

**THE REGULAR MEETING
OF THE MAYOR AND CITY COUNCIL OF BENSON, ARIZONA
HELD MARCH 23, 2015 AT 7:00 P.M.
AT CITY HALL, 120 W. 6TH STREET, BENSON, ARIZONA**

CALL TO ORDER:

Mayor King called the meeting to order at 7:03 p.m. with the Pledge of Allegiance. Mayor King then announced former Mayor James Crawford, better known as “Coach” passed away today and that he would like to take a moment of silence in recognition of Mayor Crawford’s contributions to the City of Benson. Mayor King stated Mr. Crawford was a Councilmember from 1979-1991 and 1995-2003, serving as Mayor from 1997-2001. Mayor King then stated Mr. Crawford served on the Council for 20 years, adding he was a great man and his passing was a great loss for the City. A moment of silence was observed.

Mayor King then asked if Steve Medieros of the New Life Family Worship Center was present for the invocation. Mr. Medieros was not present.

ROLL CALL:

Present were: Mayor Toney D. King, Sr., Vice Mayor Lori McGoffin, Councilmembers Pat Boyle, Jeff Cook, Joe Konrad and David Lambert.

EMPLOYEE RECOGNITION: None

PROCLAMATION:

Mayor King asked Councilmember Lambert to read a proclamation of the Mayor and Council declaring the week of March 23-27, 2015 as “Rotary Club of Benson Week.” Mayor King then presented the proclamation to the Rotary Club of Benson President.

PUBLIC HEARING:

City Clerk Vicki Vivian stated the public hearing was being held to receive comments from the public regarding a project for which financial assistance is being sought from the U.S. Department of Transportation, adding grant funds will be used to provide general public transit to the residents and visitors of the City of Benson and the surrounding communities.

Mayor King opened the public hearing at 7:11 p.m. Mayor King stated there was one person signed up to speak and invited Herman Flores to address the Council.

Mr. Flores stated he has been in Benson since 1964 and has seen many changes. Mr. Flores then stated his family members were politicians; many served on Council and they used to tell him what was going on. Mr. Flores then stated this has nothing to do with transportation, but he wanted to give Council his background, adding he had 32 years of police experience and he believes in the oath he took to serve the public. Mr. Flores then stated the concern is out there that tankers will derail, adding the U.S. government predicts 10 derailings a year and asked if Benson was ready for that. Mr. Flores stated that he had asked the Fire Chief and a Councilmember, but had received no answers. Mr. Flores then stated in Nogales there had been a bomb set but it didn’t go off because the person who built it was too stupid. Mr. Flores then stated he has worked with all agencies except the CIA, adding he has studied statutes and he has attorneys in his family, as well as an engineer who graduated from Princeton and hopefully in the near future, he will have a doctor in the family. Mr. Flores then stated he has seen what goes on and the games that are played, noting now it’s been brought up that the absent Councilman is illegal, but no one mentioned it before, adding it’s very convenient for someone or a group to do so now. Mr. Flores then stated he doesn’t cater to any group as he took an oath to serve the public and has always done that. Mr. Flores then stated for three years, he has been a helper at the

school for the STEM program and a City employee came there, saying their title was that of “acquisitioner” and then checked everyone who came in.

City Attorney Gary Cohen then interjected, stating at this point in time, the public hearing subject is grant funding for the transit system. Mr. Flores stated his comments were nothing related to transit, then stated his daughter was on the Council when the airport came about. Mr. Flores then stated she told him the airport was funded by grants. Mr. Flores then stated his son-in-law was on the Council when the caverns came in, then stated what he always heard was that if the City doesn’t get the grants, someone else would.

Mayor King then asked if there was anyone else present who wished to speak. After receiving no requests to speak, Mayor King closed the public hearing at 7:17 p.m.

CALL TO THE PUBLIC:

Luther Godley, of St. David, stated he was here to talk about the senior citizens funds and he would like the Council to vote for them.

CITY MANAGER REPORT:

City Manager William Stephens addressed Council, giving the dates of upcoming meetings and events.

