

**THE REGULAR MEETING
OF THE MAYOR AND CITY COUNCIL OF BENSON, ARIZONA
HELD APRIL 8, 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. stating he was removing New Business Item #5, adding he felt it should not be on the agenda at this time. Mayor King then led the audience in the Pledge of Allegiance. Mayor King then introduced Pastor Blair of the First Baptist Church who 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 congratulated City Manager Glenn Nichols who has served the community for 13 years, adding he will be leaving at the end of the week. Mayor King then read from the plaque the Council presented Mr. Nichols, stating the Council wishes him a happy retirement with appreciation for his dedication of 13 years to the City.

PROCLAMATION: None

PUBLIC HEARING: None

CALL TO THE PUBLIC:

Kathy Suagee addressed Council regarding New Business Item #5. Ms. Suagee's comments will be retained with the Council packet.

Pat Boyle addressed Council regarding New Business Item #5, stating there is an ever increasing amount of people's rights being taken away and freedoms being constrained, with increasing taxes and fees. Mr. Boyle then stated people work half their working lives and spend over 50% of their incomes on some sort of taxes, adding people are not free at all. Mr. Boyle then stated the first amendment is being trampled on and the second amendment is under assault at this time, adding people are also losing their property rights to ever encroaching rules that define what they can and can't do. Mr. Boyle then stated with all the rules, regulations and fees, home ownership has become a liability, adding with property taxes, it essentially means people don't really own their own homes. Mr. Boyle then stated he didn't believe this is what America represents and this type of thinking and actions need to be reversed.

Steve Sacco addressed Council stating he had a speech prepared, but Mayor King pulled the plug by removing New Business Item #5. Mr. Sacco then stated he appreciated what the Mayor did, adding very few members of the Council look out for what the citizens really want and for the rights of people in the City and he wanted to let them know he appreciates it.

Stephen Insalaco addressed Council regarding New Business Item #5. Mr. Insalaco's comments will be retained with the Council packet.

George Scott addressed Council regarding Resolution 9-2013, which expresses support for the proposed Benson clinic of the Marana Health Center. Mr. Scott stated the Southeastern Arizona Economic Development Group (SAEDG), the Benson Hospital and the City Manager have been working on this

project, adding it's important for the City of Benson, noting it will employ 17-20 full-time employees. Mr. Scott then stated the clinic will see approximately 16,000 patients per year, helping relieve some pressure on the doctors in Benson. Mr. Scott then noted Benson's unemployment rate is 14% and asked Council to approve the resolution. Mr. Scott then thanked Mr. Nichols for his service to the City of Benson for 13 years, adding he had an opportunity to work with Mr. Nichols when he was on the Council.

J.T. Moffett addressed Council regarding the appointment of the Interim City Manager, stating he had heard much talk of City Clerk Vicki Vivian and Public Works Director Brad Hamilton. Mr. Moffett then stated Ms. Vivian could not possibly fulfill the role since she was the City Clerk and would not be able to maintain her department and fulfill the duties of City Manager, adding Mr. Hamilton was in no way capable to handle the affairs of a City Manager. Mr. Moffett then stated the logical choice would be Finance Director Jim Cox, adding Mr. Cox has been the Acting City Manager before and since he is retiring as the Finance Director, he would have time to dedicate to the position and would also be on hand should the new Finance Director need assistance with the budget. Mr. Moffett then addressed the executive session and New Business Item #7, asking why the Council needs to hold an executive session to get legal advice in secret, adding the public has a right to hear what City Attorney Mike Masee has to say. Mr. Moffett then asked why Mr. Masee's new contract was changed to make him answerable to the City Manager instead of the Council as it's always been, adding Mr. Masee should take direction from the Council. Mr. Moffett then stated he believes the contract is in direct violation of the City code and should be terminated immediately. Mr. Moffett then stated the Council is responsible for safeguarding the taxpayers' dollars and they have an opportunity to end the Little Caesar's fiasco by giving a directive to the City Manager to pay the bill presented by Mr. Stephen Rose and save the taxpayers 3-10 times the amount requested by Mr. Rose. Mr. Moffett then stated the City can either pay Mr. Rose now or Mr. Masee more later, adding the cost for the lab tests, the deductible with the attorney pool and Mr. Masee's fees will far exceed the \$15,333 Mr. Rose is asking for.

