

**ATTENTION**

**IN-PERSON AUDIENCES AT CITY COUNCIL MEETINGS HAVE BEEN SUSPENDED UNTIL FURTHER NOTICE**

**Due to Covid 19 this meeting will be conducted electronically by Zoom and Facebook. The public can join, listen and view the meeting as follows:**

- **City's Facebook page (<https://www.facebook.com/COB118Arizona/>). A Facebook account is not necessary.**
- **Zoom by calling in at 1-346-248-7799 or by the following link <https://us02web.zoom.us/j/87095370846> the meeting/webinar ID is 870 9537 0846.**

**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, APRIL 14, 2021 AT 6:00 PM VIA ZOOM.

THE MEETING WAS CALLED TO ORDER BY \_\_\_\_\_ AT \_\_\_\_\_.

**ROLL CALL**

**COUNCIL**

Councilmember Louis Pawlik, Ward III  
Councilmember Joni Giacomino, Ward II  
Councilmember Frank Davis, Ward I  
Mayor Ken Budge  
Councilmember Leslie Johns, Ward I  
Councilmember Joan Hansen, Ward II  
Councilmember Anna Cline, Ward III, Mayor Pro Tempore

**STAFF**

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**

Joseph Estes

THE FOLLOWING ITEMS WILL BE DISCUSSED AND/OR CONSIDERED AT THESE MEETINGS:

1. Discussion and Possible Approval of a Motion to Go into Executive Session Pursuant to A.R.S. § 38-431.03(a)(1)(4) for discussion or consultation with the City Attorney in order to consider its position and instruct the City Attorney regarding the City's position regarding an employment contract with Stephen J. Pauken as City Manager.

*Per ARS § 38-431.03(a)(1)(4), 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 and 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.*

Ken Budge Mayor

2. Discussion and Possible Appointment of Stephen J. Pauken as City Manager and Approval of the City Manager Contract.

Ken Budge, 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 76 Erie Street, 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: April 14, 2021

Regular     Special

DATE ACTION SUBMITTED: April 13, 2021

REGULAR                          CONSENT   

TYPE OF ACTION:  
RESOLUTION                          ORDINANCE                          FORMAL ACTION                          OTHER   

SUBJECT:    Discussion and Possible Approval of a Motion to Go into Executive Session Pursuant to A.R.S. § 38-431.03(a)(1)(4) for discussion or consultation with the City Attorney in order to consider its position and instruct the City Attorney regarding the City's position regarding an employment contract with Stephen J. Pauken as City Manager.

*Per ARS § 38-431.03(a)(1)(4), 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 and 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.*

FROM:            Ken Budge, Mayor

RECOMMENDATION:            Motion to enter into Executive Session

PROPOSED MOTION:            I move that we enter into executive session Pursuant to A.R.S. § 38-431.03(a)(1)(4) for discussion or consultation with the City Attorney in order to consider its position and instruct the City Attorney regarding the City's position regarding an employment contract with Stephen J. Pauken as City Manager.

**DISCUSSION:**

A public body may go into Executive Session as per Arizona Revised Statute § 38- 431.03 (A4) (A1) For the purpose of 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 and;

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, except that, with the exception of salary discussions, an officer, appointee or employee may demand that the discussion or consideration occur at a public meeting. The public body shall provide the officer, appointee or employee with written notice of the executive session as is appropriate but not less than twenty-four hours for the officer, appointee or employee to determine whether the discussion or consideration should occur at a public meeting.

**FISCAL IMPACT:**

**DEPARTMENT LINE ITEM ACCOUNT:**

**BALANCE IN LINE ITEM IF APPROVED:**

Prepared by: Ashlee Coronado  
Ashlee Coronado  
City Clerk

Reviewed by: Ashlee Coronado  
Ashlee Coronado  
City Clerk



**REQUEST FOR MAYOR & COUNCIL ACTION**

Session of: April 14, 2021

Regular  Special

**DATE ACTION SUBMITTED:** April 13, 2021

**REGULAR**       **CONSENT**

**TYPE OF ACTION:**

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

**SUBJECT:** Discussion and Possible Appointment of Steve Pauken as City Manager and Approval of the City Manager Contract.

**FROM:** Ken Budge, Mayor

**RECOMMENDATION:** At the discretion of the Mayor and Council

**PROPOSED MOTION:** I move that we Appoint Steve Pauken as City Manager and approve the City Manager Contract.

**DISCUSSION:**

**FISCAL IMPACT:** \$88,000 Annually

**DEPARTMENT LINE ITEM ACCOUNT:** 10-51-511000

**BALANCE IN LINE ITEM IF APPROVED:**

Prepared by: Ashlee Coronado  
Ashlee Coronado,  
City Clerk

Reviewed by: Ashlee Coronado  
Ashlee Coronado,  
City Clerk

**EMPLOYMENT AGREEMENT  
CITY MANAGER, CITY OF BISBEE**

This Employment Agreement (the "Agreement") is entered into on this \_\_\_\_ day of \_\_\_\_\_, 2021, by and between the City of Bisbee, an Arizona municipal corporation (hereinafter the "City") and Stephen J. Pauken (hereinafter the "Manager"). The City and Manager may hereinafter be referred to individually as a "Party" or collectively as the "Parties."

