

MINUTES

MINUTES OF THE REGULAR SESSION OF THE MAYOR AND COUNCIL OF THE CITY OF BISBEE, COUNTY OF COCHISE, AND STATE OF ARIZONA, HELD ON TUESDAY, FEBRUARY 5, 2019 AT 7:00 PM IN COCHISE COUNTY BOARD OF SUPERVISORS HEARING ROOM, 1415 MELODY LANE, BUILDING G, BISBEE, ARIZONA.

THE MEETING WAS CALLED TO ORDER BY MAYOR SMITH AT 7:00PM.

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

Robert Smith, City Manager
Ashlee Coronado, City Clerk
Keri Bagley, Finance Director
Daniel Duchon, Personnel Director
Dwayne Wallace, Operations Manager
Albert Echave, Police Chief
George Castillo, Fire Chief

CITY ATTORNEY

Britt Hanson

INVOCATION: Mayor Smith asked for a moment of silence in remembrance of Chief Echave's father George Echave and the passing of Mike "Lefty" Lazovich.

PLEDGE OF ALLEGIANCE

MAYOR'S PROCLAMATIONS AND ANNOUNCEMENTS:

- Chief Castillo introduced the newly promoted and newly hired employees.
- Chief Echave also introduce the newly promoted and newly hired employees.

CALL TO THE PUBLIC

- Ken Kudge, Bisbee resident requested that the insurance funds be kept in a separate fund so we were able to see what was left. A proper accounting was necessary. He said that looking at tonight's accounts payable how would anyone know what we have and what we have left for a new City Hall. He suggested that either place it in the Capital Improvements Fund or a different account. Breaking it out would be very helpful with making future plans.

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

GENERAL BUSINESS:

1. ACCOUNTS PAYABLE: Subject to availability of funds

MOTION: Councilmember Cline moved to approve the accounts payable in the amount of \$336,639.70

SECOND: Councilmember Hansen

Councilmember Lindstrom asked if the payment to Executech was above and beyond the normal contract.

Mrs. Coronado responded that those were charges were associated with the new building set up. She explained that that budget was under budget at that time.

Councilmember Giacomino explained that on the first page, she did not fly somewhere. It was a hotel stay. She also asked about various charges to include water charges at the Cemetery. She wanted to point out that there were a lot of purchases being made to ACE hardware and B&D. She questioned why the City did not inventory any of these purchases.

MOTION PASSED: UNANIMOUSLY

2. Approval of the Consent Agenda

- A. Approval of the Minutes of the Regular Session of the Mayor and Council held on October 16, 2018 at 7:00PM.
Ashlee Coronado, City Clerk
- B. Approval of the Minutes of the Special Session of the Mayor and Council held on January 8, 2019 at 7:00PM.
Ashlee Coronado, City Clerk
- C. Approval of the Minutes of the Regular Session of the Mayor and Council held on January 15, 2019 at 7:00PM.
Ashlee Coronado, City Clerk
- D. Approval of the Resignation of Will Nathan from the iBisbee Committee.
Ashlee Coronado, City Clerk
- E. Approval of the Resignation of Cado Daily from the Parks and Recreation Committee.
Ashlee Coronado, City Clerk
- F. Approval of the Reappointment of William Bagby to the Public Safety Personnel Retirement Board with a Waiver for Length of Service.
Ashlee Coronado, City Clerk
- G. Approval of the Reappointment of Audrey "Luche" Giacomino to the Evergreen Cemetery Committee.
Ashlee Coronado, City Clerk

