

**THE REGULAR MEETING  
OF THE MAYOR AND CITY COUNCIL OF BENSON, ARIZONA  
HELD AUGUST 22, 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 7:00 p.m. with the pledge of allegiance. Mayor King then stated there were no invocations scheduled for the rest of the calendar year and if anyone knew a member of the clergy who would like to offer an invocation, to please have them contact the City Clerk.

**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 James Stanley for 10 years of service with the City of Benson.

**PROCLAMATION:** Mayor King asked Councilmember Moncada to read a proclamation of the Mayor and Council declaring September 7, 2011 as “Good Neighbor Day.”

**PUBLIC HEARING:** The Mayor and Council will hold a public hearing to receive comments from the public regarding “The 2010-2011 Amendments to the Tax Code of the City of Benson.”

Mayor King asked Finance Director Jim Cox to introduce the item. Mr. Cox then addressed Council stating the City subscribes to the Model City Tax Code (MCTC) along with every other City in the State of Arizona, adding the MCTC allows for consistency from municipality to municipality throughout the State. Mr. Cox then stated the MCTC is managed through the League of Arizona Cities & Towns, but is actually run by an individual commission that controls the wording of all amendments to the tax code, which are enacted on an annual basis. Mr. Cox then stated he would like to share more information by reading a memo he gave to Councilmembers.

Mayor King then opened the public hearing at 7:05 p.m. and asked Mr. Cox to continue.

Mr. Cox then read from the memo stating in 1987, the Arizona Legislature empowered the Municipal Tax Code Commission, (MTCC) in order to provide uniformity in taxation among Arizona cities. The Commission then drafted the Model City Tax Code and it has since been adopted by all Arizona cities. Mr. Cox then stated the Municipal Tax Code Commission is composed of 1 representative from the Department of Revenue and nine Mayors or Councilmembers of various municipalities throughout the State; 5 appointed by the Governor and 4 through the leadership in the State Senate and State House. Mr. Cox stated each year amendments are submitted to the Tax Commission for their consideration for inclusion in the tax code, with those amendments generally relating to conforming our municipal tax code to changes that have been made in the State Legislature for that year or to reflect changing business conditions. Mr. Cox then stated after the Tax Commission passes on and settles on the wording of each one of the amendments, they are passed down to the City, which we have here tonight, to be voted on at every municipality, resulting in a uniform tax code throughout the State. Mr. Cox then stated the local adoption of the amendments to the tax code is really mandatory, adding we don't have any choice, can't change the wording, and can't choose amendments. Mr. Cox then stated if we want to continue as members of the model city tax code community, we must adopt these amendments. Mr. Cox then gave a brief overview of the amendments, beginning with Section 1, where the wording was added to make it clear that medical marijuana is a taxable commodity, in its own category, set up in the code. Mr. Cox then stated the next amendment is that solar devices have been exempted from State and local tax for the past several years, with the provision ending June 30, but the State Legislature reenacted it and extended the law through

2017. Mr. Cox then stated there is also a House Bill, passed in the Legislature, exempting rental income charged between controlled corporations. Mr. Cox explained this would apply to businesses with common ownership that own real estate in one corporation and an operating business in another corporation, adding the law now states the rental income between those two entities is not a taxable event. Mr. Cox then stated the next amendment was not a Legislative law that was passed, but was an agreement made between the Tax Commission and banks and the business community that is very technical, allowing a foreclosed business or property that owes taxes, to defer those taxes until the foreclosed business or property is sold. Mr. Cox then stated finally, there's some clean up language that clearly establishes the use taxes used by educational institutions are exempt from the tax, adding all the amendments this year are very technical type amendments.

