

**THE REGULAR MEETING
OF THE MAYOR AND CITY COUNCIL OF BENSON, ARIZONA
HELD APRIL 22, 2013, 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. Mayor King then stated he would be removing New Business Item #8 from the agenda, stating when the item was passed on January 28, 2013, the motion was to send the proposed code change to an outside service for review before it came back to Council for action. Mayor King then stated he had spoken to the League of Arizona Cities and Towns who told him that unless the City Code has provisions in it stating the Mayor could be overridden by Councilmembers, then he couldn't. City Attorney Mike Masee stated he understood that was Mayor King's opinion. Mayor King then restated he was pulling Item #8 from the agenda and asked those present to stand for the Pledge of Allegiance. Councilmember Lambert stated he felt there should be a motion to leave Item #8 on the agenda and then hold a vote to see who wanted to leave it on the agenda and who wanted to remove it from the agenda. Mayor King stated it was not listed on the agenda to vote on leaving Item #8 on the agenda with Councilmember Lambert stating it was also not listed on the agenda to vote to remove Item #8 from the agenda. There were numerous comments from the public. Mayor King then asked City Attorney Mike Masee for his opinion with Mr. Masee asking if the Mayor wanted to conduct the Pledge of Allegiance first. Mr. Masee then stated he would have appreciated Mayor King contacting him earlier on the matter and he could do further research, but it was his understanding that when an item is on the agenda, the presiding officer can make a procedural decision such as removing it, but that almost any decision of a presiding officer can be appealed to the full body and if the full body overrules the presiding officer, then the presiding officer is overruled. Further comments and outbursts were made by the public. Councilmember Brooks stated the Mayor never asked for legal advice and the Mayor should continue the meeting with Vice Mayor McGoffin stating the Mayor had asked for a legal opinion. Mayor King then led those present in the Pledge of Allegiance. Mr. Masee then addressed the Council stating it is his opinion that the majority of a public body rules and if the presiding officer makes his decision and there is an appeal to the body as a whole, then the body as a whole can vote, adding if there's a majority, the majority can overrule the presiding officer. Mr. Masee then stated it is a matter of procedure, adding the Council hasn't adopted any rules of procedure yet, but it is just a basic concept of democracy that a majority rules, adding the Mayor is really a ceremonial position who presides at the Council meetings, which is an important duty and responsibility. Mr. Masee then stated if there is a majority will of the whole public body to do something contrary to what the Mayor wants, then his opinion is the majority prevails. Further comments were made by the public with Mayor King asking the public to quiet down. Councilmember Brooks asked if the roll call could be taken. Vice Mayor McGoffin then moved to leave New Business Item #8 on the agenda for discussion. Seconded by Councilmember Lambert. Numerous shouts were made from the audience. Councilmember Brooks stated the meeting had not been called to order and again asked for the roll call to be taken with Mayor King stating he had called the meeting order. Motion then failed 2-5 with Mayor King and Councilmembers Brooks, Maldonado, Moncada and Sacco voting nay. Mayor King then introduced Lupe Diaz of Grace Chapel who asked for a moment of silence to honor those who lost their lives during the Boston Marathon bombing and then gave the invocation.

ROLL CALL:

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

EMPLOYEE RECOGNITION:

Mayor King recognized Laura Parkin for 5 years of service with the City of Benson.

PROCLAMATION: Mayor King asked Councilmember Moncada to read a proclamation declaring the month of May, 2012 as “Building Safety Month.” Mayor King then asked Councilmember Sacco to read a proclamation declaring May 10, 2013 as “Benson Poppy Day.” Councilmember Sacco then presented the proclamation to Ms. Pat McGlumphy of the American Ladies Auxiliary. Mayor King then read a proclamation declaring the month of April as “Fair Housing Month.”

PUBLIC HEARING: None

CALL TO THE PUBLIC:

Dianne Tipton addressed Council regarding the proposed Chapter 7, “Development Services” and Chapter 7.1, “Administrative Hearings”. Ms. Tipton’s remarks will be retained with the Council packet.

Peter Wangsness stated he wanted to address the 2 proclamations, adding he had some issues with the proclamation on building safety, adding sometimes codes are written with the best intentions, but can be overly restrictive and have unintended consequences. Mr. Wangsness then stated some of the codes need to be reviewed before making them hard law. Mr. Wangsness then gave handouts to the Council stating many sustainable materials contribute to faster burning fires and buildings that fail much quicker, resulting in new hazards inside buildings and adding new challenges in getting to the buildings. Mr. Wangsness stated green rating systems reduce paved surfaces and increase landscaping and traffic, but create literal roadblocks for firefighter vehicles, adding every extra minute it takes to navigate around narrow roadways and traffic is another minute the fire has to grow and another minute someone might be waiting for rescue inside that building. Mr. Wangsness then stated he had seen some of it done in Tucson where they required landscaping in parking lots, making it more difficult to get to the building and adding additional expenses that he doesn’t think they are warranted. Mr. Wangsness then stated when he searched online for sustainable, social justice and economic justice, he found the 3 show up on government websites, like the Department of Energy, EPA and the National Institute of Justice all saying they consider economic and social justice as part of sustainability, so the Council needs to be careful of what kind of words they use. Mr. Wangsness then stated the second issue he wanted to address was that he was in favor of Benson Poppy Day, and to that end, stated Gail Griffin gave him a request to introduce here for consideration, a resolution from the State of Arizona, adding the 2008 National Defense Authorization Act authorizes the U.S. Secretary of Defense to conduct a program to commemorate the 50th anniversary of the Vietnam War and the return of soldiers, noting they were not treated too well at that time. Mr. Wangsness stated the resolution proposes 2 local events every year for 3 years and gives some guidelines, adding he has given that information to the City Clerk.