- Wednesday, March 25, 2015 – El Dorado Holdings, owners of Vigneto, formerly known as
- Monday, April 6, 2015 Whetstone Ranch, will be holding Public Open Houses, 7:00 p.m. to 9:00 p.m. at the Benson Community Center, 705 W. Union Street.
- Tuesday, March 24, 2015 – Community Watershed Alliance, 6:30 p.m., City Hall
- Tuesday, March 31, 2015 – Citizen Review Session – Vigneto, 7:00 p.m., City Hall
- Monday, April 6, 2015 – Benson Economic Development Committee, 6:00 p.m., City Hall
- Tuesday, April 7, 2015 – Planning & Zoning Commission, Public Hearing & Regular Meeting, 7:00 p.m., City Hall
- Monday, April 13, 2015 – City Council Meeting, 7:00 p.m., City Hall
- Tuesday, April 14, 2015 – Library Advisory Board, 4:00 p.m., City Library
- Monday, April 20, 2015 – City Council Worksession, 6:00 p.m., City Hall
- Monday, April 27, 2015 – City Council Meeting, 7:00 p.m., City Hall
- Tuesday, April 28, 2015 – Community Watershed Alliance, 6:30 p.m., City Hall

Mr. Stephens then stated for information on meetings and events, the public could visit the City’s website.

NEW BUSINESS:

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

- 1a. Minutes of the February 23, 2015 Regular Meeting
- 1b. Resignation of Chris Moncada from the Benson Planning & Zoning Commission
- 1c. Invoices processed for the period from March 1, 2015 through March 12, 2015

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

2. **Presentation of the Certified Audit Report for the City of Benson for the fiscal year ended June 30, 2014**

City Clerk Vicki Vivian stated Mr. Usevitch, the representative who was to give the presentation was not present due to a bad traffic accident on Interstate 10. Mayor King stated the item would be delayed until Mr. Usevitch arrived. (This item was tabled after New Business Item #6 was addressed. See remaining minutes.)

3. **Discussion and possible action regarding a Fireworks display contract between Fireworks Productions of Arizona, Ltd. and the City of Benson**

City Manager William Stephens stated this is a similar contract to the previous contract for fireworks. Councilmember Boyle asked if this had been included in the budget with Mayor King stating it was. Councilmember Lambert stated the Council would be considering a 1% sales tax increase on May 11 that could affect the budget, adding he thinks this item should be tabled until that time because if the Council were to approve the contract and then have to cancel it, the 10% down payment would be forfeited. Councilmember Boyle asked why the contract may be cancelled with Councilmember Lambert stating the City may not have the funding. Finance Director Megan Moreno then addressed Council stating the funding for this item is unusual because the funding for this event was in the current budget, but the actual event occurs in the next fiscal year. Ms. Moreno then stated if the Council chose to remove the fireworks from the upcoming budget cycle, the fireworks for the 2016 event would be cancelled. Ms. Moreno then stated she would like to remind everyone this funding was in the Community Enrichment Fund, which is funded by bed tax, adding that money is already set aside and earmarked for community events. Councilmember Boyle then moved to approve the fireworks display contract between Fireworks Productions of Arizona, Ltd. and the City of Benson. Second by Vice Mayor McGoffin. Motion passed 5-1 with Councilmember Lambert voting nay.

4. **Discussion and possible action regarding Resolution 11-2015 of the Mayor and Council of the City of Benson, Arizona, authorizing the Chief of Police to apply for a National Criminal History Improvement Program Grant and to accept it if awarded**

City Manager William Stephens stated this grant requires a 10% match with the City's cost being approximately \$3,000. Chief of Police Paul Moncada then addressed Council stating on March 6, he was made aware of this grant which closed on March 20, adding it was too late to address at the March 9 Council meeting and it couldn't wait until the March 23 Council meeting. Chief Moncada then stated he is now coming to Council to seek their approval and permission to accept the grant if it is awarded, adding if Council chooses not to approve the grant, he would simply not accept it.

Councilmember Boyle asked what the Lifescan booking program was with Chief Moncada stating it is an automated digital fingerprint scanner. Chief Moncada then stated instead of doing ink prints, the Police Department can process digital fingerprints which are transmitted electronically to the Department of Public Safety (DPS) in Phoenix and to Washington for the FBI, updating criminal history in a matter of minutes. Chief Moncada then stated the Police Department currently has a machine obtained with a grant in 2006, which is due to come offline in July, adding he was just informed of this grant by the tech company who services the current machine.

