

**THE REGULAR MEETING  
OF THE MAYOR AND CITY COUNCIL OF BENSON, ARIZONA  
HELD SEPTEMBER 26, 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.

**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 announced the 5 year service anniversary of Dana King.

**PROCLAMATION:** Mayor King asked Councilmember Moncada to read a proclamation of the Mayor and Council declaring October 7th, 8th and 9th, 2011 as "Butterfield Overland Stage Days."

Mayor King asked Councilmember Lambert to read a proclamation of the Mayor and Council declaring week of September 19, 2011 as "Employer Support of the Guard & Reserve Week." Councilmember Lambert then presented the proclamation to Fire Chief Keith Spangler.

**PUBLIC HEARING:** None.

**CALL TO THE PUBLIC:**

J.W. Hill addressed Council regarding his dissatisfaction with what he feels is the City's lack of response to ordinance violations. Mr. Hill then cited a list of violations, adding he has brought these to the attention of the City Manager and nothing has been done. Mr. Hill then stated there are people speeding on his street as well as parking violations and complained about the lack of enforcement from the police department. Mr. Hill concluded his comments stating we need change in Benson.

Steve Sacco, owner of the Postal Annex, addressed the Council concerning the Butterfield lawsuits. Mr. Sacco's comments are incorporated into the minutes.

Annette Buechel addressed the Council regarding the protection of citizens and businesses when building codes are not enforced consistently. Ms. Buechel stated she had been doing business with both Radio Shack and Postal Annex outside, due to concerns about her safety. Ms. Buechel then stated protection for the citizens and businesses in Benson is established by following the rules and codes that are in place.

John Whiteside addressed the Council regarding the Planning & Zoning Commission stating the Council made the right decision at the last meeting and the item should not be coming back. Mr. Whiteside then stated we need the broader outlook non-resident members can bring in to the Commission, since anything Benson does affects all the surrounding areas and urged the Council to leave the Commission at 7 members with 3 non-residents, if possible.

**CITY MANAGER REPORT:**

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

September 27, 2011 – Community Watershed Alliance, 6:30 p.m., City Hall  
September 29, 2011 – Cancer Relay for Life, 5:30 p.m., Community Center  
October 4, 2011 – Planning & Zoning Meeting, 7:00 p.m., City Hall

- October 10, 2011 – City Council Worksession, 6:00 p.m., City Hall  
City Council Meeting, 7:00 p.m., City Hall
- October 11, 2011 – Library Advisory Board, 4:00 p.m., Library
- October 15, 2011 – Historic Preservation Commission, 9:00 a.m., City Hall
- October 24, 2011 – City Council Meeting, 7:00 p.m., City Hall
- October 25, 2011 – Community Watershed Alliance, 6:30 p.m., City Hall

October 7, 8 & 9, 2011 – Butterfield Stage Days, beginning at 9:00 a.m. with the parade, the rodeo will begin at 5:00 p.m. at the Arena Bar with fireworks at Lions Park to follow.

Mr. Nichols stated information on I-10 closures can be found at [www.azdot.gov](http://www.azdot.gov). Mayor King stated there would be fireworks on Saturday, October 8 at 7:30 p.m. Mayor King then thanked Dr. Woodall the Benson School Superintendent and the Benson Unified School Board for the tailgate celebration held on September 23, 2011, stating the event was well received and he hopes to continue the event next year.

Councilmember Lambert asked the subjects of Council worksessions be added to the City Manager’s report.

