

**THE REGULAR MEETING
OF THE MAYOR AND CITY COUNCIL OF BENSON, ARIZONA
HELD MAY 13, 2019 AT 7:00 P.M.
AT THE BENSON COMMUNITY CENTER, 705 W. UNION STREET, BENSON, ARIZONA**

CALL TO ORDER:

Mayor King called the meeting to order at 7:08 p.m. with the Pledge of Allegiance.

ROLL CALL:

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

EMPLOYEE RECOGNITION: None

PROCLAMATION:

Mayor King read a proclamation of the Mayor and Council declaring Monday, May 27, 2019 as “Memorial Day.”

Vice Mayor Konrad then read a proclamation of the Mayor and Council declaring May 24, 2019 as “Benson Poppy Day.”

PUBLIC HEARING: The Mayor and Council will receive comments and questions from the public regarding “The 2012-2014 Amendments to the Tax Code of the City of Benson.”

Mayor King opened the public hearing at 7:15 p.m. and stated no one had signed up to speak. Mayor King then asked if there was anyone present who wanted to speak. After receiving no responses, Mayor King closed the public hearing at 7:15 p.m.

CITY MANAGER REPORT:

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

Saturday, May 18, 2019 – Historic Preservation Commission, 9:00 a.m., Long Realty Office
Monday, May 20, 2019 – Special Council Meeting, 7:00 p.m., Community Center
Tuesday, May 28, 2019 – Council Meeting, 7:00 p.m., Community Center

Saturday May 18, 2019 – Benson Country Music Festival, at San Pedro Golf Course
Live Entertainment, Kids zone, Vendors, Food and Drinks
3:00 p.m. – 10:00 p.m.

Put on your boots and come out for some fun! We will have four live cover bands and a DJ who will keep the music and dancing going throughout the evening! There will be activities in the Kids Zone that include a trackless train, a five-sports complex, a large obstacle challenge, a bungee run, a western shooting game and face painting. For those little more adventurous “kids of all ages,” we’ll have a mechanical bull ready and waiting! A variety of food and drink vendors will be there as well as vendors with interesting things to sell. This is going to be a really fun evening and we hope to see everyone there!

Tickets can be purchased on the City’s website: www.cityofbenison.com or on the City’s Facebook page.

- Friday, May 24, 2019 – City Pool Opens,
For more information on the Pool and our other Summer Activities, go to www.cityofbenson.com
- Saturday, May 25, 2019 – Movie in the Park Featuring Incredibles 2 at Lions Park
Popcorn, Soda and Water – Free while supplies last; held at the Softball Field and will start serving at 6:30 p.m. Movie will start at Dusk.
- Monday, May 27, 2019 – Forget-Me-Not Pool Party
Kick off the Summer Swim Season with the City of Benson’s Forget-me-Not Memorial Day Pool Party Monday, May 27, from 11:00 a.m. – 5:00 p.m., Join us for a fun day filled with music, prizes, and food! Free swimming is sponsored by the VFW Women’s Auxiliary
- Monday, May 27, 2019 – Memorial Day – **City Offices Closed**

NEW BUSINESS:

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

- 1a. Minutes of the March 25, 2019 Regular Meeting
- 1b. Invoices processed for the period from April 11, 2019 through May 1, 2019

Vice Mayor Konrad moved to approve the Consent Agenda. Seconded by Councilmember Maldonado. Motion passed 5-0.

2. **Recognition of Linda Lamb, Educator in Benson Unified School District, for the impact she has had on the community throughout her career**

City Manager Vicki Vivian stated Ms. Linda Lamb has been a teacher for 35 plus years, working at Benson Schools from 1984-2019, noting Ms. Lamb taught English, Creative Writing, Photography, Journalism, Graphic Art and Design, and Student Council. Ms. Vivian then stated Ms. Lamb has also coached track at Benson and has been involved in over 500 track meets, adding she has also been a physical trainer, and an assistant athletic director.

