

**THE REGULAR MEETING  
OF THE MAYOR AND CITY COUNCIL OF BENSON, ARIZONA  
HELD SEPTEMBER 10, 2018 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 7:00 p.m. with the Pledge of Allegiance.

**ROLL CALL:**

Present were: Mayor Toney D. King, Sr., Vice Mayor Joe Konrad, Councilmembers Pat Boyle, Larry Dempster, Lupe Diaz, Levi Garner and David Lambert.

**EMPLOYEE RECOGNITION:** None

**PROCLAMATION:** Mayor King read a proclamation declaring the week of September 17-21, 2018 as “Benson Bobcat Week.”

**PUBLIC HEARING:** None

**CALL TO THE PUBLIC:**

Stephen Insalaco, West Pinto Place, J-6 Ranch, spoke about the success of Wild Dogs and was glad they were getting some recognition. Mr. Insalaco then spoke about the City Council chambers demolition and said other demolition was being done at the old Doc’s business building near Ocotillo and I-10. Mr. Insalaco then spoke about the need for a new City Hall complex, first stating it should be built at the airport, then stated that in all seriousness, the new location should be on State Route 90, citing that is where growth will occur and it makes sense to have a City Hall complex there. Mr. Insalaco then stated he suggested grants and bonds to pay for the new City Hall complex.

Barbara Nunn, La Cuesta Drive, Benson, spoke about the recent election, thanking those who voted for her. Ms. Nunn stated the local radio station ran a commercial saying she did not like them, or the owner/manager and asked people not to vote for her. She then thanked the owner/manager and said that the commercial probably got her more votes.

Dave Thompson, La Cuesta Drive, Benson, spoke about the Lantern Festival held on September 8, stating the wind at the airport was 6 knots from the northeast, but when the lanterns were lit, they went circular. Mr. Thompson then stated he wanted all the work done by the City employees and the worker bees to not go unnoticed, adding the event was a huge success and thanked all those involved with putting it on.

Andrew Abernathy, South Mesquite, Benson, spoke about Planning & Zoning, stating that proposed Ordinance 593 is a bit disturbing to him, as he is a resident living within the City limits, and his priority is to the City, adding he feels people outside the City borders don’t have the same attitude about Benson. Mr. Abernathy then stated in the proposed ordinance there is no limit to living outside the City limits which has the possible effect of all 5 Commissioners residing outside of Benson. Mr. Abernathy then stated the ordinance needs to be tabled and be looked at a little more. Mr. Abernathy then stated the proposed ordinance wasn’t brought to the Planning & Zoning Commission, who it affects, for their input; then told the Council he would like to recruit outside of the Benson City limits, but outsiders won’t have Benson’s best interest at heart. Mr. Abernathy then suggested that the Council just annex that area, which is essentially what they were doing with the proposed ordinance, adding the area includes Pomerene, Willow Lakes, north of Whetstone, Mescal and Red Hawk and is the group of population that the Council is going to allow to serve and influence how the City is run.

## **CITY MANAGER REPORT:**

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

- Saturday, September 15, 2018 – Historic Preservation Commission, 9:00 a.m., Location TBD
- Tuesday, September 18, 2018 – Planning & Zoning Commission, 6:00 p.m., Community Center
- Monday, September 24, 2018 – City Council Meeting, 7:00 p.m.

Week of

- September 17-21, 2018 – Benson Bobcat Week

- Monday – Powder puff games
- Tuesday – Lights Out Assembly
- Wednesday – Homecoming Bonfire, Benson School overflow parking lot, 8:00 p.m. – 10:00 p.m.
- Friday – High School Parade, 12:00 p.m.  
Pep Rally  
Homecoming Football Game, 7:00 p.m.

Saturday,  
September 22, 2018

- Benson Pony Express Western Days  
9:00 a.m. – 4:00 p.m., Lions Park  
Hosted by Benson Beautification

A full day of activities including a car and motorcycle show, tractor pulls, antique engine displays, along with food vendors and a variety of children's activities. The Pony Express post office will also be available with commemorative stamps & stationary and will deliver your mail by horseback to Dragoon.

Saturday, October 13 &  
Sunday, October 14, 2018

- Benson Butterfield Overland Stage Days & Rodeo

This event includes the following:

- Parade
- Rodeo

For a full list of activities, locations and times, please see the City's website and [www.bensonbutterfieldrodeo.com](http://www.bensonbutterfieldrodeo.com)

## **NEW BUSINESS:**

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

- 1a. Minutes of the July 26, 2018 Special Meeting
- 1b. Minutes of the August 13, 2018 Regular Meeting
- 1c. Invoices processed for the period from August 3, 2018 through August 17, 2018
- 1d. Invoices processed for the period from August 18, 2018 through August 29, 2018

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

2. **Recognition of assistance and support from Arizona G&T Cooperative for the City's 4th of July festivities**

Interim City Manager Vicki Vivian stated this item had been placed on the agenda due to Mr. Oldfather not being able to attend the last Council meeting, but Mr. Oldfather had another situation arise and was unable to attend this meeting also. Ms. Vivian then asked Council to consider tabling the item until the next Council meeting. Mayor King then moved to table this item to a future Council meeting. Seconded by Councilmember Boyle. Motion passed 7-0.