WHEREAS, the Mayor and Council are authorized by Article III of the Bisbee City Charter to appoint a City Manager of the City of Bisbee; and

WHEREAS, Stephen J. Pauken has demonstrated to the satisfaction of the Mayor and Council that he has the administrative and executive abilities and the qualifications to fulfill the responsibilities of this position and is willing and able to accept this appointment as the City Manager of the City of Bisbee;

NOW THEREFORE, the City and the Manager hereby agree, in consideration of the mutual covenants stated below, to the following terms and conditions:

**1. EMPLOYMENT AND DUTIES.**

1.1 The Mayor and Council of the City of Bisbee hereby appoint Stephen J. Pauken as the City Manager of the City of Bisbee subject to the terms and conditions of this Agreement, the City Charter and City Code, now in effect or hereafter amended. The Manager shall serve as the administrative head of the government of the City with all of the authority, duties and responsibilities that are specified in the Arizona Statutes and in the ordinances, resolutions and other actions of the City, as these may be amended from time to time. The Manager hereby agrees to accept this appointment and to perform these duties and responsibilities faithfully and to the best of his ability, in a manner that is consistent with the requirements of the laws of the City and this State. Manager shall comply with applicable laws of the State of Arizona and the International City Management Association ("ICMA") Code of Ethics. Manager shall also perform such other administrative and executive duties as required by his position or assigned to him by the City Council.

1.2 Manager will devote his working day to the business of the City, it being recognized and agreed that the position of City Manager is full-time and that he will hold no other positions for monetary gains without prior written approval of the City Council. The Manager shall be allowed to assume occasional teaching, writing, speaking, consulting and similar work on his own time, provided that this does not conflict with the performance of this Agreement.

1.3 Notwithstanding the full-time nature of Manager's duties, he shall conduct his work hours as an executive employee, thereby giving Manager the discretion as to his actual time and place of work which may include occasional working after regular work hours and on holidays. Such executive obligation will include the privilege that Manager also has the discretion to absent himself from City offices for personal reasons provided that the operations of

the City will not suffer and that he can be reached on short notice. Manager agrees that to the extent possible, he will make his schedule available to City employees and Councilmembers at least one week in advance.

1.4 Manager shall be an exempt employee under the Fair Labor Standards Act and is therefore not eligible for overtime.

## **2. TERM.**

2.1 Manager shall serve an indefinite term, at the pleasure of the Mayor and Council, commencing on \_\_\_\_\_. The Manager shall commence employment as City Manager on the \_\_\_ day of \_\_\_\_\_, 2021 (the "Commencement Date"). Pursuant to the requirements of the City Code, the Manager shall be subject to removal by majority vote of the Mayor and Council for malfeasance or misfeasance in the performance of his duties or if he is convicted of a felony or any offense in violation of his official duties. The Manager may be subject to termination with or without cause by the Mayor and Council, subject to the express provisions of the City Charter and this Agreement.

2.2 In the event Manager voluntarily resigns as City Manager, Manager shall give the City Council sixty (60) days' advance notice unless the Parties agree otherwise.

2.3 If the Manager is removed for cause, the Manager shall be paid upon his removal the salary that has accrued to her upon the date of removal, together with the value of all accrued paid time off. If the Manager is terminated at the discretion of the Mayor and Council, the Manager shall be entitled to his accrued salary and paid time off to that date and his salary for the next three (3) months following the adoption of the preliminary resolution for removal. If the Manager voluntarily resigns, he shall be entitled to his accrued salary and paid time off to the date of the conclusion of his employment.

## **3. COMPENSATION AND BENEFITS.**

3.1 The City shall pay the Manager for his services an annual base salary of Eighty-Eight Thousand Dollars (\$88,000.00), to be paid in installments at the same time and same manner as other full-time employees of the City are paid. Following the completion of the first six months of the term of this Agreement, the Mayor and Council shall conduct a performance review of the Manager. In the event that the Mayor and Council are in agreement that the Manager is performing in a satisfactory manner and is continuing to fulfill the obligations of this Agreement as required, the compensation for the Manager shall be increased to the rate of One Hundred Thousand Dollars (\$100,000.00) per year from that date forward. At the discretion of the Mayor and Council, the Base Salary may be adjusted either as part of the budget process or by other action of the Council. The decision to increase or not increase the Base Salary of the Manager is solely within the discretion of the Mayor and Council.

