

AGENDA

AGENDA OF THE SPECIAL SESSION OF THE MAYOR AND COUNCIL OF THE CITY OF BISBEE, COUNTY OF COCHISE, AND STATE OF ARIZONA, TO BE HELD ON TUESDAY, MAY 14, 2019 AT 5:30 PM AT THE CITY HALL BUILDING, 915 S. TOVREAVILLE ROAD, BISBEE, ARIZONA.

THE MEETING WAS CALLED TO ORDER BY _____ AT _____.

ROLL CALL

COUNCIL

Councilmember Gabe Lindstrom, Ward III
Councilmember Joni Giacomino, Ward II
Councilmember Bill Higgins, Ward I
Mayor David M. Smith
Councilmember Leslie Johns, Ward I
Councilmember Joan Hansen, Ward II
Councilmember Anna Cline, Ward III, Mayor Pro Tempore

STAFF

Stephen Pauken, Interim City Manager
Ashlee Coronado, City Clerk
Keri Bagley, Finance Director
VACANT, Personnel Director
Jesus Haro, Public Works Director
Albert Echave, Police Chief
George Castillo, Fire Chief

CITY ATTORNEY

Britt Hanson

THE FOLLOWING ITEMS WILL BE DISCUSSED AND/OR CONSIDERED AT THIS MEETING:

1. Discussion and Possible Authorization to sign and return a letter from an Assistant Attorney General finding an Open Meeting Law violation for unauthorized disclosure of Executive Session information and requiring the City to pay a \$500 Fine and the City Council and Staff to attend Open Meeting Law Training.
Britt Hanson, City Attorney
2. Discussion and Possible Approval of a motion to go into Executive Session regarding the City Manager Position Pursuant to ARS § 38-431.03(a)(1), discussion or consideration of employment, assignment, appointment, promotion, demotion, dismissal, salaries, disciplining or resignation of a public officer, appointee or employee of any public body.

Per ARS § 38-431.03(a)(1), the City Council may vote to go into executive session for discussion or consideration of employment, assignment, appointment, promotion, demotion, dismissal, salaries, disciplining or resignation of a public officer, appointee or employee of any public body.

David M. Smith, Mayor

3. Discussion and Possible Direction to Staff to contact the individuals specified in Executive Session to arrange for interviews and to prepare a list of final candidates for the City Manager position for release to the public.

David M. Smith, Mayor

ADJOURNMENT

Individuals with hearing disabilities can contact the City Clerk's Office (520) 432-6012 to request an Assisted Listening Device, at least 24 hours before the meeting.

Anyone needing special accommodation to attend this meeting should contact Ashlee Coronado at (520) 432-6012 at least twenty-four hours before the meeting.

Public documents referred to herein may be viewed during regular business hours at the City Clerk's Office at 915 S. Tovreaville Road., Bisbee.

Pursuant to A.R.S. § 38-431.03(A) (3), the Council may vote to enter executive session at any point during this meeting for discussion or consultation for legal advice with its attorney(s), who may appear telephonically.



REQUEST FOR MAYOR & COUNCIL ACTION

Session of: May 14, 2019

Regular Special

DATE ACTION SUBMITTED: May 9, 2019

REGULAR **CONSENT**

TYPE OF ACTION:
RESOLUTION **ORDINANCE** **FORMAL ACTION** **OTHER**

SUBJECT: DISCUSSION AND POSSIBLE AUTHORIZATION TO SIGN AND RETURN A LETTER FROM AN ASSISTANT ATTORNEY GENERAL FINDING AN OPEN MEETING LAW VIOLATION FOR UNAUTHORIZED DISCLOSURE OF EXECUTIVE SESSION INFORMATION AND REQUIRING THE CITY TO PAY A \$500 FINE AND THE CITY COUNCIL AND STAFF TO ATTEND OPEN MEETING LAW TRAINING

FROM: **Britt Hanson, City Attorney**

RECOMMENDATION: **Not approve**

PROPOSED MOTION: **I move to authorize the Mayor and City Attorney to sign and return the April 19, 2019 letter from an Assistant Attorney General finding an open meeting law violation for unauthorized disclosure of executive session information and requiring the City to pay a \$500 fine and the City Council and staff to attend Open Meeting Law training.**

DISCUSSION: By letter dated March 13, 2019, an Assistant AG sent a letter to the City Attorney stating that it had received "complaints allege that on March 5, 2019, the Council went beyond the scope of the agenda by voting to reconsider the resignation of the City Manager, to terminate the City Manager without cause, and to provide the City Manager with a severance package" and requesting information about those complaints.

The City Attorney responded with the requested information by letter dated April 12, 2019.

