Mart parking lot. Mr. Jones then stated these jobs would better their lives and their children's lives, they would give citizens opportunity to earn more money that not only betters their lifestyle, but helps other businesses as well, noting more money earned means more money to spend at other businesses in Benson. Mr. Jones then stated he would hate to be the reason these potential jobs are lost and would not want to be the reason the citizens of Benson do not have these opportunities to better their quality of life. Mr. Jones then stated Councilmember Lambert has shown he does not want a better quality of life for the people who elected him and he would not want to be in Councilmember Lambert's shoes when these people stand up and take their voices back, when they stand up and say Councilmember Lambert is trying to take our job opportunities from us, adding it is time for them to take Councilmember Lambert's job from him. Mr. Jones then stated the Council needs to remember why they were elected; they were elected to help Benson and the citizens flourish, they were elected to be the voice of the citizens of Benson, asking the Council to be the voice and do the right thing for the City and find a way to help the Chamber function so they can help the people of Benson better their lifestyle. Mr. Jones asked the Council to help the people they were elected to help.

Jeff Cook addressed Council stating he was here the evening Mr. Lambert started this whole thing and as he recalls, Mr. Lambert was seeking to have Mr. Washington and the Chamber provide receipts for the monies they were requesting and the monies they were spending. Mr. Cook then stated from this he has seen a lot of people trying to take political opportunity and has heard people ask why Mr. Lambert and the Council want Mr. Washington out of here, adding again he was at that meeting and no one on the Council, including Mr. Lambert wanted Mr. Washington out of Benson or out of the Chamber, stating in fact, the only person he has heard that wants Mr. Washington out of here is Mr. Washington, who is the only one that has brought up leaving through resignation and if we rally the troops around me, then maybe I won't resign and wouldn't that be wonderful. Mr. Cook then stated there are people trying to take or create political advantage from the situation, adding he sat through the worksession and could see there are a lot of difficult questions Council has to deal with and most people that don't attend these sessions don't have any idea of the difficult questions Council has to deal with such as, is the City Tourism Department or is the Chamber in charge of tourism and who should get the money, does a City ordinance or does State laws supersede and override the State Constitution the attorney brought up. Mr. Cook then stated those are the questions Council has to deal with and are conveniently being ignored so some people can create political advantage for themselves. Mr. Cook then stated he does know if Council does override the Constitution by citing State law, which cannot override the Constitution, but if Council decided to do so, adding the Council can do that and has the complete right and authority to do any thing they want even if it is illegal, there are people, Mr. Cook then paused and stated he has been watching for 3 or 4 years and there are people in this community who are always goading the Council to do the wrong thing and then they threaten

or file lawsuits, which may be frivolous, in order to get the Council to do something so they can create their own political advantage and he thinks they are trying to do that again. Mr. Cook then stated he is certain if Council does supersede or override the Constitution, then those people will finally have a successful lawsuit against the Council and the City. Mr. Cook then stated to sum it up; he would like to say these same people regularly inject their own political venom into the goings on of the City, the Council and the Staff and just wanted Council to know that.

John Whiteside addressed the Council concerning the Bluegrass Festival, the bed tax and giving money to the Chamber of Commerce. Mr. Whiteside's comments will be retained with the Council packet.

CITY MANAGER REPORT:

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

- February 7, 2012 – Planning & Zoning Meeting, 7:00 p.m., City Hall
- February 13, 2012 – City Council Meeting, 7:00 p.m., City Hall
- February 14, 2012 – Library Advisory Board, 4:00 p.m., Library
- February 18, 2012 – Historic Preservation Commission, 9:00 a.m., City Hall
- February 22, 2012 – Planning & Zoning Public Hearing Whetstone Solar Park, 7:00 p.m., City Hall
- February 27, 2012 – City Council Meeting, 7:00 p.m., City Hall
- February 28, 2012 – Community Watershed Alliance, 6:30 p.m., City Hall

- February 20, 2012 – President's Day – City Offices Closed

Mr. Nichols stated over the next 3 months, work will continue on the I-10/State Route 90 Traffic Interchange project, adding up-to-date information can be found at www.azdot.gov. Mr. Nichols then stated on Saturday and Sunday, February 11th and 12th, the Arizona Ranger Territorial Days will take place at the Arena Bar. Mr. Nichols stated on Tuesday, February 14, 2012, the San Pedro Valley Arts and Historical Society will be holding a Centennial Celebration at the Museum on 5th street from 10:00 a.m. until 4:00 p.m.

Acting Mayor McGoffin stated Council would address Agenda Item #9 before the Executive Session to keep anyone who wanted to listen to that issue from having to wait until after the Executive Session.

NEW BUSINESS:

1. Consent Agenda

- 1a. Minutes of the January 9, 2012 Regular Meeting
- 1b. Resignation of Linda Kaiser from the Benson Library Advisory Board
- 1c. Appointment of Raymond Taylor to the Benson Library Advisory Board
- 1d. Invoices processed for the period from January 3, 2012 through January 12, 2012

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

2. Resolution 5-2012 of the Mayor and Council of the City of Benson, Arizona, approving and authorizing the donation of an access easement within the City of Benson to the City

Public Works Director Brad Hamilton stated this is a donation from Cochise College for an easement on the south side of the property. Mr. Hamilton then stated the property owner to the south is planning to build a new roadway there and the college board has already agreed to it, adding it is left to the City to accept the easement if we want the roadway to move forward. Councilmember Moncada verified the City would only be taking the land and the property owner would be building the road with Mr. Hamilton confirming that was accurate. Acting Mayor McGoffin stated this would eliminate traffic driving through the college parking lot to access State Route 90. Councilmember Sacco moved to approve Resolution 5-

2012. Seconded by Councilmember Maldonado. Motion passed 6-0.

3. **Resolution 6-2012 of the Mayor and Council of the City of Benson, Arizona, approving a Special Event Liquor License for The Dallas Memorial Hope Fund of Benson for February 25, 2012 at Cochise Terrace, 1030 S. Barrel Cactus Ridge, Benson, Arizona**

Ms. Paula Tyler of the Dallas Memorial Hope Fund addressed Council stating this is the 5th year of this event; a dinner and silent auction to benefit the Dallas Memorial Hope Fund which helps seniors who can no longer take care of their pets with all the pets' medical costs for life, allowing seniors not to worry about their pet. Ms. Tyler then stated the event will be held on February 25th at the barn at Cochise Terrace. Councilmember Moncada moved to approve Resolution 6-2012. Seconded by Councilmember Lambert. Councilmember Sacco called a point of order saying the Council can't approve this and must only recommend approval to the State with City Clerk Vicki Vivian stating the if Council approves the resolution, they are recommending approval to the State. Councilmember Sacco asked the City Attorney Michael Masee to explain this to him. Mr. Masee stated interior to the resolution itself is the recommendation to approve the event, therefore if Council approves the resolution, they are approving a recommendation to the State. Councilmember Sacco confirmed the resolution is then forwarded to the State with both Ms. Vivian and Mr. Masee confirming it was. Motion passed 6-0.