Pat Hoffman stated the month of May is National Mental Health Awareness and SouthEastern Arizona Behavioral Health Services (SEABHS) would like to invite Council and the members of the community to come to an event they are having at Lions Park to make the community aware of mental health and mental health services that are available to the community. Ms. Hoffman stated they brought flyers and would like to be able to ask for those to be put on the back table. Pat Rogers of SEABHS then stated the event is on May 10, from 11:00 a.m. to 5:00 p.m., adding there will be jumping castles, food and information available. Ms. Rogers then stated 1 in 4 people in the U.S. have a mental illness and 1 out of 2 people during their lifetime will be diagnosed for a type of mental illness, whether it be depression or something else, adding depression is very common, which is why there are so many ads for depression medications. Ms. Rogers then invited the Council and the public to come out for National Mental Health month.

J.T. Moffett addressed Council stating the people of the City of Benson are in prison, with the outgoing Councilmembers being the jailers, adding the people are being held captive by their arrogance, bitter ambition and twisted loyalties and the cries of the people for fairness and justice fall on deaf ears. Mr. Moffett then stated they press on to further suffocate people with Chapter 7 codes and unfair treatment. Mr. Moffett then stated the Council allows Public Works Director Brad Hamilton and City Attorney Mike Masee to draw the City into yet another unnecessary lawsuit with Little Caesar’s. Mr. Moffett then stated the good news is the people will be paroled on July 1 when the new Council is sworn in and they begin the

task of righting the wrongs and bringing justice to those who have mistreated the people and businesses of Benson. Mr. Moffett then stated Mr. Hamilton recently wasted an undisclosed amount of taxpayer's dollars on ridiculous testing regarding Little Caesar's to send rags with oil on them to some lab for testing, which could not possibly testify in court that the oil tested was the same oil the City used 3 months ago, adding he would like to know who authorized Mr. Hamilton to throw the taxpayers' money away on this test and who voted to pay him salary and benefits that top \$120,000. Mr. Moffett then stated six years ago, the City paid one man \$64,000 to run 2 departments and now the City has Mr. Hamilton and 3 more Department Heads for over \$300,000 a year to do the same job that person did six years ago. Mr. Moffett then stated the best and worst part is that Benson's economy has actually declined in the six years the City added all these overpaid Department Heads. Mr. Moffett then stated Vice Mayor McGoffin and Councilmember Lambert gave us an example of this Council's vindictive attitude, when they attempted to pull a coup on the Mayor, adding City Attorney Mike Masee has had weeks to show any law or code to support an override of the Mayor, but his ill-given advice is pathetic and unforgivable. Mr. Moffett then stated Mr. Masee gives advice, but no law, adding this is convenient and unethical. Mr. Moffett then stated he has an email City Clerk Vicki Vivian sent to the insurance company regarding Little Caesar's and read that Mr. Masee asked her to send a letter and photos received from Mr. Stephen Rose of Little Caesar's Pizza, adding this is proof that Mr. Masee is directing our City employees in direct conflict with the City code. Mr. Moffett then stated Mr. Masee is, in effect, running the City of Benson through legal advice, adding Little Caesar's has not even mentioned taking the City to court and it is not a court matter, therefore, Mr. Masee should not be directing the City Clerk to do anything. Mr. Moffett then stated Mr. Masee's contract is still in violation of Benson's City Code, adding the amended contract was never approved by the full Council, but Vice Mayor McGoffin apparently thought she had the authority to sign it without Council approval, which was a bad mistake. Mr. Moffett then stated the contract is illegal and therefore, must be voided and Mr. Masee dismissed, adding the matter can either be settled here in these chambers or the State Attorney's office will be notified of this Council's refusal to uphold the law, adding if this Council does not abide by the law, the people of Benson will start a class-action lawsuit against the Council and the City of Benson and any votes to retain Mr. Masee as the City Attorney will be included in the lawsuit to be removed from the Council. Mr. Moffett then stated since the contract is illegal, he is certain the court will not apply delays and he is confident they will rule on the matter expeditiously. Mr. Moffett then stated he hopes the Council will not embarrass the City of Benson and force them to take these drastic measures to preserve justice in Benson. Mr. Moffett then stated the people of Benson are behind Mayor King and look to him for his leadership, adding Mayor King has their confidence and appreciation for defending what is right.