- H. Approval of the Reappointment of Kay Lynn Cummins to the Parks and Recreation Committee with a waiver for length of service.
Ashlee Coronado, City Clerk
- I. Approval of the Appointment of Sara Curtis to the Parks and Recreation Committee.
Ashlee Coronado, City Clerk
- J. Approval of the Appointment of Jennifer “Ginger” Ryan to the Planning and Zoning Commission.
Ashlee Coronado, City Clerk
- K. Approval of the Appointment of Frank Davis to the Design Review Board.
Ashlee Coronado, City Clerk
- L. Approval of the Appointment of Benjamin Lepley to the Design Review Board.
Ashlee Coronado, City Clerk
- M. Approval of the Appointment of Darin Giltner to the Youth Council as the Adult Advisor.
Ashlee Coronado, City Clerk
- N. Approval of a Park, Facility and Right of Way Use Permit for the Use of City Park for the 5th Annual Howl & Prowl Vintage Motorcycle Show on Saturday, May 25, 2019 from 6:00am to 6:00pm.
Ashlee Coronado, City Clerk
- O. Approval of a Park, Facility and Right of Way Use Permit for the Use of 100 Tombstone Canyon at the Iron Man to City Park for the Bisbee Pride Parade on Saturday, June 15, 2019 from 9:30am to 11:30am.
Ashlee Coronado, City Clerk
- P. Approval of a Park, Facility and Right of Way Use Permit for the Use of City Park, Storage and Parking for Bisbee Pride as follows: Daytime: Family Stage-Kid Activities and Evening Entertainment and Dance on Friday, June 14, 2019 from 12:00PM to 2:00AM, Saturday June 15, 2019 from 9:00am to 2:00am and Sunday, June 16, 2019 for cleanup.
Ashlee Coronado, City Clerk
- Q. Approval of a Park, Facility and Right of Way Use Permit for the Use of Grassy Park with surrounding parking for the Bisbee Pride Village on Friday, June 14, 2019, Saturday, June 16, 2019 from 6:00am to 2:00am and on Sunday, June 16, 2019 from 6:00am to 4:00pm.
Ashlee Coronado, City Clerk
- R. Approval of a Park, Facility and Right of Way Use Permit for the Use of Goar Park with four parking spaces for the Bisbee Pride’s Day stage: Amplifies Music/Talks on Friday, June 14, 2019 and Saturday, June 15, 2019 from 8:00am to 8:00pm.
Ashlee Coronado, City Clerk
- S. Approval of a Park, Facility and Right of Way Use Permit for the Use of Subway Street for Bisbee Pride to extend the festival to encompass side streets for vendors and events on Friday, June 14, 2019 from 12:00pm to 1:00pm, Saturday, June 15, 2019 from 10:00am to 10:00pm and Sunday, June 16, 2019 from 9:00am to 12:00pm.
Ashlee Coronado, City Clerk

- T. Approval of a Park, Facility and Right of Way Use Permit for the Use of Howell Avenue to Review Alley for Bisbee Pride to extend the Festival area of Vendors and events on Friday, June 14 from 12:00pm to 2:00am, Saturday, June 15, 2019 from 10:00am to 2:00am and Sunday, June 16, 2019 from 8:00am to 12:00pm.
Ashlee Coronado, City Clerk

- U. Approval of the Special Event Liquor License Application submitted by the Bisbee Firefighters Local 2146 for an event to be held at the Eddie King Baseball Field, Cochise Row, Bisbee, AZ on Saturday, February 16, 2019 from 8:00am to 10:00pm.
Ashlee Coronado, City Clerk

Councilmember Giacomino requested to pull item 2K and 2L.

MOTION: Councilmember Cline moved to approve the Consent Agenda Items A-J and M-U.

SECOND: Councilmember Hansen

ROLL CALL VOTE:

AYES: Councilmember Lindstrom, Giacomino, Higgins, Johns, Hansen, Cline and Mayor Smith.

NAYS: 0

MOTION PASSED: AYES -7; NAYS -0

ITEM 2K-2L:

Councilmember Giacomino wanted to know what the criteria was for choosing certain people over others. She explained that someone that was voted chairman for the Design Review Board, was well-liked by the peers yet Mayor Smith will not appoint him back onto the Design Review Board. She said that this was a slap in the face.

MOTION: Councilmember Giacomino moved to have Frank Davis and Benjamin Lepley removed from consideration.

SECOND: Councilmember Lindstrom

Councilmember Lindstrom said that it would be nice to have an explanation of the criteria on how people are picked. He requested some explanation as to why. He was concerned about the process and how they were chosen.