3. **Recognition of Wild Dogs being chosen as one of the "10 Best Places in the Nation to get a Hot Dog" and as "One of the Best Places for Hot Dogs in Arizona"**

Interim City Manager Vicki Vivian stated Wild Dogs was recently recognized as one of the "10 Best Places in the Nation to get a Hot Dog" and as "One of the Best Places for Hot Dogs in Arizona," adding the articles were from Time.com/Money and Arizona Central (azcentral.com). Ms. Vivian then stated the articles read that "Hot dogs are a time-honored summer snack for those who've been lounging at the beach or walking around in the heat all day. You may enjoy yours fresh off the barbecue, etched perfectly with charcoal grill marks, during the July 4th holiday. But plenty of eateries deliver hot dogs that take it up a notch, whether lavished with cream cheese or topped with sweet relish. (But please, no ketchup — at least if you're from Chicago.) MONEY teamed up with Yelp to find the hottest places for a go-to dog. All the businesses on this list are in the 'hot dogs' category on Yelp. 'Best' is measured using an algorithm that looks at the number of reviews and star rating for a business; we included only one business per state, in order to ensure geographic diversity." Ms. Vivian then stated the article goes on to list the 10 best places in the nation to get a hot dog and Wild Dogs was number 2, adding since the article only listed one business per state, it could be argued that Wild Dogs is the number 1 place in the state of Arizona to get a hot dog. Ms. Vivian then continued reading from the Arizona Central article, "Wild Dogs is a great stop if you're on your way to Tombstone, Kartchner Caverns or, even better, the wineries of Willcox. Vino and Vienna all-beef make a perfect pairing. Don't be fooled by the modest exterior — it has plenty of roadside charm. Order at the counter and they'll bring the food out. The menu ranges far and wide and they're not afraid to tinker. The popular Arizona Dog is topped with pastrami, chili made in house and mustard. If you're lactose intolerant, better steer clear of the Green Chili Cheese dog, which is buried in a cascade of nacho cheese, plus pepper jack and green chili with onions. The Slaw Dog is piled with house-made coleslaw, pickle spears and mustard. Diners have more than a dozen types of dogs to choose from, along with burgers, chicken and other sandwiches. Don't be surprised if the owner brings around a complementary pudding to finish off your meal on a sweet note." Ms. Vivian then stated the Council would like to take this opportunity to recognize Wild Dogs and congratulate them on their success, adding Mr. Scott Badeker and his wife of Wild Dogs were in attendance to accept the plaque.

Mayor King presented the plaque to Mr. Scott and Mrs. Gail Badeker and congratulated them on their success.

4. **Discussion and possible action regarding Resolution 24-2018 of the Mayor and Council of the City of Benson, Arizona, approving a Construction Agreement with CXT Concrete Building, an LB Foster Company for installation of an ADA-Compliant Restrooms/Concession Project at Lions Park, pursuant to CDBG Grant #128-18**

Public Works Director Brad Hamilton stated this project, under the Community Development Block Grant (CDBG), is to replace the current restrooms/concession stand at Lions Park with an ADA-compliant building. Mr. Hamilton then stated the City bid the construction of the project and only received a bid from CXT Concrete Buildings, an L.B. Foster Company, who was the successful bidder in the previous ADA-compliant restrooms at Lions Park.

Councilmember Lambert moved to approve Resolution 24-2018. Seconded by Councilmember Garner. Motion passed 7-0.

5. **Discussion and possible action regarding Resolution 25-2018 of the Mayor and Council of the City of Benson, Arizona, canvassing, declaring and adopting the results of the Primary Election held on August 28, 2018**