Ms. Vivian also stated Ms. Lamb further served her local government, the City of Benson, by being the sponsor for the first Benson Youth Council, ensuring the Youth Council was able to attend the Annual League Youth Program held during the League of Arizona Cities & Towns Annual Conference. Ms. Vivian also stated the Youth Council had the opportunity to interact with local elected officials throughout the State and participate in their own team-building exercises, networking, and information sharing opportunities addressing youth leadership and how to become active and engaged members of their community. Ms. Vivian also stated this is just an example of what Ms. Lamb has done over the years for so many students; she has encouraged students to be their best self and to become active and engaged members of the community, which is needed to continue making our community, state and country great.

Mayor King stated he adores Ms. Lamb and she is the definition of love when it comes to our children. Mayor King then read a framed certificate he presented to Ms. Lamb which read, *“In appreciation of your lifelong dedication to education...for believing in children, for guiding through example, for inspiring with passion, for living through loving, for leaving an indelible mark on the future, for touching the human soul...you have made all the difference. Here’s to your impressive career. The vacancy you’ll leave behind may be filled, the position you held may be held by others, but in our hearts, you are simply irreplaceable. With our gratitude and love, the Mayor, Council and City Staff of the City of Benson.”*

Vice Mayor Konrad stated if anyone had the ability to be omnipresent, it’s Linda Lamb, adding he had never been to a school function that Ms. Lamb wasn’t attending and then he would turn around and be somewhere else and see her there as well. Vice Mayor Konrad stated Ms. Lamb has touched an incredible the amount of people and thanked her.

Mayor King stated Ms. Lamb will be missed very much, adding he spent many years with her at the school. Mayor King then stated the other day, he found a plaque Ms. Lamb's kids made for him for track and it brought tears to his eyes because of the enjoyment they shared and all the times he saw her when she stopped by the store. Mayor King then stated Ms. Lamb is amazing, she will never be replaced and will always be in our hearts, adding there is no one like her and never will be. Mayor King then stated Ms. Lamb will be missed at the school, but she will always be part of the City of Benson School district and all our kids, thanking her for all she has done.

3. **Discussion and possible action regarding moving the May 27, 2019 Regular Council Meeting to May 28, 2019**

City Manager Vicki Vivian stated the Council adopted Resolution 6-2019 in March setting May 28, due to the Memorial Holiday, as the date they would hold a public hearing on the "City of Benson, Arizona 2019 Water and Sewer Financial Planning Study." Ms. Vivian then stated due to the Memorial Day Holiday, Staff is now asking Council to reschedule the second regular meeting in May to Tuesday, May 28, 2019 at 7:00 p.m. per the City Code.

Councilmember Maldonado moved to approve moving the May 27, 2019 Regular Council Meeting to May 28, 2019. Seconded by Councilmember Boyle. Motion passed 5-0.

4. **Discussion and possible action regarding the financial request from the San Pedro Valley Alliance Summer Programs**

City Manager Vicki Vivian stated the San Pedro Valley Alliance has requested funding in the amount of \$4,000 to help with their 2019 summer activities, adding historically, the San Pedro Valley Alliance in conjunction with various Governor's Office programs and the City, has provided recreation activities for our youth, mainly with trips to movies, water parks, museums and other recreational facilities. Ms. Vivian stated in the past, the City had a specific line item for the San Pedro Valley Alliance with funding available ranging from \$3,000-\$5,000 each year; however, in Fiscal Year 2014-2015, funding was removed from the budget. Ms. Vivian stated last year the San Pedro Valley Alliance requested \$5,000 to help with their 2018 summer activities and the Council approved \$3,700 from the Community Enrichment budget and then the previous line item specifically for the San Pedro Valley Alliance was re-established and is in the current budget with funding in the amount of \$3,000.

Vice Mayor Konrad asked who oversaw the program as it used to be Ms. Hanson with Ms. Vivian stating Ms. Hanson is the representative who brought the letter, and her name is still on the letter so Ms. Hanson may be ad hoc; however, Jennifer Thomas is the Coordinator this year for the program.