ROLL CALL VOTE:

AYES: Councilmember Lindstrom, Giacomino, Johns and Cline

NAYS: Councilmember Higgins, Hansen, Mayor Smith

MOTION PASSED: AYES -4; NAYS -3

OLD BUSINESS

NEW BUSINESS

- 3. Public Hearing and Discussion and Possible Approval of the Notice of Intent to Adopt Ordinance O-19-01; Amending Article 5.2.4, CM Zone, Division 2 Adding Cocktail Lounges and Taverns to Permitted Uses.
Paul Esparza, Planning Manager

Paul Esparza, Planning Manager explained that before Council was text amendments to the Zoning Code. Staff had been working with an applicant attempting to complete exterior and interior tenant improvements to the Biz Art Building on Brewery Gulch for a new comedy club. Upon review of the zoning code and map, it was discovered that the parcels along Brewery Gulch are zoned CM – 2, Commercial Mixed-Use. He explained that the zoning code requires that bars, taverns, saloons and such be in a C-3 or C-4, Commercial District. Staff met on this issue to find the quickest solution to resolve the problem and it was felt that by adding taverns and cocktail lounges to CM-2, would be the best approach. He gave an overview and breakdown on maps. He explained that this would mirror the Entertainment District. He went on to explain that the planning and zoning commission held a public hearing on December 20th and they have forwarded the unanimous recommendation to Mayor and Council for adoption of this text amendment.

Councilmember Johns asked if this rezoning would affect the historic designation.

Mr. Esparza responded that it would not.

Mayor Smith opened the Public Hearing.

Mayor Smith asked if anyone wished to speak in favor of this item.

Shawn Hicks, spoke in support of the text amendments. He said that he was involved in this Comedy Club. He explained that this establishment was surrounded by drinking establishments, that all have CM-2 Zoning. He said that none of the other establishments in Bisbee have CM-3 Zoning. He thought that this had been a mistake that needed to be corrected.

Mayor Smith asked if anyone wished to speak in opposition of this item.

Ken Budge, Bisbee resident said that he was coming before Council tonight wondering why we were wanting to change 96 buildings into this type of use. He understood the entertainment district, and thought that the Gulch could handle another bar. We were going from 20 zone buildings and adding 96 that could all become bars. For homeowners to make changes to building residents within 300 feet have to be notified, and this did not. He said that he thought that was what Special Use Permits were meant for. This would allow for proper notification within 300 feet. He asked why we would go with a big blanket change instead of using Special Use Permits.

Mayor Smith asked Ms. Coronado, City Clerk if there had been any communication for or against this item. Ms. Coronado responded, no.

Mayor Smith closed the Public Hearing.

Councilmember Giacomino asked if this passed, would that mean that they could serve alcohol at any time.

Mayor Smith responded that no, if someone wanted to put a liquor establishment in any of those places they would have to go to the liquor board first. Notification would have to be made.

Councilmember Lindstrom confirmed that each one individually would have to receive approval on a case-by-case basis.

Mayor Smith explained that each liquor license would have to come before Council for approval.

MOTION: Councilmember Lindstrom moved to approve the Notice of Intent to adopt ordinance O-19-01, amending articles 5.2.4, CM zone, Division 2 adding cocktail lounges and taverns to permitted uses.
SECOND: Councilmember Higgins.

ROLL CALL VOTE:

AYES: Councilmember Lindstrom, Giacomino, Higgins, Johns, Hansen, and Mayor Smith.

NAYS: Councilmember Cline

MOTION PASSED: AYES -6; NAYS -1

4. Discussion and Possible Approval of the Right of Way Use Permit for Chiricahua Community Health Center to be able to park their Mobile Medical Clinic in front of 312 Arizona Street.
Dwayne Wallace, Operations Manager

Mr. Wallace explained that Chiricahua contacted the City and requested that they be able to park their mobile clinic in front of their temporary offices at 312 Arizona St. This would allow for dealing with overflow due to them being in such a small space during construction.

MOTION: Councilmember Higgins moved to approve the Right of Way Use Permit for Chiricahua Community Health Center to be able to park their mobile medical clinic in front of 312 Arizona St.

SECOND: Councilmember Hansen

MOTION PASSED: UNANIMOUSLY

5. Discussion and Possible Approval of a Yiptel Service Agreement to provide Phone/Fax Service at City Hall.
Ashlee Coronado, City Clerk

Mrs. Coronado explained that before Council tonight was a 36 month Agreement with Yiptel for VOIP Phone and Fax services. This comes at a cost of \$411.00 per month. There would be around an \$800.00 per month savings. She explained that this system would be able to be relocated to any location the City may move to. They come preprogrammed.

Councilmember Johns asked if the City had looked into other companies to provide this service.

