

## 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, JUNE 21, 2016, AT 7:00 PM IN THE BISBEE MUNICIPAL BUILDING, 118 ARIZONA STREET, BISBEE, ARIZONA.

THE MEETING WAS CALLED TO ORDER BY MAYOR OERTLE AT 7:10PM.

### ROLL CALL

#### **COUNCIL**

Councilmember Eugene Conners, Ward I  
Councilmember Joan Hansen, Ward II  
Councilmember Shirley Doughty, Ward III  
Mayor Ronald Oertle  
Councilmember Anna Cline, Ward III, Mayor Pro Tempore  
Councilmember Douglas Dunn, Ward II  
Councilmember Serena Sullivan, Ward I

#### **STAFF**

Jestin Johnson, City Manager  
Ashlee Coronado, City Clerk  
Sharon Buono, Finance Director  
Marc Burneleit, Fire Chief  
Andy Haratyk, Public Works Director

#### **CITY ATTORNEY**

Britt Hanson

INVOCATION: Mayor Oertle asked that we reflect on the good things in our lives, family, friends, and the community we live in.

### PLEDGE OF ALLEGIANCE

#### MAYOR'S PROCLAMATIONS AND ANNOUNCEMENTS:

- Mr. Haratyk spoke about Bud Upchurch and the paving of his road. Mayor Oertle presented Sybil and Bud Upchurch with a service award.
- Mayor Oertle read a letter of Appreciation from the iBisbee Committee for Jestin Johnson. He also extended his best wishes to Mr. Johnson on his new adventure in Georgia.
- Mayor Oertle read the Killer Termites Day Proclamation.

#### CALL TO THE PUBLIC

- Marilyn Seibold, Bisbee resident read a letter regarding Jestin and how much he would be missed. She thanked Jestin for his hard work and dedication.
- Allison Williams, Bisbee resident thanked Jestin for his support and leadership to the staff at the library. He will be missed. She asked that you support the upcoming event by the Friends of the Library. She mentioned that a benefit would be held for the Friends of the Library and KBRP.
- Cynthia Conroy, Bisbee resident thanked Jestin for everything.
- Susan Blackford, Bisbee resident said she would be back to petition the council for a new ambulance.

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 Accounts Payable in the amount of \$318,067.01.

SECOND: Councilmember Sullivan

MOTION PASSED: UNANIMOUSLY

- 2. Approval of the Consent Agenda

- A. Approval of the Appointment of James Richmann to the Community Sustainability Commission.

Ashlee Coronado, City Clerk

- B. Approval of the Park, Facility, and Right-of-Way Use Permit for the Use of Several Streets for the Coaster Race Trial Run on June 25<sup>th</sup> Pre-sets July 3<sup>rd</sup> and for the Race on July 4, 2016.

Ashlee Coronado, City Clerk

- C. Approval of the Special Event Liquor License Application submitted by the Bisbee Radio Project, Inc. (KBRP) for an Event to be held at the Bisbee Royale, 94 Main Street, Bisbee, AZ on Friday, July 1, 2016 from 5:00PM to 11:59PM; Ryan Bruce, Applicant.

Ashlee Coronado, City Clerk

- D. Approval of a Liquor License Application for the Crazy Ponyz Saloon located at 37 Ok Street, Bisbee Arizona; Ruben Verdugo Jr., Applicant.

Ashlee Coronado, City Clerk

MOTION: Councilmember Cline moved to approve the Consent Agenda items 2A-2D

SECOND: Councilmember Connors

ROLL CALL VOTE:

AYES: Councilmember Connors, Hansen, Doughty, Cline, Dunn, Sullivan and Mayor Oertle

NAYS: 0

MOTION PASSED: AYES -7; NAYS -0

**OLD BUSINESS**

**NEW BUSINESS**

- 3. Public Hearing on Truth in Taxation and Public Hearing and Discussion on FY 2016-17 Proposed Budget for the City of Bisbee.

Jestin Johnson, City Manager

Mr. Johnson stated that this was required for the FY 2016-17 Proposed Budget for the City of Bisbee.

Mayor Oertle opened the Public Hearing.

