

## MINUTES

MINUTES OF THE SPECIAL SESSION OF THE MAYOR AND COUNCIL OF THE CITY OF BISBEE, COUNTY OF COCHISE, AND STATE OF ARIZONA, HELD ON MONDAY, MAY 15, 2017, AT 5:30 PM IN THE BISBEE MUNICIPAL BUILDING, 118 ARIZONA STREET, BISBEE, ARIZONA.

THE MEETING WAS CALLED TO ORDER BY MAYOR SMITH AT 5:30PM.

### ROLL CALL

#### COUNCIL

Councilmember Anna Cline, Ward III	5:36pm
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	Excused

#### STAFF

Richard J. Marsh Jr., City Manager  
Nina Williams, Deputy City Clerk  
Keri Bagley, Finance Director  
Andy Haratyk, Public Works Director

#### CITY ATTORNEY

Elda Orduno

THE FOLLOWING ITEM WAS DISCUSSED AND/OR CONSIDERED AT THIS MEETING:

1. Discuss and Provide Guidance/ Direction regarding proposed Revisions to Sewer and Sanitation Ordinances to Address Collection of Delinquent Accounts.  
Elda Orduno, City Attorney

Mayor Smith explained that there would be three stages tonight. He would read into the record the Council Action Form which has a summary on what this meeting was about and what the proposed changes were. He would then turn it over to Ms. Orduno who would talk about some specific major changes. Mayor Smith said he would then ask Arizona Water representatives, Frank Cabello and Joe Mauzy to explain Arizona Waters part of this. Mayor Smith said that when he was running for office he discussed ways to get cash flow into the City or new revenue streams. One that had been sitting for all of this time without moving had been the sewer bills. With the assistance of the City Manager, Public Works Director, Finance Director and the City Attorney there are some extensive proposed changes. It would be up to Council as to how those changes are put into place.

Mayor Smith read the following into the record:

*As of April 30, 2017, the City is owed \$1,061,954.15 in delinquent sewer fees and \$450,136.73 in delinquent sanitation fees. In order to begin addressing these delinquencies and recoup what is owed to the City, a change in sewer and sanitation ordinances is recommended to provide an opportunity for consumers to pay off the City and bring their accounts current.*

*The proposed changes to Chapter 9 and Chapter 13 of the City Code regarding sanitation and sewer services include a one-time “amnesty” provision that would permit all residential and commercial consumers to enter into an agreement with the City, in which they would agree to pay off 50% of their sewer and sanitation account balance, minus any penalties or interest, over a six month period. In exchange, the City would agree to forgive the other 50% of the account balance, along with any accrued penalties and interest. The intent of the amnesty provision is to encourage consumers to bring their accounts current while bringing in much needed funding to the City. Should a consumer fail to pay off what is owed under the agreement after the six month period, the account balance would return to the full balance owed, including penalties and interest, minus any payments made during the six month period. The property receiving sewer services would then be in line for disconnection of sewer and water services as explained below.*

*For those residential and commercial consumers that do not enter into an agreement with the City under the “amnesty” provision and/or continue to maintain a delinquent account with the City, the City will provide a notice to the account holder, property owner, and/or resident that should the account not be brought current within 45 days from the date of the notice, the City will turn off sewer service and Arizona Water Company will turn off water service until the account is paid in full, required deposits are made, and those fees associated with reconnection of sewer and water services are paid in full. Notably, the disconnection from sewer service at a property creates a health-safety issue, which requires Arizona Water Company to turn off water service to any property pursuant to its tariffs.*

*The proposed changes to the ordinances also permit citizens to request a variance or waiver concerning sewer and sanitation fees under exigent circumstances. The City Manager, Finance Director, and Public Works Director would be jointly empowered to consider such requests on a case-by-case basis. The intent of this provision is to assist property owners under exigent circumstances.*

*The proposed changes also address State law that prohibits the City from filing a lien on residential rental properties of four or fewer units when an account is delinquent and from obligating the owner of such property from paying the account fees without express agreement from the owner. See A.R.S. § 9-511.01; A.R.S. 9-511.02. Over the years, the City has had difficulty identifying residential properties that are leased. The City, therefore, has been unable to hold tenants that use the City’s sewer and sanitation systems responsible for fees associated with such use. The City may now obtain this information from the County due to statutory reporting requirements imposed on residential rental property owners. While not all property owners may meet their statutory reporting obligations, obtaining any information available to the City from the County is a positive step in holding citizens responsible for those City services they utilize.*

