

**THE REGULAR MEETING
OF THE MAYOR AND CITY COUNCIL OF BENSON, ARIZONA
HELD JULY 25, 2011 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 7:01 p.m. with the pledge of allegiance.

ROLL CALL:

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

EMPLOYEE RECOGNITION: Mayor King recognized Al Carruthers and Rolando Carrillo for each having 15 years of service with the City of Benson.

PROCLAMATION: None.

PUBLIC HEARING: None.

CALL TO THE PUBLIC:

Laura Parkin, Chair of the 4th of July Committee in 2011, addressed Council stating once again, the 4th of July celebration was a huge success with 49 parade entries and approximately 2,000 people in attendance at the park until about 3:00 p.m. when the storm moved in; the crowd then went to about 200 for the duration of the evening. Ms. Parkin stated she would like to thank Dick Ferdon, Don Buchanan, Katie Maakestad, Ron DeSpain, Danna Judd, Bob Nilson, Andrew Parkin and Kathleen Castillo. Ms. Parkin stated she would also like to thank all of those who helped and all the sponsors for their support this year. Ms. Parkin then stated the fireworks have been moved to Friday, October 8, 2011.

Randy Robichaud stated he is a Planning & Zoning Commissioner and addressed Ordinance 558 regarding the Planning & Zoning Commission membership. Mr. Robichaud stated there are considerations that need to be looked at before this is voted on. Mr. Robichaud then stated that there is an added 11% chance of not having a quorum, adding with a 7 member board, there is a 71% chance of having a quorum and with a 5 member board, there is a 60% chance of having a quorum, which is an 11% decrease. Mr. Robichaud stated last year he was in an accident and was unable to attend some of the meetings and one other Commissioner was having medical problems in addition to a third member not attending at all, noting at that time, if the Commission consisted of 5 members, they would not have had a quorum. Mr. Robichaud then stated all Commissioners have strong points and they are all very important in making decisions. Mr. Robichaud then added with a 5 person Commission, it possibly allows only 3 members to make decisions for the City. Mr. Robichaud then stated since there are 4 volunteers available to fill the vacancies, the membership did not need to be reduced.

Jeff Cook addressed Council stating he appreciated the opportunity to address the Council. Mr. Cook stated he had not planned on speaking but after attending the worksession, felt he needed to. Mr. Cook then stated that he was having trouble hearing the Mayor's in the meeting. Mr. Cook then stated he realized it was Mayor King's first meeting, and part of the job of the Mayor is to maintain order in meetings. Mr. Cook then stated that he saw several audience members injecting chaos into the process and interrupting the speakers. Mr. Cook stated that the point of order would have been that Mr. Masee had the floor and asked the Mayor to remember that. Mayor King thanked Mr. Cook for his comments.

Kathy Suagee addressed Council stating in response to the last call to the public; Mr. Masee had advised it was up to the Mayor whether or not audience members could participate in a worksession, adding it has been allowed in the past. Ms. Suagee stated she believes Mr. Masee is wrong about a Councilmember

being able to participate as a community member when they have excused themselves because of a conflict of interest on an issue the Council is considering and she felt it would be illegal for that Councilmember to talk to another Councilmember outside of the Chambers about the issue on which they had a conflict of interest. Ms. Suagee then stated as far as proprietary interests, there were two reasons why there may be a conflict of interest; one is pecuniary where the Councilmember or a close family member may be making a paycheck and the other is the situation Mr. Maldonado is in, adding Mr. Maldonado has a proprietary interest in mobile home parks in this community and it appeared improper for him to participate in this issue. Ms. Suagee then addressed Ordinance 558 regarding the Planning & Zoning Commission membership, stating with 5 members, 2 of whom can be non-residents, people outside the community, who don't vote in Benson, nor pay taxes in Benson, might be able to sway one of the 3 people who live in Benson on the Planning & Zoning Commission to go along with them on things and that disturbs her. Ms. Suagee then stated she didn't like the idea of people outside the City being on the Planning & Zoning Commission in the first place and believes by allowing them to serve, the Council has compromised the City's business. Ms. Suagee then stated Council should consider not changing the constituency of the Planning & Zoning Commission at this time, but asked them to think in the future about changing the Commission to 7 Benson residents. Ms. Suagee then thanked the Council for their time.