**NEW BUSINESS:**

**1. Consent Agenda**

- 1a. Minutes of the September 12, 2011 Special Meeting, Including Executive Session Minutes
- 1b. Minutes of the September 12, 2011 Regular Meeting
- 1c. Appointment of Dick Ferdon as Chairman of the City of Benson 4th of July Committee for 2012
- 1d. Name change to the Hangar Agreement between the City of Benson and Clifford D. Deane
- 1e. Invoices processed for the period from September 6, 2011 through September 19, 2011

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

**2. Resolution 60-2011 of the Mayor and Council of the City of Benson, Arizona, recommending approval of the Series 10 – Beer and Wine Store Liquor License at Love’s Country Store #460 (located at 643 State Route 90, Benson, Arizona)**

City Clerk Vicki Vivian then addressed Council stating Love’s Country Store #460, formerly Gas City, has applied for a liquor license application due to a change of ownership. Councilmember Sacco moved to approve Resolution 60-2011. Seconded by Councilmember Maldonado. Motion passed 6-0.

**3. Resolution 61-2011 of the Mayor and Council of the City of Benson, Arizona, declaring as a Public Record that certain document entitled “City Code Chapter 21: Benson Public Library” dated September 20, 2011**

Mayor King stated the library chapter had been discussed at the previous Council meeting. Councilmember Sacco then moved to approve Resolution 61-2011. Seconded by Councilmember Moncada. Motion passed 6-0.

**4. Ordinance 561 of the Mayor and Council of the City of Benson, Arizona, amending the Benson City Code; creating City Code Chapter 21; adopting “City Code Chapter 21: Benson Public Library” dated September 20, 2011**

Councilmember Brooks moved to approve Ordinance 561. Seconded by Councilmember Sacco. Motion passed 6-0.

5. **Discussion and possible action regarding the Benson Unified School District's request for funding to continue the School Resource Officer (SRO) Program**

Chief of Police Paul Moncada addressed Council stating in August, Dr. David Woodall, School Superintendent, informed him the Safe School Grant which funds the School Resource Officer (SRO) had not been renewed by the State, adding the position, which costs \$61,025.04 per year has been at the school for quite awhile. Chief Moncada then stated after receiving the information from Dr. Woodall, he polled other departments throughout the State to see what they had done under the same or similar circumstances, stating most of the departments had returned the officer back to patrol; part of the departments kept the officer in the school, but with the school paying a portion of the salary and benefits; and some of the departments kept the officer there at their expense. Chief Moncada then stated Dr. Woodall has approached the City and offered for the school to pay 35% of the salary and benefits, which comes out to \$21,358.00, and for that, he would like to have the SRO in the school for the 180 days that they are in session and when they are not in session, the officer would be turned back to patrol. Chief Moncada then stated he had outlined some of the options Council could consider, to keep the SRO at the school at the City expense, to accept Dr. Woodall's proposal, to return the SRO to patrol and have officers available to respond to any criminal activity at the school, or to have an officer assigned to the school area for short periods of time, adding this option was at the request of the Mayor. Chief Moncada then stated he spoke with Dr. Woodall and has assured him, no matter what option the Council chooses, if the Council chooses to pull the SRO, we will not leave the school high and dry and would have plenty of officers available at the time to respond to the school's needs, with the only difference is the school wouldn't have an officer dedicated to them and the law related education that's being taught now by the SRO would not be possible.

Councilmember Moncada stated he has talked to some parents and others and a lot of them seem to like the idea of an SRO, except for the fact that it now comes down to the City paying for it, adding he agrees if it's grant funded, it's a great position to have, but with the City's tight budget and the police department already short on police officers, he thinks the best option is to pull the officer back into patrol, but also have an officer walk through the school at different periods of time, like the Mayor suggested, so people at the schools know there's still an officer available. Councilmember Moncada then stated the cost is not the only factor, stating some parents have had issues with having the officer at the school sometimes because the officer, according to parents, has gotten involved in situations where it should have been the school handling it, instead of the officer being involved.

