

**THE REGULAR MEETING  
OF THE MAYOR AND CITY COUNCIL OF BENSON, ARIZONA  
HELD NOVEMBER 28, 2016 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 7:10 p.m. with the Pledge of Allegiance. Mayor King then had those present observe a moment of silence for the students who were attacked at the Ohio State University.

**ROLL CALL:**

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

**EMPLOYEE RECOGNITION:** None

**PROCLAMATION:** None

**PUBLIC HEARING:** None

**CALL TO THE PUBLIC:**

Stephen Insalaco, Pinto Place, J6, addressed the Council on the Call to the Public protocol, stating during the previous meeting 2 people wanted to yield their time to him, but the City Attorney issued an edict that they couldn't do so and that Council policy did not allow someone being granted extra time. Mr. Insalaco then said the City Code allows the Council to grant additional time for speakers to address the Council, should they choose to do so. Mr. Insalaco then stated the City Attorney is to provide legal advice and not make Council decisions or set Council policy in defiance of the City Code and that the City Attorney was out of order regarding the matter. Mr. Insalaco then spoke about the Airport Services Coordinator (ASC) stating he made his case clear that the ASC contract award was conducted both unfairly and illegally, but it was not his desire to challenge the City or destroy his working relationship with the City over the matter. Mr. Insalaco maintained that the City's Request for Proposals (RFP) process remains seriously broken and there remains concern over the legitimacy of the contract award. Mr. Insalaco then stated one of the responsibilities of the ASC is to conduct an open house fly-in event during the next 12 months, adding the previous airport advisory committee also discussed holding such an event and agreed it should be held sometime in March of each year to avoid April winds, the summer heat and conflicts with other events. Mr. Insalaco then stated it takes a large team of community participants several months to organize and plan a safe and productive event, adding the event should be conducted not only as community outreach effort, but to draw the attention of future airport businesses and developers. Mr. Insalaco then stated it would be up to the ASC to determine the date of the event and his team of assistance, but he would think the event should be open to all willing community members. Mr. Insalaco then stated the same event held in 2005 was a big success and he would be happy to share the information with the ASC to see what was done right and what could have been done better. Mr. Insalaco then stated a March 2017 event is not an unreasonable target date for such an event and if the ASC chooses to hold it then, it should be the first order of business the ASC dedicates his time to.

Mayor King stated he did look into the RFP process and he feels it was done properly.

Tricia Miller, Foothill Drive, Benson, addressed the Council regarding the conduct exhibited at the last Council meeting by the City Attorney during the Call to the Public. Ms. Miller stated she watched in dismay as the City Attorney seemed to dictate to not only people who wished to speak but also the proceedings of how the Council should conduct the session, adding the City Attorney's role is to provide legal advice on legal matters and not how the Council runs the meeting. Ms. Miller then stated if the Council wishes to no longer allow the donation of time to a speaker, the Council needs to address this instead of the City Attorney and this can be accomplished by creating or updating what is commonly known as rules and procedures. Ms. Miller stated a clear set of rules and

procedures would alleviate any confusion at future meetings and would provide advice for everyone, including Council, City Staff and citizens of the community who speak during the Call to the Public and more specifically, would provide guidelines on how individuals speak not only to Council but to one another during the Call to the Public. Ms. Miller then stated it's quite shameful to see how some individuals conduct themselves during the Call to the Public and use their time to attack not only the Council, but other community members. Ms. Miller then stated people who address the Council should act accordingly and it is apparent some would benefit from a clear set of guiding principles, adding this is precisely why many local governments have adopted rules and procedures. Ms. Miller then stated those governing bodies also typically remind citizens wishing to speak on how to behave and conduct themselves in Council meetings.

