

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 WEDNESDAY, JUNE 21, 2017, AT 6:00PM PM IN THE BISBEE MUNICIPAL BUILDING, 118 ARIZONA STREET, BISBEE, ARIZONA.

THE MEETING WAS CALLED TO ORDER BY _____ AT _____.

ROLL CALL

COUNCIL

Councilmember Anna Cline, Ward III
Councilmember Joan Hansen, Ward II
Councilmember Frank Davis, Ward I
Mayor David M. Smith
Councilmember Bill Higgins, Ward I
Councilmember Douglas Dunn, Ward II , Mayor Pro Tempore
Councilmember Gabe Lindstrom, Ward III

STAFF

Richard J. Marsh Jr., City Manager
Ashlee Coronado, City Clerk
Keri Bagley, Finance Director
Albert Echave, Police Chief
Mark Burneleit, Fire Chief
Andy Haratyk, Public Works Director

CITY ATTORNEY

Elda Orduno

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

1. Discussion and Possible Approval of a Resolution stating intent to remove the City Manager.
David M. Smith, Mayor
2. Discussion and Possible recommendations on how to move forward in filling the vacant City Manager position.
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 118 Arizona St., 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: _____

Regular Special

DATE ACTION SUBMITTED: June 20, 2017

REGULAR **CONSENT**

TYPE OF ACTION:

RESOLUTION **ORDINANCE** **FORMAL ACTION** **OTHER**

SUBJECT: DISCUSSION AND POSSIBLE APPROVAL OF A RESOLUTION STATING INTENT TO REMOVE THE CITY MANAGER.

FROM: **David M. Smith, Mayor**

RECOMMENDATION: **At Council's Discretion**

PROPOSED MOTION: **Alternate Motions: i) I move to adopt a Resolution of the Mayor and Council Pursuant to Section 3.09 of the Charter, Stating a Preliminary Intent to Remove the City Manager *with cause* and Suspending the City Manager from Duty; or ii) I move to adopt a Resolution of the Mayor and Council Pursuant to Section 3.09 of the Charter, Stating a Preliminary Intent to Remove the City Manager *without cause* and Suspending the City Manager from Duty.**

DISCUSSION:

Following an evaluation of the City Manager on June 19, 2017, the Council directed staff to prepare an agenda for a possible resolution stating the Council's preliminary intent to remove the City Manager and suspend him from duty. Two alternate resolutions are attached. One calls for possible termination with cause and the other calls for possible termination without cause.

Pursuant to the City's contract with the City Manager and Section 3.09 of the Charter, termination with cause requires the Council to find that the City Manager has committed malfeasance or misfeasance, defined under Arizona law as follows: 'malfeasance' as a ground for removal is doing that which an officer has no authority to do, and is positively wrong or unlawful, whereas 'misfeasance' by an officer is doing in a wrongful manner that which the law authorizes or requires him to do".

If the Council removes the City Manager *with cause*, the City is not obligated to pay the City Manager his salary or benefits after the date of the preliminary notice of termination, except that he would be entitled to be paid for any accrued, unused paid time off. On the other hand, if the Council removes him *without cause*, the City would be obligated to pay him an additional three months salary following the preliminary resolution for removal.

If the Council adopts a Resolution for removal, whether with or without cause, the City Manager is allowed ten (10) days to reply in writing and may request a public hearing, which shall be held no earlier than twenty (20) days nor later than thirty (30) days after the City Manager files such a request.


This CAF is accompanied by the City Manager's contract and alternative draft resolutions.

FISCAL IMPACT:

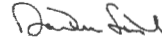
DEPARTMENT LINE ITEM ACCOUNT:

BALANCE IN LINE ITEM IF APPROVED:

Prepared by:


Eida Orduno
City Attorney

Reviewed by:


David M. Smith
Mayor

David Smith
Jun 20 2017 11:33 AM

RESOLUTION R-17-08

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF BISBEE, PURSUANT TO SECTION 3.09 OF THE CITYCHARTER, STATING A PRELIMINARY INTENT TO REMOVE THE CITY MANAGER AND SUSPENDING THE CITY MANAGER FROM DUTY

WHEREAS, on July 19, 2016, the Mayor and Council approved an Employment Agreement retaining Richard J. Marsh, Jr. as City Manager, and such Employment Agreement was duly executed; and

WHEREAS, pursuant to the Employment Agreement, the City Manager was appointed for an indefinite term; and

WHEREAS, pursuant to the Employment Agreement, and consistent with Section 3.09 of the City Charter, the Mayor and Council may remove the City Manager without cause; and

WHEREAS, pursuant to the Employment Agreement, and consistent with Section 3.09 of the City Charter, if the City Manager is removed without cause, the Manager shall be paid forthwith upon his removal his salary for the next three months following the adoption of the preliminary resolution for removal; and

WHEREAS, pursuant to Section 3.09 of the Charter, upon adopting a resolution stating a preliminary intent to remove the City Manager, the City Manager is allowed ten (10) days to reply in writing and may request a public hearing, which shall be held no earlier than twenty (20) days nor later than thirty (30) days after the City Manager files such a request; and

WHEREAS, pursuant to Section 3.09 of the Charter, after such public hearing, if one is requested, and after full consideration, the Mayor and Council may adopt a final resolution of removal; and

WHEREAS, pursuant to Section 3.09 of the Charter, by preliminary resolution the Mayor and Council may suspend the City Manager from duty.