By letter dated April 19, 2019, the Assistant AG sent a letter to the City Attorney finding that none of the complaints set forth in the March 13th letter were substantiated, but finding that "the Council violated the OML by breaking the confidentiality of February 12, 2019 executive session." As a remedy for the violation, the Assistant AG stated:

1. All current members of the Bisbee City Council and any employees who regularly attend executive sessions of the Bisbee City Council will participate in Open Meeting Law training within sixty days of the date of this letter. The training must be conducted by the Arizona Ombudsman-Citizens' Aide, another pre-approved organization, or a pre-approved attorney. Additionally, the training must be comprehensive Open Meeting

Law training, and must specifically include training on the confidentiality requirements of A.R.S. § 38-431.03.

2. The Council agrees to make a payment to the Office, pursuant to A.R.S. § 38-431.07, in the amount of \$500.00, made payable to the "Office of the Attorney General, State of Arizona"; such payment will be sent to the Office with the original signed copy of this agreement no later than thirty days after receipt of this letter.

By email to the Assistant AG dated April 23, 2019, the City Attorney expressed surprise that the Assistant AG had made a finding on an issue without first allowing a response, and further pointing out the factual error in her analysis that, if considered, would lead to a conclusion that no one broke the confidentiality of any executive session.

By email to the City Attorney dated April 29, 2019, the Assistant AG declined to reconsider the matter.

By email to the Assistant AG dated May 2, 2019, the City Attorney again pointed out the factual error and stating that "if you pursue an action in Superior Court to enforce this alleged violation, it will fail. I don't believe that you could prove to a Superior Court judge that there was any sharing of confidential exec session information, because that was in fact not done, as the evidence that you now have—and that would be presented to a Superior Court judge--clearly demonstrates."

The Assistant AG has not responded to that email.

The Council has two options. It can authorize the Mayor and City Attorney to sign the letter as requested by the Assistant AG and submit to the penalties outlined above. Or it can decline to so authorize. In that case, if the Assistant AG wants to pursue an alleged OML violation, she will need to file suit in Superior Court and the Court would then decide whether a violation occurred.

Because the City Attorney is of the opinion that the AG has made a flagrant error, the City Attorney recommends that the Council decline to authorize the Mayor and City Attorney to sign the letter.

All of the correspondence mentioned in this CAF is included with the CAF.

FISCAL IMPACT:

DEPARTMENT LINE ITEM ACCOUNT:

BALANCE IN LINE ITEM IF APPROVED:

Prepared by:

Britt Hanson
Britt Hanson, City Attorney

Reviewed by:

Ashley Cronquist



REQUEST FOR MAYOR & COUNCIL ACTION

Session of: May 14, 2019

Regular Special

DATE ACTION SUBMITTED: May 8, 2019

REGULAR CONSENT

TYPE OF ACTION:
RESOLUTION ORDINANCE FORMAL ACTION OTHER

SUBJECT: Discussion and Possible Approval of a Motion to Go into Executive Session Pursuant to A.R.S. § 38-431.03(a)(1) for Consideration of the Employment and Appointment of a City Manager

FROM: David M. Smith, Mayor

RECOMMENDATION: At Council's Discretion

PROPOSED MOTION: I move that the Mayor and Council go into Executive Session pursuant to A.R.S. § 38-431.03(a)(1) for the consideration of the employment and appointment of a City Manager.

DISCUSSION: This executive session will allow the Mayor and Council to discuss specific applications and candidates in Executive Session.

FISCAL IMPACT: NA

DEPARTMENT LINE ITEM ACCOUNT: NA

BALANCE IN LINE ITEM IF APPROVED: NA

Prepared by: Ashlee Coronado
Ashlee Coronado,
City Clerk

Reviewed by: Stephen Pauken
Stephen Pauken
Interim City Manager



REQUEST FOR MAYOR & COUNCIL ACTION

Session of: May 14, 2019

Regular Special

DATE ACTION SUBMITTED: <u>June 1, 2016</u>	
REGULAR <input checked="" type="checkbox"/>	CONSENT <input type="checkbox"/>
TYPE OF ACTION:	
RESOLUTION <input type="checkbox"/>	ORDINANCE <input type="checkbox"/>
FORMAL ACTION <input checked="" type="checkbox"/>	OTHER <input type="checkbox"/>
SUBJECT: DISCUSSION AND DIRECTION TO STAFF TO CONTACT THE INDIVIDUALS SPECIFIED IN EXECUTIVE SESSION TO ARRANGE FOR INTERVIEWS AND TO PREPARE A LIST OF FINAL CANDIDATES FOR RELEASE TO THE PUBLIC.	

FROM: David M. Smith, Mayor

RECOMMENDATION: At Council's Discretion

PROPOSED MOTION: I move to direct Staff to contact the individuals specified in executive session to arrange for interviews and to prepare a list of final candidates for release to the public.

DISCUSSION:

FISCAL IMPACT: NA

DEPARTMENT LINE ITEM ACCOUNT: NA

BALANCE IN LINE ITEM IF APPROVED: NA

Prepared by: Ashlee Coronado
Ashlee Coronado
City Clerk

Reviewed by: Stephen Pauken
Stephen Pauken
Interim City Manager