

**THE REGULAR MEETING
OF THE MAYOR AND CITY COUNCIL OF BENSON, ARIZONA
HELD MARCH 11, 2019 AT 7:00 P.M.
AT THE BENSON COMMUNITY CENTER, 705 W. UNION STREET, BENSON, ARIZONA**

CALL TO ORDER:

Mayor King called the meeting to order at 6:58 p.m. with the Pledge of Allegiance. Mayor King then introduced Adam Gilbert from the Bahai' Faith who gave the invocation.

ROLL CALL:

Present were: Mayor Toney D. King, Sr., Vice Mayor Joe Konrad, Councilmembers Pat Boyle, Larry Dempster, Lupe Diaz, Barbara Nunn and Nick Maldonado.

EMPLOYEE RECOGNITION:

Mayor King recognized Marcos Gatton and John White for 5 years of service with the City. Marcos Gatton was not present. Mayor King presented a plaque to Mr. White and thanked him for his service.

PROCLAMATION: Mayor King read a proclamation of the Mayor and Council declaring March 12, 2019 "Girl Scout Day." Mayor King then presented the proclamation to Kacy Champine and Courtney Smith, the Troop leaders for Troop #224.

PUBLIC HEARING: None

CITY MANAGER REPORT:

City Manager Vicki Vivian addressed Council, giving the dates of upcoming meetings and events.

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| Tuesday, March 12, 2019 | - Planning and Zoning Meeting, 6:00 p.m., Community Center |
| Saturday, March 16, 2019 | - Historic Preservation Commission, 9:00 a.m., Long Realty |
| Monday, March 25, 2019 | - Council Meeting, 7:00 p.m., Community Center |
| Thursday, March 14, 2019 | - Library Needlepoint Art 10:30 a.m., City Library
Ages 9-100. Under 9 yrs. Must be accompanied by an adult |
| Sunday, March 17, 2019 | - Benson City Grille, San Pedro Golf Course
will be having a St. Patrick's Day Special
from 11:00 a.m.- 3:00 p.m. Corned Beef and Cabbage |

NEW BUSINESS:

1. **Discussion and possible action on the Consent Agenda**

- 1a. Minutes of the November 13, 2017 Regular Meeting
- 1b. Minutes of the February 25, 2019 Regular Meeting
- 1c. Invoices processed for the period from February 14, 2019 through February 28, 2019

Vice Mayor Konrad moved to approve the Consent Agenda. Seconded by Councilmember Diaz. Motion passed 7-0.

2. **Swearing in and Seating of Newly appointed Councilmember**

City Manager Vicki Vivian stated at the February 25, 2019 Council meeting, the Council appointed Anicleta Maldonado to fill the vacancy created by the resignation of former Councilmember Levi Garner. Ms. Vivian stated Mr. Maldonado was officially sworn in February 26, 2019 in the City Clerk's office, then administered the ceremonial oath of office with Councilmember Maldonado.

3. **Discussion and possible action regarding Resolution 5-2019 of the Mayor and Council of the City of Benson, Arizona, directing the City's Banking partners to recognize the signatures of certain persons on electronic fund transfers, deposit and/or withdrawal checks, and declaring an emergency regarding this resolution**

City Manager Vicki Vivian stated the proposed resolution authorizes the Mayor, Council, City Manager/City Clerk and the Finance Director to sign bank transfers and checks for deposit and/or withdrawal. Ms. Vivian then stated with all Councilmembers named in the resolution, there would be a total of 9 authorized personnel to sign checks, noting 2 signatures are required, and this gives Staff the ability to have checks executed when some of the authorized persons are not available. Ms. Vivian then stated the resolution removes former Councilmembers Levi Garner and David Lambert and adds Councilmembers Barbara Nunn and Anicleta Maldonado. Ms. Vivian then stated as a policy, one member of the Council and one member of Staff will sign checks, providing one of the many checks and balances the Finance Department maintains; however, should circumstances arise with Staff not being available, two Councilmembers may be asked to sign checks. Ms. Vivian then stated a process has been put into place in the Finance Department to offset this before two Councilmembers are asked to sign checks, adding this is an administrative housekeeping item to remove former Councilmembers and add new Councilmembers.

There was no Council discussion.

Councilmember Boyle moved to approve Resolution 5-2019. Seconded by Councilmember Nunn. Motion passed 7-0.

