

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, JULY 16, 2019 AT 7:00 PM AT THE CITY HALL BUILDING, 915 S. TOVREAVILLE ROAD, BISBEE, ARIZONA.

THE MEETING WAS CALLED TO ORDER BY _____ AT _____.

ROLL CALL

COUNCIL

Councilmember Louis Pawlik, Ward III
Councilmember Joni Giacomino, Ward II
Councilmember Bill Higgins, Ward I
Mayor David M. Smith
Councilmember Leslie Johns, Ward I Excused
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
Joelle Landers, Personnel Director
Jesus Haro, Public Works Director
Albert Echave, Police Chief
George Castillo, Fire Chief

CITY ATTORNEY

Vacant

INVOCATION: Mayor Smith asked for a moment of silence to reflect and think about our public safety officials/professionals for all that they do. There's been 7 wildfires in Arizona in the last seven days

PLEDGE OF ALLEGIANCE

MAYOR'S PROCLAMATIONS AND ANNOUNCEMENTS:

- Mayor Smith announced that item #5 would be pulled from the agenda along with item 2D of the consent agenda.

CALL TO THE PUBLIC

"During the proper time on the agenda, taxpayers or residents of the city, or their authorized representatives, may address the council on any matter concerning the City's business or any matter over which the council has control (oral presentations shall not be repetitious and shall be confined to 3 minutes' maximum duration.)" Ordinance O-91-29.

THE FOLLOWING ITEMS WERE 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 \$226,016.61.

SECOND: Councilmember Hansen

MOTION PASSED: UNANIMOUSLY

2. Approval of the Consent Agenda

- A. Approval of the Minutes of the Special Session of Mayor and Council held on July 2, 2019 at 5:30 pm.
Ashlee Coronado, City Clerk
- B. Approval of the Minutes of the Regular Session of Mayor and Council held on July 2, 2019 at 7:00 pm.
Ashlee Coronado, City Clerk
- C. Approval of the Minutes of the Special Session of Mayor and Council held on July 9, 2019 at 5:30 pm.
Ashlee Coronado, City Clerk
- D. Approval of the Appointment of Dwayne Wallace to the Civil Service Commission.
Ashlee Coronado, City Clerk
- E. Approval of the Appointment of Dwayne Wallace to the Community Sustainability Commission.
Ashlee Coronado, City Clerk
- F. Approval of the Appointment of Marsha Mayer to the Parks and Recreation Committee.
Ashlee Coronado, City Clerk
- G. Approval of the Resignation of Louis Pawlik from the Planning and Zoning Commission.
Ashlee Coronado, City Clerk
- H. Approval of a Park, Facility and Right of Way Use Permit for Central School Project for the use of Grassy Park for the Annual Plein Air Festival to be held on Saturday, October 12, 2019 from 12:00pm (Noon) to 5:00 pm.
Ashlee Coronado, City Clerk

MOTION: Councilmember Cline moved to approve the Consent Agenda items A-C and E-H.

SECOND: Councilmember Pawlik

ROLL CALL VOTE:

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

NAYS: 0

MOTION PASSED: AYES -6; NAYS -0

OLD BUSINESS

- 3. Discussion and Possible Approval of the Municipal Effluent Option Agreement between Cochise County and the City of Bisbee for a 5-year term.

David M. Smith, Mayor

Mayor Smith explained that there were several speakers and they would be given their three minutes to address this. He wanted to make sure everyone was on the same playing field and explained that this was an option agreement not a sales agreement.

Matt Cook, Bisbee resident said that Bisbee was especially blessed. He said that Bisbee was roughly 700 feet higher than our aquifer which could be recharged from our wastewater. Bisbee has wonderful things going for it and his concern was this whole effluent issue and the questions that had not been answered. He said there was

due diligence that had not been done. He asked where did the contract for the Bisbee effluent project really come from? Who were the authors? Where their work sessions for the Bisbee effluent project? Was this project penciled into the County budget without the Work Sessions with the City of Bisbee? Can the county create certificates of water adequacy for this effluent without building a pipeline? He said that was a very serious question and that the answers were at ADEQ, ADWR and the office of the Attorney General. He asked if the certificates of adequacy could be purposed for developments outside the Bisbee/Naco sole-source aquifer. Will the County share the liability for this effluent should the city be sued by landowners or other stakeholders? The terms of this contract obligate the city for at least 25 years it contains a poison pill that would cost millions of dollars to the city if we were to back out. Bisbee was the only city in the state that signs contracts without exit clauses or terms to renegotiate contracts. He urged Council be aware of what they do.