Mayor King stated if the SRO is removed, he would like for the City to have someone available to at least make some kind of walk-through periodically throughout the day and also be able to respond to a call at the school when needed. Chief Moncada stated the City could do that at this time, of course, due to call loads and manpower issues, it could always change and could vary from day-to-day, but he believes given our current situation, the City would be able to have sufficient officers to respond quickly to the school in case of any criminal issue, adding even with the SRO in place, the City has had to have an officer respond to the school when the SRO is busy teaching or responding to other issues, so its not anything out of the ordinary or anything that can't be done. Mayor King asked how the other schools were doing when the SRO was no longer present with Chief Moncada stating other police departments didn't indicate one way or another if there's been an increase of calls at the school or not, adding the SRO is something the school has been fortunate for many years to have funded, but with the State's financial situation, the funding has been pulled back not only from the school, but these kinds of programs. Mayor King then asked where the officer would be assigned with Chief Moncada stating he had spoken to the patrol supervisor who is in charge of scheduling, and asked him, without telling him what was coming up with this position, what would be done to the schedule if another officer was available, with the answer being another officer would be placed on the dayshift, which not only would provide the extra man on the dayshift, but would make it easier to for us to cover or deal with any school issues that arose.

Councilmember Maldonado stated he would like to have Dr. Woodall address the Council and tell what he would be comfortable with. Dr. Woodall then addressed the Council stating at one time, the school had

both the Juvenile Probation Officer (JPO) and the SRO assigned to Benson School District through a school safety grant, but as budget times have become very difficult around the State, that money has deteriorated, adding the grant is competitive and last year the school lost the JPO and this year lost the funding for the SRO. Dr. Woodall then stated he would like to clarify there are no situations that the school authorities would handle that the SRO handles, adding what has happened over the last 3-5 years, is the school's duty to report even very minor things that would have been brushed off before are now mandated to be referred to a police officer, noting a police officer is handling more and more things in a school district than they would have years ago. Dr. Woodall then stated his proposal to pay 35% of the SRO cost was based on the amount of time a police officer would be required to be on campus vs. other functions such as gang related and law enforcement education and the SRO's interaction with the students. Dr. Woodall then stated whether it's through a variety of officers for the SRO position or calls to the police department for individual situations, he felt the City would have about that approximate time committed to the school district. Dr. Woodall then stated it has been extremely positive having an SRO in the school, but at the same time, he understood everyone is making very difficult budget choices. Dr. Woodall then stated he would prefer to keep the SRO, but his next choice would be his proposal as Chief Moncada outlined with the school paying 35% of the salary and benefits cost, while asking the City to pick up the additional amount, with the SRO picking up duties within the City of Benson, when he is not assigned to the school. Councilmember Maldonado stated if a grant is made available in the future, he would like to revisit this item, with Councilmember Moncada agreeing.

Councilmember Brooks asked how effective the SRO has been in deterring kids from having problems in the future with Dr. Woodall stating that is a difficult question to answer with hard data, but he thought some very good things came out of having an SRO. Councilmember Brooks then stated he would be willing to look at the cost for the literature that possibly teachers could hand out during the year on drugs and such, adding he didn't think that would be a big cost to the City and with minimal effort, that could still be done. Chief Moncada then stated if the SRO was pulled, the police department would continue to do the DARE training, but would just have to work it around the officers' schedules that are trained in the program, noting it would have to be cut back to the Benson school only, instead of the surrounding schools.

Councilmember Lambert asked how much criminal activity is at the school with Chief Moncada stating there may be other referrals from the school, but based on the call slips and department reports generated, he would estimate there are 1-2 criminal department reports a week. Councilmember Lambert asked about response times for an officer vs. the SRO with Chief Moncada stating in the past, there have been times an officer had to respond even with the SRO in place, adding if the SRO was tied up doing something else or handling something at one of the other schools, we still had to respond where needed. Chief Moncada then stated if the SRO is not busy, his response is immediate when it becomes apparent they need to get the SRO involved with the response from patrol taking a few minutes longer, adding 5-7 minutes is the average response time to all calls.