4. **Review of City Finances with emphasis on July 1, 2011 through December 31, 2011, financial results and the City's financial position at December 31, 2011 and discussion of sales tax revenues and projected future net revenues**

Finance Director Jim Cox addressed Council stating he would be reviewing a 6 month period ending as of December 31, 2011. Mr. Cox then began with citywide financial highlights, stating our unrestricted cash position decreased by \$214,000 to approximately \$2.0 million, adding that balance has steadily decreased from July through December, but this is normal and happens every year, with the high revenue months being the last 6 months of the fiscal year, adding the second half of the fiscal year receipts are projected to increase and we are already seeing this in the month of January. Mr. Cox then stated fund balances overall Citywide decreased by a total of \$450,000 this year due to some unusual expenses in the General Fund and some Capital Project Fund expenditures and this is also comparing this year to last year in the golf course, stating last year we had just received funds from the golf course to open and since we had not expended any of those funds, we were \$100,000 in the black in the golf course at December 31 of last year. Mr. Cox then stated this year, it was exactly the reverse, but was really ongoing normal business.

Mr. Cox then stated trend wise, we have had some unusual expenditures in the amount of about \$300,000, legal fees of \$69,000, the purchase of the land next door for \$33,000 and the Police/Fire Department roof and back up generator for \$141,000, adding this was a projected expenditure which was put off year after year and the decision was made this year to use bond money to make that repair. Mr. Cox then stated there were also pool repairs and improvements in the amount of \$37,000 and the golf course had a slow season which cost \$100,000, but it will be reversed in the second half of the year with revenues in the heavy revenue months. Councilmember Sacco asked for explanation on the \$69,000 in legal fees with Mr. Cox stating those were fees in conjunction with the Stagecoach Trails lawsuit. Mr. Cox then stated Citywide revenues increased \$160,000 compared to last year and our total revenues were \$6.39 million year-to-date. Mr. Cox then stated personnel costs increased by \$71,000 due to the golf course and the transit system, adding the golf course personnel was \$112,000 and the transit personnel was \$44,000, so you could see other personnel costs in the city decreased significantly. Mr. Cox then stated our operating costs year-to-date are minus \$11,000 and our capital costs have increased \$247,000, primarily due to the paving project which was recently completed again using bond funds in the amount of 168k, also spent 108k on the golf course.

Mr. Cox then moved to the General fund stating revenues are down \$24,000 year-to-date compared to last year, which is very disturbing. Mr. Cox then stated City sales tax collections, or the transaction privilege tax collections, are down \$70,000 along with the bed tax being down \$7,000. Mr. Cox then stated our State shared revenue is down about \$15,000, adding this is an allocation we receive from the State every year and it has been decreasing markedly each year and will continue to decrease over the next few years. Mr.

Cox then stated one other revenue area, plan review fees, are also down, since we haven't had as many plans submitted as the previous year. Mr. Cox then added rents are up \$35,000 but this is due to the fact we had a large refund last year, so there is really no change on a permanent basis. Mr. Cox then addressed expenditures in the General Fund stating personnel costs were down \$36,000 year-to-date, primarily due to lower police overtime, adding overtime is reimbursed through a federal government program, which has been on hold due to federal government funding, but the program was resuming now. Mr. Cox then stated other costs are up \$124,000 year-to-date, mostly in the administrative area, with legal fees in the amount of \$69,000, unusual IT expenses in the first half of the year, adding our overall fund balance in the General Fund is minus \$238,000 year-to-date, but he would project it will be minus \$50,000-\$100,000 as of June 30.

Mr. Cox then addressed the Enterprise funds, stating the gas fund is down \$77,000 year-to-date, but that is normal, with our heavy revenue months being January, February and March, so it will come back up and be positive. Mr. Cox then stated the water fund is operating positively and is up \$8,000 year-to-date even with \$75,000 in capital improvements to wells and with electronic meters we're installing. Mr. Cox then stated the wastewater fund is up \$80,000 year-to-date and is operating ok without consideration of the huge capital costs we have.

Mr. Cox then moved to the transit fund stating it was down \$6,000 year-to-date, but grants cover most of the costs with the exception of just a few thousand each year and the fact that its not breakeven is due to the delay in grant reimbursements. Mr. Cox then stated all 3 buses put into service this past year, are now fully operational. Mr. Cox then stated the City was also approved for funding for a bus barn, adding we have \$150,000 in the current year which will not get us too far into a bus barn, but it will get us started. Mr. Cox then stated we now have the fixed deviated routes in full operation, which covers J6, Mescal, Pomerene and St. David with bus ridership growing steadily each month. Mr. Cox stated the Dial-a-Ride program is operating just fine in its new bus. Councilmember Sacco asked where the bus barn will be located with Mr. Cox stating that would be a Council decision, adding Staff will first get funding, then study alternatives and bring it to Council for a decision. Councilmember Brooks asked how many years were left in the transit grant, with Mr. Cox stating it is a year-to-year grant, adding historically, grant funding has only increased for rural transit, but this is not to say the federal government may decide to cut it off and if they do, the City will have to discontinue the programs since they are expensive to operate.

Mr. Cox then addressed the golf course fund stating it is down \$120,000 for the first 6 months of the fiscal year, due to combination of two things, very high fertilizer and chemical usage and costs this summer due to a fungus infection of the greens, which not only cost a lot of money to fix, but also drove summer golfers from Tucson away. Mr. Cox then stated the greens are fully recovered now and are in beautiful pristine shape and the golf course is full everyday now, however, it hurt us this past summer. Mr. Cox then stated operations wise, the golf course is operating very smoothly and we're pleased with that, but the restaurant is a profit challenge like every restaurant is, adding they are in the process of putting together some changes for it that he would like to report on to Council next month with a little more in depth analysis of what's going on in both the golf and restaurant operations. Mr. Cox then stated the golf course challenge is to attract play out of Tucson, because Benson is simply not big enough to support the golf course, and to do that, we have to be awfully good at what we do to get people to drive by a lot of fine golf courses, and to come to Benson, adding thankfully, many of them are. Mr. Cox then stated we developed a customer loyalty program that has been quite successful, adding Jay Tomerlin, our Director of Golf worked very hard on the program, adding he put together a great program, which is having very positive results, with a lot of return golfers.