Ms. Orduno, City Attorney went over the proposed changes to Chapter 9 Sanitation and Chapter 13 Sewer. She said that there was an added provision that the Finance Director, City Manager and Public Works Director could consider when property owner’s fees could be reduced or make the bill zero. There were property owners that could be having difficulty paying their bills and these individuals could meet and decide to change or reduce the fees owed. She suggested that a provision be added if for some reason a property owner wrote into the City to address the issues and never got addressed. The three Directors could decide to reduce or do away with a bill. Ms. Orduno said that a time frame was also not included on this Ordinance, but she suggested that one be added. While the property was waiting for the City to get back to the owner they were still accruing fees. Ms. Orduno explained that if someone was disconnected from the sewer for a delinquent account, there were provisions requiring a 2 month deposit and they would have to pay one month advance on their bill.

Ms. Orduno explained that as far as the amnesty program went Arizona Water Company would be involved. If the City had to disconnect the sewer on a property, Arizona Water Company would also have to disconnect the water for safety and health purposes. There was a process in place to get the water

turned back on. The property owner would also have to pay whatever fees were involved to Arizona Water to be reconnected to water service. It was specifically stated in the Ordinance that the property owner was responsible for the fees.

Ms. Orduno said that the amnesty agreement states that in order to take part in the 6 month payoff period that the owner would have to enter into an agreement with the City by January 1, 2018. That was just a suggestion.

Ms. Orduno said that the Ordinance had a lot of deletions related to requirements that we had initially had for property owners with 4 or fewer units. There were statutes that say the City could not put liens on residential properties, even if the account was delinquent, that were leased out.

Mayor Smith said that unfortunately it had been found that the City had been acting improperly in assessing some of the fees. Once those accounts are found they are taken care of. He said that it plainly indicated that when a person comes in to open a sewer account they shall pay a 2 month deposit. The new Ordinance also states that new accounts will have to pay the 2 month deposit. The big question was how we enforce this. That's when staff met with Arizona Water Company in Phoenix. They in turn took our proposals to the Chairman of the Board; as a result we now have a procedure in place with Arizona Water Company. Mayor Smith explained that once the sewer was shut off on, that building immediately becomes a health hazard. The water would then be shut off pursuant to the request of the City. This sounded harsh, but the City had to do this for the City to continue. This board would be in place to help those people that were unable to pay the bill or catch the bill up.

Joe Mauzy, Arizona Water Vice President, explained that Arizona Water was not shutting the water off to help the City collect delinquent sewer bills; they were shutting it off because of the health hazard. He said that per the terms and conditions with Arizona Water and the Corporation Commission, water could be shut off without notice with the existence of an obvious hazard to the customer or the general population. The City was being kind and prudent to give the citizen a 45 day notice and Arizona Water would also give the customer a 10 day notice. He explained that this was nothing new, when the County Health Department finds a hazard for an inactive sewer service, Arizona Water shuts the water off.

Councilmember Dunn requested clarification on how interest and penalties would be charged.

Ms. Orduno responded that she meant to say that for a limited period of time and one time only the city will forgive 50% of the total delinquent amount owed, including penalties and interest. She may have not worded this artfully, but what she intended to say was the City will forgive 50% of the delinquent amount owed. She said that what the amnesty provision was that the City will forgive 50% of the balance due and basically erase any penalties and interest so, subtract the penalties and interest and just what you owe on the actual fees for your sewer and garbage that's what we're cutting in half (50%) .

Councilmember Dunn requested clarification on how multiple use properties are being calculated.

Ms. Orduno responded that your sewer bill depended on what type of user they were. Ms. Orduno said that based on the property type they were being charged based on how much they use as set out in this ordinance and based on the property type.

Mayor Smith interrupted to let everyone know what was going on; he said we currently there was a large fire on Star Avenue three (3) homes are burned and it was still actively running up the canyon. There are no injuries at this point and obviously our people are on scene.

Mr. Haratyk said that this was pretty universal. The Wastewater plant operates on volume not connections. There was an average amount of water that every resident uses. He went on to explain how they come up with the number used to calculate.

Ms. Orduno said that if the property owner disagrees with how much they're using there was a provision in there where they can install some sort of line (flowmeter) and go through that whole process to figure out exactly what we should be charging them.

Mayor Smith said that we didn't have to do that, that Arizona Water keeps track of how much they are using. He suggested to Ms. Orduno that this may be another fee that we look at like the other ones so we may be spinning our wheels here because these fees are going to be looked at again anyway.

Councilmember Dunn requested Mr. Haratyk clarify how we install a shut off valve.