Ms. Coronado responded that this company was recommended by Executech, our IT provider. She did say that she had looked into other providers.

Councilmember Lindstrom said that he was having a hard time locating information on Yiptel.

Ms. Coronado responded that this came recommended by our IT Company so that would make it a very easy transition.

Councilmember Giacomino requested information on their location and asked if they were local.

Ms. Coronado responded that they had many locations and there were people that worked out of their homes to consult.

MOTION: Councilmember Cline moved to approve a Yiptel Service Agreement to provide Phone/Fax service at City Hall.

SECOND: Mayor Smith

ROLL CALL VOTE:

AYES: Councilmember Higgins, Johns, Hansen, Cline and Mayor Smith.

NAYS: Councilmember Lindstrom, Giacomino

MOTION PASSED: AYES -5; NAYS -2

6. Discussion and Possible Approval to Accept the letter of Intent not to renew the Intergovernmental Agreement for Legal Services between the City of Bisbee and the Cochise County Attorney's Office to include early termination.

David M. Smith, Mayor

Mayor Smith explained that the Council had voted to not extend the request for a contract extension with the county attorney's office. Shortly after a letter was received from the Cochise County Attorney's office requesting for early termination of their services.

MOTION: Councilmember Higgins moved to accept the Letter of Intent not to renew the Intergovernmental Agreement for Legal Services between the City of Bisbee and the Cochise County Attorney's Office to include the request for early termination.

SECOND: Mayor Smith

Councilmember Cline said that it was apparent that we would not renew at this time. At the time of the original discussion she said Council had wanted to go out and see if there were other options available. It seems as this has now turned to us severing ties. She explained that she had an issue with letting them out of the contract early, because we would need legal services at least until June.

Councilmember Johns said that there was no date on this proposed motion. She felt the motion was misleading and wanted a date from the County Attorney's Office as to when they wanted out. She didn't know if the county wanted out tonight.

Mr. Hanson responded that it would be tonight.

Councilmember Lindstrom said that this has turned into a big thing now. Council wanted to go look and see what the options were, and now we were offending the County Attorney's Office.

Mr. Hanson said that members of the Council were very insulting and they did not want to represent a body like that.

Councilmember Lindstrom said that it would give us a chance to be covered until June to find someone. He thought that the County should stay in their contract until June.

Mayor Smith said that it was very ironic that one or more members of Council indicated that the legal advice was substandard and yet they want to turn around to keep that legal advice. It was somewhat puzzling. That was the reason the county requested an early termination of their contract.

Councilmember Johns said that no matter what Council's opinion was of the Attorney's Office it was pointed out that the bulk of the work was with the City employees. They trust the Attorney's Office very much and were sad to see them go. That was her concern with the County leaving the contract early.

Councilmember Hansen said that this was an example of how this Council needed to consider the consequences of their actions. This has gone totally south. There were things that were said that were very insulting implying that the legal advice that we were getting was not acceptable. She didn't blame the County Board of Supervisors

or the Attorney for not wanting to work with this Council. She hoped that when decisions are made the Council would take into account what they are doing to the citizens and the employees of Bisbee.

Councilmember Cline said that the new Council had come in and they wanted to see what else was out there. They wanted to look at their options.

Mayor Smith explained that that was only fifty percent of the issue. The other half was that one or more members of the Council indicated that the legal advice was substandard. That was a fact. The recording was available.

Councilmember Lindstrom said that he didn't think it was a fact. He said that you can be happy with some aspects of anything it doesn't mean you're unhappy with everything. It's like an all or nothing thing with all of you.

Councilmember Higgins said at the meeting it was an up or down vote. There was always the option of tabling something, if Council wasn't ready to make a decision on it someone could have very easily made a motion to table the issue. But that option was not taken by anyone. If Council needed more time they should have tabled it.

Mr. Hanson wanted clarification on if there was a specific date included in the motion.

Mrs. Coronado responded that there was no specific date.

Mr. Hanson requested that the motion be amended to include a specific to state immediately.

Mayor Smith said he would do that.

MOTION: Mayor Smith moved to accept the letter of intent not to renew the intergovernmental agreement for legal services between the City of Bisbee and Cochise County Attorney's office to include early termination effective tonight.