4. **Discussion and possible action regarding Resolution 6-2019 of the Mayor and Council of the City of Benson, Arizona, adopting a notice of intention to increase water and wastewater rates and setting a public hearing for May 28, 2019**

Finance Director Seth Judd stated the principal source of revenue for the Water & Wastewater Utility operations and maintenance is derived from monthly user fees charged for services provided, adding the current Water and Wastewater Utility rates, fees and other charges were adopted by Mayor and Council in February 2017 and went into effect July 2017. Mr. Judd stated these rates were put into place to bring the Water and Wastewater Utilities budgets closer to balancing, adding the rate study was completed by Staff and adopted by Council with the understanding that there would need to be another professional rate study done later. Mr. Judd then stated for the past 2 years, the City has contracted with Pat Walker Consulting as a financial consultant and she brought to our attention that the Water and Wastewater funds have been borrowing from other funds to balance their budgets at the end of the year and currently owe money to other funds. Mr. Judd then stated the current rate study in place does not provide a means for that money to be paid back, nor does it take into consideration debt service from past utility projects funded by debt (bond proceeds) and does not allow for the funds to build a reserve to be able to pay for capital expenditures that may arise.

Mr. Judd stated at the January 7, 2019 Council Meeting, Mayor and Council approved a contract with Willdan Financial Services to perform a rate study for our Water and Wastewater utilities; then stated for Council to be able to consider implementing the rate study recommendations, a Notice of Intent must be adopted and must include a date for a public hearing. Mr. Judd stated once completed, the rate study will be brought back to Council to be declared a public document before the public hearing and consideration of the rate modifications.

Councilmember Diaz stated he knows this is procedural to put out a letter of intent, but he feels a letter of intent says that the City will raise the water rates. Councilmember Diaz stated the Council has not looked at the rate study, so the Council does not know if they will adjust the rates at all. Councilmember Diaz stated the whole idea of the letter of intent, and the word intent, says the Council will be doing it; then stated the Council needs to look at the cost analysis and employee evaluation before they move on this item. Councilmember Diaz moved to make a motion to table this item until Council can see the rate study, adding that he doesn't feel delaying for 2 weeks until the Council can see the study they paid \$30,000 for is not asking for too much.

City Attorney Gary Cohen stated the notice of intent is pursuant to the state law requirement and must be done a certain number of days before the public hearing, which must be held a certain number of days before any increase to water or wastewater rates. Mr. Cohen then stated despite the language Councilmember Diaz pointed out, passing a notice of intent does not bind the City to raise the water or wastewater rates but the downside of not approving it is the Council would not be allowed to legally raise the water or wastewater rates at the time that is currently anticipated by Staff. Mr. Cohen stated he wanted the Council to know the procedural reasons for the notice of intent being presented for consideration at this time.

Vice Mayor Konrad asked if the requirement would still be in place if the Council were to lower the rates, with Mr. Judd stating the statute doesn't mention lowering rates, but he thought the requirement would apply; then added Staff would like any rate change to be effective July 1. Mr. Judd then stated by approving the notice of intent, gives the Council the opportunity to include the adjustments in the upcoming budget and would eliminate the possibility of having two rate increases in the same fiscal year, noting there is already a pre-approved increase scheduled for July.

Mayor King stated this is something Council has been working on for quite some time and he understands how Councilmember Diaz feels, but he also wants Councilmember Diaz to understand this has been going on for a long while. Mayor King stated Council knew the rate increase they approved a couple of years ago wouldn't be enough to sustain the funds, adding the City is not out to make money, but the goal is to make the water and wastewater utilities pay their own way instead of taking money from the General Fund. Mayor King then stated Councilmembers are responsible to do their jobs correctly and though it's a tough choice, it is something important the Council needs to stay on instead of trying to delay it. Mayor King then stated the Council needs to stay on the timeline that will prevent citizens from having two increases in one year.

Councilmember Diaz stated he understands the timeline and the procedure, but he feels the Council has not looked at the rate study yet, so they don't know what they will be considering. Councilmember Diaz stated if a young man comes to his door and wants to take his daughter out, he would want to know the young man's intent. Councilmember Diaz stated he knows the notice of intent is dealing with the state mandated language, but it's a philosophical thing and he is doing that for his own conscious. Councilmember Diaz then stated again, the Council has not looked at the rate study and no cost analysis or personnel evaluation has been presented.

Mayor King asked when the rate study would be presented to Council with Mr. Judd stating the Council needs to declare it a public document 30 days before the public hearing, so it will go before Council on May 28, but Staff is hoping to have it to Council in the next few weeks.