Councilmember Sacco asked if the SRO was in the City budget with Chief Moncada stating the position was included in the grant portion of the budget. Councilmember Sacco then asked if there was a possibility getting another grant with Dr. Woodall stating if the school was funded next year for an SRO, it would start July 1, 2012 and run through June 30. Dr. Woodall then stated he would like to address the number of reports and clarify that while Officer Douglas generates 1-2 reports a week, he will probably look at 10-12 incidents in the course of each week that he is required to look at, adding they hope the majority of those don't result in a report, but the school does have a duty to report on a number of things that would probably not involve an officer 10-15 years ago.

Benson School Board Member Chic Maldonado then addressed the Council stating one thing that needs to be looked at is the good rapport the presence of an SRO on campus does in deterring students from making poor choices, adding these things can't be measured and even giving handouts just isn't the same as the information coming from the SRO they know and see on campus every day. Mr. Maldonado then stated having this resource officer on campus is vital to getting an accurate account on the students breaking the more serious rules that violate state statutes and many of these are along the lines of physical harm and

drug violations that do occur on the campus, adding timely, accurate investigations are essential to the administrators taking proper disciplinary actions to get these students back on track. Mr. Maldonado then stated the SRO report is a major component in School Board members making decisions on suspensions or expulsions, adding they also assist in situations when Dr. Woodall addresses a student's parents, adding with the SRO investigation and report, parents have a tendency to agree with the actions the school takes.

Councilmember Brooks then stated he feels a police presence on the school grounds really is helpful and while, he's not sure of what might occur without that presence at the school, with the City's budget, he is not sure we can afford the SRO, but wished there was a way to provide that presence somehow. Chief of Police Moncada then stated his department could assign an officer during the morning to do a walk-through and to be seen, have a presence and could do the same thing in the afternoon, adding the officer would vary from day-to-day obviously, giving other officers a chance to make themselves known not only to the school administrator, but to the students, if that is the Council's desire.

Mayor King stated having an officer present at some time of day throughout the day is what he would like, adding he supported the SRO position over the years, but with the financial situation for both the school and the City, we have to try and come up with something a little different.

Councilmember Moncada stated it was a tough decision to make, since he was concerned about school safety, but as City Councilmembers, they are to represent all of the City of Benson and felt we could serve all the citizens of Benson including the school by returning the officer back to patrol, by having the extra officer on day shift and also doing walk-throughs at the school. Councilmember Moncada then stated if it's found to be a problem in the future, the Council could revisit this issue. Councilmember Moncada then moved to return the SRO to patrol, have officers available to respond to the school for any criminal issues and also have an officer walk-through the school at least 2 times a day. Seconded by Councilmember Lambert. Motion passed 5-1 with Councilmember Brooks voting nay.

Councilmember Lambert then asked Dr. Woodall for a report on a monthly basis for the Council to see if there is a trend of activity that would promote an SRO, asking Dr. Woodall to submit the report to the City Manager. Mayor King agreed it would enable the Council to stay informed.

6. **Discussion and possible action regarding Ordinance 559 of the Mayor and Council of the City of Benson, Arizona, amending Ordinance 225; requiring all members of the Planning & Zoning Commission reside within the incorporated limits of the City of Benson**

Building Official Luis Garcia addressed Council stating this item is to consider residency qualifications requiring all members who serve on the Planning & Zoning Commission be residents of the City, adding the item is being sponsored by Mayor King and Councilmember Lambert. Councilmember Lambert then stated on August 9, 2010, the Council at the time, voted to open positions on the Planning & Zoning Commission to outside the City limits because we were having problems filling the seats with 7 members from the City. Councilmember Lambert then stated he and Councilmember Sacco were both absent from that meeting, leaving only 1 current Councilmember who participated in that action. Councilmember Lambert then stated over the past few meetings there had been comments from the public and Staff regarding the Planning & Zoning Commission wanting to reduce the number of commissioners from 7 to 5 and it seemed most comments from the Council were focused on the residency requirement, so he wanted the Council to be able to address the residency requirements separately from the number of commissioners.

