

**THE REGULAR MEETING
OF THE MAYOR AND CITY COUNCIL OF BENSON, ARIZONA
HELD MARCH 26, 2012, 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 7:00 p.m. with the pledge of allegiance. Mayor King then introduced Pastor Lupe Diaz of Grace Chapel who gave the invocation.

ROLL CALL:

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

EMPLOYEE RECOGNITION: Mayor King recognized both Deborah Ray and Dustin Merrill for each having 5 years of service with the City of Benson.

PROCLAMATION: None.

PUBLIC HEARING: None.

CALL TO THE PUBLIC:

Mayor King spoke stating he had resumed his official duties as Mayor on March 16, 2012 with the response of applause. Mayor King then stated he appreciated the efforts of Staff and his fellow Councilmembers in keeping him up-to-date regarding matters of City business during his recent absence from Council meetings and he would especially like to commend Vice Mayor Lori McGoffin on her willingness to step in as Acting Mayor for the past two months, adding she has done a great job presiding at meetings and representing the City in other venues during his absence and he would like to thank her for all her extra efforts. Mayor King then stated he looks forward to resuming his close working relationship with Vice Mayor McGoffin and the rest of his fellow Councilmembers as they continue to work cooperatively to advance the common interests of the citizens of Benson, adding there are many more goals the Council can achieve together during the remainder of his term as Mayor and he is determined to give 100 percent effort in this project. Mayor King then stated this is the most difficult thing he has ever been through and he wanted to thank his family for all they have done for him adding the support of the community is absolutely amazing and he can't thank everyone enough for all they have done.

Stephen Insalaco addressed the Council regarding hangars at the Benson Municipal Airport. Mr. Insalaco's statement will be retained with the Council packet. After Mr. Insalaco read his statement he said Mr. Brad Hamilton informed him the City was preparing an RFP for airport hangars and he will let Mr. Graziano know.

Kevin Dirksen addressed Council stating his problem is a fire hazard and there is a weed problem in the City, adding he is not the only one who has this problem. Mr. Dirksen then stated he has asked several times to have the field north of his house cleaned up and has talked to several different staff members who have been unable to help him since the area he was talking about was private property. Mr. Dirksen then stated in the City Code, underneath the Health and Sanitation, it addresses private property and under Section 9-2-2, it addresses trees. Mr. Dirksen then stated he has been told Staff can't do anything and he would like the Council to direct Staff to do their jobs instead of saying they can't do anything.

JT Moffett addressed Council stating it was great to have the Mayor back and his hat was off to Vice Mayor McGoffin for the great job she did in his absence. Mr. Moffett then stated budget time was coming up, and asked the Council to consider 2 things; the amount of expenditures needed to keep the golf course open and the money given to the Chamber of Commerce, adding if Council were to total the amount of