City Manager Vicki Vivian stated as Councilmember Diaz knows, she disagrees with a lot of things that the state does, but she thinks in this instance the state is trying to protect and safeguard the public by making the Council notify them by approving a notice of intention to consider rate increases 60 days before approving any rate increases. Ms. Vivian then stated from a previous worksession with Pat Walker, the City's Financial Consultant, the Council learned that the utilities owe about \$880,000 to other funds. Ms. Vivian then stated the Council discussed forgiving that debt, but she would recommend not forgiving it and instead include a small debt repayment in the rate study because taking money from other funds is taking away from other services the City can provide. Ms. Vivian then stated the draft study calculated repaying the debt as fast as possible, so the rate increases came back higher than she would like to see. Ms. Vivian then stated Huachuca City raised their rates about 54% and 87%, adding a lot of times, Councils will delay rate increases, but she

feels very fortunate that our Council understands the need for enterprise funds to be self-sustaining so other funds can provide the services and products they are supposed to. Ms. Vivian then stated she asked for the draft to be revised to program in a smaller debt payment, which is why the study is not quite ready, but noted it should be completed soon. Ms. Vivian then stated there is no personnel study being conducted at this time, but in anticipation of this item, she did look up our public works utility workers in the fiscal year ending in 2011, adding the water workers were at 6.89 full-time employees and they are now down to 6.06; then stated the wastewater utility was at 6.91 full-time employees and that was also down to 6.09. Ms. Vivian then stated the current numbers also included a sanitation allocation that was not included in 2011, so in truth, the numbers are even lower. Ms. Vivian stated a personnel study won't be conducted in time to adopt the new rates for the upcoming fiscal year.

Mr. Judd stated he would like to speak about the question Vice Mayor Konrad asked earlier about the required notice of intent should the Council wish to decrease utility rates; then stated he reviewed the statute and it does not specifically have language for decreasing rates; it only addressed an increase in the rates.

Mr. Cohen stated he also reviewed the statute and while he agrees with Councilmember Diaz, perhaps Councilmember Diaz would refer to this document as a notice of intent to possibly increase the rates, since that's really what it is, even though the statute doesn't use that language. Mr. Cohen then stated Councilmember Diaz is 100% right that realistically, it should be a notice of a possibility of increasing rates, but the statute requires the notice of intention language that is being presented to Council.

Mayor King stated there had been no second to Councilmember Diaz's motion to table this item; therefore, the motion died.

Vice Mayor Konrad moved to approve Resolution 6-2019. Seconded by Councilmember Maldonado. Motion passed 6-1 with Councilmember Diaz voting nay.

5. **Discussion and possible action Discussion and possible action regarding Ordinance 595 of the Mayor and Council of the City of Benson, Arizona, amending the Benson City Code, Chapter 2, "Mayor and Council," Article 2-1 "Council," Section 2-1-4(A) "Vacancies in Council"**

City Manager Vicki Vivian stated whenever a vacancy on Council occurs, State law mandates that "The council shall fill a vacancy that may occur by appointment until the next regularly scheduled council election if the vacancy occurs more than thirty days before the nomination petition deadline, otherwise the appointment is for the unexpired term." Ms. Vivian stated per the current City Code, the vacancy must be filled within 30 days and due to the timing of Council vacancies and the newspaper's weekly publication, there have been times that the application deadline has been 8 or 9 days after the first publication. Ms. Vivian stated the first 8 years she had been with the City, there was no vacancies at all and since 2010, there have been 6 vacancies. Ms. Vivian stated she went back and looked at the timing of the deadlines and noticed three with 8 days, one with 9 days, one with 13 days and the most recent being 15 days, however that was because the newspaper extended their deadline; otherwise that would have also been 8 days. Ms. Vivian stated she was looking at the timing of this and Staff put 60 days in the resolution, but the Council is free to amend it as they see fit. Ms. Vivian stated she wanted to let Council know Staff would always fill a vacancy as soon as possible, adding she feels 3 weeks to submit an application after an advertisement is printed is sufficient and Staff would work to get the advertisement done as soon as possible.

Mayor King stated he thinks 60 days is good, adding it would be the appropriate because of advertising deadlines.

Councilmember Boyle moved to approve Ordinance 595. Seconded by Councilmember Nunn. Motion passed 7-0.

CALL TO THE PUBLIC: None

DEPARTMENT REPORTS: None

ADJOURNMENT:

Councilmember Diaz moved to adjourn at 7:30 p.m. Seconded by Vice Mayor Konrad. Motion passed 7-0.

ATTEST:

Toney D. King, Sr., Mayor

Vicki L. Vivian, CMC, City Clerk