- Mayor Oertle asked if there was a member in the public that would like to speak in support of this item. There were no members in the public that spoke in support of this item.
- Mayor Oertle asked if there was a member in the public that would like to speak in opposition of this item. There were no members in the public that spoke in opposition of this item.
- Mayor Oertle asked the City Clerk’s Office if there had been any written communications filed with the Clerk’s Office. Ms. Coronado indicated that there were not.

Mayor Oertle closed the Public Hearing.

MOTION: Mayor Oertle moved to increase the levy in the primary tax rate from \$2.5366 to \$2.5873 per one hundred dollars (\$100) of assessed value for fiscal year 2016-2017.

SECOND: Councilmember Hansen

ROLL CALL VOTE:

AYES: Councilmember Conners, Hansen, Doughty, Cline, Dunn, Sullivan and Mayor Oertle

NAYS: 0

MOTION PASSED: AYES -7; NAYS -0

- 4. Discussion and Possible Approval of Resolution R-16-05; Adopting the Final Budget FY 16-17 for the City of Bisbee; Adopting the Alternative Expenditure Limitation for FY 16-17.

Jestin Johnson, City Manager

Mr. Johnson stated this was the resolution adopting the alternative expenditure limitation for FY16-17 and the final budget FY 16-17.

MOTION: Councilmember Hansen moved to approve Resolution R-16-05 adopting the final budget and the alternative expenditure limit for fiscal year 2016-2017.

SECOND: Councilmember Cline.

ROLL CALL VOTE:

AYES: Councilmember Conners, Hansen, Doughty, Cline, Dunn, Sullivan and Mayor Oertle

NAYS: 0

MOTION PASSED: AYES -7; NAYS -0

Mayor Oertle thanked Sharon Buono, Jestin Johnson and staff for putting this budget together.

- 5. Discussion and Possible Approval of a Contract with Fireworks Productions of Arizona for the 4<sup>th</sup> of July Fireworks.

Marc Burneleit, Fire Chief

Mr. Burneleit stated before council was the contract with Fireworks Productions of Arizona. He also stated that it was in our budget. He hoped everybody would come out for the fireworks and enjoy the show.

Councilmember Cline asked if the money was coming out of the Mayor and Council budget. Ms. Buono stated yes. Mayor Oertle said that there were also some donations. Mr. Burneleit stated how much the total cost of the fireworks was for the 4<sup>th</sup> of July.

Councilmember Cline asked if the additional money came from the Firefighter union. Mr. Burneleit stated that it came from the union, donations, Freeport and other Fire Departments in the area that have donated.

MOTION: Councilmember Cline moved to approve the contract with Fireworks Productions of Arizona for the 4<sup>th</sup> of July fireworks.

SECOND: Councilmember Doughty

MOTION PASSED: UNANIMOUSLY

Mr. Burneleit thanked Mr. Johnson on behalf of the Fire Department.

- 6. Discussion and Possible Approval of the Agreement with Century Link to Provide Phone Services at Various City Locations.

Ashlee Coronado, City Clerk

Ms. Coronado stated that what was before Mayor and Council was an agreement with Century Link which provides phone services to all our city locations. She said that they had given us a little bit of a cost break which would be about a \$1,900 savings.

MOTION: Councilmember Doughty moved to approve the Agreement with Century Link to provide phone services at various city locations.

SECOND: Councilmember Cline

MOTION PASSED: UNANIMOUSLY

7. Discussion and Possible Approval Regarding a Request from Ryden Architects to Pursue Two (2) Grants to Move Forward on Designating Warren a Registered National Historic District.  
Shar Porier, Program/Grants Administrator

Ms. Porier stated that this was a long time coming as many of you know that this has been a priority especially to the people that live in Warren. She said that SHPO had the extra \$20,000.00 that they are willing to set aside for Bisbee so that Don Ryden Architects could come and finish auditing a number of properties. There were certain properties that were left out of the original survey these properties need to be included. She also stated that there was a match that we would need to meet that can be in-kind. She explained what volunteers would be doing to help in this process. She discussed phase two (2) which was a \$6,000 grant for the rewriting and adding this new scope of work from the new buildings that will be added to the Warren Historic District.