Paul Lotsof, CAVE Radio, then addressed the Council stating his comments are not about the specific amendments to the tax code, but are comments about the City's tax code. Mr. Lotsof then stated nearly all of the sales taxes are levied on goods as opposed to services, with the distinction of taxing goods, but not services having been around for a long time and prevailing throughout the nation. Mr. Lotsof then stated the City of Benson has seen fit to tax a handful of services, including telephone service and some types of construction service, with his concern being the tax on advertising. Mr. Lotsof then stated if the City is going to tax services, why not tax the commissions paid to insurance agencies, the commissions paid to real estate agencies, the law firms or medical practices or companies that send and deliver packages, adding the possibilities are nearly limitless and the revenues produced would put the City in a very enviable financial position. Mr. Lotsof then stated he is not suggesting taxing more services, but is asking why advertising has been singled out. Mr. Lotsof then stated prior to 1986, the State of Arizona taxed advertising, but in that year, the State Legislature did away with its advertising tax. Mr. Lotsof then stated if advertising is successful, it will result in more goods being sold, which in turn results in more sales tax for the City. Mr. Lotsof then stated many municipalities in Arizona do not tax advertising, such as Phoenix, Tucson, Willcox and Tombstone and suggested the Council discuss the reasons why Benson should tax advertising services and if there isn't any justification for this discriminatory tax, they may want to consider repealing it. Mr. Lotsof then stated if the Council sees fit to continue taxing advertising, they might want to consider some additional exemptions to the advertising tax, such as churches and non-profit organizations, the hospital when it promotes health fairs and other events, the school, the Chamber of Commerce and the City. Mr. Lotsof then concluded, stating the tax on advertising is not a big revenue generator for the City, and for him, it's little more than a nuisance tax that results in a lot of extra clerical work each month, asking Council to please justify the tax or get rid of it, and if Council decided to keep it, to please consider some additional exemptions.

Mayor King then asked if there was anyone else present who wished to speak. After receiving no requests, Mayor King thanked those who spoke for their comments and closed the public hearing at 7:16 p.m. Mayor King then stated the Council action on the 2010-2011 Tax Code Amendments is scheduled tentatively for the September 12, 2011 Council meeting.

### **CALL TO THE PUBLIC:**

Dianne Tipton addressed the Council concerning the executive session and Mr. Masee, stating the executive session is specifically for the Federal 1983 action brought by Mr. Kendrick against the City of Benson and 6 named defendants and nothing else could be discussed. Ms. Tipton then stated Mr. Masee was one of the named defendants and could not advise the City or any of the other 5 other named defendants on this matter in the capacity of the City Attorney. Ms. Tipton then stated the Council was aware of Mr. Masee's conflicts and they must insist that Mr. Masee not be included in tonight's executive session or any further or future meetings where he is a defendant or a named defendant in the case. Ms. Tipton then stated her son, Jay Kendrick, had provided her with pertinent information concerning a settlement offer on this issue that was presented to Mr. Murray earlier today and it was concerning the executive session discussion this evening. Ms. Tipton then stated she had provided Council with a copy of this information and suggested the Council meet without Mr. Masee present and discuss the merits of this case and the information she provided concerning the settlement. Ms. Tipton then stated when Council

reads the information, they will be made aware of things, they believe, that Mr. Massee has neglected to tell this and the previous Council concerning past settlement offers and they believe the past and present Mayor and Council have been kept in the dark deliberately by Mr. Massee. Ms. Tipton then stated if the Council agrees, Mr. Massee should be fired immediately, adding if they feel they need guidance from an attorney, she would suggest they discuss this with the insurance pool attorney, Mr. Murray, or with any other reputable attorney of their choosing. Ms. Tipton then stated under no circumstances, should Mr. Massee be included in any discussion or in the giving of any legal advice concerning this issue to the Council.

Stephen Insalaco addressed Council concerning the airport. Mr. Insalaco's comments are incorporated into the minutes.

John Whiteside addressed Council concerning a traffic incident he was involved in. Mr. Whiteside's comments are incorporated into the minutes.

Thomas Fitzgerald addressed Council asking how can there be fair treatment of the middle class if there continues to be an attack on the legal process, legal fairness and the principal of conflicts of interest, which is spelled out in great detail in the Arizona Statutes. Mr. Fitzgerald then asked how can we get the silent cliques in their ivory towers to come to City Council meetings if they're afraid of the guilt by association syndrome and actually have evidence of an experience they'd rather forget while trying to get a written opinion or a variance or a site inspection or a building permit or a new water meter or a new gas meter or any of a number of things that can make all the difference in the world as to whether a city is becoming more progressive or less. Mr. Fitzgerald then stated these aren't the days of the roaring '20s and the roaring bull market in real estate, adding many residents are seeing things including jobs and real estate values slip away and the prices of basic necessities and gasoline slugging higher and higher. Mr. Fitzgerald then mentioned the word "monopoly," stating everyone knows what it is, but they just don't know how to be dealing with it effectively. Mr. Fitzgerald then stated he couldn't go on and thanked the Council for their time.