Mr. Cox then addressed sales tax stating we could see the State is in a modest but very steady recovery, which is exciting, but he wished he could say the same thing about Benson, noting our collections are down for both transaction privilege tax and bed tax, adding they have been down for almost 12 months now, not significant to the crisis standpoint, but were very disturbing. Mr. Cox then stated our large fund deficits are both from lower revenues and higher expenditures than we've had in prior years, adding we've been able to reduce spending in prior years, but a few things are beginning to catch up with us. Mr. Cox then stated while the transit system is fully operational and operating exactly as expected, the golf course and its gross income from the golfing standpoint and restaurant profitability remain significant challenges. Mr. Cox then

stated overall, the City's financial performance is below recent years, and this is the first time he has stood before Council and said that, since we've either been better year-to-year or at least holding our own year-to-year, adding this is a small step backwards, again stating it's not to any kind of a crisis stage at this point and noted there are a lot of great things on the horizon, but he does have to report at this point, in this fiscal year, we're behind where we were last year, which is disturbing and will affect our spending patterns going forward. 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 we're skipping along the bottom of what we've done sales tax collection wise in the past several years. Mr. Cox then stated General Fund sales taxes are below last year, which is a combination of transaction privilege tax and bed tax, adding bed taxes are horrible and are the worst they've been since he has been here. Mr. Cox then stated construction sales tax appears to be a little bit better than our worse times, but it is very heavily related to the construction project up on I10-SR90. Mr. Cox then addressed the City transaction privilege collections only, adding we're skipping right along the bottom and is worse than we've done in the past several years. Mr. Cox then stated the State sales tax collections look a little better and are significantly above the 2 prior years, so we can see recovery happening at the State level, adding in the City, we're not seeing it and if you've been seeing this presentation for the past several years, you may remember the City has always been better off than the State, but that situation has reversed over the past 12 months. Mr. Cox then asked Council if they had any questions. Councilmember Lambert asked where the City stood year-to-date with bed tax collections and how much money the City had given to the Chamber of Commerce with Mr. Cox stating the year-to-date bed tax collections are \$23,800 and we've given the Chamber approximately \$25,800, adding our total budget to the Chamber for the fiscal year is \$36,000, they've received \$25,800 as of December 31 and the bed tax collections are way below the \$75,000 we budgeted for bed tax collections. Councilmember Moncada asked what the normal costs for fertilizer and chemicals for the golf course would be with Mr. Cox stating we budgeted about \$38,000 total for the year for fertilizer and chemicals, adding the \$30,000 shown in the presentation for fertilizer and chemicals is in addition to what we expected to spend, but with the infection, we had no choice or we would have lost the greens, adding the rest of the downturn is due to low revenues, noting summertime revenues are always low and were especially low when we lost the greens in July due to the infection. Councilmember Moncada asked if we expected to make up most of the loss with Mr. Cox stating we have a plan put together that will assure we're at breakeven by the end of the fiscal year, but added this will happen every year in the golf course, hopefully not as dramatic as what we're seeing now, but we will normally see a downturn in the first 6 months of the year followed by strong profitability in the second half of the year adding, unfortunately it is cyclical as is everything in this City, stating our strong revenues and sales taxes are in the second half of the year. Discussion then focused on winter visitors with Mr. Cox stating he had been hearing mixed reviews from several different restaurants and parks. Councilmember Maldonado stated in the park he manages, they only have one space that isn't rented, adding the same people are coming back every year.

5. **Resolution 2-2012 of the Mayor and Council of the City of Benson, Arizona, repealing Resolution 18-92 and designating an amount equal to 70% of the proceeds from the Transient Lodging Tax to fund the business operations of the Benson/San Pedro Valley Chamber of Commerce**

Acting Mayor McGoffin stated this item was brought forward by Councilmembers Ron Brooks and Al Sacco, asking who would like to speak first. Councilmember Brooks then addressed Council stating the reason he requested this item was because of the recent incident that happened bringing into question the City's relationship with the Chamber of Commerce in the past and present. Councilmember Brooks stated he looked over the history and realized the Chamber used to get the entire amount of bed tax and he knows at this time, the City now has a tourism bureau so things are a little different than back then. Councilmember Brooks then stated he had talked with the Chamber and worked with them to try and come up with something they were willing to live with and something the City could also do to use these monies for our own purposes in advertising the City to make sure that we don't have to rely solely on the Chamber for all the advertising for our City, adding this seems to be mutually acceptable to the Chamber. Councilmember Brooks then stated he thinks it's a good thing because it's a win/win for both the Chamber and the City, because he believes the Chamber does bring in business to this town and they don't really get recognized for that. Councilmember Brooks stated the City does give them money for events, but there's more than that coming to this town and he thinks we need to look at that as a real figure when we look at the revenues that come to this town, because we can't account for those revenues and they are not

something we can put a figure on. Councilmember Brooks then stated we just have to assume the monies we use in our tourism bureau for advertising is effective, adding we put \$138,000 last year into our tourism bureau alone and we're hoping those results are coming back to us. Councilmember Brooks then stated when he talked to the Chamber, he really tried to get them to negotiate, adding at first they wanted the full amount of the bed tax, but he thinks they understand the City has a part in this also, paying for our visitors bureau, which is something the City is putting out there and is also out of our City monies. Councilmember Brooks then stated originally the bed tax was 2% with \$74,000 in bed tax collections last year, adding the City gave the Chamber \$35,000, which is basically one-half the tax, so the City is already giving the Chamber 50% of the tax, and what the Chamber is looking for is an additional 20%. Councilmember Brooks then stated he thinks the Chamber can do the job for us and it would be a mutual agreement between the City and the Chamber, stating this is in the next resolution, but essentially, he would like to see an agreement, adding he thinks this is something the City can do and the agreement would be breakable in the future, noting if the Chamber performs well, the City will see the revenues go up and this revenue will not only go to them, but will be going into the coffers of our general fund. Councilmember Brooks then stated this is what gives the City monies to pave our roads, give raises to people, and help this town adding he knows just from experience and having a business here in town for 13 years that when he takes monies and puts it into advertising in the local paper, he goes from 1 or 2 calls a week to 1 or 2 calls a day, which is a huge difference because of advertising. Councilmember Brooks then stated it is important to this town that the Council does this and as far as the arrangement, that he came to, everyone he talked to in town likes it. Councilmember Brooks then stated maybe they're just constituents and they have no say in this, but he thinks the Council needs to listen to them too, they like the arrangement the Chamber offered the City. Councilmember Brooks stated the Council could come to a new figure if they want to try and negotiate, but from what he has heard, everyone likes that figure, adding he would like to open it up for discussion with other Councilmembers.

Acting Mayor McGoffin asked Councilmember Sacco if he would like to speak. Councilmember Sacco then addressed Council stating he thinks Councilmember Brooks and he put together a couple good resolutions and he thinks the Chamber is willing to go along with them and from what he hears, there's some good things are going to be happening in Benson adding he was very impressed with the Chamber breakfast the other day and with all the things that are going to be happening in Benson. Councilmember Sacco then stated he is all for anything the City can do to support the Chamber and he thinks we need to get some more businesses in Benson and take care of the businesses that are here already. Councilmember Sacco then stated he has heard a couple complaints from some of the merchants, asking what is the Chamber doing for them, so it is something that should be looked into.

Councilmember Brooks then stated he would like to add the importance of showing good faith in a town to businesses that are coming here, adding in being here 13 years he has had many clients and hears all the time that this town is not friendly to business. Councilmember Brooks then stated he thinks a lot of Council has heard the same thing and we need to change that image, somehow and he believes this is a faithful step, adding in a year from now or 6 months from now, if Council doesn't like what's happening or if what the Chamber is promising all falls through, it can be changed, although he believes the Chamber is going to bring other things even if it does, adding he thinks the City may be partly the fault of it not coming here. Councilmember Brooks then stated we need to keep open to the things that come to our town, adding investors come here and we may not even know they're looking us over; they may call the Chamber and ask what kind of town is this, if the town accepts this kind of business, noting a lot of times, businesses look for the Chamber of Commerce to tell them how the town does business with them. Councilmember Brooks then stated there's an importance in a Chamber and he is hoping for the UAV (Unmanned Aerial Vehicles) system to come here, which would be huge for this town, adding the revenues would take care of the streets and a lot of the problems we have right now in a tough economic time that we don't see coming out of for some time. Councilmember Brooks then stated if something like this walks into town, let's not let it run away, let's get a hold of it, adding he thinks it's worth giving a chance to Mr. Washington, Jennifer Rush and the Chamber. Councilmember Brooks then stated there's a lot of promise he has heard from a lot of people in town and they really do appreciate what Mr. Washington has done here, adding again, he believes it's worth that faithful step to try the 30/70 agreement and if it doesn't look right, Council has, in this resolution, a way to say it is not working out, the merchants don't see any results here, they're not seeing the motel increases and we want to change the arrangement, adding there is no reason

Council can't.