Don Groner stated he was present to talk about Article 21, stating about 4 weeks ago, Chapter 7 was brought to his attention and he started reading it. Mr. Groner then stated what it amounts to is that the U.S.A. is not an underdeveloped or undeveloped country, adding United Nations Article 21 was developed in 1987 for the purpose of trying to help the 50% of the world who are in desperate need of some kind of development or a process to make a better group of people, but the U.S. doesn't fit that picture. Mr. Groner then talked about his army experience and his education, stating the person who wrote Chapter 7 may have a 2-year degree, but he doesn't have the experience. Mr. Groner then read from the 4th amendment to the constitution, adding what it comes down to is due process and if someone comes to his house and knocks on his door and is going to walk in and inspect his refrigerator or dishwasher, they could go to hell, because they are not coming in his door, no matter what a piece of paper says. Mr. Groner then stated the constitution was written for the purpose of everyone in this room's protection and we don't need additional laws, adding the problem with this town, is they don't enforce the rules and laws that have already been passed. Mr. Groner then stated the City has a Police Department that doesn't respect residents as law-abiding citizens, adding when it comes to the abuse of drugs and alcohol in this town, he could drive around and show anyone where drugs are being sold and asked why the Police Department didn't do that, since that is the kind of thing that degrades the City. Mr. Groner then stated he had some documents he would like to give to Staff, adding United Nations Article 21 is really scary, adding he has been to some of these countries where there are 400 millionaires and 38 million poor people and no one in between, adding that is what is being done to our country if we make everyone equal to the type of laws that this thing wants to enforce.

Kathy Suagee stated she wanted to thank all the Councilmembers who supported Mayor King with their out of order vote, adding she thinks it's important they have listened and are trying to do what they feel is right for people's homes and for the community, adding she also wanted to remind Council that she has a petition which she will circulate if and as soon as Chapter 7 is passed. Ms. Suagee then stated a special election is costly and she'd rather not put the town through that, adding to make it more cost efficient, some names might appear for a recall at the same time, because any special election can handle more than 1 issue that could be decided. Ms. Suagee then urged both the new and current Councilmembers who would remain to go to the League of Arizona Cities and Towns educational session in June, adding they could all use a refresher, especially on parliamentary procedure. Ms. Suagee then stated as for the issue tonight, it is her understanding, in this country, that until a right is taken away because of the better good for people and is done so by passing a law, then it is a right. Ms. Suagee then stated to preclude Mayor King from removing an agenda item based upon the assumption that some law or code exists out there when it doesn't would be inappropriate, adding under Mr. Masee, who gave the opinion tonight that Mayor King could not remove an item from the agenda, the City has had more lawsuits and more costly losses of lawsuits than any other time under any other attorney. Ms. Suagee then stated the Council has also had more executive sessions during the tenure of Mr. Masee than at any other time in this Council and town's history and she thinks these things are notable because she doesn't believe all of the business that has been done in executive sessions should have been in there, adding she doesn't think the Council should be afraid to discuss the City's business in front of the City's residents. Ms. Suagee then stated the citizens of Benson are the Council's constituents and she wanted to remind Council that the City staff is not, adding in most cases, everyone who is the head of a department does not even live in the City and doesn't have to abide by the laws Council passes, but the citizens do. Ms. Suagee then stated she would like to mention the idea of sustainable buildings, adding there is a good conference in June in Mesa, called the Historic Preservation Conference, where they explore sustainable building, ways to be creative in urban planning, Historic Preservation and other issues she thinks everyone should be concerned about and should be considered and included in the future efforts in writing building codes, urging Council to attend.

Diana Comaduran stated she went to City Hall to get an agenda and was given an agenda along with the Council Communication for New Business Item #8. Ms. Comaduran then stated she became very concerned about Chapter 7 being brought up, adding she lives in fear that what happened to her in Phoenix, when the City fathers condemned all the houses from 11th Street and Van Buren to beautify Van Buren, will happen in Benson, adding it was devastating to her. Ms. Comaduran then stated this isn't needed in Benson, adding the City may need to be beautified and there are a lot of houses that really look bad, but there has to be another way to do it. Ms. Comaduran then stated there are a lot of people who are concerned with Chapter 7, including people from J6 and Pomerene, asking the Council to please listen to the public about Chapter 7.

Stephen Rose addressed Council about the issues he has had with his ovens at Little Caesar's. Mr. Rose stated a good member of the community witnessed City workers accidentally pour red oil into the wrong portion of the gas meter when they installed it and no one from the City notified him of this negligent act and instead have attempted to cover it up. Mr. Rose stated this occurred in December, 2012 and in January, he hired 20 local people to open his store, which had to be closed for several days due to the ovens failing, adding this was due to the red oil, which was found in the ovens. Mr. Rose then stated in the interest of time, he would skip over all of the Luis Garcia and Glenn Nichols obstructionism and in the intimidation attempts and will also skip over all the more recent City Clerk and City Attorney deceit and nonsense. Mr. Rose then stated his ovens were damaged and his business was greatly affected by this attempted cover up, which continues with Public Works Director Brad Hamilton ordering a test of the oil found on rags the City used to swab the gas line in an attempt to fix the problem. Mr. Rose stated Mr. Hamilton's test is immoral and wrong because it is deceitful, biased, unscientific and is designed to help the City escape the consequences of negligent acts and his own inaction, adding the test was done months after the fact, under sneaky and deceitful conditions and the so-called samples were collected by incompetent City workers with their own reputations to protect. Mr. Rose then stated he was told the City employees were attempting to fix their mistake, but instead, they were secretly fixing a test for Mr. Hamilton and in doing so, they further