Interim City Manager Vicki Vivian stated Resolution 25-2018 is a requirement that must be completed no later than 20 days after the election, adding the resolution officially approves the canvass of the votes cast in the August 28, 2018 Primary Election. Ms. Vivian then stated 1,275 ballots were cast and went over the number of votes each candidate received, stating for Mayor, Toney D. King, Sr., received 836 votes; for Council seats with 4-year terms, Lupe Diaz received 597 votes, Michael Jabkowski received 390 votes, Joe Konrad received 648 votes, Barbara Nunn received 683 votes, and Christine O’Hara received 530 votes; for Council seats with a 2-year term, Larry Dempster received 987 votes. Ms. Vivian then went on to state that A.R.S. §9-821.01 addresses the calculations of a majority of votes cast for the Mayor and Council seats and explained the steps to calculate a majority, which are to first, add the total number of actual votes cast for all candidates for an office whose names were lawfully on the ballot for that office; second, to divide that sum by the number of seats to be filled for that office and finally, to divide that number by 2 and round up to the highest whole number. Ms. Vivian then stated if someone receives more than this number of votes, they would be considered “seated” at the Primary election, adding if there were to be more candidates who received more than the majority than there were seats to be filled, the City would declare those candidates who receive the highest number of votes (equal to or over that number) elected to fill the number of seats. Ms. Vivian then stated using this calculation, the following candidates were considered seated: for Mayor, Toney D. King, Sr., for Councilmembers seeking a 4-year term, Barbara Nunn, Joe Konrad and Lupe Diaz and for Councilmembers seeking a 2-year term, Larry Dempster. Ms. Vivian then stated due to all the open seats being filled, there will be no General Election for the City of Benson in November.

There was no Council discussion.

Councilmember Garner moved to approve Resolution 25-2018. Seconded by Vice Mayor Konrad. Motion passed 6-1 with Councilmember Lambert voting nay.

6. **Discussion and possible action regarding the Fourth Temporary Extension of License Agreement between Cox Communications Arizona, LLC, A Delaware limited liability company, authorized to transact business in the State of Arizona (“Cox”), and the City of Benson**

Interim City Manager Vicki Vivian stated the franchise agreement the City Council passed in 2002 was set to expire in December 2015 and since that time, the previous City Manager executed temporary extension agreements. Ms. Vivian then stated when a representative from Cox Communications contacted her as the Interim City Manager, she, along with the City Attorney began new negotiations of the proposed agreement, adding during that time, a new bill, House Bill 2579 being discussed by the legislature, affected video service providers and the abilities for cities to negotiate franchise agreements. Ms. Vivian stated although this bill failed to progress to law, Senate Bill 1140, which was a 1-page bill originally addressing State Land became a “striker bill” in which the original proposed language is stricken and replaced with new proposed language and in this case, the new proposed bill addressed video service providers. Ms. Vivian then stated Senate Bill 1140 passed through both the House and the Senate and was signed by the Governor on May 16, 2018, adding the changes to the current law are outlined on the attachment in the Council packet. Ms. Vivian then summarized the changes, stating the City will still hold the license, however, it will be a simple administrative process, comparative to a business license. Ms. Vivian then stated the League will be working on a standard application form for cities to use and this application and the short-form license must be adopted by cities by July 1, 2019 with the implementation to occur January 1, 2020, as that is when incumbent cable operator may choose to apply for a streamlined, short-form local license to supersede its existing license. Ms. Vivian then stated cities will retain the ability to collect the license fee, and it is paid directly to the City, adding cities can still set the franchise fee at any rate from 0-5%; the new law does not change that, and the City can make that change with an amended agreement. Ms. Vivian then stated the City also still has the option of the government channels for the City, and Cox still provides one outlet to City buildings that are within a standard drop of their plant, noting the equipment charges can be negotiated, but that has to take place outside of the

license. Ms. Vivian then stated in addition, Cox will continue to have to submit permits for any work they do in the City right-of-way, just as they do now.

Councilmember Garner asked what the rate currently being charged by the City was with Ms. Vivian stating the City is currently collecting 3%.

Councilmember Boyle moved to approve the Fourth Temporary Extension of License Agreement between Cox Communications Arizona, LLC, a Delaware limited liability company, authorized to transact business in the State of Arizona (“Cox”), and the City of Benson. Seconded by Vice Mayor Konrad. Motion passed 7-0.

7. **Discussion and possible action regarding the request from the Benson Butterfield Rodeo Committee and the General Federation of Women’s Clubs – Arizona Benson Junior Women’s Club for assistance with Butterfield Stage Days by providing and assisting with set up of bleachers and serpentine fencing, providing equipment and personnel to assist with the chalking the parking lot at the Arena, giving access to water for prep and dust control and becoming a sponsor the for the Benson Butterfield Rodeo**

Interim City Manager Vicki Vivian stated in August of 2012, the Council voted to sponsor the Benson Butterfield Rodeo with a donation allowing the event to expand to 2 days and now the Benson Butterfield Rodeo Committee is requesting sponsorship through funding and logistical support. Ms. Vivian stated the funding will come from the Community Enrichment section, its own line item, budgeted for \$5,000.00, which Council approved in the 2018/19 Fiscal Year Budget. Ms. Vivian then stated they are also requesting logistical support to provide and set up serpentine fencing for the VIP tent area and parking control, consisting of providing equipment and personnel to assist with Arena parking lot chalking and access to water for prep and dust control. Ms. Vivian then stated the General Federation of Women’s Clubs, specifically the GFWC-AZ Benson Junior Women’s Club, has also requested assistance for bleacher set up in the G&F Pizza parking lot, as well as police support, blocking off the streets for the Butterfield Stage Days Parade route on Saturday, October 13th, 2018, adding this is their 32nd year for the parade which will begin at 9 a.m. and end approximately one hour later.