3.2 In addition to the salary and benefits described in Paragraph 3.1 of this Agreement, the Manager will receive the following benefits:

- 3.2.1 The Manager shall receive the same health, life, disability, vision and dental insurance benefits that are made available to other unclassified regular full-time employees of the City. The Manager shall also be a participant in the Arizona State Retirement System, as a City employee. In addition, the Manager shall be entitled to receive all other fringe benefits that are available to other unclassified full-time City employees, on the same basis as those employees.
- 3.2.2 The Manager shall be entitled to the same paid time off for vacation, holidays and sick leave as is made available to other unclassified employees of the City. This shall include not less than Two Hundred and Eight Hours (208) per year of paid time off.
- 3.2.3 The City shall provide the Manager with a suitable vehicle to be used in connection with City business. The City shall provide the maintenance and fuel necessary for this vehicle. Unless specifically authorized by the Mayor and Council, this shall not be a take home vehicle. If a City vehicle is not available, the Manager will provide his own vehicle with mileage reimbursement at the current federal rate to be paid by the City to the Manager for any work-related travel.
- 3.2.4 Reimbursement for business expenses, which must be related to the Manager's duties and be for the best interest of the City. This may include the purchase of food and refreshments for persons with whom the Manager works, does business with, or negotiates with when such activities are for the City's benefit. In addition, the Manager shall be entitled to per diem at the established City rate for travel outside of the City.
- 3.2.5 The City shall also provide the Manager with a cell phone for use on City business. The Manager shall reimburse the City for that portion of any additional expense associated with the use of this cell phone that is not related to City business.
- 3.2.6 The City shall budget and pay for the Manager's membership and participation in the Arizona City Managers Association (ACMA) and the International City Managers Association (ICMA), as necessary for the Manager to obtain the educational and information benefits offered by these organizations, for the overall good of the City. The City may provide funds for the participation in additional organizations, depending upon the availability of funds. Payment for travel and subsistence expenses of the Manager for approved short courses, seminars or institutes of more than one day that are necessary for his professional development and for the good of the City. The Manager shall notify the Mayor and Council of his attendance plans.

#### **4. RESIDENCY.**

Residence in the City at the time of appointment of a Manager shall not be required as a condition of the appointment, but within 90 days after reporting for work, the Manager must become a resident of the City, unless the Mayor and Council approve the Manager's residence outside the City.

#### **5. INDEMNIFICATION.**

The City shall defend, hold harmless and indemnify the Manager against any claims, demands, legal actions and judgments that may arise out of any alleged act or omission occurring within the scope of the performance of the Manager's duties under this Agreement. The City shall provide liability insurance at the City's own expense, which may be though the City's overall coverage, for such claims, demands and actions. The City's responsibility to defend, hold harmless and indemnify shall not extend to unlawful actions or to willful or wanton actions that are outside of the scope of the Manager's duties under this Agreement.

#### **6. PERFORMANCE EVALUATIONS.**

The City and the Manager agree that periodically they shall meet to discuss and evaluate their mutual working relationship, rapport, goals and objectives. The Manager's performance shall be evaluated not less than every six (6) months for the first year of this Agreement. Thereafter they shall meet as often as the Mayor and Council deem to be necessary, but not less than annually. Following any such evaluation, the parties may also discuss the terms and conditions of this Agreement and any amendments that they may deem to be appropriate.

#### **7. GENERAL PROVISIONS.**

7.1. This Agreement constitutes the entire Agreement between the parties and fully incorporates any prior oral or written understandings between them. This Agreement may only be amended by a written instrument signed and approved by both parties in the same manner as this Agreement.

7.2. Pursuant to A.R.S. § 38-511, as applicable, the provisions which are incorporated herein by reference, all parties are hereby put on notice that this Agreement is subject to cancellation by the City if any person significantly involved in initiating, negotiating, securing, drafting or creating the Agreement on behalf of the City is, at any time while the Agreement is in effect, an employee or agent of any other party to the Agreement in any capacity or a consultant to any other party of the Agreement with respect to the subject matter of the Agreement.

7.3. The provisions of this Agreement are severable. In the event that any term of this Agreement may be held to be in violation of any federal, state or local law, the remaining terms and conditions shall remain in effect.

7.4. This Agreement shall be governed by the law of the State of Arizona, and suits pertaining to this Agreement may be brought only in courts in the State of Arizona. Venue for



any such action shall be in the Cochise County Superior Court.

7.6 Any notice concerning this Agreement must be in writing delivered personally or sent by certified registered mail as follows:

To CITY:

City Clerk  
76 Erie Street  
Bisbee, Arizona 85603

To MANAGER:

Stephen J. Pauken  
[REDACTED]  
Bisbee, Arizona 85603

7.5. No right or interest in this Agreement shall be assigned by the Manager without prior written permission of the City, and no delegation of any duty of the Manager shall be made without prior written permission of the City.

**IN WITNESS WHEREOF**, the Parties have caused this Agreement to be executed, the day and year first herein written:

**MANAGER**

**CITY OF BISBEE**

\_\_\_\_\_  
Stephen J. Pauken

\_\_\_\_\_  
Ken Budge, Mayor

ATTEST:

\_\_\_\_\_  
Ashlee Coronado, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Joseph D. Estes, Gust Rosenfeld, PLC  
City Attorney