CITY MANAGER REPORT:

Finance Director Jim Cox then addressed Council, giving the dates of upcoming meetings and events.

- July 26, 2011 – Community Watershed Alliance, 6:30 p.m., City Hall
- August 2, 2011 – Planning & Zoning Meeting, 7:00 p.m., City Hall
- August 8, 2011 – City Council Meeting, 7:00 p.m., City Hall
- August 9, 2011 – Library Advisory Board, 4:00 p.m., Library
- August 20, 2011 – Historic Preservation Commission, 9:00 a.m., City Hall
- August 22, 2011 – Public Hearing, 7:00 p.m., City Hall
City Council Meeting, 7:00 p.m., City hall
- August 23, 2011 – Community Watershed Alliance, 6:30 p.m., City Hall
- July 28, 2011 – 2011-2012 School Year Begins

Mr. Cox stated the Public Hearing on August 22, 2011 was for the 2010-2011 Amendments to the Tax Code of the City of Benson.

NEW BUSINESS:

1. Consent Agenda

- 1a. Minutes of the June 23, 2011 Special Meeting
- 1b. Minutes of the June 27, 2011 Regular Meeting, Including Executive Session Minutes
- 1c. Reappointment of Elizabeth Brenner to the Benson Historic Preservation Commission
- 1d. Reappointment of JoAnne Sturgeon to the Benson Historic Preservation Commission
- 1e. Reappointment of Ruth Wilson to the Benson Historic Preservation Commission
- 1f. Resignation of Luanne Posegate from the Planning & Zoning Commission
- 1g. Resolution 44-2011 of the Mayor and Council of the City of Benson, Arizona, approving and authorizing the execution of a Lease Agreement between the Benson Unified School District #9 (The "District") and the City of Benson for the property located at 197 E. 7th Street for the purpose of operating a Charter High School Program
- 1h. Resolution 45-2011 of the Mayor and Council of the City of Benson, Arizona, approving and authorizing the execution of an Intergovernmental Agreement between the City of Benson and the Benson Unified School District #9 (The "District") to permit reciprocal use of the buildings and grounds of the City of Benson and the District
- 1i. Resolution 46-2011 of the Mayor and Council of the City of Benson, Arizona, approving and authorizing the execution of an Intergovernmental Agreement between the City of Benson and the St.

David School District (The “District”) to permit reciprocal use of the buildings and grounds of the City of Benson and the District

- 1j. Resolution 47-2011 of the Mayor and Council of the City of Benson, Arizona, approving and authorizing the execution of an Intergovernmental Agreement between the City of Benson and the Pomerene Elementary School District #64 (The “District”) to permit reciprocal use of the buildings and grounds of the City of Benson and the District
- 1k. Invoices processed for the period from June 21, 2011 through July 18, 2011

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

2. **Recognition of the Benson High School Softball Team for winning the 2011 State Championship; Certificates of Recognition will be presented and the Team’s request for a Donation to purchase Championship Rings will be considered**

Councilmember Lambert read the names of the coaches and players from the certificates of recognition as Mayor King presented them. Mayor King thanked the team for representing the community and wished them luck in the upcoming season. Mayor King then stated there will be discussion on the City giving some funding to help the team purchase State Championship rings and asked Coach Shad Housley to come forward for any questions. Mr. Housley gave a brief history of the team stating this is the third State Championship Benson has won in six years and each time the City has been gracious in helping purchase rings and the team is very grateful. Mr. Housley then stated each Spring Break, the team attends a tournament in Payson, Arizona held in honor of a 3 year old girl; Gracie Haught, who was killed tragically when she was accidentally run over by her grandfather. Mr. Housley stated each year the tournament donates money to help less fortunate children in Arizona and each year the team raises at least \$1,000.00 for the Gracie Haught Foundation, reading parts of an article from the Payson Round Up newspaper. Mr. Housley then stated the character that is built by being part of this team is much more than a State Championship. Councilmember Brooks stated for clarification that the money for this donation would be taken from the Community Enrichment Fund. Councilmember Sacco asked if Council had donated before with Finance Director Jim Cox stating the Council has donated to the prior two championship rings in the amount of \$500.00, adding there is funding in the budget for this. Councilmember Brooks asked how much money has been raised so far with Mr. Housley replying the team has raised over half of the money needed for the rings.