SECOND: Councilmember Higgins

ROLL CALL VOTE:

AYES: Councilmember Lindstrom, Higgins and Mayor Smith.

NAYS: Councilmember Giacomino, Johns, Hansen and Cline

MOTION PASSED: AYES -3; NAYS -4

Mr. Hanson said that the Attorney's office would continue to take care of the City Clerks, Public Works, Finance, Police and Fire. Nothing in the contract obligates the attorneys to sit in the seat.

7. Public Hearing on Notice of Intent to Increase Rates for Sewer Service.
Keri Bagley, Finance Director

Mrs. Bagley explained that this was a public hearing on whether or not to increase the sewer fees. There were two options for the proposed increase. It was suggested that a work session be scheduled so that counsel could decide which rate schedule we should go with before actually moving the ordinance forward.

Mayor Smith clarified that counsel would not be voting on the rates tonight, this was just a public hearing.

Mayor Smith opened the public hearing.

Mayor Smith asked if there was anyone present that would like to speak in favor of this item.

Mayor Smith asked if there was anyone present that would like to speak against this item.

Deborah Reardon, Bisbee resident asked how far along we were on collecting unpaid sewer bills. She also asked how much was still owed. She went on to say she didn't have a problem paying her sewer bill, but it was hard especially when you are retired that you are paying and paying in the bill continues to go up. She thought that the bill was getting kind of high and she would like to see more done about collecting.

Mayor Smith responded that since we instituted the amnesty program we were at just under \$600,000 collected.

Doris Turner, Bisbee resident requested that Council take other things into consideration such as size of building and occupants of residences. People wouldn't mind paying this bill if it was fair.

Mayor Smith asked Mrs. Coronado if we had received any additional communication from any members of the public. Mrs. Coronado responded no.

Councilmember Giacomino said that she had people approach her regarding Airbnb's and why they were being charged a regular house sewer rate instead of a motel/hotel rate.

Mayor Smith closed the public hearing.

8. Discussion and Possible Approval of a Revised Visitor Center Manager Job Description.

Bill Higgins, Councilmember Ward I

Leslie Johns, Councilmember Ward I

Councilmember Johns said that this was on the agenda because there were some complaints in her ward about the Visitor Center Manager/Tourism Manager job not being filled quickly. Then it was discussed to revise the job description and it got to the public for review. She knew it was important to fill this position fast.

Councilmember Higgins said that this had become more complicated than they first thought. The Special Session on the 12th would be helpful to hear suggestions.

Rob Page, Bisbee business owner said he appreciated the upcoming Special Session on this position. His main concern was salary range. He said this was the only department that actually generates revenue. He said that this job was vitally important to what they do downtown.

Councilmember Hansen agreed with Mr. Page. She asked that Council consider tabling this item for further discussion.

MOTION: Councilmember Hansen moved to table this discussion.

SECOND: Councilmember Higgins

Councilmember Lindstrom said that he didn't understand why this wasn't something the City Manager and HR Director could take care of. He didn't understand why we would be calling a special work session for a job description.

Councilmember Giacomino said she didn't understand what we are prolonging this instead of hiring someone when there was already a pool of applicants.

ROLL CALL VOTE:

AYES: Councilmember Higgins, Johns, Hansen, Cline and Mayor Smith

NAYS: Councilmember Lindstrom and Giacomino

MOTION PASSED: AYES -5; NAYS -2

9. Discussion and Possible Approval of the Recommendation from the Bisbee Arts Commission to Fund a Grant Application for “A Dance History of Bisbee” by Rita Marie Verri for \$500.00 from the Bisbee Arts Commission Fund.

Bill Higgins, Council Liaison to the Bisbee Arts Commission

Councilmember Higgins explained that there were a number of these coming before Council this evening. These grants would not be coming out of city funds, they would be coming out of funds that were raised by the Bisbee Arts Commission through fundraising.

MOTION: Councilmember Higgins moved to approve the funding of the grant application for “A Dance History of Bisbee” by Rita Marie Verri for \$500 from the Bisbee Arts Commission Fund

SECOND: Councilmember Hansen

MOTION PASSED: UNANIMOUSLY

10. Discussion and Possible Approval of the Recommendation from the Bisbee Arts Commission to Fund a Grant Application for the Return of the Turkey Vultures 2019 for \$500.00 from the Bisbee Arts Commission Fund.