### **CITY MANAGER REPORT:**

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

- August 23, 2011 – Community Watershed Alliance, 6:30 p.m., City Hall
- September 1, 2011 – Cancer Relay for Life, 5:00 p.m., Community Center
- September 6, 2011 – Planning & Zoning, 7:00 p.m., City Hall
- September 12, 2011 – City Council Meeting, 7:00 p.m., City Hall
- September 13, 2011 – Library Advisory Board, 4:00 p.m., City Library
- September 17, 2011 – Historic Preservation Commission, 9:00 a.m., City Hall
- September 20, 2011 – Economic Development Subcommittee, 5:15 p.m., City Hall
- September 26, 2011 – City Council Meeting, 7:00 p.m., City Hall
- September 27, 2011 – Community Watershed Alliance, 6:30 p.m., City Hall
  
- August 26, 2011 – Movie in the Park, "Rango", Lions Park, Dusk
- September 5, 2011 – On Labor Day there will be free swimming, music and prizes raffled every hour. Low-cost lunches will be available from the Benson Firemates.
- City Offices will be closed.

Mr. Nichols then stated information on I-10 closures can be found at [www.azdot.gov](http://www.azdot.gov)

Mayor King then encouraged those present to invite their families and friends to attend the movie at the park, adding he has attended it in the past and it's very enjoyable.

## **NEW BUSINESS:**

### **1. Consent Agenda**

- 1a. Minutes of the August 8, 2011 Worksession
- 1b. Minutes of the August 8, 2011 Regular Meeting
- 1c. Invoices processed for the period from August 1, 2011 through August 15, 2011

Councilmember Sacco stated he would like to discuss the worksession minutes and then moved to remove Item 1a from the Consent Agenda and place it on the regular agenda. Seconded by Councilmember Brooks. City Attorney Mike Masee then addressed the Council stating the concept of a consent agenda is that basically there is no item that is required for discussion and when any member of the City Council requests an item to be removed from the consent agenda, the item is removed, adding with the notice Councilmember Sacco just provided, Item 1a is automatically removed, and any motion would then be for the remainder of the Consent Agenda with the exception of Item 1a. Councilmember Sacco then made a motion for the remainder of the Consent Agenda to be voted on. Mr. Masee then addressed Council, asking for clarity, with the motion to vote on the Consent Agenda being changed to adopt or deny, giving for example, a motion to “adopt the Consent Agenda with the exception of Item 1a.” Councilmember Sacco then moved to adopt the Consent Agenda. Mayor King asked Councilmember Sacco if he would like to add ‘with the exception of Item 1a.’ Councilmember Sacco then added “with the exception of Item 1a” to his motion. Seconded by Councilmember Moncada. Motion passed 6-0.

### **Consent Agenda – Items Removed:**

- 1a. Minutes of the August 8, 2011 Worksession

Councilmember Sacco stated at the worksession, Council agreed to have a redlined version and a more detailed narrative of what the combination was going to consist of and in the minutes there was also no mention of this or further worksessions which both he and Mayor King requested. Councilmember Sacco then stated he also asked for Staff to address the Planning & Zoning Commission in the new code under new development services. City Clerk Vicki Vivian then addressed Council stating on page 2 of the worksession minutes, it addressed the redlined version as discussed by Council. Councilmember Sacco then questioned the section addressing the redlined version with Ms. Vivian reading from the minutes, “Councilmember Sacco asked if the changes were for ‘new development’ only and then asked for a marked-up version so he could tell what was being changed. Mr. Garcia stated the changes were so substantive; a redlined version wouldn’t help with the clarification” because you’d be striking every single section and then putting it on the new document. Ms. Vivian then stated she suggested referencing each section saying where that section was addressed in the new chapter, with Mayor King stating “that would be a good tool for the next worksession.” Ms. Vivian then stated at the August 8, 2011 worksession, there were technical difficulties and there was no recording, but she would check her notes for Councilmember Sacco’s comment regarding the placement of the Planning & Zoning Commission into the City Code. Ms. Vivian stated she did recall Councilmember Sacco requesting the Commission be addressed in the code, with Mr. Garcia stating Staff is reviewing the entire code, chapter by chapter and it would be addressed. Ms. Vivian then stated the changes would be made and the minutes would be brought forward at the next Council meeting.

### **2. Recognition of former Councilmember Jo Deen Boncquet**

Mayor King stated the City would like to recognize former Councilmember Boncquet for her time on the City Council, adding Ms. Boncquet was out of town during the swearing in of the new Council. Mayor King thanked Ms. Boncquet, stating it was an honor to work with her and then presented her with a plaque. Former Councilmember Boncquet thanked the Council and Staff she served with for keeping the City in-line and on budget, adding she appreciated the work that was done and then congratulated the new Council. Ms. Boncquet then stated being on the Council was a good learning experience.