Councilmember Lambert moved to approve a donation of \$500.00 from the Community Enrichment Fund to assist with the purchase of championship rings. Seconded by Councilmember Brooks. Motion passed 6-0.

3. **Ordinance 557 levying upon the assessed valuation of the property within the City of Benson, Arizona, subject to taxation. A certain sum upon each One Hundred Dollars (\$100.00) of valuation, sufficient to raise the amount estimated to be required in the annual budget, less the amount estimated to be received from fines, licenses and other sources of revenue providing a General Fund for the General Municipal Expenses: All for Fiscal Year ending June 30, 2012**

Finance Director Jim Cox addressed Council stating the Property Tax Ordinance is adopted annually and according to Statute, can be done no earlier than 14 days following Council’s adoption of the final budget for the Fiscal Year; which was adopted on June 27, 2011. Mr. Cox then stated the property taxes are 3.5% of the General Fund Revenues used to operate the administrative areas of the City. Mr. Cox then stated the final budget for 2011-2012 approved a property tax levy rate of 0.4538 and budgeted revenues of \$220,000, compared to the 2010-2011, which had a 0.4577 rate and budgeted revenues of \$216,000, adding there has been a slight reduction for the fifth consecutive year. Mayor King commented that everyone likes when taxes go down. Councilmember Brooks asked if the reason that we have more revenues with a lesser tax rate is because of higher property values with Mr. Cox stating it was primarily from new construction. Councilmember Moncada moved to approve Ordinance 557. Seconded by Councilmember Lambert. Motion passed 6-0.

4. **Ordinance 558 of the Mayor and Council of the City of Benson, Arizona, amending Ordinance 225; decreasing the membership of the Planning & Zoning Commission from seven (7) members to five (5) members**

Building Official Luis Garcia addressed Council stating this ordinance was intended to get the Council decision to get in line with the wishes of the Planning & Zoning Commission who voted 4 to 1 at their meeting held July 19, 2011 to amend their bylaws to go from a 7 member Commission to a 5 member Commission. Mr. Garcia stated that this will work as a benefit to the City as well as the public to have more consistent quorums as he feels it would be easier to get 3 people to a meeting than it is to get 4 people to a meeting. Mr. Garcia then stated another note is that a 7 member board really comes into play when there is a ward system, which is not the case in Benson. Councilmember Sacco asked what the thinking was in reducing the number of Commissioners with Mr. Garcia stating it was to have a more consistent quorum. Councilmember Sacco stated he thought that the less members you have, the higher the chances of not having a quorum and then added Planning & Zoning is not included in Chapter 18 of the City Code and would like it to be addressed. Mr. Garcia responded by stating Staff is currently working on the code to get in line with what the actual applications are in the City. Councilmember Sacco reiterated he would like to have the Planning & Zoning Commission addressed in Chapter 18 of the City Code. Councilmember Sacco then stated the proposed ordinance reads “the Planning & Zoning Commission of the City of Benson shall be composed of 5 members, at least 3 of whom shall be residents of the City of Benson” and asked if there is still a problem of recruiting Commissioners. Mr. Garcia stated on the next agenda item there are 2 residents and 2 non-residents applying for an appointment to the Planning & Zoning Board, adding it is still difficult to recruit City residents to serve. Councilmember Sacco asked how recruiting is advertised, with Mr. Garcia stating it has been in the paper and has also been announced at the Planning & Zoning meetings. Councilmember Sacco stated the proposed ordinance reads, “the Planning & Zoning Commission of the City of Benson shall be composed of 5 members, at least 3 of whom shall be residents of the City of Benson” and he would like to amend it to say “at least 3 or more shall be residents of the City of Benson”. Mr. Masee stated if Councilmember Sacco wanted to make this a motion to amend the proposed ordinance as such, the motion to amend would take precedence over the underlying discussion and the amendment would need to be addressed first. Councilmember Sacco stated he would like to move to make such amendment to Section 1 of the proposed ordinance, deleting the words “at least 3 of whom” and replace them with “at least 3 or more members” shall be residents of the City of Benson. Mayor King then stated Councilmember Sacco’s motion is on the table and asked if there was a second. Councilmember Brooks stated he was not sure he entirely liked the idea of anyone outside the City being on a board. Mayor King again asked if there was a second on the motion. Mayor King then stated the motion died for lack of a second. Mayor King asked if the Ordinance could be amended to only include Benson residents. Mr. Masee stated it would be beneficial for discussion purposes to also have that amendment in the form of a motion, but he thought Councilmember Sacco still held the floor. Councilmember Sacco stated he does not feel it is necessary to have non-residents on the Commission; their interests won’t be in the City of Benson and we have enough local people who will be glad to apply to be appointed to the Planning & Zoning Commission, adding it was revised to allow non-residents a few years back when there was a problem getting residents to serve, but felt that was not a problem today and he would like to eliminate non-resident applications for the Planning & Zoning Commission, adding it was a motion to do so. Councilmember Brooks stated that issue is a different issue than what is being presented. Mayor King then stated Councilmember Sacco’s motion to amend Section 1 to only include City residents was on the table. Mr. Masee then clarified the amendment would now have Section 1 strike the words, “at least 3” and replace with “all” of whom shall be residents of the City of Benson. Councilmember Sacco agreed that was his motion. Mayor King then asked if there was a second. Motion seconded by Councilmember Brooks. Mayor King then opened the item for discussion. Councilmember Moncada asked if residents take precedence over non-residents, with Mr. Garcia stating there is no policy in place that would give any precedence, adding the only policy in place is the ordinance that allows non-residents to be able to be on the Planning & Zoning Commission. Mr. Masee then stated this is up to the discretion of the City Council, adding if the preference is to man the commission with all residents, even though the ordinance currently allows non-residents, they could do that on a policy basis, by how the Council votes on the appointment issues. Mr. Masee then stated the way the ordinance is written simply allows non-residents,