Bill Higgins, Council Liaison to the Bisbee Arts Commission

MOTION: Councilmember Higgins moved to approve the funding of the grant application for the Return of the Turkey Vultures 2019 for \$500 from the Bisbee Arts Commission fund.

SECOND: Councilmember Hansen

MOTION PASSED: UNANIMOUSLY

11. Discussion and Possible Approval of the Recommendation from the Bisbee Arts Commission to Fund a Grant Application for “Aurora Brings Color into the World” by Judy Murray for \$422.50 from the Bisbee Arts Commission Fund.

Bill Higgins, Council Liaison to the Bisbee Arts Commission

MOTION: Councilmember Higgins moved to approve the funding of the grant application for “Aurora brings Color into the World” by Judy Murray for \$422.50 from the Bisbee Arts Commission fund.

SECOND: Councilmember Lindstrom

MOTION PASSED: UNANIMOUSLY

12. Discussion and Possible Approval of the Recommendation from the Bisbee Arts Commission to Fund a Grant Application for the 2019 Tucson Symphony Concert for \$1,000.00 from the Bisbee Arts Commission Fund.

Bill Higgins, Council Liaison to the Bisbee Arts Commission

MOTION: Councilmember Higgins moved to approve the funding of the grant application for the 2019 Tucson Symphony Concert for \$1000 from the Bisbee Arts Commission fund.

SECOND: Mayor Smith

MOTION PASSED: UNANIMOUSLY

13. Discussion and Possible Approval of the Recommendation from the Bisbee Arts Commission to Fund a Grant Application for “Creative Clay Arts Activities” by Tonya Borgeson for \$500.00 from the Bisbee Arts Commission Fund.

Bill Higgins, Council Liaison to the Bisbee Arts Commission

MOTION: Councilmember Higgins moved to approve the funding of the grant application for “Creative Clay Arts Activities” by Tonya Borgeson for \$500 from the Bisbee Arts Commission fund.

SECOND: Mayor Smith

MOTION PASSED: UNANIMOUSLY

14. Discussion and Possible Direction to Staff regarding the City Attorney Search.

Gabe Lindstrom, Councilmember Ward III

Councilmember Lindstrom said that after talking to the City Clerk regarding where we were advertising for city attorneys, he wanted to discuss the other options.

Mrs. Coronado explained that staff needed direction from Council as to whether they wanted to continue with the RFP, or as an employee.

Councilmember Lindstrom said that this was an emergency situation.

Councilmember Johns asked what other options were as far as advertising.

Mrs. Coronado responded that we were advertising with the League of Arizona Cities and Towns, our City website and newspapers.

Mayor Smith requested that we contact the Arizona State Bar to see if they had a site to advertise on. We will expand our search.

15. Discussion and Possible Approval to waive Attorney/Client Privilege to discuss Memo from County Attorney regarding JACOBS Contract.

Per ARS § 38-431.03(a)(4), the City Council may vote to go into executive session for discussion or consultation with the attorneys of the public body in order 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.

Leslie Johns, Councilmember Ward I

Joni Giacomino, Councilmember Ward II

MOTION: Councilmember Johns moved to waive Attorney/Client privilege to discuss the memo from the County Attorney regarding Jacobs contract.

SECOND: Councilmember Giacomino

ROLL CALL VOTE:

AYES: Councilmember Lindstrom, Giacomino, Higgins, Johns, Hansen, Cline and Mayor Smith.

NAYS: 0

MOTION PASSED: AYES -7; NAYS -0

16. Ratification of Actions Taken on November 20, 2018. The purpose of this item is to ratify an earlier action by the Mayor and Council regarding entering into a Five Year Contract with JACOBS for Operations Services of the City of Bisbee's Wastewater Treatment Plant.

Leslie Johns, Councilmember Ward I

Joni Giacomino, Councilmember Ward II

Councilmember Johns explained that since the attorney-client privileges were waived regarding the memo. She explained that she did seek outside counsel on this she spoke to Spencer Smith from Deaconcini McDonald who had written several wastewater treatment plant contracts including the one in Nogales. This contract does not stand for many reasons. The memo written from Mr. Hanson stating that Councilmember Giacomino claim that the contract was illegal was specious and merely wishful. She said that was not true. She said the opinion she received said that Arizona law was very strict, that the contract was only good for one year and that the majority of the Council approved the motion for one-year contract. She said that the contract that was signed was a five-year contract and since the mayor cannot authorize a contract on his own and he's the one that signed the contract, it was not a good agreement. It would have to be approved by Council and the majority of Council approved a 12-month contract. The five-year contract was not valid because it was not approved by Council. She was informed that Jacobs could sue us over this. It was unlikely that they would. She said to make this contract valid this contract would have to be re-voted on by Council. This contract was good for this year, but Council needed to take action on this.