Paul Lotsof, a non-resident and business owner of the CAVE FM radio station in Benson, stated the Benson newspaper doesn't cover all the Benson Council meetings anymore, even though they used to at least since the 1970s and very likely, before then. Mr. Lotsof then stated the change may be a cost savings measure due to sagging revenues, which is a problem all newspapers across the nation face. Mr. Lotsof stated the newspapers' own websites further hurt their circulation and the papers end up raising their price, which again, lowers their circulation even more. Mr. Lotsof then stated there is also some formidable competition to the Benson newspaper that is able to offer far cheaper advertising, because they only print advertising cover and cover and have very little overhead. Mr. Lotsof then stated if the City only places print advertisements in the newspaper, they are only reaching a fraction of the newspaper readers, and even though the Council may think publishing items in the paper will reach everyone, they are only complying with antiquated state law pertaining to informing the public, at best, adding they need to update their thinking and face today's reality. Mr. Lotsof then stated CAVE FM has been covering Council meetings for the last 30 years and he would like everyone to know he will continue to cover Council meetings as long as he is in charge, adding he knows of no other radio station in Arizona that provides news reports on its local City Council meetings, even in Phoenix or Tucson. Mr. Lotsof then stated he also placed a question on his website asking if listeners were interested in what the Council did and found that he had listeners as far away as Sierra Vista say they are interested and are glad he reports on the meetings.

Scott Sinclair, Lee Street, St. David, stated he owns property in Benson and he hopes everyone had a great Thanksgiving, adding it is a time to stop and reflect on what we do, what we've done and where we're going. Mr. Sinclair then stated he was wading through all the general plans of the City and found an item about bringing Amtrak into the Visitors Center to get rid of the shack people have to wait in for the trains and praised the Council for that, adding he hopes it happens in the near future. Mr. Sinclair then stated he received a letter from Cochise County regarding Post Ranch Road and he wanted to share it with the Council, Staff and the public. Mr. Sinclair noted the letter was addressed to Mayor King. Mr. Sinclair then read the letter, which urged "the City of Benson to work with the private owners in this area to resolve the closure of this road in the short term, and to coordinate the future alignment and construction of this connecting corridor in order to integrate into the downtown Benson area in the longer term." The letter will be retained with the Council packet.

Cindy Sinclair, Lee Street, St. David, stated she also owns a home in Whetstone Canyons in Benson. Ms. Sinclair then spoke about Post Ranch Road being not only an issue in Benson, but in St. David, Sierra Vista and Cochise County, stating these areas and the community are all interdependent. Ms. Sinclair stated people come from all over to use the State Trust land and thousands upon thousands of people are from out of State and are familiar with that road. Ms. Sinclair stated of their 700 signatures on the petition to open Post Ranch Road, about 2/3 are Benson specific. Ms. Sinclair then stated St. David is very well aware of the proposed development, adding 95% of the property is in the St. David school district. Ms. Sinclair then stated there is nothing Benson does that doesn't affect St. David and stated people from outside the City shop, eat and spend money in Benson and care about Benson. Ms. Sinclair then asked the Council to please give them some weight. Ms. Sinclair then stated Post Ranch Road is imbedded in the City's GDP (General Development Plan) and Arizona has a statute which says there can be no agreement with a developer that is in violation of a City's GDP. Ms. Sinclair then stated no one is arguing the developer can improve the road, but nowhere in anyone's plans does it say the developer can close the road. Ms. Sinclair then stated her understanding of Arizona law is that if a road has been used more than 50 years, which this road clearly has, and is documented, the road is now a public right-of-way, adding people can own land on either side, but can't own the public right-of-way. Ms. Sinclair then stated she is no attorney, but she knows the Arizona Supreme Court just made a ruling in Pleak vs. Entrada, and it says the same thing: if a road has been used by the public for 50 years or longer, the road is a public right-of-way.