Councilmember Konrad asked if the Police Department processed fingerprinting for the schools with Chief Moncada stating they process fingerprinting for the public, school employees, citizens for immigration, liquor license applicants and other jobs that require fingerprinting. Councilmember Konrad asked if the Lifescan machine was used for those with Chief Moncada stating it depended on what was required. Councilmember Konrad asked about the immediate notification of criminal history for school volunteers with Chief Moncada stating it would not be immediate, adding the Lifescan program transmits fingerprints and any reporting done is sent directly back to the requesting entity, such as the school in this case and not the City. Chief Moncada then stated the program can also be used to identify an unknown subject, adding if an officer has reason to think he is being given a false name, he can call DPS in Phoenix and have the fingerprints moved up to the top of the list and check on that suspect right away. Chief Moncada then stated typically, the program is used to update criminal history.

Councilmember Boyle asked about the current machine no longer being supported with Chief Moncada stating all maintenance has been kept up on the current machine, but effective July, 2015, it will no longer be supported with software updates and there will be no parts available, adding according to DPS, the current machine has to come offline and without a new machine, the Police Department will have to go back to ink only fingerprinting.

Councilmember Konrad asked about the continuing cost of the Lifescan program with Chief Moncada stating the quote he received was for the purchase and warranty of the hardware, adding the Police Department currently pays about \$8,000 per year for maintenance. Chief Moncada stated the current machine itself was approximately \$50,000; however, the new proposed hardware is approximately \$30,000.

Councilmember Cook stated he is assuming if the machine isn't updated, it will be a matter of time before it's inoperable with Chief Moncada stating according to DPS, the current system, both the hardware and the software will be taken offline in July.

Vice Mayor McGoffin asked City Attorney Gary Cohen about a conflict of interest with her husband being on the Police Department, adding he will be retiring before the grant is awarded with Mr. Cohen stating there is no direct conflict and her husband has no financial interest in whether the Police Department has a digital fingerprinting machine or not so there is no legal reason for her to abstain, but she could abstain if she wanted.

Councilmember Konrad asked about the deadline for the application with Chief Moncada stating the deadline was March 20, so it has been submitted, but any awards wouldn't be made until after July, adding if the Council decides not to approve the grant, he would simply not accept the award. Councilmember Konrad then asked if the Council could consider the grant after Chief Moncada could provide them with on-going maintenance costs with Chief Moncada stating he knew the current maintenance plan was approximately \$5,000-\$8,000 per year and he expected the new maintenance costs to be similar. Councilmember Konrad expressed concern that the costs would increase substantially after the first year with Chief Moncada stating the company providing the program is the exclusive provider for the state of Arizona and he didn't think they would increase the maintenance costs that much, adding they provide this program and manufacture every automated Lifescan machine in the state of Arizona.

Councilmember Boyle asked if the grant match was in the current budget with Chief Moncada stating it would be placed in the upcoming budget, adding the expenditure would not occur until after July. Councilmember Lambert moved to approve Resolution 11-2015. Seconded by Councilmember Boyle. Motion passed 6-0.

5. **Discussion and possible action to authorize a proposed mural on an outdoor wall of the Visitor's Center parking lot**

City Manager William Stephens stated the Benson Clean & Beautiful committee has raised funds to create another mural and are asking permission to have the mural placed in the Visitor Center parking lot on a vacant wall at the west end of the east parking lot. Mr. Stephens then stated Lisa Hill of the Benson Clean & Beautiful committee is available for questions.

Councilmember Lambert stated the committee has done a great job, adding he enjoys looking at the murals around the City and he has talked to committee member Leo O'Farrell about some new murals and where they will be placed, stating again, the committee is doing an excellent job. Mayor King stated he loves to watch people stop and take pictures of the murals, adding it's amazing how many people stop and take pictures in the downtown area. Ms. Hill stated she loves that also and wished there were a way to count the number of people who stopped to view and take pictures of the murals.

Councilmember Boyle asked if the committee has a list or a route people could follow to see all the different murals with Ms. Hill stating the committee is working on that and could get it to the Council in the next couple of weeks.