Acting Mayor McGoffin opened the item for discussion with other Councilmembers. Councilmember Maldonado stated Council doesn't know if the agreement is legal or not, adding he is not an attorney and the City Attorney Mike Masee presented other information to the Council, adding he would like to get a legal opinion from the Attorney General to find out what the City can do to help the Chamber and work together with them. Councilmember Moncada stated he agreed with Councilmember Maldonado and thinks we have some legal problems with two different opinions on whether it's legal or not legal and doesn't think Council has all the information. Councilmember Lambert stated he agreed and the information given to Council by Mr. Masee is right out of the Arizona Constitution and with that in mind, the best thing to do would probably be to hold off on this until an opinion from the Attorney General's office can be obtained. Councilmember Sacco stated he was not sure the Attorney General was going to give an opinion. Councilmember Brooks stated the Council should be able to find facts from other cities, adding he has a legal attorney who set contracts up with Bullhead City and a lot of others, adding he thinks we can find that information to be sure Council is making a safe decision. Councilmember Brooks then stated he believes we can get that information, so he agrees we definitely need to make sure what Council does is legal. Councilmember Maldonado then stated he wanted to be sure things were done legally, but noted the Chamber is an important part of the City and the City needs them.

Councilmember Brooks then asked if he could ask what each Councilmember feels, as far as the arrangement, if Council could legally approve it, if it was something they would be comfortable with, adding the Chamber would like to know if the City wants to do business with them. Councilmember Maldonado stated the City took over tourism years ago and even the Chamber is saying the City is doing a good job and the people we have there are doing a good job, so why not split the bed taxes 50/50. Councilmember Brooks stated that is basically what the City has been doing. Councilmember Brooks then stated there may be other parties out there and he doesn't know this, but there may be parties looking at this town right now as to whether they should invest and asked if the Council was willing to step out and take a chance with the Chamber and do this one time, making sure it's legal before doing it, adding that is what his question is and he wants the Chamber to understand where the Council is coming from and he would like them to know how Council feels about them. Councilmember Brooks then stated he thinks, although it's not part of this resolution, he is willing to table it because he agrees and can't disagree the Council needs to make sure what they do is legal. Councilmember Sacco asked if Councilmember Brooks was suggesting Council get a second legal opinion and asked Councilmember Brooks if he wanted to make that a motion, with Councilmember Brooks asking if the Council discussion was finished.

After a question on the order of motions, Acting Mayor McGoffin asked the City Attorney for clarification with Mr. Masee stating he had not heard a motion yet. Acting Mayor McGoffin stated it sounded like Council was contemplating making a motion to request a second opinion with Mr. Masee stating making such a motion is not on the agenda, so it arguably would be an open meeting issue, adding the action of requesting such an opinion would require discussion on how to obtain the second opinion, whether to use an RFQ or who would choose the attorney, noting there is a lot involved in such a motion, and since it's not on the agenda, it could be a problem. Councilmember Brooks then moved to table both items on the agenda asking if it were possible to table them both at the same time. Acting Mayor McGoffin stated they needed to be handled individually. Councilmember Brooks then amended his motion to table Resolution 2-2012 until Council has further information, stating he would like to include the item at the next regular Council meeting. City Clerk Vicki Vivian stated Councilmember Brooks could include in his motion he would like to table it until the next regular Council meeting. Councilmember Brooks then restated his motion to table Resolution 2-2012 until the next regular Council meeting. Councilmember Sacco then moved to amend the amended motion adding Council obtain a second legal opinion. Several Councilmembers stated obtaining a second legal opinion had been discussed and there may be open meeting law problems approving it since it was not on the agenda. Councilmember Sacco asked if it could be done since it was in connection with this agenda item. Councilmember Brooks stated the Council could table this and they could, as a Councilmember, individually find the proper authority to let Council know that information. Amended motion was then seconded by Councilmember Sacco. Acting Mayor McGoffin then stated she really wanted to work with the Chamber and she appreciates everything they do for the City, adding as soon as Council gets more information, hopefully they can come up with something that will

work for both the City and the Chamber. Motion passed 6-0.

6. **Resolution 3-2012 of the Mayor and Council of the City of Benson, Arizona, that a 6-year agreement be written, spelling out the entire agreement between the City of Benson and the Benson/San Pedro Valley Chamber of Commerce containing the terms by which the Benson City Council will be designating an amount equal to 70% of the proceeds from the Transient Lodging Tax to fund the business operations of the Benson/San Pedro Valley Chamber of Commerce passed by Resolution 2-2012**

Councilmember Brooks moved to table Resolution 3-2012 until the next regular Council meeting. Seconded by Councilmember Sacco. Motion passed 6-0.

7. **Resolution 4-2012 of the Mayor and Council of the City of Benson, Arizona, amending the FY2011-2012 Budget to increase the amount designated for the Chamber of Commerce in the Community Enrichment section of the Budget to \$77,660.25 and transferring \$42,660.25 from the Contingency Line Item in the General Fund and approving \$52,282.30 for immediate disbursement to the Chamber of Commerce**

Councilmember Brooks moved to table Resolution 4-2012 until the next regular Council meeting. Seconded by Councilmember Sacco. Motion passed 5-1 with Councilmember Lambert voting nay.

8. **Discussion and possible action regarding the administration and the funding of the Annual Benson Bluegrass Festival scheduled for April 27, 28 & 29, 2012**

City Manager Glenn Nichols addressed Council stating on January 11, 2012, he received a letter from the Benson/San Pedro Valley Chamber of Commerce, saying they were not going to sponsor the annual Bluegrass Festival this year. Mr. Nichols then stated included in the Council information is the approximate budget and costs to put this event on, adding Mr. Sandoval has already lined up the Bluegrass entertainment for the event and Mr. Nilson estimated the additional expenses for the event, which totals approximately \$27,500. Mr. Nichols then stated Mr. Nilson and Ms. Parkin have both agreed to work on the event and have been assisting the Chamber with events in the past, noting they have some knowledge of what needs to be done. Mr. Nichols then stated he would hope the Chamber would provide information on some of the vendors so they could be used and included in the event. Acting Mayor McGoffin asked Chamber President Jennifer Rush to speak, verifying at this point the Chamber doesn't have the money to cover these costs, since they have to be paid in advance of the event with Ms. Rush stating due to complications, the Chamber was precluded from being able to do fundraising they had anticipated, noting the issue isn't that the Chamber doesn't want to do the event, but financially, they are unable to do so.