Greg Hall, Mesquite, St. David, stated this is all one big community, adding he got a card for the Cascabel Fair, which is being held the same day as the Benson fair and instead of the events competing with each other, he thinks people will go to both. Mr. Hall then stated a petition was started 4-6 weeks ago regarding Post Ranch Road and the thing everyone had in common was that they wanted the road opened. Mr. Hall then noted there could be people who don't want it opened and just approach the people gathering petition signatures. Mr. Hall then stated some of the comments he heard from people on the issue were that they used to drive to work on the road every day, but now they have to go around the road; questions on why the road was closed; they learned to drive on that road; their boy scout troop used to camp on the land and people can drive from Highway 80 to Highway 90 with their car in neutral. Mr. Hall then stated he knew the Council didn't really care about St. David and the surrounding communities, but he thinks that is wrong, adding people from St. David shop in Benson. Mr. Hall then stated so far, they have collected 723 signatures and of those, 416 were from Benson addresses and there were a lot from out of State, representing the winter visitors. Mr. Hall then stated everyone used to think the winter visitors brought the financial boon in the winter, which helped get everyone through the hard times, but then everyone got sight of El Dorado's golden carrot and just don't care about anything else anymore.

Mayor King stated he and the Council do care about the surrounding areas and they know the decisions they make do affect them. Mr. Hall then stated he had a Benson fireman tell him that unless Mr. Hall was a Benson resident, Mr. Hall had no right to go to a Council meeting. Mayor King then reiterated that the Council does care about the surrounding areas.

Sam Miller, Foothill Drive, Benson, stated he spoke at the last Council meeting not about the ASC (Airport Services Coordinator) or the RFP (Request for Proposals), but about the airport. Mr. Miller stated he just wanted to give the Council information on how airports can be a financial engine for a small city and examples in how they can add to the gross domestic product of the State of Arizona, the U.S. and the jobs they create; however, the newspaper article that was written only mentioned that he was against Mr. Dave Thompson being the ASC, which is not what he said. Mr. Miller then stated again, he just wanted to bring to light that the airport could be used for the benefit of Benson and thanked the Council for taking a step forward to help improve the airport and possibly City finances by growing the airport. Mr. Miller then stated he also understands the Council may be supporting the Benson Shop with a Cop program and that if the Council does, he wanted to thank them for their support. Mr. Miller then stated the program is a great thing and he has participated every year except for 1 year when he was out of town, adding his wife also volunteers. Mr. Miller then stated the program brings joy to every single trooper, deputy, officer and federal agent who participates and gives them something to look forward to in addition to benefitting all the children who participate. Mr. Miller then stated it is great to have this interaction between law enforcement and children, especially, when some of the children come from a situation where they have seen one of their parents being arrested and that negative interaction has been the only interaction with law enforcement they have had.

**CITY MANAGER REPORT:**

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

- Tuesday, December 6, 2016 – Planning & Zoning Commission, 7:00 p.m., City Hall
- Monday, December 12, 2016 – City Council Meeting, 7:00 p.m.
- Tuesday, December 13, 2016 – Library Advisory Board, 4:00 p.m., City Library
- Tuesday, December 27, 2016 – Community Watershed Alliance, 6:00 p.m., City Hall
- Saturday, December 3, 2016 – Christmas on Main Street and at the Benson Museum 10:00 a.m.– 4:00 p.m.

Festival of Lights – Light Parade, Floats that best represent the theme, “A Christmas Wish” will be awarded 1st, 2nd and 3rd place prizes! Win prizes by donating non-perishable food items for the Benson Food Bank, drop off items at City Hall, Visitors Center, Community Center and the Tree Lighting. The Light Parade starts at 6:00 p.m.

Santa will be attending the Tree Lighting at Benson City Hall, 120 W. 6th Street. The Tree Lighting starts at 7:30 p.m.

Saturday, December 10, 2016 – Benson Shop with a Cop event  
Benson Basketball Tournament at the High School

Monday, December 26, 2016 – Christmas Holiday – City Offices Closed

Mr. Stephens stated the Lighting Code Task Force continues to meet on regular basis as set up by the Task Force, adding anyone who would like to participate can contact Michelle Johnson for details. Mr. Stephens then stated for more events in Benson, the public could visit the City's website: [www.cityofbenson.com](http://www.cityofbenson.com) under "What to do Today."