Councilmember Konrad confirmed there was no cost to the City with Mr. Stephens stating the committee worked hard to raise funding and is only seeking approval to paint the mural on City property. Councilmember Konrad then moved to authorize the proposed mural on the outdoor wall of the Visitor's Center parking lot. Seconded by Councilmember Lambert. Councilmember Cook asked for clarification on where the mural would be painted with Ms. Hill stating it would be on the wall right next to the Visitor's Center on the east side. Motion passed 6-0.

EXECUTIVE SESSION: Pursuant to A.R.S. §38-431.03 (A)(3), discussion or consultation for legal advice with the attorney or attorneys of the public body regarding an ordinance about the number of times the Mayor and Councilmembers can appear for regular and special meetings by telephone or other available electronic means

Vice Mayor McGoffin moved to enter into an executive session with Mayor and Council, the City Manager, the City Attorney and the City Clerk at 7:41 p.m. Seconded by Councilmember Boyle. Motion passed 6-0.

Council reconvened at 8:30 p.m.

6. **Discussion and possible action on an ordinance about the number of times the Mayor and Councilmembers can appear for regular and special meetings by telephone or other available electronic means**

City Manager William Stephens stated Council gave direction to Staff at the February 23, 2015 Council meeting, to create an ordinance outlining attendance/absence parameters and specifying the type of Information Technology electronic means to attend Council meetings in absentia, adding the proposed ordinance is for Council review, discussion and consideration.

Vice Mayor McGoffin stated there has been a lot of discussion on the subject, adding electronics are great, but a human presence is important so everyone can tell a Councilmember is paying attention. Vice Mayor McGoffin then stated she was thinking of limiting electronic participation to 5 consecutive meetings and 8 total meetings for the year, adding she feels for the most part, a Councilmember should be present for meetings.

Councilmember Lambert stated with 2 regular meetings each month, the Council has 24 regular meetings a year and with budget worksessions, other worksessions and special meetings, the Council usually holds approximately 40 meetings a year. Councilmember Lambert then stated he thinks 20% could be attended electronically, which would be 8 meetings a year and half of those (4) could be consecutive.

Councilmember Cook stated he wished more people were in attendance because he has been listening to a lot of wild accusations from people who are pushing their warped political agendas and telling him that Mayor King had declared the seat held by Councilmember Wangsness vacant. Councilmember Cook then stated the truth is that Mayor King did not declare the seat vacant, adding Mr. Wangsness declared his seat vacant by saying he's been gone for more than 90 days.

Councilmember Lambert then stated Councilmember Cook's comments should be reserved for New Business Item #8 with Councilmember Cook agreeing.

Councilmember Lambert then moved to approve Ordinance 576 with the respective numbers to be 8 meetings throughout the year that can be attended telephonically and 4 consecutive meetings that can be attended telephonically. Seconded by Vice Mayor McGoffin. Councilmember Konrad then asked about using Skype and if there was a possibility that could come to fruition with Mr. Stephens stating electronic means would address any form of electronic participation, including Skype. Mr. Stephens then stated some electronic participation wouldn't be appropriate, adding there is a requirement for the participating Councilmember to be heard and to be able to respond, noting that texting and using email would be examples of inappropriate electronic means. City Attorney Gary Cohen then stated he intentionally put language that was open-ended in the proposed ordinance for telephonic or other available electronic means, adding the reason he did so is that he is not sure what those means currently are and also that we don't know what will be available in the future. The motion then passed 6-0.

2. **Presentation of the Certified Audit Report for the City of Benson for the fiscal year ended June 30, 2014**

Mayor King stated the Council would now address New Business Item #2, adding due to circumstances, he was moving to table the item. Seconded by Councilmember Konrad. City Attorney Gary Cohen stated for the

record to be clear, he wanted to note there was a traffic accident on Interstate 10, and the person who was to be addressing Council could not be present. Motion passed 6-0.