Acting Mayor McGoffin then asked if the Chamber was able to do the event, how much money would it take for the City to give them to be able to complete the event, adding she understands the revenue from Bluegrass is a lot of the Chamber's income and will help them in the future with their budget and other events and things they would like to do. Ms. Rush then stated she was not anticipating this question tonight and apologized that her treasurer had to leave, but if she were to make an estimation, she would have to say there's 10,000 remaining in the City's budget for the Chamber and the estimated costs were \$27,500 so the Chamber would need the \$10,000 currently allocated in the budget and an additional \$17,500. Acting Mayor McGoffin then opened the item for discussion.

Councilmember Brooks then stated Council had allocated some monies throughout the year for all these events in the general budget and understands the estimated costs of \$27,500 for the Bluegrass Festival, but the last amount Council had budgeted to the Chamber was \$20,000 and the Chamber had drawn \$9,000 of that which leaves essentially another \$10,000 and asked Ms. Rush if that would be enough to do the Bluegrass Festival, adding it seems it would be. Ms. Rush stated she would like to give a bit of history, and said Butterfield Days was expanded to 3 days and like everyone else, the Chamber's revenues and sponsorship dollars they were able to obtain decreased so they didn't make as much money on Butterfield Days as in past years. Ms. Rush then stated when it came to Christmas on Main Street, because of the complications with the Department of Transportation and having to move locations, the expenses increased,

adding there have been far more expenses this year related to events, due to these extenuating circumstances.

Councilmember Brooks stated he wasn't sure what to say and this may be another item Council might want to table because if Council decided to go the other way, the Chamber may not need this. City Manager Glenn Nichols stated we're reaching the breaking point on this event and if the issue is tabled and no decision was made, the bands would be lost because Mr. Sandoval needed to know one way or the other if the event was going to be held this year. Councilmember Sacco asked if the Chamber had handled this event in the past and if they had cost experience with Mr. Nichols stating the cost experience was used to determine the budget given to Council. Councilmember Sacco then confirmed if the event was cancelled, the bands would be lost with Ms. Rush stating the bands are on a national circuit and Bluegrass has been rising, becoming more and more the venue Bluegrass people want to be in, so if the event were to be cancelled, a great deal of momentum and position would be lost. Councilmember Sacco stated Bluegrass is a very popular event and is a money maker, if it's handled right, asking if the Chamber would be willing, if the City were to advance money for the Bluegrass Festival, to take on responsibility for the event with Ms. Rush stating the Chamber would, adding as she mentioned, not being able to do the event was merely a financial issue.

Council discussion then focused on the ability to advance funding and the ability to expend funding on a specific event which would help tourism and the City. Councilmember Brooks then stated Finance Director Jim Cox may have information on the availability of funds and where they would come from, with Mr. Cox stating if the City were to approve funds in the amount of \$27,500 to the Chamber of Commerce, the City would exceed the budget line item by approximately \$17,000, adding that would be a Council decision, noting the funding would come out of the contingency fund. Mr. Cox then stated Council budgeted \$36,000 to the Chamber in the 2011-2012 budget with \$25,800 expended so far, leaving a little over \$10,000 remaining in the budget line item and stated again, if Council were to advance 100% of the funding estimated to complete the Bluegrass Festival, it would be approximately \$17,000 more than what we have in the budget currently. Councilmember Brooks then asked where the funding would come from if the City did the event with Mr. Cox stating the City would expend the funding in the same way, but would also collect the commensurate revenues earned at the Bluegrass Festival. Mr. Cox then stated in the past, the City has actually paid expenses on behalf of the Bluegrass Festival but the Chamber received the revenue from the event, noting the Chamber also paid a small portion of the expenses. Councilmember Brooks asked for clarification on where the funding would come from with Mr. Cox stating he presumed if the City did the event, no further funds would be advanced to the Chamber of Commerce during the current fiscal year, which would leave \$10,000 in the budget to be used for the event. Mr. Cox then stated he would anticipate the revenues earned by the event would be in the neighborhood of \$15,000-17,000, offsetting the additional costs. Councilmember Brooks asked if Mr. Cox was saying after revenues were received from the event, the City could pay the performers and if the performers needed to be paid right away, with Mr. Cox stating he thought the question was directly toward allocations in the budget, but assuring Councilmember Brooks the City carries a cash balance and had the funds to do the event. Councilmember Sacco stated the event also generates revenue for the RV parks, hotels and motels and that needed to be figured into the equation also. Councilmember Moncada stated whether he is in Phoenix, Tucson or Sierra Vista, he always hears about the Bluegrass Festival; people love it and it's the most popular event Benson has, so he thinks we definitely need to do the event and he thinks Bob Nilson and Laura Parkin can do a great job. Councilmember Sacco stated the only question he has is if the Council wants the City or the Chamber to do it with the City's financial support, since the Chamber has more experience with the event than the City does. Councilmember Moncada stated for now, until Council gets the legal questions answered, the City's going to have it do it, adding it can't wait 2 weeks for a decision. Councilmember Lambert asked if Tourism Director Bob Nilson could come forward since he would be the person running the event if the City chose to do it. Mr. Nilson addressed Council stating he has been involved in the Bluegrass Festival since it's beginnings with Former Chamber Director Bev Stepp, adding last year and the 2 years prior to that, Dick Ferdon and he helped, so they do know how to do it. Mr. Nilson then stated they assisted Former Chamber Director Bob Mucci for two years and assisted Former Chamber Director Debbie Thompson for 2 years before that, adding before that it was with Former Chamber Director Bev Stepp. Mr. Nilson then stated the only thing he wasn't really in on was setting up the sponsorships and the booth space, but if the City chose to do the event, he has templates for the 4th of July event, including

vendor applications, sponsorship forms and booth setup that could be used for the Bluegrass event. Mr. Nilson then stated it's getting down to the wire for sponsorships, noting a lot of the businesses that sponsor the event, do it a year in advance. Councilmember Sacco asked if a date had been set for the event with fellow Councilmembers stating it was going to be held April 27, 28 and 29. Mr. Nilson then stated Mr. Sandoval has had the entertainment lineup since a month after the last festival, adding he is very professional and does this every year. Mr. Nilson then stated the other thing that is a revenue generator is the program, and while he had not been involved in the selling of the ads, City Staff has allowed him to actually do the artwork for the posters and the programs for the past 6 years, adding he has all those templates. Mr. Nilson then stated he doesn't feel comfortable as a City employee going out and getting sponsorships, noting on the 4th of July committee, there is someone who's not a City employee to do that, and he feels the same about selling ads in the Bluegrass program, but stated there is income to be made on the programs, the vendors and gate fees.