Mayor King encouraged everyone to show up for the Christmas events. Mayor King then encouraged people to think of those less fortunate during the holiday season and donate to the food bank.

## **NEW BUSINESS:**

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

- 1a. Minutes of the September 12, 2016 Worksession
- 1b. Minutes of the September 12, 2016 Regular Meeting
- 1c. Invoices processed for the period from November 1, 2016 through November 18, 2016

Vice Mayor McGoffin moved to approve the Consent Agenda. Seconded by Councilmember Lambert. Motion passed 6-0 as Councilmember Moncada was not present for the vote.

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

City Manager Bill Stephens stated each year the City has been a sponsor of this event, adding during the Fiscal Year 16-17 budget process, the Council included a line item in the Community Enrichment fund for the Shop with a Cop program in the amount of \$500. Mr. Stephens then stated the item before Council is the sponsorship and distribution of this expenditure. Vice Mayor McGoffin stated this was an excellent program she whole-heartedly supports and moved to approve the \$500 sponsorship of the Shop with a Cop program for the community. Seconded by Mayor King. Councilmember Konrad stated Denise Celentano was present and he wanted to recognize everything not only she, but her husband has done for the community, adding they are retiring and moving along, but have done a lot for Benson. Ms. Celentano thanked the Council for their support over the last 7 years, adding the Shop with a Cop program will still continue with someone else taking over it for her. Ms. Celentano received applause from all those present. Motion passed 7-0.

### **3. Presentation and possible discussion of the Certified Audit Report for the City of Benson for the fiscal year ended June 30, 2016**

Finance Director Dustin DeSpain stated the financial audit for the last fiscal year has been completed and Mr. Jim Usevitch from Colby & Powell was here to present the findings. Mr. Usevitch addressed Council stating the audit went very well, adding one indication was that he was addressing the Council in November instead of February or March. Mr. Usevitch then stated he would address the basic points, stating last year, the City had a significant finding regarding some reconciliation of accounts, but this year, there were no significant findings even with the City having over \$1,000,000 in federal funds, which were used to buy some buses and a fire truck. Mr. Usevitch then stated the biggest point he wanted to make is that the City had about 4 years of losses, noting the City has had some rough years with the economy being down, but last year, the City broke even and this year made almost \$600,000 in governmental funds, which was seriously needed, adding cities need funds on hand for unexpected emergencies. Mr. Usevitch then stated this increased the City's cash by over \$400,000, which is a good thing, adding cities can't operate at a loss and continue doing so each year. Mr. Usevitch then reiterated that the audit went really well and that he appreciates the Council. Mr. Usevitch stated the tone really starts at the top, adding some Councils don't take a lot of interest and it reflects in the work that happens in the accounting department, but in Benson, the accounting reflects the Council's interest. Mr. Usevitch then stated the accounting department does a good job and has a lot of controls in place, adding when the audit is performed, a lot of testing is done,

noting again, the audit went very well. Mr. Usevitch then stated the audit report before Council is noted as a draft, adding auditors are now required to insert Public Safety Retirement and State Retirement information in the report, but those reports had not been issued when the audit was complete. Mr. Usevitch then stated those reports were just issued on Wednesday and his firm would be finalizing the City's audit, adding the only change would be the removal of the "Draft" annotation and then thanked Council for their time.

4. **Discussion and possible action regarding Resolution 37-2016 of the Mayor and Council of the City of Benson, Arizona, canvassing, declaring and adopting the results of the General Election held on November 8, 2016**

City Clerk Vicki Vivian stated this resolution is a requirement that must be completed no later than 20 days after the election, adding Resolution 37-2016 officially approves the canvass of the votes cast in the November 8, 2016 General Election. Ms. Vivian stated the only issue the City had on the ballot was Proposition 418, which was the resolution proposing an extension of the Alternative Expenditure Limitation (AEL) for the City of Benson for the next 4 years, which allows the City Council to determine the amount of the alternative expenditure limitation for the fiscal year and replaces the state-imposed expenditure limitation. Ms. Vivian then stated AEL, also known as Home Rule, passed 1,166 to 823, with 1 over-vote and 114 under-votes, adding this means 114 people did not vote on the issue at all.