CITY MANAGER REPORT:

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

- April 9, 2013 – Library Advisory Board, 4:00 p.m., City Library
- April 20, 2013 – Historic Preservation Commission, 9:00 a.m., City Hall
- April 22, 2013 – City Council Meeting, 7:00 p.m., City Hall
- April 23, 2013 – Community Watershed Alliance, 6:30 p.m., City Hall
- April 30, 2013 – Citizen Review Session, 7:00 p.m. City Hall
- April 20, 2013 – 2013 Relay for Life, 6:00 p.m., Lions Park
- April 26, 27, 28, 2013 – Bluegrass in the Park, Lions Park

Mr. Nichols reminded those present of the continuing work on the Interstate 10 and the Marsh Station project, adding up-to-date information can be found at www.azdot.gov. Vice Mayor McGoffin then stated on April 27, 9:00 a.m. to noon, the Medicine Shoppe in conjunction with the Benson Police Department, will hold a prescription take back day for all controlled substances.

NEW BUSINESS:

1. Consent Agenda

- 1a. Invoices processed for the period from March 15, 2013 through March 29, 2013

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

2. Resolution 9-2013 of the Mayor and Council of the City of Benson, Arizona, expressing support for the proposed Benson Clinic of Marana Health Center, Inc.

City Manager Glenn Nichols stated Mr. Scott, at the Call to the Public, gave a very good description of what Marana Health Center will do for the community, noting the only thing he wanted to add was that they will also have dental services available for low-income adults and children. Mr. Nichols then stated the Benson Hospital is in support of the center which will have a clinic available for small issues. Vice Mayor McGoffin asked if the services will be only for low-income people or for everyone, but will be engineered for low-income people with Mr. Nichols stating services will be for everyone, but the grant application is engineered for low-income adults and children. Vice Mayor McGoffin stated there is a great need for this in Benson and moved to approve Resolution 9-2013. Seconded by Councilmember Maldonado. Motion passed 7-0.

3. **License Agreement between the Friends of the Benson Library and the City of Benson for the use of Property located at 197 E. 7th Street, Benson, Arizona**

City Manager Glenn Nichols stated the Friends of the Benson Library wanted to expand what they are able to do for the community, adding the annexed part of the library is what they currently use for book sales and other activities, but they would like to open that back up for training and library activities, and asked if they could use the vacant building instead. Mr. Nichols then stated the City currently pays the utility bills on the building now, noting there is one meter for both the vacant side of the building and the Food Bank. Councilmember Moncada stated the Friends of the Benson Library have given a lot to the library, such as the property, books and the children's center. Councilmember Brooks asked about liability with City Attorney Mike Masee stating per the agreement, the City could seek indemnity. Councilmember Moncada then moved to approve the license agreement between the Friends of the Benson Library and the City of Benson for the use of the property located at 197 E. 7th Street, Benson, Arizona. Seconded by Councilmember Brooks. Mayor King thanked the Friends of the Benson Library for everything they have done. Motion passed 7-0.

4. **Contract for Prosecutorial Services between Ann P. Roberts and the City of Benson**

City Manager Glenn Nichols stated Ann Roberts has agreed to continue to provide prosecutorial services with the same contract, adding the only thing changed from the previous contract was the date and contract amount, which was approved in the current budget. Councilmember Brooks asked about the Cost of Living Adjustment (COLA) with Mr. Nichols stating the Council amended Ms. Roberts' previous contract, as well as the City Magistrate's contract to make any COLA applicable to both of those positions. Councilmember Moncada moved to approve the contract for prosecutorial services between Ann P. Roberts and the City of Benson. Seconded by Councilmember Sacco. Motion passed 7-0.