but doesn't mean it would force Council to select non-residents, and they could make a preference to select residents. Councilmember Moncada then stated if the ordinance were changed to only allow City residents to serve, which is what he would like, it may possibly cause a problem if not enough residents apply to the Commission. Councilmember Sacco asked why the Council was looking at reducing the membership to begin with, adding a 7 member commission worked for years, providing more opinions and a better debate. Mayor King then stated some of the Council looked at reducing the size of the boards and commissions since it was difficult to get people to serve on them. Mr. Garcia then restated the Planning & Zoning Commission did vote to have only 5 members instead of 7 members. Mayor King then stated the motion to amend Section 1 of Ordinance 558, would now read, "the Planning & Zoning Commission shall be composed of 5 members, all of whom shall be residents of the City of Benson." Mr. Masee reminded Council the motion was to amend the proposed ordinance and did not commit them to adopt it. Councilmember Maldonado asked about current non-resident Planning & Zoning Commissioners and what would happen if the ordinance was adopted, with Mr. Masee stating the ordinance would take effect in 30 days, and in that period, any non-resident would need to resign or be removed. Motion then failed 5-1 with Mayor King, Councilmembers Brooks, Lambert, Maldonado and Moncada voting nay and Councilmember Sacco voting aye.

Councilmember Lambert then stated that he had provided each Councilmember an attendance report for the Planning & Zoning Commission and upon review there had only been one time, November of 2010, where there had not been a quorum, and only two times there were 4 Commissioners present, stating most other meetings had 5 or 6 Commissioners present. Councilmember Lambert then stated the Luanne Posegate had resigned and quoted from her resignation letter that, "sometimes it's very difficult for the Commission because they seem to be going in different directions and it makes it hard at times to work things out." Councilmember Lambert then stated that is why it's important to have a 7 member Commission, adding if there are only 5, those 5 may agree quickly and it may not be in the best interest of the City. Councilmember Lambert then moved to leave the Commission at 7, moving to disapprove Ordinance 558. Seconded by Councilmember Brooks. Mr. Masee stated this means an aye vote would mean one is voting against Ordinance 558. Motion passed 6-0.