Vice Mayor McGoffin stated a lot of people didn't understand Home Rule, adding some people read the ballot and thought the Council was imposing another tax. Vice Mayor McGoffin then stated the City can't promote Home Rule, but asked if there were any suggestions on getting information out so people could understand it. Ms. Vivian stated the language on the ballot complies with state law, adding she agrees that it's not the easiest to understand, but it was required. Ms. Vivian then stated she did speak to the Finance Director about holding workshops on Home Rule to distribute information, noting Vice Mayor McGoffin was correct that the City can't promote Home Rule, but can explain it. Ms. Vivian then stated the premise people need to understand is that it's like going back to 1979-80 and limiting a person's spending amount to the amount they were paid in that time. Ms. Vivian then stated since then, a person's paycheck or income may have increased, but their spending limit has not, adding the extra income can be put into a savings account, but they can't do anything else with it, even if their living expenses have increased since then. Ms. Vivian then stated Home Rule allows the Council to exceed that limitation and can set limitations based on the City's revenue. Vice Mayor McGoffin then stated people need to understand this before the next Home Rule election in 4 years.

Councilmember Konrad moved to approve Resolution 37-2016. Seconded by Councilmember Boyle. Motion passed 7-0.

5. **Discussion and possible action regarding Resolution 38-2016 of the Mayor and Council of the City of Benson, Arizona, prescribing standards of Financial Disclosure for Local Elected Officials**

City Clerk Vicki Vivian stated recently passed House Bill 2429 amended the financial disclosure statement required for candidates and public officers, adding the primary change was a new category on the statement that requires reporting of certain travel-related expenses, which when reported, are exempt as a "gift" under the law. Ms. Vivian then stated another change is that the law no longer requires the specific names of the public officer's spouse or children to be included on the statement as long as a general description is provided and allows the public officer to provide a home or work address. Ms. Vivian then stated the last change is that the Secretary of State is now authorized to prescribe the electronic format for the local public officer's financial disclosure statements. Ms. Vivian then stated the law is effective January 1, 2017.

Ms. Vivian then spoke about the new financial disclosure statement that was provided to the City Clerks last week through the League's Municipal Election Manual, stating the new statement reflects all the changes from House Bill 2429 in addition to the removal of the notarization requirement, which is due to the Secretary of State's Office interpreting the law requiring a "verification" on the statement to mean that notarization is not required on this form. Ms. Vivian then stated after the campaign finance training session, the issue was raised that the current financial disclosure resolution adopted several years ago by cities and towns no longer reflects the current law and the League agrees that the recent legislation necessitates an update to previously adopted resolutions, noting

Benson adopted Resolution 108-83, in 1983. Ms. Vivian then stated the proposed resolution before Council contains revised language reflecting all statutory changes enacted since 2011. Ms. Vivian then stated the Secretary of State's Office is working on an electronic format and she anticipates that it may be a fillable pdf version of the current form, but for now, to comply with electronic filing requirements, Councilmembers may fill out the form, scan it and email it to the Clerk's office, adding she would let the Council know when an electronic form becomes available, but it's not likely it will happen in the next 2 months.

Councilmember Konrad moved to approve Resolution 38-2016. Seconded by Vice Mayor McGoffin. Motion passed 7-0.

6. **Discussion and possible direction to Staff regarding the Railroad Quiet Zone Improvements Final Design - Scope for Professional Services and Fees**

Public Works Director Brad Hamilton stated he requested a scoping fee from the on-call engineering firm that did the initial study, adding the scoping fee is \$105,000 and is not something the Council has in the current budget. Mr. Hamilton then stated the upcoming budget process begins in approximately 60 days and that Staff was looking for direction from the Council on whether they wanted to move forward and transfer funding for the study from the current budget contingency fund or wait on the study and put the cost in the upcoming budget.

