

**THE REGULAR MEETING
OF THE MAYOR AND CITY COUNCIL OF BENSON, ARIZONA
HELD SEPTEMBER 28, 2015 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 7:03 p.m. with the Pledge of Allegiance.

ROLL CALL:

Present were: Mayor Toney D. King, Sr., Vice Mayor Lori McGoffin, Councilmembers Pat Boyle, Jeff Cook, Joe Konrad, David Lambert and Chris Moncada.

EMPLOYEE RECOGNITION: None

PROCLAMATION:

Mayor King read a proclamation of the Mayor and Council declaring Friday, October 23, 2015 as "Benson Bobcat Day." Mayor King then stated October 23 was homecoming and invited those present to come out and support the Benson Bobcats, adding he will be presenting the proclamation at the school's homecoming assembly.

PUBLIC HEARING: None

CALL TO THE PUBLIC:

Kathy Suagee, Duane Street, Benson, stated in April of this year, she took an issue to the City Manager questioning the practice of some of the Councilmembers addressing Council from the podium at the Call to the Public, but nothing was done about her complaint, so she sent it to the Attorney General, which is why the Council has a decision from him. Ms. Suagee then read from the letter, "At the March 9, 2015, Councilman Jeff Cook spoke as a member of the public in the 'Call to the Public' portion of the meeting. Mr. Cook addressed the budget in relation to a proposed sales tax increase which had been brought up by previous speakers during the 'Call to the Public'. Neither of these topics, each of which would have to come before the Council for final action, were listed on the agenda for that meeting. Mr. Cook's comments were primarily directed to the other Councilmembers though he probably intended for the public to hear them as well. Regardless of the public's presence, a quorum of the Council was present and heard his comments and proposals. This constituted a meeting on the budget and tax increase issues. However, the meeting on these topics was not properly noticed in violation of the Open Meeting Laws as noted more fully below." Ms. Suagee then stated A.R.S. §38-431.01 lays out the parameters for having a public meeting then continued reading from the letter, "A.R.S. §38-431.02 sets forth the requirements for providing notice to the public of a meeting, including the requirement for an agenda that identifies the specific matters to be discussed and decided. Except in the case of an emergency, a public body may only discuss, consider or decide matters listed on the agenda or other matters related thereto." Ms. Suagee then continued reading, "The March 9, 2015 meeting minutes reflect that Mr. Cook discussed several possible Council actions in relation to cutting budgetary expenses. According to the meeting minutes he asked the Council if they should cut funding to numerous programs and entities including the following: the pool; Lions Park; the Gas, Water and Wastewater departments; the golf course; the library; the police department; and the fire department. These statements to the Council regarding the City budget constituted the discussion of legal action. They should not have occurred unless they were properly noticed, which they were not. The agenda for the meeting does not list the budget as a topic of discussion or action. Accordingly, this meeting was held in violation of the Open Meeting Laws. Members of a public body should not participate as speakers during 'Calls to the Public' before a public body of which they are a member. They cannot simply 'take off one hat and put on another'. Any time they discuss legal action with a quorum of the public body members, it must be properly noticed. If a topic is on the agenda, it should be discussed at that time." Ms. Suagee went on to say that if the item is not on the agenda, there should be no discussion. Ms. Suagee then stated the letter says the Attorney

General's office feels the actions were not done with the intent of evading Open Meeting Laws, therefore, he believed the appropriate remedy in this case was training regarding Open Meeting Laws, especially regards to the requirements for notice and to also require this letter and proposed settlement terms be appropriately noticed on the agenda at the next Council meeting, the letter be read aloud and copies of the letter be made available to the members of the public. Ms. Suagee then stated after the Council received this letter, they had the City Attorney contact the Attorney General's office and re-discuss the terms of settlement, adding the Council didn't want to read the letter aloud, which is why she was reading it. Ms. Suagee then said the next letter was to confirm the discussion regarding the settlement and the Attorney General said he would leave it to the City Council's discretion whether it should be read out loud provided that copies of the letter were available to anyone who would like a copy. Ms. Suagee then stated she did not see any copies of the letter at the back of the room and she believed the proposed settlement agreement letter should be read aloud, which was now unnecessary, that it should be discussed in public and that copies of the letter be made available at this meeting, but unfortunately, the Attorney General or his clerk wasn't that specific. Ms. Suagee then stated she didn't think it was appropriate for the Council to have an executive session and hide to discuss this as it was not a matter of sensitivity. Ms. Suagee then stated she thought this Council spends far too much time in executive sessions every time they don't want to face the public and discuss their business in front of the public.