Acting Mayor McGoffin then stated a possible compromise since the Chamber has done sponsorship solicitation and has sold ads for the programs, is the Chamber could do the program and receive the revenues from the program, which could be a fundraiser for them, and then help out with some other ways, noting this would split the revenues from the event. Acting Mayor McGoffin stated since this event was one of the Chamber's biggest fundraisers, she was trying to find a way to help them with their budget next year. Councilmember Brooks stated he thought that idea sounded good. Councilmember Lambert then asked Mr. Nilson how much income he would anticipate from the event, with Mr. Nilson stating he wasn't involved much with income, but estimated gate fees could range from \$8,000-\$12,000, adding sometimes the weather affects attendance and not all people come all 3 days. Councilmember Sacco stated the income would be hard to estimate, and would have to take into consideration the money hotels, motels and all the restaurants in town would make, adding he knows this is a big event. Mr. Nilson agreed stating he believes the last Bluegrass Festival had between 2,000 and 3,000 paying people in attendance. Chamber Board Director John Kelly then addressed Council stating the Bluegrass Festival has always been a revenue maker for Benson, and as Mr. Nilson stated, it is hard to sell when that is not what you do for a living, adding all the Chamber members have businesses and sell for a living. Mr. Kelly then stated he has spoken with Ms. Rush and the reason the Chamber couldn't put on the Bluegrass Festival was they didn't have the extra funds to do it, so if the Council was willing to give the funds to the Chamber, they would put on the event and it would be successful like always. Mr. Kelly then stated it would be up to Council to decide, but there is a small window and Council could either vote for the Chamber to do it and fund the money for it, vote for the City to do the event, or vote to dissolve the event, adding dissolving the event would affect all the residents and businesses in Benson. Councilmember Brooks stated right now, in the enrichment fund is \$10,000 sitting there for the Chamber to use for this event, and asked if the Chamber took that money, would it be enough to take care of getting everything lined up, because there would still be several months before the payment to the performers would need to be made or if the event would require all the funding up front or if the balance was something Council could act on at the next meeting, because if the new arrangement came about, Council could make a decision and if it didn't come about, Council would have to make the decision that the City is going to do the entire event. Ms. Rush stated as Mr. Cox mentioned earlier, the event would require an additional \$17,500 this year along with the remaining \$10,000 in the budget and stated even if the City does the event, Council would still be expending the additional \$17,500, so she would agree with Mr. Kelly that it makes sense to have those from the Chamber that have been doing the event and are used to selling go ahead and do the event. Ms. Rush then stated if the Council would allot the additional \$17,500 to the Chamber, they would do the event and the Council wouldn't have to worry about it and the Chamber would continue on as usual or the Council could pay the additional \$17,500 and have Mr. Nilson do the event.

Councilmember Brooks then stated if the hiccups with the Chamber hadn't come along recently, the City would still have had to pay this additional funding anyway since the event was in the budget, wouldn't we, since it was something we planned to do, stating he didn't understand since it was in the budget. Mr. Cox then stated in the budget process, Council came up with \$35,000 based on Staff recommendation which was sufficient in prior years to put on the events the Chamber did. Mr. Cox then stated in the past, the City paid the event expenses directly and the Chamber earned the revenues, which was a good way to fund Chamber activities, but this year the process changed, with the City cutting checks directly to the Chamber, in the total amount of approximately \$25,000 leaving about \$10,000 left in the budget and with \$27,500 in

expenses for the Bluegrass Festival, it results in the shortfall. Mr. Cox then stated the allocated funds to the Chamber in the budget were the result of a \$35,000 budget request from the Chamber, which has been historically budgeted each year to fund Chamber events when the City paid the expenses directly there was never a problem in the 5 years, it's been done. Councilmember Moncada asked if the expansion of Butterfield Days to 3 days and having to move Christmas on Main Street contributed to the problem with Ms. Rush confirming this, stating for example, the Chamber allocated \$9,000 of the money from the City for an event that cost more than \$14,000, so the Chamber has been paying more out of pocket for events than the funds they receive from the City for those events and by continually paying more, it has left the Chamber short. Councilmember Maldonado stated the last time the City received a budget request from the Chamber was in 2008 requesting \$35,000 for the events and asked if anyone from the Chamber came to the budget meetings with Ms. Rush stating she did not have an answer for that. Councilmember Sacco asked if the Chamber was invited to the budget meetings with Council stating the meetings were for all the public, including the Chamber. Councilmember Lambert then stated it was simply a communication issue and if the Council had an idea the Chamber needed more money, it was easy to consider and increase the budget during the upcoming budget meetings, but to take additional funding from the contingency funds is where the problem falls right now.

Councilmember Brooks then asked if the remaining \$10,000 would be enough for the Chamber to give the Council another 4 weeks to make the decision or if they needed the \$27,500 with Mr. Kelly stating the Chamber Board, like Council, runs in terms, adding the current Chamber Board was seated in July, after the budget meetings had concluded, but they can attend the upcoming budget meetings. Mr. Kelly then stated changes like Christmas on Main being moved due to a last minute decision by ADOT, and expanding Butterfield all have to be taken into consideration, and he thinks what the Chamber has done with the events so far has been pretty awesome for Benson. Councilmember Maldonado asked if the Chamber would have a problem if the City did the Bluegrass Festival just this year and then Council could consider a new budget request from the Chamber for the upcoming budget with Ms. Rush stating as they have said, the Chamber can't do the event without the additional funding and the question is if the City is going to do the event, they would still be spending the additional money anyway. Acting Mayor McGoffin stated the difference is if the Chamber does the event, the City doesn't get anything back in the long run, but if the City does the event, the City would keep the revenues which would offset the additional funding needed to do the event and the budget line item wouldn't be over as much. Ms. Rush then stated for the City to do the event is an option the Council can choose as it comes down to a simple matter of mathematics, since the Chamber doesn't have the money to front the costs, adding all the Chamber wants to do is work with the City. Councilmember Maldonado stated the City doesn't want to lose the event, since if it is cancelled the Chamber will lose their place in the entertainment circuit.

Councilmember Brooks then stated we still needed someone to do the sales and asked about contracting with the Chamber to do that part of the event, with Ms. Rush stating her suggestion, if the City does the event and Council wanted to work out anything like Councilmember Brooks was saying such as contracting for doing sales and return and then once again, that gets the Chamber income, it would be a decision Council could make afterwards, as to how it should be done, but it appears to be the important thing right now, was whether or not the Council was going to commit to the event, because Mr. Sandoval has to know the decision. Councilmember Moncada then moved for the City to do Bluegrass this year and we can work out the details, but we need to give direction to Staff so they can move ahead. Seconded by Councilmember Lambert. Motion passed 4-2 with Councilmembers Brooks and Sacco voting nay.

Acting Mayor McGoffin then called for a 5 minutes recess. Council reconvened at 9:16 p.m.

9. Review of the City Attorney and possible action on the contract for Municipal Legal Services

Acting Mayor McGoffin stated this item was brought forward by Councilmembers Ron Brooks and Al Sacco, asking who would like to speak first. Councilmember Brooks addressed Council stating since he wasn't on the Council at the time the contract was signed between the City Attorney and the past Council, he felt he needed to have a review concerning the contract we have with the City Attorney. Councilmember Brooks then stated Mr. Toney King, Sr., Mr. Al Sacco and Mr. Chris Moncada were also not on the Council at that time, with Council indicating both Mr. King and Mr. Sacco were on the Council

at that time. Councilmember Maldonado then stated he was not on the Council at that time, but both he and Councilmember Sacco served on the Attorney Selection Committee. Councilmember Brooks then stated he was basically making a point that it was acceptable to do a review at this time, because some of the new Councilmembers weren't part of the old contract. Councilmember Brooks then stated he has had some trouble with information from this attorney over the time he has been on this Council regarding different issues, one of which, was his personal experience in the election he was elected in, adding this was not to be mean or pointed or to be a vendetta, but was an actual experience in which he got to see first hand how this attorney handles affairs of the public or even with the City Council. Councilmember Brooks then stated there were two roads to take here, one is that there are a number of those on the Council who are not happy with the attorney and are not happy with his performance, adding the higher road would be is the Council going to have 2 or 3 members that are unhappy with his services have to deal with him in the next year and a half or are we going to look for a new City Attorney or firm that all the Council will be happy with, noting this would be the higher road.