3. **Resolution 53-2011 of the Mayor and Council of the City of Benson, Arizona, recommending approval of the Interim Permit & Beer and Wine Store – Series 10 Liquor License at Love’s Country Store #9 (located at 640 S. Highway 90, Benson)**

Mayor King asked if anyone from Love’s was present to address Council. Ms. Kathy Bean, General Manager of the new convenience store stated she was present for questions. City Clerk Vicki Vivian then addressed Council stating Love’s Country Store #9 has applied for a liquor license application due to a change of ownership. Ms. Vivian then stated the procedures have been followed according to ARS §4-201, and no written arguments in favor of or opposed to the issuance of the license had been received. Ms. Vivian then stated the issue was now at the step where the “governing body of the City or Town shall then enter an order recommending approval or disapproval”, adding once Council makes a recommendation, she will forward the proper documents to the Arizona Department of Liquor Licenses & Control. Ms. Vivian then stated Councilmember Brooks did note there are two separate addresses on the application, so we would need to confirm the address at this location. Ms. Bean stated 640 S. Hwy 90 is the Shell station and 643 S. Hwy 90 is the former Gas City location. Councilmember Sacco moved to recommend approval of the interim permit & beer and wine store license for Love’s to the State of Arizona. Seconded by Councilmember Brooks. Motion passed 6-0.

**EXECUTIVE SESSION:** Pursuant to A.R.S. §38-431.03 (A)(3) & (4), for discussion or consultation for legal advice with the attorney or attorneys of the public body regarding the City’s position and to instruct its attorney(s) regarding pending litigation, 1983 Civil Rights Claim – Stagecoach Trails Mobile Home Court (MHC), LLC and Jay Kendrick vs. the City of Benson, Arizona, et al.

Councilmember Lambert stated Mr. Masee’s job as the City Attorney is to admonish Council of their legal bindings, not to expose anything in the executive session, so if they excluded Mr. Masee from the executive session because he’s named on it, they would also have to exclude Glenn Nichols and the City of Benson, which would mean the Council could also not enter an executive session. Councilmember Lambert then moved to enter in to an executive session with the Mayor and Council, the City Manager, the City Attorney and the City Clerk at 7:45 p.m. Seconded by Councilmember Moncada. Motion failed 3-3 with Councilmembers Brooks, Sacco and Mayor King voting nay.

Mayor King then stated before something like this was done, he wanted to make sure Council was in the right and then asked Mr. Masee if he could address Council. Mr. Masee stated he would prepare a memo for Council to explain where a potential conflict could exist and where a conflict doesn’t exist, adding he has sought outside counsel on this matter and for the issue going to be presented to Council tonight, it would not have involved any interest on his part, so there would not have been a conflict.

Councilmember Brooks then addressed Council stating he had spoken to Mr. Murray briefly and he would like to have Mr. Murray come down and speak to the Council personally instead of using a conference call; adding Mr. Murray did say he wanted to come and speak to the Council. Mayor King asked if the Council could bypass this item and the following item and have Mr. Murray address the Council on an upcoming agenda. City Attorney Mike Masee stated the Council could do so.

**ADJOURNMENT:**

**Councilmember Lambert then moved to adjourn at 7:47 p.m. Seconded by Councilmember Maldonado. Motion passed 6-0.**

4. **Direction to Counsel regarding the 1983 Civil Rights Claim – Stagecoach Trails Mobile Home Court (MHC), LLC and Jay Kendrick vs. the City of Benson, Arizona, et al.**

**NONE – SEE ITEM ABOVE.**

**DEPARTMENT REPORTS:** None

**ADJOURNMENT:**

**SEE ABOVE ACTION PRIOR TO NEW BUSINESS ITEM 4.**

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Toney D. King, Sr., Mayor

ATTEST:

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Vicki L. Vivian, CMC, City Clerk

**22 August 2011**

**Call to Public Address,  
Regular Meeting of the City Council,  
City of Benson Arizona**

Stephen Insalaco  
3280 West Pinto Place,  
J-Six Ranch

Honorable Mayor, and Council Members;

I wish to address you briefly concerning the economic situation of the airport. The Benson airport is nearly 12 years old now. It was understood when it was built that it was to be a golden-nugget for Benson to chew on because of its close proximity to an interstate highway, several state highways, rail service, and the major metropolitan areas of Tucson and Sierra Vista. In addition, the clear blue skies of Arizona promise nearly 360 days of good flying weather.