NOW, THEREFORE, BE IT PRELIMINARILY RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF BISBEE, COUNTY OF COCHISE, STATE OF ARIZONA, THAT:

1. It is the intent to remove the City Manager without cause pursuant to Section 3.09 of the Charter.
2. The City Manager is preliminarily suspended from duty, effective immediately, and is not to report to work, access City facilities, or use any City assets, including, but not limited to, computer, phone or vehicle, or have contact with any

City employee for any purpose related to work (except to notify the City Clerk of his request for a public hearing pursuant to Section 3.09 of the Charter) until notified otherwise by the Mayor in writing.

3. If the City Manager replies to the preliminary resolution to remove him, and he requests a public hearing, the City Clerk is directed to set a public hearing before the Mayor and Council within the time frames required by Section 3.09 of the Charter.

PASSED, ADOPTED, AND APPROVED BY THE MAYOR AND COUNCIL OF THE CITY OF BISBEE ON THIS __ DAY OF JUNE, 2017.

APPROVED:

David Smith, Mayor

ATTEST:

Ashlee Coronado, City Clerk

APPROVED AS TO FORM:

Elda Orduno, City Attorney

RESOLUTION R-17-08

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WHEREAS, on July 19, 2016, the Mayor and Council approved an Employment Agreement retaining Richard J. Marsh, Jr. as City Manager, and such Employment Agreement was duly executed; and

WHEREAS, pursuant to the Employment Agreement, the City Manager was appointed for an indefinite term; and

WHEREAS, pursuant to the Employment Agreement, and consistent with Section 3.09 of the City Charter, the Mayor and Council may remove the City Manager for cause, defined as malfeasance or misfeasance; and

WHEREAS, the Mayor and Council find that the City Manager has committed malfeasance and/or misfeasance in the performance of his duties; and

WHEREAS, pursuant to Section 3.09 of the Charter, upon adopting a resolution stating a preliminary intent to remove the City Manager, the City Manager is allowed ten (10) days to reply in writing and may request a public hearing, which shall be held no earlier than twenty (20) days nor later than thirty (30) days after the City Manager files such a request; and

WHEREAS, pursuant to Section 3.09 of the Charter, after such public hearing, if one is requested, and after full consideration, the Mayor and Council may adopt a final resolution of removal; and

WHEREAS, pursuant to Section 3.09 of the Charter, by preliminary resolution the Mayor and Council may suspend the City Manager from duty.

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his request for a public hearing pursuant to Section 3.09 of the Charter) until notified otherwise by the Mayor in writing.

3. If the City Manager replies to the preliminary resolution to remove him, and he requests a public hearing, the City Clerk is directed to set a public hearing before the Mayor and Council within the time frames required by Section 3.09 of the Charter.

PASSED, ADOPTED, AND APPROVED BY THE MAYOR AND COUNCIL OF THE CITY OF BISBEE ON THIS __ DAY OF JUNE, 2017.

APPROVED:

David Smith, Mayor

ATTEST:

Ashlee Coronado, City Clerk

APPROVED AS TO FORM:

Elda Orduno, City Attorney



REQUEST FOR MAYOR & COUNCIL ACTION
Session of: June 21, 2017

Regular Special

DATE ACTION SUBMITTED: <u>June 20, 2017</u>			
REGULAR	<input checked="" type="checkbox"/>	CONSENT	<input type="checkbox"/>
TYPE OF ACTION:			
RESOLUTION	<input type="checkbox"/>	ORDINANCE	<input type="checkbox"/>
FORMAL ACTION	<input type="checkbox"/>	OTHER	<input checked="" type="checkbox"/>
SUBJECT: DISCUSSION AND POSSIBLE APPROVAL/RECOMMENDATION ON HOW TO MOVE FORWARD IN FILING THE VACANT CITY MANAGER POSITION.			

FROM: David M. Smith, Mayor

RECOMMENDATION: At the discretion of the Mayor and Council

PROPOSED MOTION: At the discretion of the Mayor and Council

DISCUSSION:

This agenda item will provide an additional opportunity for input and direction as to how you may wish to proceed in filling the position of City Manager.

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: *David Smith*
David Smith
Jun 20 2017 11:37 AM
David M. Smith
Mayor