7. **Review of City Finances with emphasis on February financial results, and the City's financial position at February 28, 2015**

Finance Director Megan Moreno stated the new Finance Director Dustin DeSpain was present, but has yet to see this monthly presentation so she will address Council tonight, but he will be giving this presentation in the future. Ms. Moreno then began her presentation stating the Citywide unrestricted cash balance has bounced back and sits at \$1.2 million, which is right in line with this time last year, adding the City is not gaining any ground, but is maintaining and it's nice to see the cash balance has increased over the \$1 million threshold. Ms. Moreno then stated this will help the City with the large payments due at the end of the fiscal year, noting the payment to Wal-Mart required as part of the development agreement as well as the upcoming bond payment. Ms. Moreno then stated bond proceeds are still at \$954,000, adding no bond draws have been made since the last financial presentation.

Ms. Moreno then stated fund balance revenues exceeded expenditures by \$211,000 for the month of February, and also ended positive year-to-date at \$456,000 for the fiscal year. Ms. Moreno then stated last year the City was \$207,000 in the red, noting this is a significant turnaround, adding this difference is attributed to cost savings measures put into place as well as furloughs for City employees and other personnel costs saved through attrition. Ms. Moreno then stated Citywide revenue for the month of February was \$818,000 and was \$5.9 million year-to-date, which was a decrease over the prior year of about \$247,000, but noted at this time last year, the City had received a significant amount in grant revenue from CDBG funding and also had collected a much higher Construction Sales Tax. Ms. Moreno then stated at this time last year, the Construction Sales Tax was \$135,000 compared to this year, which sits at \$47,000.

Ms. Moreno then stated personnel costs citywide were \$345,000 which is down compared to last February and is down year-to-date down by almost \$400,000, adding this is a result of the combination of furlough savings and attrition, noting the last time she presented, the City had lost 10 employees and now she believes the City has lost 15 employees.

Ms. Moreno then stated in the General Fund, revenues were \$409,000 for the month and were \$2.2 million year-to-date, which was still down from last year. Ms. Moreno then stated there are no significant increases, but there have been some increases over last year in State Shared Sales Tax and State Shared Revenues, which are the two funds the Governor is sweeping. Ms. Moreno then stated those numbers aren't available yet, but she is hoping to have them soon, so how the City will be affected will be known going into the upcoming budget cycle. Ms. Moreno then stated personnel costs in the General Fund decreased by \$31,000 for the month compared to last February and is down year-to-date by \$228,000 from last year at this time. Ms. Moreno then stated the fund balance was positive for the General Fund ending at \$28,000 for the fiscal year, adding last year, the General Fund was still operating in the red at this point, by \$320,000.

Ms. Moreno then addressed the Enterprise Funds stating they all ended in the positive, including Golf Course operations and the Golf Course Food and Beverage was negative by only \$196.00. Ms. Moreno then stated Gas, Water, Wastewater and Sanitation were all positive for the month of February and year-to-date, but noted there have been no capital improvements or money spent on capital projects this year. Ms. Moreno then stated the Golf Course ended in the positive \$15,000 for the month of February, but was still down \$58,000 in Golf Operations and \$28,000 Food and Beverage, adding a loss of \$87,000 was budgeted this year and the Golf Course is still under that budgeted amount.

Councilmember Lambert asked about bond proceeds being used for repairs in the Enterprise Funds with Ms. Moreno stating she would have to check, noting bond proceeds have been used to do some pavement management, to purchase 2 dump trucks and for some airport and UAS development. Mr. Stephens stated there was some paving done at Stagecoach Trails with Ms. Moreno stating that was approximately \$35,000 in the Streets fund that would come from bond proceeds.

Ms. Moreno then addressed sales tax, stating City Sales Tax is right in line with where it was last year at this time, but at \$255,000, it's slightly above where it was two years ago. Ms. Moreno then stated Bed Tax was \$7,455 for the month of February, which is just slightly above where it was the last two years and Construction Sales Tax was just over \$9,000 for the month of February, right in line with where it was two years ago, adding last year, Construction Sales Tax actually dipped below zero, due to some accounting adjustments that came through. Ms. Moreno then stated as she mentioned, Construction Sales Tax was \$135,000 at this time last year and this year is only \$47,000 year-to-date, adding Construction Sales Tax is used to fund capital projects around the City.