5. **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 by Mayor King at the beginning of the meeting. (See Call to Order)

6. **Resolution 10-2013 of the Mayor and Council of the City of Benson, Arizona, appointing an Interim City Manager**

Mayor King opened the item for discussion. Councilmember Brooks stated he had heard the names of City Clerk Vicki Vivian and Public Works Director Brad Hamilton for consideration, but didn't know if anyone had considered Finance Director Jim Cox. Councilmember Brooks then stated Mr. Cox has been an Acting City Manager for a month when the previous City Manager Martin Roush was ill and Mr. Cox would be an excellent choice for the transition to a permanent City Manager. Councilmember Moncada stated he thought Mr. Hamilton should do it, since Mr. Hamilton was the Acting City Manager when it was needed, ever since Councilmember Moncada has been on the Council. Councilmember Maldonado stated he thought Mr. Hamilton could handle the position. Vice Mayor McGoffin then stated Mr. Cox had a lot of health issues and didn't think the added stress of the position was a good idea. Vice Mayor McGoffin then

stated Ms. Vivian was also very busy, adding Mr. Hamilton is also very busy with a lot of responsibilities, but the position will be hard, regardless of whom Council designates. Councilmember Sacco stated he disagreed and felt Mr. Cox would be the better choice, adding Mr. Cox has more experience. Councilmember Lambert agreed Mr. Cox has done an excellent job and can handle it, but was concerned about the added stress during the budget cycle, adding Mr. Cox is going to be leaving soon and didn't see why Council would want to add more stress to him. Councilmember Brooks then stated Mr. Cox knew his health limitations and if he was willing to take on the responsibility, it was at his own risk, adding with the way Mr. Hamilton just handled the recent issue at Little Caesar's, he wouldn't vote for him. Councilmember Brooks then moved to appoint Jim Cox as the Interim City Manager. Seconded by Councilmember Sacco. Vice Mayor McGoffin stated she would like to ask Mr. Cox for his opinion with Mr. Cox thanking her for her concerns, but stated he is in excellent health at this time. Mr. Cox then stated he had planned on retiring mid-way through the budget cycle as soon as he and Deputy Finance Director Megan Moreno were comfortable with her proceeding forward. Mr. Cox then stated he worked hard in the Finance Department to ensure a smooth transition and if it meant working a few extra months to provide a smooth transition in the management of the City, he was willing to do so. Councilmember Maldonado then stated he didn't understand where the support for Mr. Cox was coming from since many people complained about Mr. Cox not knowing what he was doing and saying Mr. Cox couldn't do his job. Councilmember Maldonado then stated he wasn't saying Mr. Cox didn't do a good job as the Finance Director, but was just questioning how the people who were supporting Mr. Cox for the position of the Interim City Manager were the same ones who didn't feel Mr. Cox could do the job of Finance Director. Councilmember Brooks stated a lot of citizens say a lot of things, but a lot of people have faith in Mr. Cox. Motion then passed 4-3 with Councilmembers Lambert, Maldonado and Moncada voting nay. Councilmember Brooks asked when the Council would discuss the pay for the position with Mayor King stating it can be brought up at the next Council meeting.

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 correspondence received from Little Caesar's