Councilmember Brooks then stated unfortunately, he thinks he is going to have to go through some of the things he found that were incorrect or done improperly by the City Attorney and it had to come to the City's attention, one of which is the election he was elected in. Councilmember Brooks then stated he went to the Secretary of State and got information directly from them that he should have been on the general ballot, adding the information came out of the State statutes which says there are two ways to get on the general ballot, one is by petition and the other one is a majority vote in the primary election as a write-in. Councilmember Brooks stated that is black and white and is very clear, adding the Secretary of State sent a letter that read in their opinion, he should be on the general ballot, but instructed Staff to follow their own City's advice. Councilmember Brooks stated after Mr. Masee saw this information, he still refused to let him on the ballot. Councilmember Brooks then stated he had to go to the Attorney General's office, which looked into the matter and spoke with the Secretary of State in elections there and found the correct information that he should have been on the ballot, adding the Attorney General's office then called and talked to Mr. Masee, who still refused to put him on the ballot and the Attorney General's office had to tell Mr. Masee that Mr. Brooks was going to be on the general ballot or the election would be shut down. Councilmember Brooks then stated he didn't know how many people knew that, but it was clear and was only one incident, adding he has many more that he could bring up if Council would like, but it was very clear to him that he could have sued the City for that. Councilmember Brooks then stated he didn't want to sue the City, he wanted to be a Councilman and help the City, but that was a legal lawsuit he could have brought against the City. Councilmember Brooks then stated a year or so ago, the News-Sun did a report on the City Councilmen and how they felt about the service with Mr. Masee, and then read a quote from an article dated Tuesday, September 14, 2010 in which it reads, "...continued mistakes and oversights have some Benson City Councilmembers thinking it may have been time to search for a new attorney. Several of the Councilmembers are not looking favorably at the City Attorney Michael Masee's job performance after yet another vote may be required to increase the City's bed tax. This would be the third vote to approve the measure...", Councilmember Brooks continued reading "...while Councilman David Lambert said he's still investigating the situation, Vice Mayor Toney King and Councilmembers Al Sacco and Lori McGoffin say they are very unhappy with the continued mistakes; Sacco was speechless saying he wants to discuss the matter further during a Council meeting and King and McGoffin said there's no excuse. 'I am extremely concerned here,' McGoffin said, 'we count on the City Attorney being professional and taking care of all these details before Council votes. I am extremely frustrated and we are trying to run a professional City and if we have to keep re-voting on something, it just ends up costing the taxpayers' ". Councilmember Brooks then stated the recent thing Mr. Masee brought up about the bed tax, there are other cities doing this now and if they're all illegal, then Mr. Masee's an exception to the rule, but he believes there's a way for this to happen, but Mr. Masee chose to go the other direction with him. Councilmember Brooks stated Mr. Masee may not have had a directive from Council to look into the matter, but he chose to send Councilmember Brooks something that says Council can't do this and he could have taken the other direction and tell Councilmember Brooks if this is what the Council wants, he would look into this or get a directive to look into this and get Councilmember Brooks the information. Councilmember Brooks then stated it is just a continued type of bad information that he sees out of Mr. Masee's opinions, adding in Stagecoach Trails, Mr. Masee had 22 motions and every one of them failed. Councilmember Brooks stated Mr. Masee has refused to go along with the orders the local judge in Cochise County ordered him to do and then even allowed the Council to make a conditional permit to put a

home on, adding he has been in the business a long time and has never heard of such a thing. Councilmember Brooks then stated there are just many numerous mistakes and he personally does not feel comfortable with advice from Mr. Masee and he would not like to be forced to have him for his counsel in the future and he thinks in all fairness with the other Councilmembers, not as a vendetta Mr. Masee, the Council would thank him for his time with the City, but he thinks we should find a new law firm the Council is all happy with.

Councilmember Sacco then spoke stating he is very unhappy with Mr. Masee also, because of the Stagecoach Trails lawsuit and some of the correspondence that has been going back and forth between the lawyers for Stagecoach Trails and Mr. Masee and the trial courts, adding we've lost a huge portion of our zoning code, Section 16, because the City failed to provide the notice required by the zoning enabling act when it adopted Section 16. Councilmember Sacco stated Section 16 was part of Ordinance 398 which is a major overhaul of the City's zoning regulation and Mr. Masee should have known when this happened and he was using this as an argument in the court hearings that we were giving up Section 16 in the zoning code, which does not sit well with him. Councilmember Sacco then stated he believes Stagecoach Trails has been after Mr. Masee to discuss a settlement and it's never taken place and in the meantime, we're incurring legal costs, not the City, but Stagecoach Trails is incurring legal costs which if they prevail, will be passed on to the City, so we're talking some additional dollars here. Councilmember Sacco then stated based on all that and these actions, he has no faith in Mr. Masee whatsoever or any of his opinions, which is why he keeps continuously asking for a second opinion.

Acting Mayor McGoffin opened the item for discussion. Councilmember Maldonado stated both he and Councilmember Sacco were on the committee that selected Mr. Masee, adding they went through a lot of attorneys and it was unanimous to select Mr. Masee. Councilmember Maldonado stated they knew attorneys make mistakes, but he felt right now, it would cost the City more to get rid of Mr. Masee than it would to keep him due to the outstanding litigation and the cost to get someone up to speed. Councilmember Brooks stated Mr. Masee has a 60-day notice and the City has a February 1 court trial date, adding 60 days would be plenty of time for Mr. Masee to argue the litigation out and then if it's appealed or taken to a higher court at that point, he thinks the City Risk Pool Attorney can actually handle it and is totally up to speed on it, but Council could confirm it with him. Councilmember Brooks then stated Mr. Masee does have some arguments that he doesn't believe the Risk Pool Attorney feels comfortable making, because he wasn't there to make those initial arguments, so Mr. Masee would need to make those arguments himself, but if Council did dismiss him, it would be with a 60-day notice. Councilmember Maldonado stated he felt Council should let Mr. Masee finish the current litigation and Council could make a decision after it was completed. Councilmember Sacco stated the City has outside counsel that's handling those cases right now and Mr. Masee has very little to do with those lawsuits right now, so it should not impact the Council's decision whether to continue a relationship with Mr. Masee or not. Councilmember Brooks stated Mr. Masee would still have 60 days and he is uncomfortable with even 60 days, adding he fears for the town and he is here to watch over the town, which is Council's job to be protectors to make sure the City doesn't end up in lawsuits like with the Chamber. Councilmember Brooks then stated even in the middle of the issue with the Chamber, he thinks it would have been appropriate for Mr. Masee to interrupt Council and suggest they go into an executive session or suggest they table the issue, instead of letting the issue go on and on. Councilmember Maldonado stated Councilmembers are the ones to table issues, not the attorney, with Councilmember Brooks stating the attorney is there to keep the Council out of trouble and Mr. Masee should have suggested or advised the Council during the meeting. Councilmember Maldonado asked Councilmember Brooks if he asked Mr. Masee for his opinion with Councilmember Brooks stating he had not. Councilmember Lambert then stated he had a couple of corrections, stating Councilmember Brooks brought up the fact the Council would be stuck with Mr. Masee for another year and a half, but in all actuality, Mr. Masee's contract is up May 1, 2012, so it ends in 3 months anyway. Councilmember Lambert then stated the other thing he wanted to clarify is, Councilmember Sacco brought up the fact that Mr. Masee has very little to do in the current litigation, which is actually false, adding Mr. Masee has everything to do with it, because the outside counsel is under his direction, agreeing with Councilmember Maldonado that it would best to keep him on that until at least the appeal part is done. Councilmember Moncada stated the only thing he would like to say is his experience with Mr. Masee has been mostly good, noting he has only been on Council 6 months, but when he has a disagreement, he talks to Mr. Masee and they explain their issues, stating they don't always agree,