Councilmember Dunn stated that for clarification that this was submitted last year and we thought it was a done deal. It has been bounced back to us for the map that was submitted only including contributing properties. They have also made the determination that the cut off of the earlier survey was 1941 and now there are eighty-one (81) properties that were constructed between 1941 and 1950 which was commencement of the Lavender Pitt. A request had been made to include them in the survey.

Ms. Porier introduced Alyssa Gerszerwski, Special Projects Coordinator from the State Historic Preservation Office.

Ms. Gerszerwski stated she was here on behalf of the State Historic Preservation Office and here to answer any questions that you may have about this process.

Irene Newlon, Bisbee resident said that many homes have been renovated keeping the historic value. If Old Bisbee was an historic district she thinks Warren deserves that same designation.

Margaret Hartnett, Bisbee resident thanked Mayor and Council for allowing the residents to speak tonight. She supported the designation.

Carol Beauchamp, Bisbee resident thanked the Council for the opportunity to speak. She spoke about City Beautiful and how Bisbee was one of the first planned developments along with Philadelphia and Washington. She explained City Beautiful. She requested that Council approve this item.

Fred Miller, Bisbee resident supported the Historic designation. He said we had a declining aging community. He spoke of the research he had done on Historic districts. He requested approval.

Judy Anderson said she was a volunteer who participated in the walking and taking pictures of the Warren area. She spoke regarding the Warren Ballfield. She encouraged that Council approve this item.

Rebecca Orozco, Bisbee resident stressed preserving the history that we have left.

Councilmember Dunn spoke in detail regarding the tax break that could be given and how you would go about getting it. He stated that in many meetings he had been too it comes up that Bisbee: Old Bisbee and

Warren was the most historically intact community in Arizona. We certainly had a lot to be proud of. He strongly advocated in moving forward with this designation.

Susan Blackford, Bisbee resident stated she supports this item.

MOTION: Councilmember Hansen moved to approve the Ryden Architects to pursue grant applications for purposes of designating Warren a Registered National Historic District.

SECOND: Councilmember Sullivan

MOTION PASSED: UNANIMOUSLY

- 8. Discussion and Possible Approval of the Subaward Agreement between the City of Bisbee and SEAGO Area Agency on Aging.

Jestin Johnson, City Manager

Ms. Porier stated that this was the annual Subaward Agreement we had with Southeastern Area Governments Organization (SEAGO). They help us provide money towards transit of the elderly. Every year we go into this agreement and they provide a partial return on what it costs to transport. She would recommend approval of this.

MOTION: Councilmember Cline moved to approve the Subaward Agreement between the City of Bisbee and SEAGO Area Agency on Aging.

SECOND: Councilmember Sullivan

MOTION PASSED: UNANIMOUSLY

- 9. Discussion and Possible Approval to Accept the Bid and Enter into a Contract with KE&G for Chip Seal of Adams Ave. in Old Bisbee.

Andy Haratyk, Public Works Director

Mr. Haratyk stated that we had a problem with drainage so along with Adams Avenue being paved they would also pave Laundry Hill. He would like to move that council accept the bid and enter into contract with KE&G for chip seal of Adams Avenue in Old Bisbee.

MOTION: Councilmember Connors moved to approve to accept the bid and enter into contract with KE&G for Chip Seal of Adams Avenue in Old Bisbee.

SECOND: Councilmember Hansen

MOTION PASSED: UNANIMOUSLY

- 10. Discussion and Possible Approval to Enter into an Intergovernmental Agreement with the Arizona Department of Transportation (ADOT) to Inspect City Bridges. The Cost of these Inspections is Federally Funded by the Federal Highway Administration.

Andy Haratyk, Public Works Director

Mr. Haratyk stated that Arizona was now being allotted along with every state in America a pot of money to do bridge inspections. Bridge inspections for us are important we have a total of nineteen (19) bridges. This will be totally funded by ADOT.

Mayor Oertle said that it would be good for us to see how our bridges are.

Councilmember Hansen said this works in very well for the Streets and Infrastructure committee so that they would know what bridges need to be attended to.

MOTION: Councilmember Hansen moved to approve to enter into an Intergovernmental Agreement with the Arizona Department of Transportation (ADOT) to inspect City Bridges.