Councilmember Brooks stated he would like to discuss this issue in public, stating people want to hear it and he doesn't think it's critical enough to hold an executive session, adding he thinks City Attorney Mike Masee can give Council the information in public. Councilmember Brooks then stated if the Council needs a motion to not enter into an executive session, he would be happy to do so. Councilmember Sacco agreed. Mayor King then stated he asked for the executive session to discuss what was given to the Council by Mr. Rose of Little Caesar's. Councilmember Brooks then moved to not go into an executive session, but to discuss the issue publicly. Seconded by Councilmember Sacco. City Attorney Mike Masee stated when a motion is made, it's always preferable to make a motion in an affirmative way instead of a negative way, adding the Council would have to have a positive vote of 4 or more to go into an executive session. Mr. Masee then stated a motion to not do something is an awkward motion, adding the only time the Council would hold an executive session is with a motion to do so that carries with a majority, and if no motion to enter into an executive session is seconded and carried, the Council doesn't go into an executive session; it simply dies. Mr. Masee then reiterated a motion to not do something is not very clear. Mayor King then stated with the current motion, a no means yes and a yes means no. Mr. Masee then stated that is what happens with a negative motion, adding it's an awkward way to put things. Councilmember Brooks then stated he was just making a motion to change Agenda Item #7 to not be an executive session, which he felt was straight forward enough. Mayor King then stated Agenda Item #7 is a separate item. Councilmember Brooks then moved, again, to not go into an executive session and to discuss this matter publicly. Seconded by Councilmember Sacco. Councilmember Moncada stated he would be abstaining from this issue, based on advice from Counsel. Motion failed 2-4 with Mayor King, Vice Mayor McGoffin and Councilmembers Lambert and Maldonado voting nay. Mr. Masee then stated the motion failing did not mean Council would go into an executive session, but noted the Council would need a motion to enter into the executive session, should they choose to. Vice Mayor McGoffin then stated in the 8 years she has served on the Council, they have never received legal advice in an open meeting, then moved to enter into an executive session with Council, City Manager Glenn Nichols, City Attorney Mike Masee, Public Works Director Brad Hamilton and the City Clerk Vicki Vivian at 7:50 p.m. Seconded by Councilmember

Lambert. Motion passed 4-2 with Councilmembers Brooks and Sacco voting nay.

Council reconvened at 8:05 p.m.

7. **Discussion and possible direction to Staff regarding the correspondence received from Little Caesar's**

Mayor King stated he placed this item on the agenda so Mr. Rose of Little Caesar's could address Council, adding the Council is here to listen and after that the Council will adjourn and wait until another Council meeting for this issue to be addressed. Mr. Rose then addressed Council stating he was grateful to have a business in Benson and to be able to serve the people in the community. Mr. Rose then stated the saddest aspect of the whole ordeal he has faced, is the fact that had it been handled correctly in December, 2012, when red oil was poured into his gas line, none of this would have occurred, adding he didn't open the store until January, 2013 and everything could have been avoided. Mr. Rose then stated the City Manager and those who work under him have chosen to deceive, sweep the issue under the rug and point blame at others in the community and he is dumbfounded by the choices they have made. Mr. Rose then stated everything could have been avoided if the City Manager and those that answer to him would have been honest, owned up and rectified the situation. Mr. Rose then stated there may be some people wondering how he arrived at the knowledge that red oil was poured into the line, which is another issue he finds alarming, adding he did not find out by the City Manager nor by Brad Hamilton, but he found out from a citizen of the community who saw them pour the red oil into the line and then panic and make multiple calls on what to do. Mr. Rose then stated no one notified him, his contractor or his plumber and he feels the deception and cover up is far more disgusting than the actual error, adding he would like the City to know he does not have any animosity at all to the person who accidentally poured the red oil into the line.

Councilmember Brooks asked why the City Engineer was not present at the meeting for him to question with Mayor King and Vice Mayor McGoffin stating he was ill. Councilmember Brooks stated he had some serious questions he would like to ask him with Mayor King stating he placed this item on the agenda for Mr. Rose to address the Council.

Mr. Rose continued, stating people make mistakes, but to have an organized effort where people are trying to stick to a narrative that it wasn't the red oil, that it was some other reason that caused their oven failure leaves him dumbfounded. Mr. Rose then stated they opened their doors on January 21 and throughout that week strange anomalies occurred with their ovens and they wouldn't fire up correctly, adding after messing with the ovens for as much as an hour, they would finally ignite. Mr. Rose then stated by the following week, the ovens were completely inoperable and they had service technicians come out, adding they found red oil in the ovens. Mr. Rose then showed Council some photos and stated he had a photo that was taken after the meter had supposedly been replaced and put in correctly, adding either it wasn't replaced or the second meter was installed incorrectly as well. Mr. Rose then stated he didn't know which was the case, but he knew the red oil was still there. Councilmember Brooks asked about the pictures, stating this was the first time he had seen them. Mr. Rose then stated he had tried to show Mr. Nichols the pictures on March 7 and after reaching out to Councilmember Lambert, who had come to the store and listened to him, he had emailed them to Councilmember Lambert on March 7 also.