Mayor King stated he believes in this program, has followed it for years, and he feels it is very important because it helps keep our kids involved in the summer and they get the opportunity to do different activities, adding he feels it's important to continue the program.

Vice Mayor Konrad asked if anyone knew why the budgeted amount was set at \$3,000 with Ms. Vivian stating it was carried forward from past budgets, but she had discussed with the Finance Director about increasing it in the future and the possibility of pulling funding from an additional line item. Finance Director Seth Judd stated there was still money available in the Community Enrichment fund so if the Council would like to consider more than the budgeted amount of \$3,000, funds could be appropriated from elsewhere in the Community Enrichment budget. Vice Mayor Konrad stated the Council approved \$3,700 last year, but he thought in the past the approved amount may have been closer to \$5,000 with Ms. Vivian stating past approved funding varied from \$3,000 to \$5,000, adding it depended on funding also coming from other places like the Governor's office, but noted she doesn't believe they receive that funding any longer. Ms. Vivian then stated she thought other entities partnered with the schools, for the buses and drivers, but she doesn't believe they receive any funding and she did increase the amount to \$3,500 in the proposed budget for next year.

Mayor King stated this is basically a grant to allow a child to be able to go places and have something to enjoy instead of getting into trouble in the summer, adding there are a lot of kids that take advantage of this program.

Vice Mayor Konrad moved to approve the financial request from the San Pedro Valley Alliance Summer Programs in the amount of the \$3,000 currently budgeted and adding \$1,000 from the Community Enrichment fund for a total of \$4,000. Seconded by Councilmember Maldonado. Motion passed 5-0.

5. **Discussion and possible action regarding the authorization of Armstrong Consulting Inc. under the City of Benson On-call Engineering Contract to conduct Design and Construction Services for the Benson Municipal Airport for the removal of the existing fence and constructing an airport perimeter fence**

Bradley J. Hamilton, P.E., Public Works Director/City Engineer stated this was a task order with our on-call consultant, Armstrong Consulting, Inc., to design and get the Bid Package ready for the next grant-funded project at the airport for an airport perimeter fence, adding it will be reimbursed by the FAA at about 91 percent and ADOT will then split the remaining cost with the City, so the City's share would be about \$4,500.

Mayor King stated he understands this fenced has been discussed for a long time and he is glad it's finally being looked at with Mr. Hamilton stating it took a little longer than expected to get through the environmental portion.

Vice Mayor Konrad asked what the timeframe was for demolition and reconstruction with Mr. Hamilton stating he would know the timeframe after Armstrong puts the bid package together, adding the goal is to put the project out for bids and have results back by the end of next month and then we can apply for the grant.

Councilmember Diaz questioned the fact that this was only for the design and not the construction with Mr. Hamilton stating this covers design, engineering and construction management services, although it does not cover construction itself. Councilmember Diaz asked about other projected fencing around an extensive runway or something with Mr. Hamilton stating at this time, the City doesn't own the property around the airport and the federal government would not fence property that wasn't the City's, adding the City had to have the proper surveys and everything else to make the fence is on City property. Mr. Hamilton then stated the fencing is basically to keep cows off the property, adding the current fence is smooth wire, and a big bull can lean on it and lay it right over. Mayor King stated in the past the cows have done that.

Vice Mayor Konrad moved to approve the authorization of Armstrong Consulting Inc. under the City of Benson On-call Engineering Contract to conduct Design and Construction Services for the Benson Municipal Airport for the removal of the existing fence and constructing an airport perimeter fence. Seconded by Mayor King. Motion passed 5-0.

6. **Discussion and possible action regarding Memorandum of Understanding (MOU) between the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) and the City of Benson Police Department**

Chief of Police Paul Moncada stated this Memorandum of Understanding (MOU) is to enable the Police Department to utilize ATF's database for trace evidence for crimes involving firearms, meaning it will allow the Police Department the ability to submit trace evidence and have ATF look for a determination comparison in their database to detect for the trace evidence of a firearm in their files. Chief Moncada then stated there is no cost to the City.