contaminated the gas lines with the cloth fibers that made their way into the oven filters. Mr. Rose then stated Mr. Hamilton may pretend he can't understand how red oil has possibly damaged the ovens, but any first grader knows water changes to vapor when heated and can travel miles into the sky and form rain clouds, just as oil when heated, turns into oil vapor and can travel through yards of gas line, then returns to a liquid form as it accumulates on oven parts at the end of the line. Mr. Rose then stated City of Benson employees, a few elected officials and administrators have bungled nearly everything they've touched because of an action they have failed to properly deal with and have now given free rein to a self-serving renegade City Attorney who historically steers everything in whatever direction best suits him, adding Council has failed to hold Mr. Hamilton accountable for his failure to train City employees, and for his deceit, lies and cover up and has allowed him to run amok with the silly attempts to avoid accountability. Mr. Rose then stated because he provides a service that many people depend on and because he pays taxes and employs citizens of this community who also pay taxes, Mr. Hamilton's inaction and deceit has harmed this entire community and he must be held accountable. Mr. Rose then stated Councilmembers could either stand and take action now and do what is honest and right or could continue to sit on their hands and do nothing and wait for the new Councilmembers to do the job they seemingly lack the courage to do.

Vice Mayor McGoffin stated she did not understand where everyone was getting the fact that she was trying to pass Chapter 7, adding she has listened to the public and for the past two times she has requested to have it on the agenda, she wanted it on to be able to say she did not want to waste \$10,000 on a review when it was just going to be rejected by the public anyway. Vice Mayor McGoffin then stated she felt that if each Councilmember appointed someone for a citizens review, we could just go back to the drawing board and start over on Chapter 7, adding she has listened and she is not trying to pull something over.

Councilmember Lambert then stated in accordance A.R.S 38-431.01, at the conclusion of the Call to the Public, the individual members of the public body may respond to criticism made by those during the Call to the Public. Councilmember Lambert then stated he would like to address the criticism made by Ms. Tipton, Mr. Moffett, Ms. Suagee and Ms. Comaduran, stating the agenda item (New Business Item #8) he and Vice Mayor McGoffin wanted to address had nothing to do with passing it, adding it would be illegal to pass it since there was no resolution or ordinance. Councilmember Lambert then stated they wanted to place it on the agenda for discussion and possible direction to Staff on what to do. Councilmember Lambert then stated he would like to direct the Mayor to either throw out Chapter 7 or direct Staff to enforce the current code or send it to an attorney for review and pay the \$10,000 to do so, which is going to be a waste of money, adding that is a direction to the Mayor and to Staff.

CITY MANAGER REPORT:

Interim City Manager Jim Cox addressed Council, giving the dates of upcoming meetings and events.

- April 29, 2013 – Community Watershed Alliance, 6:30 p.m., City Hall
- April 30, 2013 – Citizen Review Session, 7:00 p.m., City Hall
- May 1, 2013 – Citizen Review Session, 7:00 p.m., City Hall
- May 6, 2013 – Economic Development Subcommittee, 5:15 p.m., City Hall
City Council Budget Worksession, 7:00 p.m., City Hall
- May 7, 2013 – Planning & Zoning, 7:00 p.m., City Hall
- May 8, 2013 – City Council Budget Worksession, 7:00 p.m., City Hall
- May 13, 2013 – City Council Budget Worksession, 6:00 p.m., City Hall
City Council Meeting, 7:00 p.m., City Hall
- May 14, 2013 – Library Advisory Board, 4:00 p.m., City Library
- May 15, 2013 – City Council Budget Worksession, 7:00 p.m., City Hall
- May 18, 2013 – Historic Preservation Commission, 9:00 a.m., City Hall
- May 20, 2013 – City Council Budget Worksession, 7:00 p.m., City Hall
- May 22, 2013 – City Council Budget Worksession, if necessary, 7:00 p.m., City Hall
- May 27, 2013 – Memorial Day, City Offices Closed
- May 28, 2013 – Community Watershed Alliance, 6:30 p.m., City Hall

- April 26, 27, 28, 2013 – Bluegrass in the Park, Friday, Saturday, Sunday, Lion’s Park – See previous minutes for comments
May 24, 2013 – City Pool Opens

Mr. Cox stated the budget schedule had been moved back to the original schedule since he would be here for the budget process. Mr. Cox then reminded those present of the continuing work on the Interstate 10, adding up-to-date information can be found at www.azdot.gov.

Mayor King encouraged everyone to attend the Bluegrass Festival. Vice Mayor McGoffin then stated on April 27th, the Medicine Shoppe and the Benson Police Department are having a prescription take back day for any controlled substances that are no longer being used. Vice Mayor McGoffin then stated this is very important and will help keep these drugs off our streets.

Mayor King agreed and stated he would also like to thank everyone who participated in the Relay for Life, adding they did an amazing job and the event was very inspirational. Mayor King then stated he would like to thank Vice Mayor McGoffin for starting this event with Vice Mayor McGoffin stating she would also like to thank everyone involved, noting the event raised over \$45,000 this year.

Councilmember Brooks then stated he would also like to thank everyone for coming to the Golf Course forum, which was held to gather suggestions for the Golf Course. Councilmember Brooks stated it went very well.

Mayor King then stated he would address New Business Item #10 in place of New Business Item #8.