Tricia Gerrodette, Eagle Ridge Drive, Sierra Vista, stated said she would like to give a brief background to her written comments and stated about 18 months ago, there was a proposal to create a water district in Pima County and she along with other active people appeared before the Pima County Board of Supervisors to express some concerns. Ms. Gerrodette stated before it came to the Board of Supervisors for a vote, she and others were asked to adjourn to a conference room, where they spent 2 hours with a Deputy County Attorney, trying to resolve issues and concerns. Ms. Gerrodette stated the applicant ended up withdrawing the application for the special district and the reason she was sharing this information was to show that she was not a total novice on state law regarding districts. Ms. Gerrodette then stated her comments were about the possible future vote of a CFD for El Dorado, adding that vote would include the Council's decision on governance of this new government entity. Ms. Gerrodette then stated this new governance will have long-lasting and far-reaching consequences, adding her comments were based on A.R.S., Title 14, Chapter 4, Article 6. Ms. Gerrodette then stated unless the Council voted no on the establishment of the CFD, this new government entity will stand on its own and the City of Benson will have no more authority over the CFD actions than it does over the actions of the Unified School District Board. Ms. Gerrodette stated voters choose Councilmembers and the School Board, but the only voters for the CFD, if established, will be the property owners and at least until homes are built, those voters would be the members making up El Dorado Benson, LLC. Ms. Gerrodette stated if the Council establishes a board other than Councilmembers and the board is not to the liking of El Dorado Benson, she believes they can simply vote in a new board, so the City would have no further control whatsoever over the CFD. Ms. Gerrodette then asked the Council to consider voting no on the establishment of the CFD, adding El Dorado hasn't needed one before to do all their previous developments and she doubts if one is absolutely needed now. Ms. Gerrodette then stated if the Council does vote to establish the CFD, she would ask them to please put the City Council in place as the board of directors, otherwise, she believes the residents of Benson will have absolutely no further control over what the CFD does. Ms. Gerrodette then asked for her comments, given to the City Clerk, be part of the record. Ms. Gerrodette's comments will be retained with the Council packet.

Donald Buchanan, River Road, St. David, stated he was a property holder who will be affected by any water conditions and he wanted to let the Council know that he attended a meeting Saturday held by the Northern Cochise County Democratic Party. Mr. Buchanan then spoke about the meeting saying someone who had major responsibilities from the USGS geological survey presented information on water availability in this area and spent a lot of time telling those present about all the mountains of information they have on water availability or lack thereof, adding the problem is now they have data, but no one to fund their next step, which would be to put the information together and come up with a model that would tell what the water availability is. Mr. Buchanan then stated the speaker said that anything heard about water is not based on good scientific evidence and that the 100-year water certificate is basically a legal thing which is not based on good research, adding the bottom line is that the certificate is basically a get out of jail free card the legislature has given real estate developers and he hoped the Council would recognize that. Mr. Buchanan then stated anyone who doubted the science would be welcome to all the publications and website information he has. Mr. Buchanan then stated no model has been

developed and all the information now about water availability is inadequate and incomplete, adding all the information from the studies haven't been put together and analyzed so it can't be used to give the 100-year certainty of water. Mr. Buchanan then stated he gave the City Clerk a brochure he got in Santa Fe, NM about water availability and conserving water, adding if the Rio Grande river was running here, he may not be half as concerned as he is, but that other people in Maricopa, Pima County and other places were also concerned and he hoped before the Council decided, that they would get a little more concerned. Mr. Buchanan then stated he had one last comment regarding the Open Meeting Laws, adding he approved of Councilmember Cook trying to get informed and involve the public. Mr. Buchanan then stated the Open Meeting Laws are used more to keep information from the public than it is to get information to the public. Mr. Buchanan stated the only interaction he had with the City Attorney was when the City Attorney gave him, what he was sure was a bad opinion, adding he was then told he couldn't discuss the opinion with anyone. Mayor King informed Mr. Buchanan that his time to speak had expired with Mr. Buchanan then asking the Council to check out the water issues.