Mayor King stated this is a good thing for the community and the rodeo is part of the Colorado Bull Riding Association and the Rodeo Association. Mayor King then moved to approve the assistance and sponsorship as requested. Seconded by Councilmember Diaz. Motion passed 7-0.

8. **Update on City Council chambers demolition, possible temporary Council meeting facilities and City Hall Facilities; to include direction to Staff regarding a possible temporary meeting facility**

Interim City Manager Vicki Vivian stated she wants to discuss the possibility of a temporary meeting facility, stating, she has recently looked at a facility the school owns and the school has agreed to lease it to the City for \$250 a month plus utilities which would give the City a designated meeting place with better acoustics. Ms. Vivian then stated the space is smaller but most of the Council meetings don’t have many visitors; then added it would also allow the City’s boards and commissions to meet there along with other community organizations that have been using the Council Chambers. Ms. Vivian stated the other possibility is to keep the meetings at the community center but noted the bad acoustics and the risk of displacing someone who would like to rent it for a community event.

Councilmember Dempster asked about Gracie’s Station (now called Butterfield Station) with Ms. Vivian stating the reason she hesitates on that location is it is off Highway 90, adding most cities try and keep their government buildings downtown as that helps with the downtown revitalization.

Vice Mayor Konrad moved to direct Staff to bring back a lease for the school. City Attorney Gary Cohen then asked if Vice Mayor Konrad wanted to consider any other options. Vice Mayor Konrad then amended his motion to direct Staff to bring back all possibilities including an agreement with the school for the use of their facility. Seconded by Councilmember Boyle. Motion passed 7-0.

9. **Discussion and possible action regarding Ordinance 593 of the Mayor and Council of the City of Benson, Arizona, amending prior inconsistent ordinances including 559, reducing to five (5) the number of members of the Planning & Zoning commission, and expanding the residency requirement for those members to allow them to reside within the incorporated limits of the City of Benson or a seven-mile radius beyond such, so long as said residence is also within Cochise County**

Interim City Manager Vicki Vivian stated it has become difficult to find qualified persons to serve on the City's Planning & Zoning Commission, adding the proposed ordinance here was written in an effort to alleviate or at least minimize that issue. Ms. Vivian then stated the ordinance seeks to accomplish that in two ways; first, by decreasing the number of persons on this Commission from seven (7) to five (5) and second, by broadening the current requirement that members of this Commission reside within the City of Benson. Ms. Vivian then stated the ordinance expands that residency requirement by letting Commission members reside within a seven (7) mile radius of the City, so long as that residence is still in Cochise County.

Mayor King moved to reduce the Planning & Zoning Commission to 5 members, but to leave the City residency requirement intact. Seconded by Councilmember Diaz. After more discussion, City Attorney Gary Cohen stated, to keep the record clear, the ordinance should be brought back with modifications for a clean ordinance. Ms. Vivian suggested the motion could be amended with Mr. Cohen stating the Council could amend it, but a rewritten ordinance considered by Council would result in a clearer record. Mayor King then amended his motion to have the City Attorney, Mr. Cohen, bring the ordinance back with modifications at the next Council meeting. Amended motion seconded by Councilmember Boyle. Motion passed 7-0.

**EXECUTIVE SESSION:** As per A.R.S. §38-431.03 (A)(1), (3) & (4), Discussion or consideration of employment, assignment, appointment, promotion, salaries, or resignation of a public officer, appointee or employee of the City. The Council will discuss and consider the possible appointment and the language of a possible employment contract for a City Manager, and may receive legal advice and give instructions to the City Attorney

No executive session was held.

10. **Discussion and possible action regarding Ordinance 594 of the Mayor and Council of the City of Benson, Arizona, amending the Benson City Code, Chapter 3 "Administration," Article 3-2 "Officers," Section 3-2-1(B) "Manager"**

Councilmember Lambert moved to approve Ordinance 594. Seconded by Councilmember Boyle. Motion passed 7-0.

**DEPARTMENT REPORTS:** No comments from Council.

**ADJOURNMENT:**

Vice Mayor Konrad moved to adjourn at 8:13 p.m. Seconded by Councilmember Boyle. Motion passed 7-0.

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Toney D. King, Sr., Mayor

ATTEST:

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Vicki L. Vivian, CMC, City Clerk