NEW BUSINESS:

1. Consent Agenda

- 1a. Minutes of the February 25, 2013 Regular Meeting
- 1b. Minutes of the March 25, 2013 Regular Meeting
- 1c. Invoices processed for the period from March 30, 2013 through April 11, 2013

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

2. Presentation of Certified Audit Report for the City of Benson for the fiscal year ended June 30, 2012

Finance Director Megan Moreno introduced Jim Usevitch of Colby & Powell who was here to present the audited financial statements for the fiscal year ending June 30, 2012. Mr. Usevitch addressed Council stating the presentation was a little late this year, due to the pending retirement of Jim Cox and the addition of Finance Director Megan Moreno, to give her the experience of going through an audit. Mr. Usevitch then stated anytime a city has a single audit done when they get over \$500,000 in federal funds, they have to turn the audit into the federal clearing house at least 9 months after the year end, which was March 31, adding we were able to meet that deadline. Mr. Usevitch then stated his firm comes in and makes sure all the numbers are materially correct, adding the audit went really well and based upon the results, they were able to issue an unqualified opinion, which is the highest rating they give. Mr. Usevitch then stated there were some audit findings, where things didn’t go as well as they should have, but these were repeats of last year, adding it’s not uncommon to have them repeat for 2 years, noting by the time you find an issue in the first audit and get it corrected, it flows over into the next year, so it should be corrected when the next audit is done. Mr. Usevitch then stated he would like to thank Staff, adding the audit requires a lot of information and Staff is tasked with gathering the items they need to review to complete the audit. Mr. Usevitch then stated the audit went very well and overall, the City of Benson is in good shape, adding the City has some cash and has been keeping expenses under control. Mr. Usevitch then stated he could

answer any questions Council had. Councilmember Brooks stated he would like to receive the audit earlier, adding he received it 10 minutes before the meeting. Ms. Moreno stated that decision was made by the Finance Department to save on shipping costs, but they will definitely take that into consideration for next year, adding they could also provide Council with an electronic copy of the audit earlier next year. Councilmember Moncada asked about the audit findings with Mr. Usevitch stating they had to do with the oversight of grants, adding the City gets a number of federal grants and the requests to draw down money weren't getting reviewed properly and weren't getting reconciled to the general ledger, which are two very important steps needed to ensure nothing happens. Mr. Usevitch then stated the other finding was what he calls "housekeeping" where someone goes through the general ledger, making sure everything is cleaned up, adding over the year there are thousands of transactions and some need to be tweaked. Council thanked Mr. Usevitch for his presentation.

3. **Resolution 12-2013 of the Mayor and Council of the City of Benson, Arizona, approving the supplemental salary deferral plan managed by ASRS and TIAA-CREF as an option for City employees' retirement savings accounts**

Finance Director Megan Moreno stated the City currently offers Nationwide to employees to fund their own 457b plans and this supplemental salary deferral plan would offer the employees an additional option. Ms. Moreno then stated TIAA-CREF is sponsored by the Arizona State Retirement System (ASRS) and is used by the State and some other governments in the area, adding they are low cost and have a very good reputation. Ms. Moreno stated Mr. Kurt Ritter from TIAA-CREF was present to answer any questions Council may have. Mr. Ritter then addressed Council stating ASRS went through an RFP process to select a low cost partner and provider for the deferred compensation plan for cities, counties and municipalities throughout the State and they selected TIAA-CREF, adding they have been in business since 1918. Mr. Ritter then stated benefits of TIAA-CREF are the low cost and better outcomes for participants, noting Cochise County has utilized their services for almost 2 years and other entities, such as Graham County, Thatcher and the City of Safford adopted the program well over a year ago. Councilmember Moncada asked who paid the fees with Mr. Ritter stating the participants paid the fees and there was no cost to the City. Vice Mayor McGoffin asked about employees who currently had Nationwide accounts and if the funds could be moved with Mr. Ritter stating an employee can change new contributions to another plan and if they would like to move assets from the current provider, Nationwide, they can, adding some programs have surrender charges, but Nationwide does not and neither does TIAA-CREF, so if they want to move assets back and forth, they can. Councilmember Brooks asked if employees had the option to be in both programs and what kind of backing the employees had with TIAA-CREF in case the economy worsened with Mr. Ritter stating employees could be in both programs and then stating the employee has a choice on where to have the contributions invested, adding there are guaranteed accounts in both programs, and the programs are backed by the entity behind it, either Nationwide or TIAA-CREF. Mr. Ritter then stated TIAA-CREF has the highest ratings given by the major rating agencies, adding the Standard & Poor rating of 4 is only achieved by TIAA-CREF and two other companies in the country; New York Life and Northwestern Mutual. Councilmember Moncada moved to approve Resolution 12-2013. Seconded by Councilmember Brooks. Motion passed 7-0.