taxpayer dollars going to these two entities, they could easily give the employees a 5% raise and provide the police with a yearly incentive increase pay plan otherwise known as a step plan. Mr. Moffett then stated the golf course did not lose \$125,000 the first half of the fiscal year, but lost \$275,000, adding just because Mr. Hartley reimburses the City for \$25,000 a month; it does not negate the overall loss. Mr. Moffett stated as a business investment, the golf course still lost twice that which was reported and the Council can not include Mr. Hartley's money since it has no bearing on what money the golf course and restaurant actually brought in. Mr. Moffett stated the problem with the original reimbursement arrangement, and the Council should have been told, is that they get too used to counting on the additional funds and never really budget themselves without it, adding the fact that the City only gets 32 months of additional funds from Mr. Hartley should be a wake up call since the City is looking at yet another year in the red for this investment, which he affectionately calls Cox's folly. Mr. Moffett then stated tonight the Council will hear more of Mr. Cox's song and dance about the golf course and how well it is doing with another month yet in the black, but this was during the peak season and Mr. Cox should tell the Council about it again in August, when the golf course will be right back in the red losing money. Mr. Moffett then stated in a couple months from now, the Council will be hearing more excuses for the money needed to pour into the course to keep it healthy and operational and asked the Council to not fall for the smoke and mirrors tricks again, adding this bad investment must go. Mr. Moffett then stated we have a great community here, a safe and beautiful place to live because of our fine Police Department and City employees who work hard to keep it that way, adding no one can deny our cops are some of the best anywhere. Mr. Moffett then stated our City workers are known for their helpful and friendly attitude toward the citizens and the same can be said for all the office workers in every department, adding they are always helpful and courteous and with this in mind, he finds it appalling that the number one priority has been to keep the golf course open, no matter what the cost, at the cost of neglecting the very employees who make this City tick. Mr. Moffett then stated it is a discredit to Mr. Cox to see there's always sufficient funding to keep his beloved golf course afloat while denying employees a decent raise in almost 5 years. Mr. Moffett then stated the Council has an obligation and a tremendous burden this coming fiscal year to do away with the frivolous spending and make a serious effort to take care of the needs and much deserved financial well-being of our cops and employees, adding the attitude of putting off the needs of the people to try and save the golf course is defeating and demeaning to our dedicated employees and good citizens of Benson. Mr. Moffett then stated the Chamber of Commerce has shown it is not worthy of any financial support in the next budget, adding the Chamber Board actually voted not to support or help the Tourism Department with Bluegrass, and in addition, the decision to give Chamber Director Marc Washington a \$3,000 Christmas bonus last December is proof enough they need to fend for themselves. Mr. Moffett stated he was beside himself when he found out in the midst of financial strain and while demanding the Council give them more money, they gave away all the profits from Christmas on Main Street to their director as a bonus, not to mention the constant threats of lawsuits from the same entity that is asking Council for money. Mr. Moffett then stated if the Council gives the current Chamber Board more money, they will find themselves in the same boat next year with the Chamber demanding money like a child or else they won't lift a finger, adding the Chamber feels it is none of the City's business what they do with the funding they get from the City. Mr. Moffett then stated he had seen the truth in the fact that it is indeed tax dollars going to the Chamber, and it certainly is the Council's business. Mr. Moffett then stated the bed tax must be used for tourism and quite frankly the Chamber has had its sites set on big business and certainly not tourism. Mr. Moffett then stated the Council should take these two entities off the budget and they will find there will be sufficient funds to take better care of the real needs of the people of Benson.

CITY MANAGER REPORT:

Public Works Director Brad Hamilton addressed Council, giving the dates of upcoming meetings and events.

- March 27, 2012 – Community Watershed Alliance, 6:30 p.m., City Hall
- April 3, 2012 – Planning & Zoning, 7:00 p.m., City Hall
- April 9, 2012 – City Council Worksession – General Development Plan & Zoning Regulations
6:00 p.m., City Hall
- City Council Meeting, 7:00 p.m., City Hall

- April 10, 2012 – Library Advisory Board, 4:00 p.m., Library
- April 21, 2012 – Historic Preservation Commission, 9:00 a.m., City Hall
- April 23, 2012 – City Council Public Hearings – General Development Plan & Zoning Regulations, 7:00 p.m., City Hall
- City Council Meeting, 7:00 p.m., City Hall
- April 24, 2012 – Community Watershed Alliance, 6:30 p.m., City Hall

- April 14, 2012 – Little League Opening Ceremonies, Parade at 9:00 a.m. and Ceremonies start at 10:00 a.m. at Lions Park
- April 21, 2012 – Benson’s Relay for Life Event, Lions Park
- April 27, 28 & 29, 2012 – Bluegrass in the Park, Lions Park

Mr. Hamilton reminded those present of the continuing work on the I-10/State Route 90 Traffic Interchange project, adding up-to-date information can be found at www.azdot.gov.