Cado Daily, Bisbee resident wanted to repeat some things that were mentioned at the last meeting so it was clear in our heads. She said we were being asked to contribute some of our effluent to the river and that's a good thing. If Bisbee does not provide some water to that stretch of the river we would be contributing to the killing of the cottonwoods, willows, vegetation and animals. The water was not coming down from Mexico as it has been. We do not know why. That section of the river is declining. By Bisbee providing some of our effluent to that section we would be helping to keep that part of the river going. She explained that we needed to protect the river. She went on to say that we all needed to do our part in conserving water.

Steve Dey, Naco resident said whose water was it anyways? He said that water was purchased by the citizens of Bisbee, it was collected in a facility paid for by the citizens of Bisbee. It was treated by personnel paid for by the citizens of Bisbee. In his mind the citizens of Bisbee own the water not the City Council. But Council was elected to make informed responsible decisions about things that are publicly owned. He went on to discuss the vegetation. He said he also wanted to stabilize the upper San Pedro River basin, but not by pumping treated water into the basin. We needed to keep our water here recharging our own separate sole-source international aquifer.

Mayor Smith said that at the request of the Council Mr. Pauken had contacted Ann Roberts, Attorney, to review this contract for the City of Bisbee. He requested that Miss Roberts give us the take on her review.

Ms. Ann Roberts, said that she was retained to review this option agreement. She explained that the version before Council tonight for consideration was the version she created based on revisions on the version that the County had sent over. She said that everyone needed to remember that this was just an option agreement that was good for five years. What the city was saying was we are willing to sell these 200 acre-feet to the county at some point in the future. A part of this that may be confusing were the terms in this option agreement that the parties wanted to define for future use in what was going to be named the Contemplated Effluent Agreement. That would come later on after considerable advances were made on the County's behalf. She said one big change in the agreement was that she didn't believe that the City of Bisbee should be on the hook for liquidated damages while this option was in place. If the county wanted to come back and discuss something to that effect, her position would be if the county was willing to spend some money on the project and the city breached the agreement for whatever reason then, if there was a breach it would be for actual damages. She did not agree with the liquidated damages clause. She explained that she moved that portion of the document into the Contemplated Effluent Agreement. She said because we were dealing with an odd animal with this agreement, remember that we were looking at these terms as they would go into a future agreement. That did not mean that we did not have the ability to negotiate with the future agreement. She explained that the city would enter into this option agreement for five years to agree not to sell all of our effluent water and have 200 acre-feet for the County available. She did clarify that all the city would do was guarantee the 200 acre-feet at market value and market value would be reevaluated every five years which would be to the benefit of the city if the value went up and to the county's benefit if the market went down.

Councilmember Pawlik asked if within the five-year period the pipeline was not built would the City still be on the hook for liquidated damages or any other provisions of this option.

Ms. Roberts explained the way she had it written now there were no liquidated damages within the option agreement. It would only be if the Contemplated Option Agreement were negotiated in the future.

Mr. Pawlik said if the money was not raised in the pipeline was not built what would happen.

Ms. Roberts said the option would expire.

Councilmember Giacomino asked if wastewater was considered a utility. She said Section 31.2 of the Charter stated that something like this would have to have an Ordinance.

Mr. Pauken responded no. He heard this question earlier today. He said within section 7.05 of the Charter stated the actions that required an ordinance. He said we were not establishing or altering anything. The pipeline would not be the city's. Mr. Pauken went on to say that Councilmember Giacomino question was about infrastructure and we would not be adding to our infrastructure. They are hooking their pipe to our discharge.