4. **Contract for Interim City Manager between Jim Cox and the City of Benson**

Mayor King asked City Attorney Mike Masee to address Council. Mr. Masee then stated as a result of the appointment of Mr. Cox by Council at the previous Council meeting, he was speaking with Mr. Cox welcoming him to his new role and briefing him on the importance of reviewing the code provisions that govern City management duties and Mr. Cox asked if he needed a contract. Mr. Masee then stated while it's not essentially necessary, he thinks it's a great idea to have a contract, so he and Mr. Cox used the contract for the previous City Manager as the template. Mr. Masee then stated revisions included a 60-day term of office appointment, but in the event that during that 60 days, a permanent City Manager is not named and assumes office, the contract rolls over for another 30 days. Mr. Masee then stated on the expiration of that 30 days, there's another automatic rollover provision, noting the idea is that this is not something that is going to come back before Council every month, adding when the City Council hires a

new permanent City Manager, then the term of office by the terms of the contract will expire. Mayor King then opened the item for discussion. Vice Mayor McGoffin asked what Mr. Cox's current salary was with Mr. Cox stating it was approximately \$81,000. Council discussion then included the severance clause in the proposed contract with Mr. Massee stating the City shall provide a severance payment equal to one month salary at Mr. Cox's current rate, plus one week salary for every renewal term. Mr. Cox stated his motivation was to make the transition to a new City Manger as smooth as possible and he has made the commitment to stay as long as necessary, but this provision is to encourage Council to proceed with the hiring of a new City Manager. Mr. Massee then stated when the Council appoints a permanent City Manager, Mr. Cox will vacate the office of the City Manager and for the remainder of the contract term, Mr. Cox will serve as an executive assistant to the City Manager to bring him up to speed.

Vice Mayor McGoffin stated the Council had recently decided to advertise the position of the City Manager with a salary range of \$70,000 to \$112,000 for a qualified City Manager with the education and experience and she didn't feel comfortable with the proposed \$95,000 salary. Vice Mayor McGoffin then stated Mr. Cox can now turn many financial duties over to Finance Director Megan Moreno and she felt Mr. Cox's current salary should be adequate, adding she wasn't excited about the severance package, but could see it was a way to ensure Council move forward in hiring a permanent City Manager. Mr. Massee then stated a motion could be made to amend the contract, with Mr. Cox adding he would continue at his same salary should Council choose, if the remaining terms of the contract were approved.

Councilmember Lambert asked about the applicants for the City Manager position and how the Council was going to proceed with Mr. Cox stating he would contact the League to get information and then speak to the Councilmembers to see how they would like to proceed with the process and then organize it in accordance with their wishes. Councilmember Brooks stated he would like to have something on the next agenda with Councilmember Moncada agreeing the Council needed to move forward quickly.

Councilmember Lambert then stated he felt the Council should table the contract until the Council had more information on when they would be getting a new City Manager, adding if the Council hired a City Manager within the next 30 to 60 days, a contract wasn't needed. Councilmember Lambert then moved to table the contract until the next Council meeting. Motion died for lack of a second.

Vice Mayor McGoffin then moved to approve the contract for Interim City Manager between Jim Cox and the City of Benson with the amendment to continue Mr. Cox's current salary. Seconded by Councilmember Brooks. During the vote, Councilmember Sacco asked what the latest information from the League was on finding a candidate. Councilmember Moncada stated Mr. Cox would get the information to the Council. Motion then passed 5-1 with Councilmember Lambert voting nay and Councilmember Sacco abstaining.

5. **Discussion and possible action regarding the sponsorship of the Benson High School Project Graduation Class of 2013 Committee to be held at the school on May 24, 2013, to include possible donation of funds**

Interim City Manager Jim Cox stated the Benson High School Project Graduation Class of 2013 Committee has requested that Council consider participation in the form of a donation, adding by way of history, in 2009, the Council did provide support in the amount of \$1,000 for Graduation Night. Mayor King asked if the event would be a "locked in" event with Mr. Cox stating it would and there would be substance free entertainment with prizes and activities to keep the kids indoors and safe. Council discussion then included the budget, how much was unexpended in the City Promotions line item and how much was expected to remain after the Bluegrass Festival expenses with Finance Director Megan Moreno stating unexpended funds were approximately \$37,000 with Bluegrass costing approximately \$26,000. Mr. Cox then stated the City hoped to come close to breaking even on the Bluegrass Festival, adding the weather is going to be great and there are 2 grammy-nominated bands that have huge followings. Councilmember Lambert then stated he felt this was a good cause and asked what happened in 2010, 2011 and 2012 with Mr. Cox stating no request for sponsorship was made with Mayor King stating an event of this magnitude requires a lot of

volunteers and even though it wasn't held for those years, he is glad it is being held again to keep our kids and streets safe on graduation night. Councilmember Lambert then moved to approve a contribution of \$1,000 from the Community Enrichment fund to the School Graduation Class Committee. Seconded by Councilmember Maldonado. Motion passed 7-0.

6. **Resolution 10-2013 of the Mayor and Council of the City of Benson, Arizona, recommending approval of the issuance of a Series 10 (Beer/Wine Off-Sale) Liquor License at Dollar General Store #6629, 445 W. 4th Street, Benson, Arizona**