Mayor King then verified with the proposed ordinance, Ms. Jane Scholer would remain on the Planning & Zoning Commission until the end of her term, with Mr. Garcia stating since Commissioner Scholer as been fully seated in her position, she would remain on the Commission to complete her term. Mayor King then agreed with Councilmember Lambert's comments, adding in previous discussions, the Council seemed to be in agreement on the residency requirements with the biggest conflict being the number of commissioners, which is why he wanted the issue brought back separately.

Councilmember Sacco asked Mr. Garcia if he felt he had a problem getting people to serve with Mr. Garcia stating if the proposed ordinance passed, it would create 2 vacancies on the Commission, adding we currently have an application from a citizen of Benson and advertising would be done to solicit additional applications. Mr. Garcia then stated with the amount of attention the members of the Commission has had on the agenda, he didn't feel there would be a problem filling the positions.

Councilmember Brooks stated his concerns were the ability to establish quorums for Planning & Zoning meetings, but as long as the positions could be filled, he would rather see City residents on the Commission. Councilmember Lambert moved to approve Ordinance 559. 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, Silver Two Investments, LLC; Butterfield Plaza Benson, LLC; Butterfield Plaza Benson, LLC, dba Butterfield Plaza vs. City of Benson

Councilmember Moncada moved to enter into Executive Session with the Mayor and Council, City Manager, City Attorney and the City Clerk at 8:04 p.m. Seconded by Councilmember Maldonado. Motion passed 6-0.

Council reconvened at 8:31 p.m.

7. **Discussion and possible action regarding a proposed settlement agreement in pending litigation, Silver Two Investments, LLC; Butterfield Plaza Benson, LLC; Butterfield Plaza Benson, LLC dba Butterfield Plaza vs. City of Benson**

City Attorney Mike Masee addressed Council stating this case, which has been pending for several years now, is being defended by an outside attorney, Marshall Humphrey, who is very experienced in tort litigation toward defense, with the City being indemnified in the cost of the defense by the Arizona Municipal Retention Risk Pool. Mr. Masee then stated the relevant parties and their attorneys went to a private settlement conference mediated by Jeffrey Minker, who is a very experienced mediator. Mr. Masee then stated at that settlement conference, there was an effort to make a global settlement with all of the cases, but it was not able to be done, but the conference resulted in a proposed settlement of the property owner's claims. Mr. Masee then stated in exchange for the \$100,000 settlement, the City would be forever released of any claims on the part of the property owner, including claims that were actually brought forth and claims that could have been brought forth. Mr. Masee then stated in addition to the City itself being released, the named defendants of Mark M. Fenn and his wife would also be released, adding the standard release language that would be prepared in the settlement agreement would also release all other City officers and employees. Mr. Masee then stated under the terms of the City's insurance policy, the City would have to reimburse the risk pool \$5,000.

Councilmember Sacco asked Mr. Masee to clarify that the proposed settlement does not impact the other pending cases. Mr. Masee then stated the proposed settlement has been presented on its own, because a settlement with the other parties has not been able to be reached, adding our outside attorney, gave his recommendation to settle this, as does the insurance claims manager, who is handling this case. Mr. Masee then stated it is important to note that the proposed settlement in this case does not impact the other cases, adding Councilmember Sacco's vote would not create a benefit or a detriment to either him or a close family member because it's independent of the other pending claims and therefore does not create a conflict of interest for Councilmember Sacco.

Councilmember Lambert then asked if the proposed settlement agreement were passed, would the Council be setting any precedent with Mr. Masee stating settlements by their nature do not create precedent, adding there is standard language inserted in all settlements that the City is not admitting any liability or wrongdoing one way or the other; the other party or anyone else in the future can not use the settlement

against us as an admission of liability. Mr. Masee then stated simply put, the agreement is, in exchange for this amount of money, the parties are basically walking away from the case.

Councilmember Moncada then moved to approve the proposed settlement agreement in pending litigation, Silver Two Investments, LLC; Butterfield Plaza Benson, LLC; Butterfield Plaza Benson, LLC dba Butterfield Plaza vs. City of Benson. Seconded by Councilmember Brooks. Motion passed 5-1 with Councilmember Sacco voting nay.