Mr. Rose then stated after finding the red oil in the ovens, he approached Mr. James Barker, a City worker, who first admitted the mistake and called his supervisor to receive instructions on how to remedy the issue, but later changed his story. Mr. Rose stated the City's new narrative was that it was impossible for "a teaspoon of oil to reach the ovens" but that the eyewitness saw far more than a teaspoon of oil poured into the gas line. Mr. Rose then stated he found it troubling that administrators in the City chose to hang onto this narrative, adding from the photos, you could see it was far more than a teaspoon of oil that reached their ovens. Mr. Rose then stated whether Mr. Nichols chose to believe this narrative, that is on his shoulders, but Mr. Rose believes it was in their best interest to sweep it under the rug. Mr. Rose then stated meanwhile, he had to close his business for 4½ days and portions of additional days to attempt to remedy the problem, adding when you open a business, you want to start off on the right foot and Little Caesar's

has a reputation of hot and ready pizza, but instead they had to close for multiple days. Mr. Rose then stated he had the joy of seeing the citizens of the community show up and have a look of disappointment, adding some people were vocal in being disappointed in Little Caesar's and it was brought to his attention that many people in the community questioned their ability and their business, adding he finds it ironic that they were being blamed for someone else's incompetence. Mr. Rose then stated the City attempted to fix the problem by blowing air through the lines, but even after that was done, they continued to get oil into the ovens. Mr. Rose then stated on March 6 he received a phone call from Rafael Carrillo, his District Manager, telling him the ovens weren't working and the technicians found red oil again. Mr. Rose then stated he drove down to Benson and at 8:00 a.m. he called and was unable to talk to the people he wanted to, instead receiving a phone call from Mr. Garcia, telling him it was physically impossible for a teaspoon of oil to reach the ovens, adding at that point, he called his contractor Reid Stinnett, who was able to speak to Mr. Barker. Mr. Rose then stated Mr. Stinnett stated Mr. Barker was aware of the situation and wanted to meet Mr. Rose at the store, but then Mr. Rose received another phone call from Mr. Stinnett saying someone had pulled the rug out from under Mr. Barker and Mr. Nichols didn't want Mr. Barker to do anything until Mr. Rose met with Mr. Nichols. Mr. Rose then stated he and Mr. Carrillo went to City Hall with this emergency situation at about 11:20 a.m. and was not able to meet with Mr. Nichols, but was able to set an appointment with him for 2:00 p.m. Mr. Rose then stated knowing City officials were sticking to this narrative and that they were casting blame at his plumber, who does not use red oil in his activities with plumbing, he found it necessary and wise to bring him along also. Mr. Rose then stated the meeting was very adversarial and he didn't feel Mr. Nichols listened to him about the problem, but chose to talk about himself and was very disparaging and arrogant. Mr. Rose then stated the Council should remember the mistake had been admitted to and he had an eyewitness, adding the narrative was a cover up. Mr. Rose then stated as a business owner, he has a vested interest in Benson and the people of Benson are good people and fed up with the adversarial approach that certain City officials have with citizens of the City and with businesses of the City. Mr. Rose then stated he could go on, but the issue just needs to be handled, adding he gave Council a list of items and costs that have occurred, noting he didn't add everything he could have, such as the cost of meals for himself, the District Manager and the Assistant Manager from another store, the fuel for traveling to Benson, the pro-rated portion of rent, all the wasted wages or a refund for the dirty gas, but just listed the simple things, such as the loss of product, profits, lodging, oven repairs and the gas meter installation. Mr. Rose then stated he hopes Council would do the right thing.

DEPARTMENT REPORTS: None

ADJOURNMENT:

Vice Mayor McGoffin moved to adjourn at 8:55 p.m. Seconded by Councilmember Sacco. Motion passed 7-0.

Toney D. King, Sr., Mayor

ATTEST:

Vicki L. Vivian, CMC, City Clerk