City Clerk Vicki Vivian stated Dollar General had applied for a liquor license application and the City has followed the State procedures, according to ARS §4-201. Ms. Vivian then stated the Council communication stated the City had received no written arguments for or opposed to the issuance of the license, however, she did receive 1 email on April 22 with a comment opposing the issuance of the license, adding the email had been distributed to the Council prior to the meeting. Ms. Vivian then stated we are now at the step where the local governing body would recommend approval or disapproval and once Council makes their decision and recommendation, the paperwork will be forwarded to the Arizona Department of Liquor Licenses and Controls who will then take on the process of either issuing the license or not. Councilmember Brooks stated he had spoken to the store manager and they would like to send their attorney to explain to Council what their intentions were with the liquor license, asking if anyone was present from Dollar General. After receiving no response, Councilmember Brooks stated at this time, he wouldn't want to approve it because he didn't have enough parameters, adding when he went to the store, there was only 1 employee and he didn't know how they are going to control the liquor to keep minors from getting it. Councilmember Brooks then stated he didn't feel comfortable and would like them to explain how they are going to control it, adding the Council may need to table this item until Dollar General could have a representative explain it to Council. Vice Mayor McGoffin stated she did not agree, adding both Safeway and Wal-Mart don't have their liquor locked up and don't have anyone watching it 24/7, so she doesn't feel Dollar General should be held to a higher standard than other establishments that sell liquor. Vice Mayor McGoffin then stated Council gives a recommendation, but can't control the employment element, adding she feels Council's decision should be based on the area or location an entity is trying to sell liquor in. Mayor King stated he agreed with Vice Mayor McGoffin, adding he has been in retail long enough to know that nothing is 100% theft-proof. Mayor King then stated there are 10 other Dollar General locations in Arizona that have liquor licenses. Discussion then ensued on controlling liquor and where it would be located in the store with Councilmember Lambert stating he felt, according to the application, that the liquor would not be readily accessible. Councilmember Lambert then moved to approve Resolution 10-2013. Seconded by Councilmember Moncada. Councilmember Brooks then stated the application didn't show how many aisles were in the store and he felt the cashier would not be able to see the liquor from the registers. Mayor King then called for a vote. Motion passed 4-3 with Vice Mayor McGoffin voting nay, stating she felt someone from Dollar General should have been present to address Council questions and Councilmember Brooks and Sacco also voting nay.

7. **Resolution 11-2013 of the Mayor and Council of the City of Benson, Arizona, approving a Mutual Aid Agreement with the Rincon Valley Fire District**

Fire Chief Keith Spangler stated this basic mutual aid agreement is another tool both departments can use if they have a large incident and need more help, adding Benson is currently part of a countywide mutual aid agreement with all the entities in Cochise County, but Rincon Valley is a little closer than Sierra Vista. Chief Spangler then introduced Chief Kahle of the Rincon Valley Fire District to answer any questions. Councilmember Moncada asked about the area the Rincon Valley Fire District covers with Chief Kahle stating they primarily cover the unincorporated town of Vail, adding their closest station to Benson is located on I10, about 25 minutes away. Chief Kahle then stated the reason both departments are asking for the agreement is there have been 2 incidents in the last few days alone where they have helped each other, adding one of their brush trucks has been in Benson for the last 3 days helping out on the recent brush fire. Councilmember Moncada confirmed the City would have coverage before answering a mutual aid call with Chief Spangler stating as with all mutual aid agreements, if the City won't be provided with coverage, the

Fire Department declines to respond to the mutual aid request. Councilmember Brooks asked about the number of calls this would require with Chief Spangler stating the Rincon Valley Fire District runs about the same number of calls Benson does, but mutual aid requests would depend on the circumstances. Councilmember Brooks then stated the helicopter used during the recent brush fire had to fuel elsewhere and asked what could be done so it could purchase fuel at the Benson Airport with Vice Mayor McGoffin noting that issue was not listed on the agenda for discussion. Mayor King then thanked the Fire Department for the work did on the recent brush fire. Councilmember Moncada moved to approve Resolution 11-2013. Seconded by Councilmember Brooks. Motion passed 7-0.

Mayor King then called for a 5 minute recess at 8:48 p.m. Council reconvened at 8:55 p.m.

8. **Discussion and possible direction to Staff on the Proposed Chapter 7, Development Services and Chapter 7.1, Administrative Hearings outside review or other Council direction**

This item was removed from the agenda by Mayor King. (See Call to Order)

10. **Discussion and possible direction to Staff regarding Benson City Code, Article 3-3, Council and Administration Relationships**

Mayor King stated he put this item on the agenda to discuss that as the Council, they need to make sure that there is a penalty for Councilmembers who are directing Staff. Mayor King then stated there is a problem with Councilmembers going to Staff and it needs to be stopped. Mayor King then stated the other issue is the Councilmembers are part of the Council and it takes 4 Councilmembers to make a decision to do something. Mayor King then stated he had spoken to City Attorney Mike Masee about putting a penalty in place and basically, the only thing Council could do was censure a Councilmember. Mr. Masee then addressed Council stating he and the Mayor discussed the possibility of amending Article 3-3 of the City code for some explicit penalties, adding right now, Article 3-3 says that Councilmembers are to direct their communications to the City Manager, however, they are allowed to inquire and communicate with Staff for the purpose of inquiry. Mr. Masee then stated Councilmembers have an obligation to be fully informed, and if there is something that is immediately available with some Staff member, it would be appropriate for the Councilmember to ask for it, but it crosses the line when there is a directive that is being implemented as part of that level of communication. Mr. Masee then stated a penalty provision could most reasonably include a censure, but because Councilmembers are elected and each one has their representation to their electorate, to remove them or take them off the Council for a small period of time would not be appropriate. Mr. Masee then stated something of the level which doesn't have any immediate functional impact may be appropriate for discussion, but he wouldn't recommend anything further than that, at this time.