Dave Thompson, La Cuesta Drive, Benson, stated he came all the time to the Council meetings and he was amazed and surprised that there is so much information concerning Benson, it's situation, development and residents' personal involvement from outsiders, adding those people don't vote or live in Benson, but they have all this knowledge about what is best for Benson and it's residents. Mr. Thompson then stated he resented that and he thinks Benson is what is best for him and it's important to focus on what is best for Benson. Mr. Thompson then stated he has heard a few things that are in error, adding ADWR (the Arizona Department of Water Resources) has a 100-year progressive format and they show plenty of water for El Dorado and undeveloped reports from others don't mean a lot. Mr. Thompson then stated as a resident of Benson, he would appreciate the people of Benson supporting Benson and as a businessman in Benson, it amazes him that all the other businessmen aren't here supporting it. Mr. Thompson then said he has heard that the developers are going to make a lot of money, adding he hopes they do, because it will trickle down on everyone who lives in Benson noting property values will go up and businesses will thrive which will make Benson a better place for residents and for their children. Mr. Thompson then stated this isn't something that is going to happen next year or the year after that, adding it will probably be after he and half the people at the Council meeting were gone, but it would be good for their children.

Barbara Nunn, La Cuesta Drive, Benson, stated she hated speaking, but she does it because others will tell her what they want to say, but they won't come speak themselves so she comes to pass along what they tell her. Ms. Nunn then stated the meeting started out with the spanking the City Council and expressed that everyone should work together and support the Council instead. Ms. Nunn then spoke about the secret meeting held at Denny's last April, stating she and Mr. Thompson were able to find out where it was and attended it to find out what was going on. Ms. Nunn then stated that was when she first found out there was a certified group of people who wanted to stop the development, adding their whole game plan was point after point after point how they could destroy what could help Benson. Ms. Nunn stated the discussion at that meeting actually included killer golf carts and how these awful golf carts would sneak up behind people and could maim or kill them. Ms. Nunn then asked if anyone had ever been to the SKP park, adding she is there a lot and those people drive golf carts around as fast as they can and are happy because most of them are electric, they aren't wasting fuel or polluting and it's a cool way to get around. Ms. Nunn then said she has also heard comments about a 40' wall of water and asked where that was supposed to come from, adding there were a couple of people at the Council meeting who believed that. Ms. Nunn then stated El Dorado is going to capture the water, adding when she and Mr. Thompson went to Maricopa, they saw what El Dorado did with the effluent, which was to have beautiful water features and fountains that hold the water, eliminating it from running downhill in a 40' wall. Ms. Nunn then stated she also heard about the yellow-bellied sap suckers, adding she wasn't sure that was the bird the Audubon society is so concerned about being displaced, but it has wings and asked if it couldn't fly somewhere else. Ms. Nunn then said she had also heard comments about the game trail and asked if that meant the javelina wouldn't be able to find their way to her house to tear up her birdfeeders and backyard, adding that would be a horrible shame and maybe the javelina could go back to South America, where they're from. Ms. Nunn then stated she also heard about there being 20,000 cars on the road, then stated when she and Mr. Thompson went to Maricopa, the traffic flow was better than anything she had ever seen in Tucson and they traveled with no problems. Ms. Nunn then stated she and Mr. Thompson attended a meeting held by the Democrats and was close to being kicked out because the group was bagging on El Dorado and she asked if it wouldn't have made sense to have someone from

El Dorado present to respond to the vilification and be able to answer their questions. Ms. Nunn then stated they left the meeting because they didn't want to get thrown out. Ms. Nunn then stated the bottom line is the Council needs to help Benson survive, adding people want to live in Benson and have it be a viable community instead of a dying community.

CITY MANAGER REPORT:

City Manager William Stephens addressed Council, giving the dates of upcoming meetings and events.