Vice Mayor McGoffin then stated the Benson Relay for Life event has almost 200 participants signed up to walk and the event will start April 21 at 4:00 p.m., adding the event will last throughout the night concluding at approximately 10:00 a.m., symbolizing that Cancer never sleeps. Vice Mayor McGoffin then stated there will be events and speakers all night, adding if anyone would like to sign up for the walk, they can do it online at www.relayforlife.org then follow the links to Benson, adding there is a lot of information on the website. Vice Mayor McGoffin then stated over \$12,000 had been raised for the event so far. Vice Mayor McGoffin then encouraged everyone to come out and enjoy the evening and make it a community event, whether they walked or not. Mayor King agreed.

NEW BUSINESS:

1. Consent Agenda

- 1a. Minutes of the March 12, 2012 Regular Meeting
- 1b. Invoices processed for the period from March 1, 2012 through March 14, 2012

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

2. Discussion and possible action to appoint a Selection Committee to review the Municipal Legal Services (City Attorney) Proposals

Mayor King stated this item would allow Council to discuss how the committee would be formed to review the Municipal Legal Proposals. Councilmember Moncada stated he would like to see the committee consist of 5 or 7 members with citizens and 3 Councilmembers serving on the committee. Councilmember Brooks stated he would like to see the City Manager also serve on the committee since the City Manager uses the City Attorney quite often. Mayor King then stated Councilmembers Moncada and Sacco had expressed their interest to serve on the committee as well as himself. Councilmember Brooks then indicated he would like to serve on the committee also. Discussion then focused on the issue of a quorum of the Council serving on the committee and the necessity of limiting the number of Councilmembers on the committee to 3. Councilmembers Brooks and Maldonado then asked about the process to select citizens to serve on the committee with City Clerk Vicki Vivian giving a brief overview of the process used in the last selection committee. Ms. Vivian stated those Councilmembers who did not serve on the committee gave names of people they would like to represent themselves on the committee and she contacted them to see who would be able to serve on the committee. Ms. Vivian stated at a later Council meeting, she gave the names of those persons who could serve on the committee and the Council appointed the committee members. Ms. Vivian then stated the same process could be used, if Council decided to do so and the committee could be appointed at the next Council meeting. Mayor King stated the names could be dropped off at the City Clerk’s office over the next few days, giving the Councilmembers a chance to decide on who they would want to represent them. Ms. Vivian then suggested each Councilmember who

would not be serving on the committee give more than 1 name in case someone she contacted could not serve on the committee. Councilmember Brooks stated he felt it was critical to have the City Manager serve on the committee since he relies so heavily on the City Attorney and he felt the other people to serve on the committee should be voted on by Council with those who received the most votes serving on the committee. Ms. Vivian stated in the last process, only the Councilmembers who did not serve on the selection committee were given the opportunity to choose who they would like to represent themselves since the Councilmembers who served on the committee represented themselves. Vice Mayor McGoffin then agreed, but stated if she picked a person to represent her, that person should have a higher priority and should serve on the committee instead of a person chosen by a Councilmember who was serving on the committee, adding this would ensure a fair representation of Council. Mayor King then stated this item would be addressed at the April 9, 2012 Council meeting for the actual appointment of the selection committee members.

3. **Memorandum of Understanding between the Arizona Department of Fire, Building and Life Safety, Office of State Fire Marshal and the City of Benson**

Building Official Luis Garcia stated this Memorandum of Understanding gives the City of Benson the authority to review plans and perform periodic inspections, such as the annual inspection program, in County- and State-owned buildings, as well as the public school buildings. Mr. Garcia then stated this is currently reserved for the State, however, the State Department of Building, Fire and Life Safety has requested local municipalities take this over due to their staffing shortfalls. Mr. Garcia then stated one of the advantages of having this agreement is it actually gives first responders an opportunity to be able to get into these buildings, adding prior to this agreement, they still responded to these buildings in case of an emergency, but had no prior knowledge as to what the building entailed, noting this is definitely a benefit to the community.