SECOND: Councilmember Connors

MOTION PASSED: UNANIMOUSLY

11. Discussion and Possible Approval to Retain Tim Hogan and Arizona Center for Law in the Public Interest to Defend the Lawfulness of City Ordinance O-13-14, Which Prohibits Retailers from Providing Single Use Plastic Bags to Customers.

Britt Hanson, City Attorney

Mr. Hanson stated that this was noticed for possible executive session whether the Council chooses to do it or not there was certain information that certainly be easily made public. We were here this time last year on the same issue the state had passed a ban on plastic bag bans. The Council voted four (4) to three (3) to keep the bag ban in place. This past spring the legislator repassed the bag ban primarily to correct a defect in the legislation from the previous year. The one thing that was different this year from last year was that the state also passed a separate piece of legislation that would allow a legislator to ask the Attorney General to review any city ordinance in the state to see if it would conflict with state law. If the Attorney General concluded that it did then the Attorney General could take a number of actions and one of those was to request the State Treasurer to withhold State shared revenues from that City until it repeals that ordinance. When the legislation was rumbling around this year he had talked to Mr. Hogan and asked him if he was interested in representing the City of Bisbee for free if the Council so chose and Mr. Hogan indicated that he would be. He also stated that this was not coming with a recommendation from the City Attorney.

Susan Blackford, Bisbee resident spoke in opposition of this item. She said that this was about not allowing the people to vote. She reiterated about the loss of state revenue dollars. In her opinion Council was violating their duties as a city council persons and city attorney. She wanted to know why council had taken the citizen's right to vote away.

Mayor Oertle asked for clarification from Mr. Hanson, if the state statute took affect August 6<sup>th</sup>. Mr. Hanson stated that was correct. Mayor Oertle also asked if upon notification to municipal government of Bisbee that we have thirty (30) days to repeal Ordinance O-13-14 and state share revenues would be withheld. He understood that it wasn't for the whole year it would be for time until we repeal the Ordinance. Mr. Hanson stated that was correct.

Fred Miller, Bisbee resident said that this issue wasn't about voting it was about the state legislature prohibiting the City from doing what we want to do. He stated that this was a very drastic over reach. He requested Council support this.

Judy Anderson, Bisbee resident supported the challenge to the state legislature. She voted for the Council members to carry out what the people wanted.

Councilmember Hansen said that Ms. Blackford had the right with the petition to put this issue on the ballot and there were technical problems. She stated that Ms. Blackford had her chance. She said that this was much bigger than the ban on plastics this was an issue as Mr. Miller indicated of our authority to vote on local issues. The Arizona State constitution in article thirteen (13) grants specific authority with cities that have a population of more than 3500 to adopt a city charter this provision recognizes the authority of locally elected decision makers to make local decisions and the ability of the level of government closest to the citizens to respond to specific needs in their communities. She stated that this was what it was all about and didn't think that we should let the state of Arizona take away our authority to make decisions locally. She reiterated the two specific pieces of legislation in detail. She also stated that she would not vote against this.

Councilmember Dunn stated that this was an extremely important issue before council. Cities across the state are looking to the decision we make this evening. An earlier headline in the Bisbee Review read "Battle Over Plastic, Bisbee to consider fighting states ban on bag bans". He echoed what Councilmember Hansen had said that this much bigger issue than plastic bags. He said that the only way we were going to resolve this was through a court of law. He spoke about the legislation.

Councilmember Doughty speaking for the elderly and the handicap people in Bisbee it was very difficult to go into a store and carry out a paper bag she has seen many times the paper bags break sometimes before people ever get out of Safeway. She resents having to pay for a paper bag.

Councilmember Connors stated that it was awful that these laws were passed after we passed our ordinance. He said that we shouldn't be pushed around and that politics are so ugly. He was proud to be sitting here tonight. He spoke about how this ordinance came about.

Mayor Oertle stated that he takes his own bags to the store he feels better about that in relationship to the environment. He also had noticed that the City was cleaner and the other thing he noticed in town was that this ordinance had not been enforced. So, it was a none enforceable ordinance. He would also like to know the parameters of what the eighteen (18) charter cities governments can and cannot do. Mayor Oertle and Councilmember Connors had an exchange of opinions.