- Tuesday, October 6, 2015 – Planning & Zoning Meeting, 7:00 p.m., City Hall
 - Wednesday, October 7, 2015 – Benson Economic Development Committee, 6:00 p.m., City Hall
 - Monday, October 12, 2015 – City Council Meeting, 7:00 p.m., City Hall

 - Friday, October 9 through Sunday, October 11, 2015 – Benson Butterfield Overland Stage Days & Rodeo
- Friday, October 9th
- Rodeo Queen Horsemanship Competition, 4:00 p.m., Free Admission
Arena Bar and Rodeo Grounds, 250 N. Prickly Pear
- Saturday, October 10th
- Parade, 9:00 a.m. Theme “Everyday Heroes” – 5th Street
 - Car Show, Tractor Pulls, Vendors, Antique Engine and Tractor Display, Registration 8:00 a.m. – 10:00 a.m. with Show held 10:00 a.m. - 2:00 p.m., Lions Park, 435 N. Adams Street
 - Pony Express, Mail Office Opens 10:00 a.m., Riders depart at High Noon, Lions Park, 435 N. Adams Street
 - Rodeo & Kids’ Events, 3:00 p.m. with Main Rodeo at 5:00 p.m., Arena Bar and Rodeo grounds, 250 N. Prickly Pear
- Sunday, October 11th
- Kids’ Events, 1:00 p.m. with Queen Coronation and Rodeo at 2:00 p.m., Arena Bar and Rodeo grounds, 250 N. Prickly Pear

Rodeo Tickets are available at the Gate for both days.

Mr. Stephens then stated for more events in Benson, the public could visit the City’s website: www.cityofbenson.com under “What to do Today.”

Mayor King stated he supported the rodeo and asked people to support the community and attend it, adding he could guarantee it was a lot of fun. Councilmember Konrad then asked about the location of the tractor pull with City Manager William Stephens and Mayor King indicating it would be at Lions Park, behind the bridge. Councilmember Lambert then stated in response to the criticism at the Call to the Public, regarding there being no copies of the Attorney General’s letter available, there were 2 copies on the back table as part of the complete Council packets. Councilmember Lambert then said the Attorney General’s letter didn’t say copies had to be left on the table and didn’t say how many letters needed to be there; only that the letter had to be available to the public.

NEW BUSINESS:

1. Discussion and possible action on the Consent Agenda

- 1a. Minutes of the August 24, 2015 Regular Meeting
- 1b. Invoices processed for the period from September 3, 2015 through September 18, 2015

Councilmember Moncada moved to approve. Seconded by Vice Mayor McGoffin. Motion passed 6-1 with Councilmember Lambert voting nay.

2. **Discussion and possible action regarding sponsorship of the Benson Shop with a Cop program**

City Manager William Stephens stated during the Fiscal Year 2015-2016 budget process, Council included a line item in the Community Enrichment section for the Shop with a Cop program in the amount of \$500.00. Mr. Stephens then stated Ms. Denise Celentano of the Benson Shop with a Cop program is now asking for the distribution of this expenditure. Mayor King then asked Councilmember Lambert for his comment. Councilmember Lambert stated he was currently on the board of the directors for this program and with advice of counsel, he would be abstaining from the discussion and the vote. Councilmember Lambert then left the dais.

Councilmember Moncada said this is an amazing event and it's great to see all the officers with the children, adding he is glad the Council can support it. Mayor King agreed, stating it's amazing to see this convoy with the sirens blaring, to see the kids with officers and to see all of their faces during the event. Mayor King then stated he's grateful the program lets the Council be a part of the event and thanked Ms. Celentano for what she does.

Councilmember Moncada moved to approve a sponsorship in the amount of \$500 for the Benson Shop with a Cop program. Seconded by Councilmember Konrad. Motion passed 6-0 with Lambert abstaining.

3. **Discussion and possible action to direct Staff and/or the Benson Economic Development Committee (BEDC) about the BEDC's efforts to assist the Benson Clean & Beautiful Committee in raising revenue for the Benson Clean & Beautiful's next mural project by helping create a pamphlet of completed murals**

City Manager William Stephens stated the Benson Economic Development Committee (BEDC) would like to request permission to proceed with assisting the Benson Clean & Beautiful Committee in their efforts to raise funding for another mural. Mr. Stephens stated the BEDC's request is to help the Committee create a pamphlet of completed murals and the BEDC Chairman or members in attendance could answer questions Council may have. Councilmember and BEDC Member Pat Boyle stated BEDC Chairman Mike Berryhill was unable to attend due to an emergency and asked Councilmember Boyle to represent the BEDC. Councilmember Boyle then stated Mr. Berryhill was involved with a photography club and wanted to help with pictures and the layout of the pamphlet, adding the Benson Clean & Beautiful asked for the BEDC to help them. Councilmember Boyle then stated the pamphlets will help advertise the murals and benefit the community.