Councilmember Maldonado asked about the similarities between this MOU and the IGA with the State's Office of Manufactured Housing with Mr. Garcia stating the agreements are similar but with two different divisions within the Department of Building, Fire and Life Safety. Councilmember Brooks asked if this applied to any government building with Mr. Garcia stating the level of government buildings affected would be from the State down. Councilmember Sacco then stated he thought the State's responsibility was to inspect the placement of a unit on a lot, then the City came in and did the inspection on the utilities and asked if Mr. Garcia would be doing the same thing with Mr. Garcia stating the placement of a unit was actually always under the authority of the local zoning regulations and/or the adopted local fire code, adding the IGA gave us back the authority to inspect utilities. Mr. Garcia then stated this MOU will allow the City to review the construction documents, issue permits on modifications to the buildings and perform all annual fire inspections to ensure they are being operated in compliance with the adopted State Fire Code.

Mayor King stated the City did a great job of the inspections when he was the manager of a local store and the City is very knowledgeable and believes this is something the City can handle. Councilmember Maldonado stated he would like to have a provision allowing Staff to reinforce their position in case there is a disagreement. Councilmember Brooks then stated Staff will be certified by the State. Mr. Garcia then stated there is language in the MOU addressing audits from the State Department of Building, Fire and Life Safety, adding the City could use those audits to make sure we're inspecting to the State's performance standards. Mr. Garcia then added local staff actually holds the appropriate credentials to be able to do these inspections, with Chief Spangler being certified through the State to perform fire inspections and Mr. Garcia being certified through the International Code Council, as well as holding the designation of a Certified Building Official. Mr. Garcia then stated Staff also has the support of the State on any disputes and any appeal would be handled through the State Fire Marshal.

Councilmember Brooks asked if there would be additional costs to the City, such as overtime, additional staffing or the cost for a certified engineer to verify correct prints with Mr. Garcia stating the review of the construction documents would remain in-house; the same as all other construction documents reviewed with qualified personnel on Staff right now, requiring no additional staffing, adding the same process

would apply and the City would review the construction documents according to the State adopted fire code along with the locally adopted building code. Councilmember Brooks then asked about the fees the State normally would be collecting with Mr. Garcia stating any fees associated with the inspection process and/or permitting will now be retained with the City of Benson, providing additional revenue for the City.

Vice Mayor McGoffin then moved to approve the Memorandum of Understanding between the Arizona Department of Fire, Building and Life Safety, Office of State Fire Marshal and the City of Benson. Seconded by Councilmember Brooks. Motion passed 6-0.

4. **Trust Assurance Agreement to Construct Subdivision Improvements with H40 Development, L.L.C. for Sunset Trail (located west of Ocotillo, north of Union)**

Public Works Director Brad Hamilton stated the subdivision Sunset Trail started in 2007 and was brought before Council in 2008 and was now at the final plat stage, adding the long timeline was due to the slow down in development. Mr. Hamilton then addressed both this item and the next New Business Item, stating the trust assurance agreement is the City's guarantee the developer is going to build the subdivision improvements as they go, which is required by State law and the next item is the final plat itself. Councilmember Maldonado asked Mr. Hamilton to come forward and show the proposed subdivision on the map for the public. Councilmember Brooks and Councilmember Moncada asked about the access to the subdivision with Mr. Hamilton stating the main access road will be on Ocotillo with a secondary paved access road on Union. Councilmember Moncada moved to approve the Trust Assurance Agreement to construct subdivision improvements with H40, L.L.C. for Sunset Trail. Seconded by Vice Mayor McGoffin. Motion passed 6-0.

5. **Final Plat for Sunset Trail (located west of Ocotillo, north of Union)**

Councilmember Brooks confirmed the developer will be covering the costs of the development and will be able to tap into our existing utilities with Mr. Hamilton stating they would be able to tap into the wastewater and water utilities, adding it will actually help the City complete another loop on the water side around the hospital. Councilmember Brooks then asked about the streets with Mr. Hamilton stating after construction there is a 1 year warranty on the streets, then the City accepts them for maintenance after we are sure they were built to City standards. Mayor King noted the developer included space for a small park, adding this is something the Council has asked of developers and he appreciated it. Councilmember Maldonado then moved to approve the Final Plat for Sunset Trail. Seconded by Councilmember Sacco. Motion passed 6-0.