5. Appointment of Planning & Zoning Commissioners

Building Official Luis Garcia addressed Council stating the outcome of the previous item affected this item and the 4 applicants presented would fill the 4 vacancies. Mayor King stated of the 4 applicants, there are 2 residents and 2 non-residents. Mr. Garcia then stated if the 4 applicants are approved, the commission would consist of 4 residents and 3 non-residents. Councilmember Brooks asked about the ordinance regarding the composition of the membership with Mr. Garcia stating 4 members of the commission must be Benson residents. Councilmember Moncada moved to approve the 4 applicants' appointment to the Planning & Zoning Commission. Seconded by Councilmember Lambert. Motion passed 6-0.

6. Resolution 48-2011 of the Mayor and Council of the City of Benson, Arizona, entering into an Agreement with Psomas, for Benson 5th Street Improvements, Community Development Block Grant (CDBG) #105-11

Public Works Director Brad Hamilton stated approximately a year ago, Council chose 2 projects for the Community Development Block Grant Program; 5th Street Improvements and a Drainage Study. Mr. Hamilton stated this is engineering design to place curbs and sidewalks. Councilmember Brooks asked if the project included both sides of the street, with Mr. Hamilton stating the curbs will be on both sides, but the sidewalk placement will be dependent on the costs of the project. Mayor King stated the Community Development Block Grant (CDBG) funding is received every 2 years, with Mr. Hamilton stating in the first year, the projects are selected and in the second year, the project moves forward with the CDBG funding, adding the last projects included paving and sidewalk projects. Councilmember Brooks asked if there is a portion the City is charged for, with Mr. Hamilton answering there is no charge unless the City decides to expand the project. Councilmember Brooks then clarified the project area and asked why it was chosen with Mr. Hamilton stating only certain areas in the City qualify, adding a special survey had to be completed to make sure this area did qualify. Councilmember Sacco asked if this was part of CIP PW11-7

with Mr. Hamilton stating that he did not have the budget in front of him and he did not know off-hand. Councilmember Sacco then asked what the estimated completion date was for publication of the RFQ, with Mr. Hamilton stating that process had been completed several years ago and had followed Federal guidelines and obtained the Arizona Department of Housing's approval which allowed the contract with Psomas to be brought to Council for action. Councilmember Lambert moved to approve Resolution 48-2011. Seconded by Councilmember Maldonado. Motion passed 6-0.

7. **Resolution 49-2011 of the Mayor and Council of the City of Benson, Arizona, entering into an Agreement with Psomas, for Benson Master Drainage Study Area, Community Development Block Grant (CDBG) #106-11**

Public Works Director Brad Hamilton addressed Council stating this item is the other approved project and is to have a drainage study completed for all of the eligible area inside of Benson that can be done using Community Development Block Grant funding. Councilmember Maldonado asked if this would also be fully funded with Mr. Hamilton stating it would be fully funded. Councilmember Brooks stated he has seen areas where the water was actually over the curb on 4th Street when it rains. Mr. Hamilton stated this study is to gather the information necessary to address drainage issues in the eligible areas and will contain preliminary cost estimates and requirements, adding the study is the first step needed in being able to approach FEMA and other organizations that fund flood control. Councilmember Moncada clarified that with the study, the Council will have a better idea of cost and what is needed to address flooding and drainage problems, as well as the study being used in applying for grants with Mr. Hamilton verifying he was correct. Councilmember Lambert then moved to approve Resolution 49-2011. Seconded by Councilmember Moncada. Motion passed 6-0.

8. **Jennella Drive Pre-Annexation Water Extension Agreement between Diana L. Hemovich and Michael Hemovich and the City of Benson**

Public Works Director Brad Hamilton addressed Council stating several years ago the City built a water line down Jennella and as a way to pay for a portion of the cost; the City gave the residents along Jennella an opportunity to tie in to it. Mayor King stated this is not something new, with Mr. Hamilton adding the first residents were charged a fee of \$5,000, which was determined when the line was built, but the Council later raised the fee to \$10,000. Councilmember Brooks asked if the City would have to run a line for the purpose of a fire protection line with Mr. Hamilton stating the agreement is only for water service, which includes the meter being set in the right-of-way, adding the customer is responsible for the connection from that point. Councilmember Brooks moved to approve the Jennella Drive Pre-Annexation Water Extension Agreement between Diana L Hemovich and Michael Hemovich and the City of Benson. Seconded by Councilmember Lambert. Motion passed 6-0.