Ms. Moreno then reviewed State retail sales tax collection, stating it is right in line, just slightly below the previous year, adding February is always the strongest month for collections because it's based on December sales. Ms. Moreno then asked if there were any questions from Council.

Councilmember Konrad asked about the House Bill in the State legislature regarding the elimination of the rental transaction privilege tax with Ms. Moreno stating she has been informed by the League of Arizona Cities and Towns that the bill is dead in the water, but she hasn't gotten a final report on it, adding she will check on the status. Councilmember Konrad asked if the information she was given looks more positive than it did in January with Ms. Moreno stating the general opinion now is that the bill won't move forward and if that is the case, the Council should revisit what to do locally about collecting the rental tax with Councilmember Konrad agreeing.

Mayor King thanked Ms. Moreno for her presentation.

EXECUTIVE SESSION: Pursuant to A.R.S. §38-431.03 (A)(3) and/or (4), discussion or consultation for legal advice with the attorney or attorneys of the public body, and possible instruction to the attorney or attorneys of the public body about Council seat issues related to A.R.S. Sections 38-101, 38-291(6) and/or law(s) involving residency and principle place of abode requirements for Councilmembers

Councilmember Lambert moved to enter into an executive session with Mayor and Council, the City Manager, the City Attorney and the City Clerk at 8:48 p.m. Seconded by Councilmember Konrad. Motion passed 6-0.

Council reconvened at 9:30 p.m.

8. **Discussion and possible action on procedures to an individual to fill Council seat**

Mayor King stated because the Council seat occupied by Councilmember Wangsness has been determined to be vacant by operation of law, he moved to hold a special meeting on April 2 to fill the vacancy. Seconded by Councilmember Lambert. Councilmember Lambert then stated he would like to have the motion amended to include a meeting time of 7:00 p.m. Mayor King amended his motion to include a starting time of 7:00 p.m. Amended motion was then seconded by Councilmember Lambert. Councilmember Konrad stated he knew the deadline to appoint someone was April 2, but asked if the meeting could be moved to April 1 for personal reasons. Mayor King then amended his motion again to change the meeting date to April 1 at 7:00 p.m. The amended motion was again seconded by Councilmember Lambert.

Councilmember Cook expressed concerns of not having a quorum present and the legal deadlines for noticing meetings. Councilmember Cook then stated the Council might want to schedule more than one meeting as there might be one person applying or there might be a dozen people applying and the Council might not want to interview every applicant in one meeting. Vice Mayor McGoffin stated she thought the Council could appoint someone in one meeting. Councilmember Lambert stated it may be better to notice more than one meeting in order to comply with the legal posting timeframe.

Councilmember Konrad stated March 31 and April 1, if needed would work better for him with Councilmember Lambert stating the deadline for the submission of applications was March 31. Mayor King stated meeting on March 31 wouldn't give the Council much time to review the applications with City Clerk Vicki Vivian stating the applications were short and didn't contain a lot of information to review. City

Manager William Stephens then stated Staff could notify the applicants of the meeting being held on March 31, should the Council decide to hold the meeting then. Councilmember Cook then asked if the Council could come in and review any applications that had already been submitted with Ms. Vivian stating any applications submitted were public record and were available to anyone who wished to see them.

Councilmember Lambert stated he thought the Council should have an executive session prior to the item so the Council could get the County Attorney's opinion on the situation. City Attorney Gary Cohen stated an executive session could be held prior to the action item. Mr. Cohen then stated he would like to clarify the motion on the floor, stating his understanding was the motion was to direct Staff to set up a meeting for the evening of March 31 to consider applications for the Council seat the City determined vacant by law and at that time, the Council will reserve the right to interview applicants and either decide on who to fill the seat that evening or if the Council doesn't decide, the meeting will carry over to April 1 and if necessary to April 2; in addition, the Council will hold an executive session at those meetings prior to the action item. Motion was confirmed and then seconded again by Councilmember Lambert. Motion passed 6-0.

DEPARTMENT REPORTS: None

ADJOURNMENT:

Vice Mayor McGoffin moved to adjourn at 9:37 p.m. Seconded by Councilmember Konrad. Motion passed 6-0.

ATTEST:

Toney D. King, Sr., Mayor

Vicki L. Vivian, CMC, City Clerk