**DEPARTMENT REPORTS:** None

**ADJOURNMENT:**

Councilmember Maldonado moved to adjourn at 8:37 p.m. Seconded by Councilmember Moncada. Motion passed 6-0.

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Toney D. King, Sr., Mayor

ATTEST:

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Vicki L. Vivian, CMC, City Clerk

## Just Kidding

As you know on May 23, 2008 representatives of the City of Benson visited our business at 581 West 4<sup>th</sup> Street, handed my wife a Notice of Condemnation, demanded that she sign it and told her to comply with its content. When asked why the City was condemning our suite my wife was told that the purpose of the notice was to “light a fire” under the building owner.

At this point we trusted that the City of Benson was sincere and made plans to relocate our business. We found a new suite and moved to our current location. Unfortunately, several months later Mike Locket rescinded the Condemnation Notice. I guess that Mr. Locket was **just kidding** when he condemned Butterfield Plaza.

After moving as instructed by the Condemnation notice, we were sued by Butterfield Plaza, LLC for breaking our lease. Believing that we had Arizona Statutes on our side and trying to work with the City of Benson against Butterfield Plaza LLC, we counter sued. Unfortunately, both the Superior Court and the Arizona Appellate Court ruled that our suite was not condemned due to the City of Benson rescinding their Condemnation Notice.

As a result of following the Condemnation Notice, having to relocate our business and subsequent lawsuits, we have:

- Lost thousand of dollars in sales
- Owe a enormous amount of legal fees
- Had to divert much needed cash flow to pay for new facility improvements
- Have to pay higher rent
- Had our excellent credit history damaged
- Suffered both physically and emotionally
- Run the risk of losing everything that we own

We believe that the City of Benson represented by Mr. Mike Locket, made a gross mistake by issuing a Condemnation Notice and then subsequently rescinding it. This mistake is affirmed by Mike Locket's statement in his deposition (see attached), that he did not do any tests or calculations with regard to the structural condition of Butterfield Plaza. Mr. Locket further stated that he relied upon Tenant complaints as his reason for issuing the

Condemnation Notice. This act along with comments from City Staff about “lighting a fire” under the building owner, leads us to believe that the City did not have our best interest at heart. Further, the fact that Mr. Locket was chastised by the City Council for not following proper procedures and his response that he was a Department Head and could do whatever he wanted, demonstrates further that the City was not acting in our best interest.

On September 13, 2011 attorneys representing the City of Benson invited us to participate in a settlement conference (see attached e-mail). After spending almost eight hours at an attorney’s office in Tucson, having to pay our lawyer \$2,500.00 to represent us and being told we had to pay a share of the conference, we were told that the attorneys representing the City of Benson had absolutely no intention of settling with us and were only going to offer \$100,000.00 to Butterfield Plaza. It appears that they were **just kidding** too.

On September 19, 2011 we attended a hearing in Bisbee to see if the attorneys representing the City of Benson were correct in their accusation that we had not filed our claim in a timely manner. It was our hope that the judge would render a decision about this claim, but instead the matter was put off until November 29, 2011 to give the attorney representing the City of Benson “more time to prepare”. I guess that the attorney representing the City of Benson was **just kidding** about the hearing.

We find it troubling that a representative of the City of Benson erroneously told us to move and then an insurance company representing the City refuses to pay for this error. We find it insulting that those same attorneys offered to settle with us, but then after making us wait, said that they had no intention of even speaking with us.

We would like to encourage you to deny the settlement offer with Butterfield Plaza LLC proposed by the attorneys representing the City of Benson and instead instruct them to settle with all parties that are involved in this matter (Butterfield Plaza LLC, Radio Shack and PostalAnnex).

It is important to keep in mind that if we lose our lawsuit with Butterfield Plaza LLC, the City of Benson will have to do without a PostalAnnex and unfortunately, we are not **just kidding**.