9. **Resolution 50-2011 of the Mayor and Council of the City of Benson, Arizona, approving and authorizing the expenditure of public funds, in an amount not to exceed \$43,203.00, to allow Cochise County ("County") to proceed with the construction of improvements to Central Avenue pursuant to the January 25, 2005 Intergovernmental Agreement (IGA)**

Public Works Director Brad Hamilton addressed the Council stating this is a joint project between the City and the School District. Mr. Hamilton then stated the school is using Adjacent Ways Funding to rebuild the alley between the school and 6th Street for access and drainage, which will cause more water flow to Central Avenue. Mr. Hamilton then stated Central Avenue already has flood problems so the City's part of the project will be to lower Central Avenue to accept all of the water properly and help the flow of water to continue to 6th Street. Mayor King asked if this was money that was budgeted for with Mr. Hamilton stating that it was. Councilmember Moncada asked of they would be eliminating the crown on Central with Mr. Hamilton confirming that was correct. Councilmember Brooks asked if the water would move down the center of 6th Street, with Mr. Hamilton stating it is supposed to flow down 6th Street and does for the most part, but also currently flows on to private property, which hopefully, would be eliminated. Councilmember Lambert moved to approve Resolution 50-2011. Seconded by Councilmember Maldonado. Motion passed 6-0.

10. **Resolution 51-2011 of the Mayor and Council of the City of Benson, Arizona, approving and authorizing the expenditure of public funds, in an amount not to exceed \$189,905.87 to allow Cochise County (“County”) to proceed with the construction of improvements to City streets pursuant to the January 25, 2005 Intergovernmental Agreement (IGA)**

Public Works Director Brad Hamilton addressed the Council stating this item is being funded by the bond program, even though pavement management was started before the bond issue in about 2007 when Council decided to expend approximately \$200,000 a year on street maintenance. Mr. Hamilton then stated shortly thereafter, the economy went south and pavement management had to be suspended, but with the bonds, it may be looked at again. Mayor King stated that this would cover Huachuca Street, Silverwood Lane, Dragoon Street, Patrick Drive, Si Tengo Drive, Hillcrest Drive and 6th Street. Mr. Hamilton stated that Foothill will be left as an alternate in case there are funds left. Councilmember Brooks asked if this would look like what the County did on Hermosa and how long the results would last, with Mr. Hamilton stating the County would skin patch the bad spots with hot mix and then come back with a single shot chip seal polymer and would last from 5-7 years, but the County was seeing good results for approximately 7 years. Councilmember Maldonado moved to approve Resolution 51-2011. Seconded by Councilmember Moncada. Motion passed 6-0.

11. **Court Consolidation Agreement by and between the City of Benson, Arizona and Cochise County, Arizona for the period of July 1, 2011 – June 30, 2012**

Finance Director Jim Cox addressed the Council stating each year the City participates in the funding of the Magistrate Court with the County and that our Fiscal 2011-2012 budget has an amount of \$105,000 which was the original bill received from the County just before the final budget was enacted, however, subsequent negotiations with the County have reduced the amount to \$59,228, which was still an increase from the \$37,000 paid last year. Mr. Cox then stated \$37,000 was an arbitrarily low number that had been agreed to due to budget timing limitations, adding the City was expecting an increase in the area of the proposed agreement, adding the increase was from extra jail costs. Councilmember Sacco moved to approve the Court Consolidation Agreement by and between the City of Benson, Arizona and Cochise County, Arizona for the period of July 1, 2011 – June 30, 2012. Seconded by Councilmember Maldonado. Motion passed 6-0.

DEPARTMENT REPORTS: None

ADJOURNMENT:

Councilmember Lambert moved to adjourn at 8:19 p.m. Seconded by Councilmember Sacco. Motion passed 6-0.

Toney D. King, Sr., Mayor

ATTEST:

Vicki L. Vivian, CMC, City Clerk