Vice Mayor Konrad asked for Chief Moncada to describe trace evidence with Chief Moncada stating trace evidence can be ballistics, the bullet itself, or the shell, adding now they do analysis of the casings themselves and the markings on the casings. Chief Moncada further explained they can identify a firearm just by the markings on the primer, and/or the injection if it is an automatic or semi-automatic, and the ejected casings out of the firearm.

Councilmember Diaz asked if this was a new agreement with Chief Moncada stating the database was made available and offered last year but it was not brought to Council at that time, so he asked for another agreement he could present to Council. Councilmember Diaz asked if there was any opposition to this kind of activity from other municipalities or others with Chief Moncada stating he was not aware of any opposition, adding most other departments have already entered into these kinds of agreements.

Mayor King stated he didn't see any issues with the agreement, then moved to approve the Memorandum of Understanding (MOU) between the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) and the City of Benson Police Department. Seconded by Councilmember Maldonado. Motion passed 5-0.

7. **Discussion and possible action regarding an Intergovernmental Agreement with the Arizona Department of Revenue for the Administration, Collection, Audit and Licensing of Transaction Privilege and affiliated Excise Taxes imposed by the State, Cities or Towns**

Finance Director Seth Judd stated beginning in 2014, Arizona Revised Statute (A.R.S.) §42-6001, which governs Local Transaction Privilege Tax, was modified by the legislature to require the Arizona Department of Revenue (ADOR) to administer the transaction privilege tax and use taxes imposed by all cities and towns, adding this intergovernmental agreement (IGA) is updated periodically depending on new laws enacted by the legislature. Mr. Judd stated this is the new agreement sent out by the Arizona League of Cities and Towns along with a memo outlining the changes made to the agreement. Mr. Judd stated this agreement will not result in any budgetary impact to the City of Benson; then noted it is basically a housekeeping item with the agreement being updated periodically by the Department of Revenue.

Councilmember Diaz asked if this was the agreement allowing the City to call and have the state come in and audit businesses who are not paying taxes with Mr. Judd stating the state has the auditing authority for all the businesses in the City.

City Manager Vicki Vivian stated this is an agreement the City has had in place for many years, adding it was renewed in 2011 and again in 2013 with a few changes. Ms. Vivian then stated the City has always used the Department of Revenue to collect taxes as opposed to some other cities that are self-collecting. Ms. Vivian stated then the legislature passed a law that required all cities to use ADOR to collect taxes and ADOR would start charging cities for this service, noting this item is an updated IGA reflecting all those new laws and changes. Ms. Vivian then stated ADOR has the option to audit businesses, but that is at their discretion. Ms. Vivian then stated at one time the City looked at trying to have auditing authority, so if there was a questionable issue on tax collections, it could reported and an audit of that business could be requested or the City could hire an independent auditor to perform an audit, but it was overwhelmingly defeated by public opinion.

Councilmember Diaz stated he remembers that issue before Council which is why he asked his question with Ms. Vivian stating the City did not adopt that proposal. Ms. Vivian then stated ADOR still has the authority to audit businesses, and assuming they saw something that would trigger an audit, they would still conduct an audit, but she believes their basic focus right now is collection and distribution, at least until they increase staff to levels of being able to conduct audits.

Councilmember Diaz stated in the agreement, it includes information on a State and Municipal Audit Resolution Team (SMART), and if he was reading that correctly, the team would be comprised of four seats representing jurisdictions and four seats representing the Department with Ms. Vivian confirming this. Ms. Vivian then stated under Section 14.4 in the agreement, there is a list of issues the panel would be deciding on, including decisions on auditing a taxpayer, and decisions regarding suspensions, closures, and disclosure of information. Councilmember Diaz thanked Ms. Vivian for the clarification.

Councilmember Boyle moved to approve an Intergovernmental Agreement with the Arizona Department of Revenue for the Administration, Collection, Audit and Licensing of Transaction Privilege and affiliated Excise Taxes imposed by the State, Cities or Towns. Seconded by Councilmember Diaz. Motion passed 5-0.