Vice Mayor McGoffin asked if the censure would be in the form of a resolution, adding she felt it should be the Mayor who would give out a censure because she feels the Mayor should be the one to keep the Council in check and if a Councilmember is crossing the line, she feels it is up to the Mayor to make sure they are good Councilmembers and abide by the rules. Vice Mayor McGoffin then stated if the rules are getting broken, she believes the City employee should be able to come to the Mayor and the Mayor would hand out the censure, with a penalty of \$25 to \$50 per incident, adding City staff are working hard and don't need 7 different bosses, especially if they are receiving directions from Councilmembers that may be in two different directions. Vice Mayor McGoffin then reiterated that the Council should not be giving direction to Staff unless it's done as a whole Council together, adding each Councilmember has only 1 vote and it takes 4 votes of the Council in an open meeting to do anything, including directing Staff. Vice Mayor McGoffin then stated if a Councilmember wants something done, they go to the City Manager and the City Manager can direct Staff or may tell the Councilmember to go to that Staff person, adding these are the steps that should be followed. Vice Mayor McGoffin then stated she strongly felt Council needed to do something because Staff is getting bombarded by Councilmembers who are not adhering to their roles as Councilmembers and are directing Staff. Mayor King then stated he has as much of an obligation to protect Staff as he does the citizens, adding he would like to ask Mr. Masee to come up with something the Council can have on the next agenda to put in place to censure Councilmembers to put a stop to this.

Mayor King then stated this has been an on-going issue for some time and it's time to stop it, adding that is what the Council has a City Manager for and who the Councilmembers should go to. Mayor King then stated if Councilmembers make requests of the City Manager and he doesn't fulfill the request or address it, then the Council holds the City Manager accountable. Mayor King then repeated Councilmembers need to stop directing Staff, they can ask questions, but they can't direct them to do something, adding Staff is under enough pressure without the added burden of directives from Councilmembers who shouldn't be directing them. Councilmember Brooks stated a memorandum might be in order to the Councilmembers reminding them of that code infraction, adding all of Council should know that they can ask any Staff any question they want, but if they require any work from Staff, they have to go through the Council, which is done by a Council vote and any other directives have to be done through the City Manager. Vice Mayor McGoffin stated she would rather see a penalty put in place. Councilmember Moncada stated he didn't know if a penalty could be put in place, but a warning and a censure could be done. Mr. Masee then stated any financial penalty, would at a minimum, require due process, which would be an opportunity to have the Councilmember give their side of the story, adding this is basically a hearing and he didn't know if the Council wants to have a hearing officer or if the Council would want to preside at a hearing like that. Mr. Masee then stated for these reasons, he is saying to go slowly into those waters and maybe put a censure in place, adding he likes Vice Mayor McGoffin's suggestion that the Mayor can be very pro-active and give warnings, even written warnings, when there's something he's not comfortable with, and if it's not corrected, then the Mayor can proceed with a censure motion with Council. Councilmember Brooks stated in the past, there were accusations that other Mayors have directed Staff and asked what the Council would do in that case, with Mayor King stating he should be treated the same of the rest of the Council, with the Vice Mayor issuing a warning to him. Mayor King then stated Mr. Masee could put in the code that the Vice Mayor can warn the Mayor and then proceed with a censure motion with the Council. Council consensus was for Mr. Masee to present something at the next Council meeting regarding censuring members of the Council.

9. **Review of City Finances with emphasis on March, 2013 financial results, the City's financial position at March 31, 2013 and discussion of expected future net revenue streams**

Mayor King asked Finance Director Megan Moreno to condense the financial presentation. Ms. Moreno then briefly reviewed City finances stating the City's cash decreased for the month of March, due to having 3 payrolls, however the fund balance was positive for March, adding we are now into the time of year where we're going to continue to see those positive fund balances and the year-to-date negative should slowly dwindle as we get closer to June 30th. Ms. Moreno then addressed the enterprise funds, stating there was a large decrease in the Gas fund, due to more expenditures than normal over the revenues, adding the month of March includes 2 months of natural gas purchases. Ms. Moreno then addressed the Golf Course stating a public forum was recently held which was very positive and the Golf Course saw record revenues in March, up \$37,000, adding this included a loss on the restaurant portion, \$3,500 in golf cart maintenance fees and some unexpected insurance expenses. Mayor King noted the Golf Course had just under 3,000 golfers this month, adding Director of Golf Operations Jay Tomerlin is doing an excellent job at the Golf Course. Ms. Moreno then reviewed sales tax, stating the City sales tax in general fund sales never hit the peak we were expecting, noting this was due in part to the low construction sales tax collections, however the State sales tax collections are looking good as always. Ms. Moreno then stated overall, the City is doing well, adding we just need to continue in our conservative cash management approach and we'll be fine.

10. **Discussion and possible direction to Staff regarding Benson City Code, Article 3-3, Council and Administration Relationships**

This item was discussed in place of New Business Item #8. (See above)

DEPARTMENT REPORTS: None

ADJOURNMENT:

Vice Mayor McGoffin moved to adjourn at 9:10 p.m. Seconded by Councilmember Maldonado. Motion passed 7-0.

Toney D. King, Sr., Mayor

ATTEST:

Vicki L. Vivian, CMC, City Clerk