Councilmember Cline said she felt better with the 5-year option rather than going into a 25-year agreement.

Mr. Pauken said there were a series of several questions submitted to him via email. He explained all these questions would need to be answered between now and the time that the County and the city would come back to the table to discuss the Contemplated Agreement. There was a ton of work that needed to be done between now and five years.

Mayor Smith said that what we have in our packet tonight was different from what the Board of Supervisors had passed. If this was passed tonight it would have to go before the County Board of Supervisors again. Should that not occur this would dissolve anyway.

MOTION: Councilmember Higgins moved to approve the Municipal Effluent Option Agreement between Cochise County and the City of Bisbee for a 5-year term.

SECOND: Councilmember Hansen

ROLL CALL VOTE:

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

NAYS: Councilmember Pawlik, Giacomino

MOTION PASSED: AYES -4; NAYS -2

NEW BUSINESS

4. Discussion and Possible Approval of Resolution R-19-08; a Resolution of the Mayor and City Council, City of Bisbee, County of Cochise, State of Arizona, fixing, levying and assessing the amount to be raised by the City of Bisbee from property taxation and fixing and determining the property tax rate for the 2019-2020 fiscal year and providing for severability.

Keri Bagley, Finance Director

Ms. Bagley explained that this was the Resolution to increase the property tax rate for fiscal year 19-20 by 2% to 2.9152 per one hundred dollars of assessed value. This was the maximum allowed.

Councilmember Giacomino asked why we were doing the maximum. It hasn't always happened.

Mr. Pauken explained that the maximum amount raises may be a total of \$20,000. The state legislature passed a law that told cities and towns if you eliminate your property tax or cut your property tax, and you desire to get it

back at a later date you could only go in increments of 2%. This was a sound conservative way to ensure that our revenues remained as diverse as possible.

MOTION: Councilmember Higgins moved to approve Resolution R-19-08 fixing, levying and assessing the amount to be raised by the City of Bisbee from property taxation and fixing and determining the property tax rate for the 2019-2020 fiscal year in the amount of \$2.9152 per \$100 of assessed valuation and providing for severability.

SECOND: Mayor Smith

ROLL CALL VOTE:

AYES: Councilmember Pawlik, Higgins, Hansen and Mayor Smith.

NAYS: Councilmember Giacomino, Cline

MOTION PASSED: AYES -4; NAYS -2

5. The Design Review Board Annual Report.

Michael McPartlin, Vice-Chair Design Review Board

This item was pulled from the agenda.

6. Discussion and Possible Approval of the Appointment of Theresa Coleman as the City Manager, Effective July 29, 2019, and the Approval of an Employment Agreement with Ms. Coleman.

Stephen J. Pauken, Interim City Manager

Nanette Slusser, Bisbee resident explained she was a reference for Heather Ruder who applied for the position of City Manager. Because of her relationship with Heather she had kept up with what she had been doing over the years. When a call was made to Heather to congratulate her on the position she had just finished with negotiations, and explained that she had not gotten through negotiations. Ms. Slusser said that she had the privilege of speaking to the City Manager today to get additional background on the negotiations and how they occurred. She then made phone calls to former colleagues and human resources to see how we got to a place where the negotiations failed. It was really a fundamental difference between hiring someone with qualifications and number of years of experience and hiring for a job. In her discussions with Ms. Ruder she understood that she was being hired for a job. Once you get someone on board, you then go to what can we use to support the salary they were asking for, and in this case there was breakdown in negotiations. That probably would have been fine if everything closed after that and someone else was hired. Unfortunately, what gives the appearance to people on the outside of some challenges with this process was that the new candidate was offered more money than the old candidate who was the number one selected candidate. Her hopes were we didn't have to hire another City Manager as long as she lived in Bisbee.