Councilmember Boyle asked about the price increasing should the Council decide to wait with Mr. Hamilton stating he didn't feel any price change would be significant. City Attorney Gary Cohen stated if the Council decided to move forward, Staff would move through the formal bid process, but he also agreed any price change would probably not be significant. Councilmember Boyle then asked about using the contingency now and putting that money back in the next budget process with Finance Director Dustin DeSpain stating money isn't put back into a contingency fund. Mr. DeSpain then stated should the Council decide to move forward now, he would need to check on it to make sure the City stayed within the current expenditure limitation set by the current budget or the Council could build this expense into the upcoming budget.

Vice Mayor McGoffin and Councilmember Konrad both asked Staff preference and about the downside of waiting to move forward with Mr. DeSpain stating the price could be slightly different, but he feels it would be more advantageous not to pull funding out of the contingency fund.

Councilmember Moncada spoke about he and another Councilmember leaving the Council in January and that he felt the new Councilmembers should be part of the decision, stating he felt the leaving Councilmembers shouldn't push the decision to move forward and then not have to deal with the problems it may create in the new budget process.

Councilmember Lambert stated he always hated to use contingency funds, which the Council needs to maintain for emergencies or a catastrophe, adding he would rather hold off and put the project in the upcoming budget. Councilmember Lambert then stated the Council could also choose to put the project in the CIP fund over several years, if they chose, enabling the project to be done over several years instead of having to spend half a million dollars at one time.

Councilmember Cook stated moving forward would commit spending \$100,000, which is 20% of the half million cost of the project and then agreed with Councilmember Cook that the new Councilmembers should be part of this decision.

Mayor King stated he wanted the quiet zone, but the Council has to be diligent with the spending and the budget process, adding he agrees that the project should be addressed in the upcoming budget. Mayor King then stated he thinks the Council should look at other projects as well, funding options and the possibility of tying them together as the Council discussed at a previous meeting. Mayor King then stated the only thing he worried about was increasing interest rates, but noted the budget process will be starting soon.

Councilmember Boyle then moved to postpone this expenditure until the next budget. Seconded by Councilmember Konrad. Vice Mayor McGoffin stated the Council was basically just pushing the project back

about 6 months. Councilmember Cook stated there were 2 incoming Councilmembers in attendance and he wanted them to know that they would have to consider some of the things the current Council has, which is what the best way is to spend the City's money. Councilmember Cook then stated the condition of the Council chambers and the City Hall building is an issue, adding it may hold together another 5 or 10 years and the Council can move forward with the quiet zone, but on the other hand, the Council chamber wall may lean further over and come down before the end of the year and a tremendous amount of money may have to be spent on the building. Councilmember Cook then stated if the Council committed \$100,000 to the quiet zone and then had to repair or rebuild the building, it may be years before anything more could be done on the quiet zone and as a Councilmember, they each must consider what the highest priorities are. Motion passed 7-0.

**EXECUTIVE SESSION:** Pursuant to A.R.S. §38-431.03 (A)(3)& (4); Discussion or consultation with the attorneys of the public body for legal advice and to consider its position and instruct its attorneys regarding the public body's position regarding contracts that are the subject of negotiations, in pending or contemplated litigation or in settlement discussions conducted in order to avoid or resolve litigation regarding Post Ranch Road.

**EXECUTIVE SESSION:** Pursuant to A.R.S. §38-431.03 (A)(7); Discussions or consultations with designated representatives of the public body in order to consider its position and instruct its representatives regarding negotiations for the purchase, sale or lease of real property, regarding the property known as the west Benson wellsite.

Councilmember Konrad moved to enter into executive sessions for the two topics listed on the agenda with the Council, City Manager, City Attorney, City Engineer and the City Clerk at 8:03 p.m. Seconded by Vice Mayor McGoffin. Motion passed 7-0.

Council reconvened at 8:50 p.m.

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

**ADJOURNMENT:**

Vice Mayor McGoffin moved to adjourn at 8:50 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