Despite all of this, the airport has not developed economically as fast as many might have hoped, myself included. For example, the fixed-based operator business has changed hands now for the second time, and is currently in the third owner's hands. The transfer of FBO services was due largely because the previous two owners didn't see it as a profitable business venture.

Among the problems facing the economic growth of the airport are the following:

- The high price of aviation fuels due to the fact that there remains no place on the airport to store a complete fuel shipment, resulting in 2000-gallon splits, which add unnecessary costs to the fuel price.
- Inconsistent aviation fuel availability, due to small fuel storage capabilities, and because the airport sometimes runs out of fuel waiting for a suitable split recipient partner. The airport has been on at least one emergency response organization's no-land list because of lack of fuel.
- Lack of aircraft storage in the form of hangar space – plausible hangar tenants are consistently turned away for lack of aircraft hangar space.
- A runway that is too short. While the original 4000-foot runway service was seen as adequate for flight instruction and many recreational aviation activities, it comes in too short or marginal at best, for more serious general aviation services that might bring more revenue to the airport's balance sheet.

The airport is also plagued with some basic infrastructure issues including lack of communications bandwidth in the form of telephone lines and intranet access, and a progressively worsening roadway condition.

I believe that it was always understood that the airport would start life operating in the red, and that over time as aviation businesses came to the airport and grew, that the airport's balance sheet would progress towards the black, eventually becoming a self-supporting municipal business segment.

Therefore for continued airport economic improvement, I recommend the following:

- Provide above-ground self-serve fuel service – seek an alliance on this item with the current FBO provider.
- Additional hangar and T-shade aircraft parking spaces – the City of Benson should do this with future AIP grant funds.
- Provide a longer runway – seek AIP grant funds in alignment with current Airport Master Plans.
- Repair Aviation Drive – continuously seek grant funds
- Expand telecommunications capabilities – seek an airport business sponsor to spearhead this activity – provide incentives.
- Market airport property – seek additional aircraft owners to base aircraft here – seek new aviation business entities.

And my last suggestion, is to encourage an airport advisory board to further new recommendations, and provide some of the leg work for these activities.

Thank you for your attention.

STATEMENT

TO: CITY OF BENSON, ARIZONA                      AMOUNT DUE \$135.00

PAY TO JOHN LWHITESIDE  
1091 W POSSUM LANE  
BENSON, ARIZONA 85602

EXPLANATORY STATEMENT: on May 15, I was involved in an accident as I tried to pull out of a very steep driveway on/near San Pedro Bridge on E 4<sup>th</sup> street. The first responder was a Border Patrolman who called Benson Police for us. Officer Ed Eison responded, and did a superb job of securing the scene and investigating. EMT's and Benson Fire Department also responded.

The Officer asked me to move my pickup truck onto the shoulder, which I did. I parked with the left side on the shoulder pavement, and the right side on dirt slightly Lower. I canted my front wheels slightly to the left. This cant and the slight difference in elevation may have seemed to someone that the camber was off. Since I got hit on the left front fender and tire, this is possible. **IT DID NOT AND DOES NOT INTERFERE WITH THE DRIVEABILITY OF THE TRUCK!!**

NOTE: The mechanic I bought the truck from had purchased It from a Mexican who had changed the suspension to make it a Low Rider. My mechanic friend had to **COMPLETELY REBUILD THE SUSPENSION** in order to convert it back to a normal truck. When I bought the truck, he told me that it has a slight pull to the right and should be realigned. The truck drives out fine, and, due to my illnesses, I have not had the alignment done, yet! On May 16, he came over, inspected the truck, test drove it, and told me it has a slight pull to the right. **Otherwise, NO DISCERNABLE DAMAGE!**

Officer Behr shows up , and in his godhood, declared **"I WILL NOT PERMIT THAT TRUCK TO BE DRIVEN!"** He named the wrecker services available, and I indicated that if I wanted one, it would be Tim's Wrecker. **I DID NOT CALL THE WRECKER, BEHR DID.!** When we got the truck home, I had to take money I had been saving for other items to pay the tow bill; **FOR WHICH I EXPECT REIMBURSEMENT, POSTE HASTE!!!** The officer exceeded his authority. The officer bullied and harassed me, when he thought I was helpless, which at the time was pretty much true. **THIS IS ONE OF BENSON'S FINEST?????**