Mr. Pauken said he was delighted to put forward this recommendation of Theresa Coleman to serve as city manager with an effective date of July 29th. He explained that Council had the opportunity to review the agreement in executive session during the last meeting. He explained this was the second city manager he has hired in the past 10 months. He had no doubt Ms. Coleman will do well. He didn't want to go into further discussion because he believed that negotiations were a dynamic process, some succeed and some do not. He didn't feel that bringing up details of contract negotiation and a public domain serve's best. He said the parting with Ms. Ruder at the end of the negotiations was mutual. By keeping it that way her opportunities for a position somewhere else in Arizona was well improved. With that he recommends this contract with Theresa Coleman.

Motion: Councilmember Cline moved to appoint Theresa Coleman to serve as City Manager of the City of Bisbee effective July 29, 2019 and approve the employment agreement with Ms. Coleman.

SECOND: Councilmember Pawlik

ROLL CALL VOTE:

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

NAYS: 0

MOTION PASSED: AYES -6; NAYS -0

- 7. Discussion and Possible Approval on a Professional Services Contract for Interim City Attorney with the Ledbetter LLF Law Firm, P.L.C.

Stephen J. Pauken, Interim City Manger

Mr. Pauken said as discussed at last week’s meeting Council reviewed as asked us to contact Ledbetter LLF to serve as the Interim City Attorney. This was a fixed-rate contract set at \$10,000 per month for the next six months. It could be terminated on an early basis with notice if we so desire.

MOTION: Councilmember Pawilk moved to approve the Professional Services Contract for Interim City Attorney with the Ledbetter LLF law firm, P.L.C.

SECOND: Councilmember Hansen

ROLL CALL VOTE:

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

NAYS: 0

MOTION PASSED: AYES -6; NAYS -0

- 8. Discussion and Possible Approval of a Tourism Marketing Agreement with a Contractor, and a Return to the Position Description of Visitor Center Manager and the Authority to Advertise for Tourism Marketing and a Visitor Center Manager.

Stephen J. Pauken, Interim City Manager

Mr. Pauken explained that this position was discussed approximately 6 months ago, some recommendations were made by the iBisbee Committee for a new position at a new rate of pay. It was a different job description. The new job description showed some difficulty in identifying an appropriate candidate in which to hire. With a series of meetings with a series of different people an idea was put forth. The idea came about that what we could do was go back to the Visitor Center Manager and then go out and find someone who specializes in marketing. They are very two distinct skill sets. One person that he was able to interact with was the chair of the iBisbee Committee and he was agreeable to this. Part of the discussions that were had involved Jen Luria. Mr. Pauken said that he requested her to draw up a scope of work. What we are requesting from Council this evening was to pass a motion authorizing staff to advertise for a Tourism and Marketing firm for the city and to direct staff to hire a Visitor Center Manager.

MOTION: Councilmember Cline moved to authorize staff to advertise for a person or firm to engage in tourism marketing for the City of Bisbee as well as direct staff to hire a Visitor Center Manager.

SECOND: Mayor Smith

MOTION PASSED: UNANIMOUSLY

- 9. Discussion and Possible Approval to Authorize the Bisbee Police Department to make the necessary changes to the intersection of D’Autremont Avenue and Shattuck Street effectively making it an all-way stop.

Albert Echave, Police Chief

Chief Echave explained that he had received a call from a concerned citizen who lives on that four-way intersection. They were concerned with the traffic flow and limited visibility with the northbound traffic. He went out and looked at the intersection and indeed the visibility was limited. He said that Mr. Haro also took a look at it and produced the document in the packet.

Councilmember Giacomino thanked Chief Echave because she almost was broadsided the other day.

MOTION: Councilmember Hansen moved to authorize to make the necessary changes to the intersection of D'Autremont Avenue and Shattuck Street effectively making it an all way stop.

SECOND: Councilmember Giacomino

MOTION PASSED: UNANIMOUSLY

10. City Manager's Report:

- Verbal Update on the AOT Grant Application- Mr. Pauken gave an update on the application and explained that it had been submitted to AOT. He thanked Jen Luria and Iona Smerekenich for their assistance.
- Other current events (No Discussion)

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 Pawlik

MOTION PASSED: UNANIMOUSLY

ADJOURNMENT: 8:04 PM

David M. Smith, Mayor