Councilmember Hansen said that this whole thing was about local authority, it's about us losing our due process because it's not going before a court. We need due process that was the reason we needed to be a part of this lawsuit.

Mayor Oertle reiterated that he would like to know the parameters in court of what charter governments can and cannot do, but we are in a situation. He said that we could be notified by the Attorney General's office that unless we repeal our ordinance that our state share revenues aren't coming. This was a serious problem for our City finances. He also said that the only solution he could see was to repeal the O-13-14 then he would 100% support challenging this in the courts to know the parameters in court of what charter governments can and cannot do.

Councilmember Connors stated that if we repeal it then there would be no need to go to court. Mayor Oertle asked if this would take some time to be done. Mr. Hanson stated that the wheels of justice tend to move slowly. Mayor Oertle said that we could run into a situation when that statue takes effect on August 6<sup>th</sup>. Mayor Oertle and Councilmember Connors had an exchange regarding on whether this would happen or not.

Councilmember Sullivan said she didn't think we should repeal it, but we could possibly put a moratorium on it until we found out how the lawsuit goes. She explained what a moratorium was. Mayor Oertle asked City Attorney Hanson what his thoughts would be on that.

Mr. Hanson said he had thought about that, but called it a suspension of the ordinance and had discussed that with a couple of attorney's including Mr. Hogan. He explained his thoughts on this process which was twofold. We wouldn't gain anything or lose anything we would be neutral.

Councilmember Dunn would like to move forward on the suit specifically to clarify the parameters what the charter does and does not allow cities to do.

Councilmember Cline commented on what Councilmember Hansen stated that she felt we were losing our due process, which was what many citizens had felt that they lost their due process when the ban took place. Her concern was when we are sworn into office we are sworn in to uphold the laws of the state and that was her concern.

Councilmember Dunn stated that representatives take the same oaths as we do. This needs to be resolved in a court of law.

Mayor Oertle didn't think the courts will side with Bisbee on this. It was beyond the bags. He wants to see what the parameters are. He asked Mr. Hanson about cases that would support this case. Mr. Hanson said there were several on it.

MOTION: Councilmember Dunn moved to retain Tim Hogan and the Arizona Center for Law in the Public Interest to defend the lawfulness of City Ordinance O-13-14, which prohibits retailers from providing single use plastic bags to customers.

SECOND: Councilmember Hansen

Mayor Oertle said that he would support this, but it was hinged on the fact that we will probably have to bail (repeal) out. He really wanted to know what charter governments can do and it truly was beyond bags.

Councilmember Hansen said there needs to be an interpretation of what the cities can do.

ROLL CALL VOTE:

AYES: Councilmember Conners, Hansen, Doughty, Dunn, Sullivan and Mayor Oertle

NAYS: Councilmember Cline

MOTION PASSED: AYES -6; NAYS -1

12. City Manager's Report:

- Mr. Johnson went over the monthly financials.
- Mr. Johnson acknowledged Raul Hildago in Public Works for 5 years of service in our streets division and Mike Teran in Wastewater for receiving his grade three (3) certification.
- Mr. Johnson asked that council to disregard an email that was sent regarding a special session.
- Mr. Johnson thanked Sheriff Daniels and the Cochise County Sheriff's Office and all those who supported us during our Bisbee Pride event.
- Mr. Johnson spoke regarding the Turn Out Gear for the Fire Department.
- Mr. Johnson also spoke on an initiative that had been coordinated through the City of Sierra Vista relating to housing.
- Mr. Johnson thanked Mayor Oertle and all the members of council for their support and the community for embracing his family. He also thanked former Councilmember Smith and former Mayor Badal.
- Other current events

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.):

- Councilmember Hansen commented on the 4<sup>th</sup> of July Events and wished everyone a safe 4<sup>th</sup> of July.
- Councilmember Doughty commented on signs that are posted on the telephone poles.
- Councilmember Cline wished everyone a happy and safe 4<sup>th</sup> of July and wished Mr. Johnson very well as he transitions back to Georgia.

MOTION: Councilmember Hansen moved to adjourn the meeting.

SECOND: Councilmember Cline

MOTION PASSED: UNANIMOUSLY

ADJOURNMENT: 9:20PM

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Ronald Oertle, Mayor