Councilmember Moncada asked if there was any funding requested with Councilmember Boyle stating the only thing asked for was manpower.

Mayor King stated the murals are beautiful, adding he went to the open house this weekend to see the newly-painted shops and he feels this is a good thing for the community. Vice Mayor McGoffin moved for the BEDC to assist the Benson Clean and Beautiful Committee with their pamphlet of the murals. Seconded by Councilmember Boyle. Councilmember Konrad stated the motion specifically directs the BEDC, and not City Staff, to do this, adding he is assuming Staff won't be participating. Mayor King stated he had discussed this with Mr. Berryhill and the only thing they were requesting was permission for the BEDC to help the Benson Clean and Beautiful Committee with Councilmember Boyle concurring. Motion then passed 7-0.

4. **Discussion possible action regarding the purchase of a Parkson Certified Rebuild for the City's existing HyFlow Continuous Self-Cleaning Bar/Filter Screen for \$68,900**

Public Works Director Brad Hamilton stated this item is to purchase the bar screen discussed during the budget, adding the bar screen is about 12 years old and the price to rebuild it is approximately \$68,900, while the replacement cost is approximately \$129,000. Councilmember Moncada asked about the budgeted amount with Mr. Hamilton stating the budgeted amount would cover the expense, which is estimated to be \$60,000-\$70,000, but that is a worst-case scenario and the cost may be lower.

Councilmember Moncada moved to approve the purchase of a Parkson Certified Rebuild for the City's existing HyFlow Continuous Self-Cleaning Bar/Filter Screen for \$68,900. Seconded by Councilmember Lambert. Motion passed 7-0.

5. **Discussion and possible action regarding Resolution 26-2015 of the Mayor and Council of the City of Benson, Arizona, approving a Construction Agreement with CXT Concrete Buildings, an LB Foster Company for installation of ADA-compliant restrooms at Lions Park, pursuant to CDBG Grant #129-15**

Mayor King stated he had a request from Public Works Director Brad Hamilton to remove this item from the agenda due to new information being received, adding the item will be placed on a future agenda.

EXECUTIVE SESSION: Pursuant to A.R.S. §38-431.03 (A)(3) and/or (4), discussion or consultation for legal advice with the attorney or attorneys of the public body about the letter from the Arizona Attorney General's office dated September 21, 2015

Councilmember Moncada moved to enter into an executive session at 7:41 p.m. with the Mayor and Council, City Manager, City Attorney and City Clerk. Seconded by Vice Mayor McGoffin. Motion passed 6-1 with Councilmember Lambert voting nay.

Council reconvened at 7:59 p.m.

6. **Discussion and possible action to approve and ratify the letter from the Arizona Attorney General's office dated September 21, 2015 and to accept proposed agreement therein**

Councilmember Konrad moved to ratify the letter from the Arizona Attorney General's office. Seconded by Councilmember Boyle. Vice Mayor McGoffin asked if the motion should include accepting the proposed agreement. Councilmember Konrad then amended his motion to approve and ratify the letter from the Attorney General's office and accept the proposed agreement therein. Amended motion was seconded by Councilmember Boyle. Motion passed 7-0.

City Attorney Gary Cohen stated he would like the record to reflect that there are copies of the letter on the back table as part of the Council packet, then stated for anyone who wished a copy, more could be made. Mr. Cohen stated there have been no requests for additional copies, but anyone can make that request and a copy will be made available. Mr. Cohen then stated the letter is also on the City's website as part of the Council packet.

DEPARTMENT REPORTS: No comments from Council.

ADJOURNMENT:

Vice Mayor McGoffin moved to adjourn at 8:21 p.m. Seconded by Councilmember Konrad. Motion passed 7-0.

Toney D. King, Sr., Mayor

ATTEST:

Vicki L. Vivian, CMC, City Clerk