but that's the way it is. Councilmember Moncada then stated personnel reviews are usually done in executive session and for whatever reason, it is being done in the open meeting and he doesn't think it should have been done that way. Acting Mayor McGoffin stated she has had several disagreements with Mr. Massee, but they have talked about them and worked through them, which is the way it is with Councils, adding she has had disagreements with Councilmembers, but we work through them. Acting Mayor McGoffin then stated Council has to do some of their own homework and if they don't approve, they can look for other counsel on their own, or ask to get a second opinion through other means. Acting Mayor McGoffin then stated at this time, she is not comfortable with getting a new attorney until the contract is up in May and Council could look at it then because she didn't want to pay to get another attorney caught up to speed with all that Council has, adding she won't say all of the lawsuits were done on Mr. Massee's watch since she is pretty sure Mr. Benavidez was here for some of them. Councilmember Brooks then stated he would have to reiterate again, it seems fine to let Mr. Massee make his arguments and finish out this thing, but this is not going to end, it's going to go on and on, adding he believes if the decision comes in their favor, it's going to go on and continue.

Councilmember Brooks then stated he has no problem with Mr. Massee finishing the discussions that are going to be needed here and as Councilmember Lambert brought up the fact that May 1 would be the end of the contract, he thinks he could probably go that far with it, but personally he would say that he would like to see a new law firm at that time and this is something Council can talk about in the future, but he absolutely refuses and is going to go get counsel somewhere else, because he does not trust Mr. Massee. Councilmember Brooks then stated he told Council about the general ballot, which was absolutely wrong, adding he doesn't know what the reason was, but he wishes Council would search their hearts because they would find the answer and he didn't like it and shouldn't be forced to have an attorney he doesn't trust. Councilmember Lambert stated he had one comment and agreed with Councilmember Moncada this should have been done in an executive session so Council could have all got their opinions out on the table with the contracted employee present, adding he did check with Mr. Massee before the meeting to ask if he would rather have this in an executive session or open forum and Mr. Massee stated he didn't care one way or the other. Councilmember Sacco stated he thinks it is time for Council to look for a law firm that has more than 1 lawyer and it may cost a little more, but he thinks it would be well worth their while. Councilmember Sacco then stated he would like to have the Acting Mayor direct staff to start looking around at some other firms. Acting Mayor McGoffin then asked Mr. Massee if there was anything he would like to say. Mr. Massee then addressed Council stating in light of the hour, he didn't know if it would be fruitful, but there are reasons for everything. Mr. Massee then stated one mistake he sill admit was completely his mistake was relating to the public hearing for the bed tax, adding as a result of his mistake, the bed tax didn't get increased and so the City has had to live without the additional revenues of additional tax monies. Mr. Massee then stated as far as the general election ballot, he could go through the process and the analysis of the ordinance at stake in the election and how the ordinance, he felt, was very clear, noting there was no State statute on point, adding he didn't know what Councilmember Brooks was receiving as far as saying there was a statute on point, because he searched and was wanting to find a statute, even after talking to Amy Bjelland, the Elections Director at the Secretary of State's office. Mr. Massee stated he believed she was who Mr. Brooks had been speaking with directly and after speaking to her, reading the same ordinance to each other, they came to different outcomes as far as what that ordinance really means and Ms. Bjelland did not mention there was a statute on point nor did the Assistant Attorney General who called and made some threats to him. Mr. Massee then stated he then contacted other City attorneys with the ordinance, asking for their opinions and the answer was to put him on the ballot, adding there was no analysis of the language, just the results oriented answer to put him on the ballot. Mr. Massee then stated his ethical obligation is to interpret and apply ordinances as they are written regardless of the policy preference that he may have and so his point of view, what he heard from everyone who did not provide any kind of legal analysis, was here is the result you have to follow. After looking at the uniform results, he then discussed it with the City Clerk and decided regardless of what the ordinance said, we were going to follow what the majority said and put Mr. Brooks on the ballot. Mr. Massee then stated after the election, if Council recalled, he came back to Council to clarify the ordinance, so the situation where attorneys are imposing their policy preferences, would not happen again. Mr. Massee then stated again, it is his ethical obligation is to apply the law as it is written, not as he would prefer it to be, which is what he did in that case. Councilmember Brooks then stated something that is clearly stated in the elections of the State of Arizona, adding we all know law comes from morality, what was the right thing to

do, adding in the Arizona State Statutes, it says if there's any confusion in a matter of an election, do what favors the people and asked how one person on the ballot would be favoring the people. Councilmember Brooks then moved to end the contract with Mr. Massee on the 30th, when the term expires, adding this is more than a 60-day notice and he would move to seek new counsel. Acting Mayor McGoffin stated the motion on the floor was to end the contract with Mr. Massee on the date, at the term of his contract. Seconded by Councilmember Sacco. Motion failed 2-4 with Acting Mayor McGoffin and Councilmembers Lambert, Maldonado, Moncada voting nay.

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 both pending litigation matters, Stagecoach Trails Mobile Home Court (MHC) vs. the City of Benson, Arizona, et. al.

Councilmember Lambert moved to enter into Executive Session with the Acting Mayor and Council, City Manager, City Attorney Mike Massee and the City's outside legal counsel provided by the Arizona Municipal Risk Retention Pool, Mr. Jeff Murray and the City Clerk at 9:42 p.m. Seconded by Councilmember Brooks. Motion passed 5-1 with Councilmember Sacco voting nay.

Council reconvened at 10:14 p.m.

DEPARTMENT REPORTS: None

ADJOURNMENT:

Councilmember Sacco moved to adjourn at 10:15 p.m. Seconded by Councilmember Brooks. Motion passed 6-0.

Lori McGoffin, Acting Mayor

ATTEST:

Vicki L. Vivian, CMC, City Clerk