6. **Discussion and possible direction to Staff regarding the non-compliance of weed and debris code**

Building Official Luis Garcia stated about a year ago, he presented a proposed update to this code which included merging two chapters together; the Building and the Planning & Zoning enforcement into one chapter for Development Services, which is the way the department currently functions. Mr. Garcia stated the current regulations speak to Mr. Dirksen's and others in the City of Benson's current conditions and enforcement behind it, however, there are a lot of shortfalls in the current language as far as the enforcement, the abatement and liens on property are concerned, adding the language is not adequate as it is currently written, which was addressed in his proposed chapter changes. Mr. Garcia then stated he is working on this closely with the City Attorney, adding he has compared the regulations with multiple jurisdictions and Councilmember Brooks even brought information in from a local municipality, noting he is planning on bringing the proposed plan to Council in the near future. Councilmember Moncada then confirmed with Mr. Garcia the code is lacking the teeth to enforce the code with Mr. Garcia stating he is also looking at other municipalities of similar conditions to try and have regulation that is adequate for the City of Benson to enforce the regulations in the new chapter he is going to present. Mr. Garcia then stated the proposed changes also provide a streamlined process that is hopefully going to be more economical and more complete for the local jurisdiction to be able to enforce. Councilmember Brooks then spoke, stating he didn't understand why the City can't enforce this when it is something we have on the books, adding in the Code under Section 9, there was even a form to send to the person involved in the property to give them

notice and he didn't understand what was lacking to enforce it. Mr. Garcia then stated one issue is when punishment penalties are addressed, the penalties are not clearly written and don't have a clear tier as far as what level of penalty applies to what violation, adding in recent experience in trying to be able to take a property through the enforcement process through the local magistrate court, this was one of the issues that had the case thrown out, adding this was supported by the local City Prosecutor also. Councilmember Brooks then asked City Attorney Mike Masee to address the Council concerning this issue with Mr. Masee stating he doesn't typically work very closely on enforcement matters of this nature adding the development department does this, but the feedback he has gotten from the City Prosecutor supports Mr. Garcia's statement that there are some peculiarities lacking in the code that makes the magistrate hesitant on moving forward with some of these issues. Mr. Masee then stated one of the options that we're very strongly looking at is creating an administrative hearing officer process, adding this would allow quicker service and resolution, with a determination from a neutral hearing officer, adding the proposed changes should be brought to the Council next month. Councilmember Moncada stated in his experience, this is not the only problem in the City code where we have language, but no enforcement, adding he has run into this with his son being bit by a dog and while there was language addressing the situation, there was no way to charge the person.

Councilmember Brooks then expressed his frustration at the situation stating this happens all over the country and is handled somehow, questioning why the City has never had anything in place to help the people of this community that continually come in and are upset all the time and nothing ever gets done. Councilmember Brooks then stated he had a lot of compassion for what is going on with Mr. Dirksen, adding he has looked at Mr. Dirksen's property and it upsets him and after speaking with the City Manager, found all the City can do is send the property owner a letter. Councilmember Brooks then stated he knows enforcement has to have some teeth somehow, but it seemed to him the process is already in place to give someone a notice to clean up the property and then if they don't do it, the City comes back and has a contractor give an estimate on the clean up of that property and the City gives the property owner that notice and if the property owner doesn't get the property cleaned up by that time, the City has the crew come in and clean the property up, then the City puts a lien on the property and moves on. Councilmember Brooks then stated this is what is done in many other places and there are a lot of people coming to him about this problem, adding the Council needs an answer.