Councilmember Giacomino said that this needed to be addressed until then we are only running on a one-year contract. Jacobs had the option to breach, but her concern was the wording. She suggested finding outside legal who was familiar with contract law.

Dwayne Wallace, said that the plant was doing better than it had ever been. A gentleman has moved here with this three children and wife, that's three more kids in our school district. Everyone knew that this was a five-year contract. He urged Council to ratify this contract for five years. He said that Jacobs has agreed to negotiate an escape clause once we have an attorney.

Mayor Smith explained that we have varying legal opinions. If we needed to hire outside counsel that was fine.

Donna Pulling, Bisbee resident said she has handed out an appeal on the city manager's decision regarding this contract. She explained that one of the areas of the contract was defected it didn't have a cancellation clause in a multiyear contract of over \$500,000. She explained that there were three other violations of this contract. She went on to say that this was not a valid contract.

MOTION: councilmember Johns moved to hire outside counsel regarding this matter.

SECOND: Councilmember Giacomino

Mayor Smith said that was an invalid motion. Hiring an attorney was not on the agenda. The agenda item states to ratify. He explained that we could add that to the agenda for next week.

MOTION: Mayor Smith moved to ratify the actions taken on November 20, 2018 which was actions of the Mayor and Council regarding entering into a five-year contract with Jacobs for operations services of the city of Bisbee wastewater treatment plant.

SECOND: Councilmember Higgins

ROLL CALL VOTE:

AYES: Councilmember Higgins, Hansen and Mayor Smith

NAYS: Councilmember Lindstrom, Giacomino, Johns and Cline

MOTION PASSED: AYES -3; NAYS -4

17. Discussion and Possible Approval of a Motion to go into Executive Session to discuss the Job Performance of City manager, Robert E. Smith, Per 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.

Leslie Johns, Councilmember Ward I
Joni Giacomino, Councilmember Ward II

MOTION: Mayor Smith moved to enter into executive session

SECOND: Councilmember Johns

MOTION PASSED: AYES-6; NAYS -1 (Higgins)

MOTION: Councilmember Hansen moved to come out of Executive Session

SECOND: Councilmember Cline

MOTION PASSED: UNANIMOUSLY

18. Discussion and Possible Approval of a Lease Agreement for Copy Machines with XEROX Corporation for City Hall Offices.

Ashlee Coronado, City Clerk

Mrs. Coronado explained that before Council tonight was a lease agreement for two copy machines through Xerox Corporation. This was State Contract pricing.

Councilmember Cline asked why we were leasing in opposed to purchasing a machine outright.

Mrs. Coronado explained that maintenance and toners were included. If anything goes wrong with the machines it would be taken care of through the lease. Once our lease ws up we are able to upgrade after a few years.

MOTION: Councilmember Higgins moved to approve the lease agreement with Xerox Corporation for City Hall offices.

SECOND: Councilmember Johns

ROLL CALL VOTE:

AYES: Councilmember Lindstrom, Giacomino, Higgins, Johns, Hansen, Cline and Mayor Smith.

NAYS: 0

MOTION PASSED: AYES -7; NAYS -0

19. City Manager's Report:

- Mr. Robert Smith gave an update on the ongoing projects with the Public Works Dept. He also gave an update on the Public Works Director search.
- He also gave an update on the other departments.

COUNCIL COMMENTS OR FUTURE AGENDA ITEM SUGGESTIONS: (Council members may suggest topics for future meeting agendas, but Council will not here discuss, deliberate or take any action on these topics.):

MOTION: Councilmember Higgins moved to adjourn the meeting.

SECOND: Councilmember Lindstrom

MOTION PASSED: UNANIMOUSLY

ADJOURNMENT: 9:04 PM

Anna Cline, Mayor Pro Tempore