8. **Discussion and possible action regarding Resolution 13-2019 of the Mayor and Council of the City of Benson, Arizona, declaring as a public record that certain document filed with the City Clerk and entitled "The 2012-2014 Amendments to the Tax Code of the City of Benson"**

Finance Director Seth Judd stated the Model City Tax Code Amendments for 2012-2014 were approved by the Municipal Tax Code Commission in 2015, adding these updates were prepared by the Arizona League of Cities and Towns based on actions taken by the State Legislature or to clarify existing provisions within the existing code. Mr. Judd then stated the League prepares these amendments in order to maintain consistency in the application of the tax code within all municipalities in Arizona and in collecting information for the Use Tax, it was discovered the City of Benson's version of the tax code was not updated to the most recent 2015 version. Mr. Judd stated Staff then requested the resolution and ordinance from the League to approve the state mandated amendments. Mr. Judd

continued stating to adopt the proposed Code change, Council must adopt the change by an ordinance, which must be published; however, there is a provision enabling a City to adopt the provisions of a code “by reference” saving on publication costs. Mr. Judd stated in order to do this, the Council must adopt a resolution declaring such provisions as a public record and three copies must be filed in the office of the City Clerk and kept available for public use and inspection; then the Council can act on the ordinance and if approved, the ordinance must be published in full and will notify the public of a City Code change. Mr. Judd then stated this resolution declares “The 2012-2014 Amendments to the Tax Code of the City of Benson” a public record, adding the next Council item for consideration is the ordinance that if approved, would adopt the changes.

Vice Mayor Konrad asked how this will be prevented in the future with Mr. Judd stating there was quite a bit of turnover in the Finance Department, but he has been in touch with the League of Arizona Cities and Towns Tax Analyst, Lee Grafstrom and Mr. Grafstrom now has both Mr. Judd and City Manager Vicki Vivian on his email list to make sure this doesn’t happen again.

Ms. Vivian stated that in her position now, she has the ability to make certain things like this don’t get missed adding she is on many legislative calls so she would be aware of changes in tax legislation. Ms. Vivian then stated another way she and the Council can be informed of such changes is by attending the League’s tour they specifically take around the state sharing with City Councils and Staff all the new legislation that passes each year.

Councilmember Diaz asked if this was something that already exists in the City Code with Mr. Judd stating this updates the City’s existing tax code based on the new laws that were passed. Councilmember Diaz stated he found exemptions on certain City sales and out-of-state sales, adding the reason he is asking is because the Council just passed the sales tax (use tax) and the use tax attaches those kind of sales, so he was questioning whether these exemptions affected the use tax. City Attorney Gary Cohen stated the first example Councilmember Diaz pointed out involves the limited subject of “Job Printing” and the second issue is in the context of the limited subject of “Food for Consumption on the Premises.” Mr. Cohen then stated to the extent these are exclusions, the Use Tax would not apply to these narrow subjects; however, he would be happy to look into it more and write a memo on it if Councilmember Diaz would like. Mr. Cohen then stated on the face of this, those exemptions are limited to the two topics under the headings in which they appear. Councilmember Diaz stated he understood and did not need a memo; then noted since many people are doing all sorts of printing and banners and such that people are ordering online, he was questioning if it covered print jobs. Councilmember Diaz then stated his other question related to some of the food people buy that is packaged with Mr. Cohen stating he understood, but to provide Councilmember Diaz with a more thorough answer, he would need to pull up the language of the use tax and compare them, adding what he provided here was a quick, off-the-cuff answer based on these pages.

Councilmember Boyle moved to approve Resolution 13-2019. Seconded by Vice Mayor Konrad. Motion passed 5-0.