Mr. Haratyk said that the shut off valve hopefully gets installed outside of your property line which would be ideal, but some of them can't be. There was a pipe that has a straight arm which connects to their sewer line and connects to the other end that goes into our sewer line so when we are ready to shut off we actually put a valve down inside with a padlock on it. We turn that valve and put a padlock on it which will block 99% of the liquid that runs through the line.

Councilmember Dunn asked what it cost for a residential shut off.

Mr. Haratyk said there were two (2) options on the shut off the actual unit was about \$14.00 and we give you a couple of options they can have us install there are fees associated. We encourage you to either install and it doesn't have to be a licensed contractor and then we come and inspect it. The cost can range anywhere from \$50.00 to \$500.00 depending on who you have install and how complicated the insulation was, but as a rule they are very inexpensive.

Councilmember Dunn clarified who pays if we have to install.

Mr. Haratyk said that if we have to install the fees associated are in the code. He also said that they charge to take the padlock off on the reconnect fee.

Mayor Smith interrupted to let everyone know that we have air support on the fire now.

Councilmember Higgins had a question regarding timing, we were looking to have this implement by January of 2018.

Ms. Orduno said she selected January 1, 2018 just out of her own calculating on how soon we could get this ordinance in place and then to give people lead time to make them aware because we will also have to notify people.

Councilmember Higgins said that would give people six (6) months from right now to think about what they are going to do.

Ms. Orduno said it would be from July if we can get all of this done by July then they have until January 1<sup>st</sup> and say they do contract with us on January 1<sup>st</sup> then they would have six (6) months after that to completely pay off their 50%.

Councilmember Higgins thought that we shouldn't string it out to long. We should do it as quickly as possible.

Ms. Orduno said that she would just need to calculate based on the date council voted for approval then we have to give thirty (30) days before it goes into effect.

Mayor Smith said that they were voting tonight on this concept and the 50% and it could be slipped into the language such as of the date of the ordinance those that are currently behind in their sewer and sanitation so that they can't scam it after that point.

Councilmember Higgins asked what the time frame would be if you were delinquent on your bill before you get a notice.

Ms. Orduno said that it would be upon 30 days delinquency once you hit that 30 day mark that you are late Finance will send out a notice saying you are now delinquent and have 45 days to bring your account current or we will shut off on the 46<sup>th</sup> day.

Councilmember Hansen had questions regarding what types of documentation was needed, how far back we were going to go and those types of things. She also asked about the 30 day response time line for the directors to get back to someone. She would like to see a response within 15days.

Mayor Smith said he was confused so if he called the City and said hey I need a meeting with those three guys we need a time period that would take place which was what he thought the 30 day was.

Ms. Orduno said that she had actually envisioned 30 days for decision yay or nay either way having a form that they actually fill out that they can pick up from the city basically setting forth why and if for some reason documentation was needed. She also said that the whole process from the time you submit your application to the time you your final decision 30 days. She didn't want to prolong this person accruing fees while they're waiting and 30 days was already one month.

Mayor Smith interrupted to say that we know have five (5) structures involved in the fire and that the fire suppression line was broken.

Councilmember Dunn spoke regarding extenuating circumstances and that Ms. Orduno had used various terms to describe this.

Ms. Orduno said that originally in the ordinance it describes exigent circumstances shall mean any one time or temporary emergency events or circumstances that severely limits or prevents the payment of existing sewer rates. Going through this process we had had a lot of scenarios thrown at us. She was intentionally giving them latitude and hopefully over time they would develop a record and experience of when to give an exception and when not to. She just didn't know what they're going to encounter and didn't want to tie their hands.

Mayor Smith said that he wanted to bring something up when he was talking about bringing revenue into the city and the addition of this ordinance would provide us more revenue through cash flow and being able to settle out this debt that we haven't been able to and collecting 50% of something was a whole bunch better than collecting 100% of nothing.

MOTION: Mayor Smith would like to move that we accept the concept of 50% reduction with moratorium as stated for the six (6) month period and that the requested changes in this document be completed and brought back to the council for final vote.

SECOND: Councilmember Hansen

ROLL CALL VOTE:

AYES: Councilmember Cline, Hansen, Davis, Higgins, Dunn, and Mayor Smith

NAYS: 0

MOTION PASSED: AYES -6; NAYS -0

MOTION: Councilmember Hansen moved to adjourn the meeting.

SECOND: Councilmember Cline

MOTION PASSED: UNANIMOUSLY

ADJOURNMENT: 6:37PM

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David M. Smith, Mayor