Mayor King confirmed with City Attorney Mike Masee any action taken would have to be initiated by Staff. Vice Mayor McGoffin then verified with Mr. Garcia the issue was currently being worked on with Mr. Garcia confirming this and adding another component to the enforcement would be the funding to support this effort. Councilmember Moncada verified this would be additional costs for the City with Mr. Garcia stating the additional costs and the lien process that statute covers doesn't really give the recovery rate as one would just think it's going to just be paid back, it is actually a lengthy process, and it is likely the City may not see the recuperation of those fees. Mr. Garcia then stated he hopes to bring this issue to Council next month in a worksession with Mayor King asking if the draft can be given to Council any sooner. Mr. Garcia stated this is something Staff has been diligently working on, adding Staff is trying to be able to codify the processes to make sure they are enforceable and they have a sense of completeness included within the regulations and he would get them to Council as soon as possible.

7. **Review of City Finances with emphasis on January and February 2012, financial results and the City's financial position at February 29, 2012 and discussion of sales tax revenues and projected future net revenues**

Mayor King stated he had asked Mr. Cox to give a very brief presentation since some of the Council had meetings throughout the County since early this morning. Mr. Cox then gave a brief overview of the City finances beginning with the City's cash position, stating the City will see cash building between now and the month of May, and then it will decrease a little, as the City has to make the bond payment and the Wal-Mart payment. Mr. Cox then stated trend wise, finances will continue to improve during the second half of Fiscal Year 2012, adding the year-to-date revenues is \$6.9 million, which is \$404,000 more than this same period last year, but operating costs have increased. Mr. Cox then stated in the General Fund, revenues were down \$2.9 million year-to-date and City Sales Taxes are down 4% or \$62,000 year-to-date,

meanwhile, State Sales Taxes have increased almost 9%, noting the City is counter-trending the State and has been for almost 10 or 11 months now, which is a disturbing trend. Mr. Cox then stated fund balances increased during the month of February, and the Enterprise Funds of Gas, Water, Wastewater and Sanitation are all operating ok and the City is preparing to put out RFPs to do rate studies on each one of these funds to keep them operating properly. Mr. Cox then stated the Transit Fund is performing as projected and the golf course has shown a \$40,000 profit in the months of January and February. Mr. Cox then stated as expected, that will continue, and the golf course will be at breakeven by the end of the fiscal year, adding he would like to emphasize since the statement was made that is absolutely untrue, there have been no City funds used to operate the golf course since the City took it over and it will continue that way until August, 2014 at which time, the Council has a decision to make about the golf course, noting the goal of the golf course, of course, is to be at a breakeven point by then. Mr. Cox then stated right now, the golf course is operating toward that goal and we think we've made a lot of very positive improvements. Mr. Cox then stated in summary, they talked briefly about the year-to-date tax collections, as far as the City, then stated overall, the City's financial performance is slightly below recent years, but is not in any way, shape or form, at an alarming point at this point in time, adding our cash reserves have stayed intact and we continue to operate in a down economy. Mr. Cox stated this has been a real challenge, but City staff has been able to meet that challenge and he would like to express appreciation to all Department Heads and Council that we've been able to keep the spending under control, so we're able to keep our bond rating going through these tough times, unlike many other cities. Mr. Cox then stated the sales tax charts show the City is trending down and the State is trending up and asked if Council had any questions. Mayor King asked about the number of payments left to Wal-Mart with Mr. Cox stating the payment made each year is 50% of the City's sales tax collections or \$250,000 a year, whichever is less, noting that includes an interest portion as well as principle with the total debt amount of \$1.5 million. Mr. Cox then stated the City had made 5 payments of \$250,000, but those included interest and since the debt is a contingent liability, the liability isn't booked, adding he will go back and calculate it for Council and have that information available at the next Council meeting.

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.

Mayor King stated the Council would not be holding this executive session. City Attorney Mike Masee then addressed the Council stating the matter given to Council regarding the status of the litigation was not confidential, adding the only news is that the motion was filed and the City is preparing an opposition.

DEPARTMENT REPORTS: None

ADJOURNMENT:

Vice Mayor McGoffin moved to adjourn at 8:05 p.m. Seconded by Councilmember Brooks. Motion passed 6-0.

Toney D. King, Sr., Mayor

ATTEST:

Vicki L. Vivian, CMC, City Clerk