9. **Discussion and possible action regarding Ordinance 598 of the Mayor and Council of the City of Benson, Arizona, relating to the Transaction Privilege Tax; adopting “The 2012-2014 Amendments to the Tax Code of the City of Benson” by reference; establishing effective dates; providing for severability and providing penalties for violations**

Finance Director Seth Judd stated as noted in the previous item, any change to the City Code must be adopted by an ordinance, which must be published in accordance with State law requirements; however, when a change to the City Code is quite lengthy, there is a provision enabling a City to adopt the provision of a code or a public record without setting forth such provisions in the ordinance; enacting the provisions “by reference.” Mr. Judd then stated the previous item presented to Council, Resolution 13-2019, declared the document, “The 2012-2014 Amendments to the Tax Code of the City of Benson” as a public record and Council may now consider Ordinance 598, which would enact the City Code change, if approved.

Vice Mayor Konrad moved to approve Ordinance 598. Seconded by Councilmember Diaz. Motion passed 5-0.

City Manager Vicki Vivian stated she would like to see if the Mayor would consider taking the Call to the Public, if any, before possibly entering into the Executive Session. Mayor King stated he would address the Call to the Public next.

CALL TO THE PUBLIC:

Elton Bowman, S. Ocotillo Street, Benson, stated he was representing “Brighten the Path,” the organization that volunteers to go around the City and pick up trash several times a year. Mr. Bowman stated it had been kind of quiet lately, but they have been working behind the scenes, with business building owners, and have gotten quite a good response as they go into businesses and tell them to clean up, noting they have made good headway with Walmart, Dollar General and all along the Butterfield Mall. Mr. Bowman then stated he sent a letter to the Editor of the San Pedro Valley News-Sun and he would read it to Council, so they are forewarned. The letter read, “*Dozens of volunteers, under the name of Brighten the Path, have given their time and energy in the past year and a half picking up loose trash in Benson. The city looks much better as a result of their efforts and we will continue in our effort to make Benson a nicer place to live. There are additional efforts being exerted behind the scenes to get businesses involved in keeping their areas clean and plans are being made to get signage and additional garbage containers strategically placed around the city to give people a clear opportunity to dispose of trash properly. Having a clean, healthy and inviting appearance in our city has to be a community effort. Everyone needs to take an interest and actively pursue the end goal in order to accomplish it. If you see trash, pick it up and put it in a proper container. I would like to suggest the people of Benson “Adopt A Spot” to keep clean in Benson. It can be a street, an alley, a one block stretch of a street or anything. It can be your own front yard or your entire yard or the alley behind your house. You choose what you are willing and able to do and simply do it. No fanfare, no accolades, just the end result of a cleaner, nicer environment in our city. I’m sure the Benson City Codes define the illegality of dumping in the waterways, streets and alleys as well as enforcement procedures and penalties to be assessed accordingly. I invite the City Council to take action to support the effort to clean up the city and keep it that way through enforcement of our laws regarding littering and dumping. It is not only unsightly, it is unhealthy to have loose trash and food containers, some with rotting food in them, laying around drawing rodents and insects. Signage, well placed trash receptacles and enforcement of the laws can make a big difference in the appearance of our city and the good health of the people. ‘We the People’ is all-inclusive. It is everyone in the city. It is powerful. Join us.*” Mr. Bowman then thanked the Council and Mayor King thanked Mr. Bowman for his efforts and his comments.

EXECUTIVE SESSION: Pursuant to A.R.S. § 38-431.03 (A)(3) & (7), for discussion or consultation for legal advice with the attorney or attorneys of the public body and discussions or consultations with the Mayor and Council’s designated representatives to consider its position and possibly instruct its representatives regarding negotiations for the purchase, sale, lease, or exchange of city-owned real property.

Vice Mayor Konrad moved to enter an Executive Session with the Mayor and Council, the City Manager, the City Attorney, the Public Works Director and the Deputy City Clerk, at 7:56 p.m. Seconded by Councilmember Maldonado. Motion passed 5-0.

Council reconvened at 8:38 p.m.

DEPARTMENT REPORTS: None

ADJOURNMENT:

Vice Mayor Konrad moved to adjourn at 8:38 p.m. Seconded by Councilmember Maldonado. Motion passed 5-0.

Toney D. King, Sr., Mayor

ATTEST:

Vicki L. Vivian, CMC, City Clerk