

JUDICIAL ADVISORY BOARD MINUTES

October 6, 2010

The Judicial Advisory Board of the City of Mesa met in the lower level meeting room of the Council Chambers, 57 East 1st Street, on October 6, 2010 at 7:51 a.m.

BOARD PRESENT

Kate Ali'varius, Chairman
Phillip Austin
Daniel A. Barker
David P. Brooks
Peter Lesar
David M. Talamante

BOARD ABSENT

None

STAFF PRESENT

Kathleen Broman
Michael Claspell
Matt Tafoya

1. Introduce new Boardmembers.

Each Boardmembers provided a short synopsis of their professional background.

2. Elect Chair and Vice Chair.

It was moved by Boardmember Barker, seconded by Boardmember Talamante, that Boardmember Ali'varius be appointed Chairman of the Judicial Advisory Board.

Chairman Ali'varius declared the motion carried unanimously.

It was moved by Boardmember Brooks, seconded by Boardmember Talamante, that Boardmember Barker be appointed Vice Chairman of the Judicial Advisory Board.

Chairman Ali'varius declared the motion carried unanimously.

3. Approve the minutes from the March 3, 2010 Board meeting.

It was moved by Boardmember Talamante, seconded by Boardmember Barker, that the minutes of the March 3, 2010 Judicial Advisory Board meeting be approved.

Chairman Ali'varius declared the motion carried unanimously.

4. Items from citizens present.

There were no items from citizens present.

5. Hear an update on the Open Meeting Law and Parliamentary Procedure from City Attorney Debbie Spinner.

Deputy City Attorney Alfred Smith addressed the Board and stated that he was substituting for City Attorney Debbie Spinner who had a scheduling conflict this morning.

Mr. Smith stated that with respect to Parliamentary Procedure, neither the Mesa City Council nor any citizen advisory board or committee has adopted Robert's Rules of Order. He explained that for the purpose of the Judicial Advisory Board, the Chairman, along with the individual members, can establish guidelines relative to the manner in which items are introduced.

Mr. Smith displayed a PowerPoint presentation (**See Attachment 1**) and offered an overview of the Open Meeting Law (OML) and its impact on the Judicial Advisory Board. He cited the legal definition of the OML as follows: "All meetings of any public body shall be public meetings and all persons so desiring shall be permitted to attend and listen to the deliberations and proceedings. All legal action of public bodies shall occur during a public meeting." Mr. Smith noted that the purpose of the OML, which is enforced by the Arizona Attorney General's Office, was to ensure that the public had an opportunity to "observe what the government is doing and how it is being done."

Mr. Smith reported that per State policy, notices and agendas must be provided for meetings with information reasonably necessary to inform the public of the matters to be discussed or decided. He said that the OML not only applies to all public officials discussing or conducting public business, but also advisory boards and subcommittees, such as the Judicial Advisory Board.

Mr. Smith, in addition, noted that the legal definition of "a meeting" is as follows: "The gathering, in person or through technological devices, of a quorum of members of a public body at which they discuss, propose or take legal action, including any deliberations by a quorum with respect to such action." He cautioned the Boardmembers, for instance, against discussing, texting or e-mailing each other relative to Board matters outside of a legally posted and agendized meeting and said that such actions could result in the individuals unintentionally violating the OML.

In response to a question from Boardmember Brooks, Mr. Smith clarified that if a subcommittee of the Judicial Advisory Board was established for some purpose, the members must still comply with the OML and legally post and agendize their meetings in order to discuss and consider various matters.

Mr. Smith further remarked that with regard to the seven-member Judicial Advisory Board, four members constitute a quorum. He explained that if a quorum of the Board discusses a subject that is reasonably likely to come before the Board outside of a legally posted and agendized meeting, such action could violate the OML. Mr. Smith also stated that methods of communication such as phone calls, e-mail, letters, blogs and using staff to transmit information

that could be the subject of discussion at a Board meeting are inappropriate means of conveying information between the Boardmembers.

Mr. Smith further reported that the Board may communicate with staff and staff can provide the Board with factual information outside of a public meeting. He noted, however, that staff cannot be used to sidestep the OML.

Discussion ensued relative to the fact that the OML requires that at least 24 hours in advance of a public meeting, the meeting notice must be posted and the agendas/backup materials made available; and that the public body may only discuss items listed on the agenda or "reasonably related" to the agenda.

Mr. Smith explained that with respect to conducting meetings, the Chairman of the Judicial Advisory Board manages the meeting, subject to motions approved by the Board. He also remarked that the Board, as a public body, may impose reasonable time, place and manner restrictions on speakers. Mr. Smith also stated that Robert's Rules are for guidance only and the Board was not required to follow those rules. He also remarked that the Board may require speakers on the same side of an issue with no comments to select a spokesperson and added that Open Call to the Public is permitted, but not required.

Additional discussion ensued relative to the fact that if an item is not included on an agenda, it cannot be discussed during a public meeting; that the OML gives the public the right to attend a meeting and listen to deliberations, but not to speak at a meeting (for zoning ordinances, a public hearing is required at a Planning Commission meeting); and various components of a set of minutes. (See Pages 16 and 17 of Attachment 1)

Mr. Smith further reported that the meeting notice and agenda must indicate that the public body may adjourn into Executive Session and cite the specific statutory reason for doing so. He noted that the public body must vote to convene an Executive Session and said that only those members of the public body and those individuals whose presence is reasonably necessary for the public body to carry out its duty are permitted to attend the Executive Session.

Responding to a question from Boardmember Austin, Mr. Smith advised that unless it was necessary for the Board to discuss a specific matter, he would caution the inclusion of a "boilerplate" Executive Session notice on every agenda as a standard practice. He also briefly highlighted the kind of matters that can be discussed in Executive Session (See Page 19 of Attachment 1) and added that legal action can only be taken in a public meeting.

Mr. Smith further noted that the City Attorney's Office does not represent Mesa residents and nor does it have jurisdiction over homeowners' association disputes.

In response to a question from Chairman Ali'varius, Mr. Smith clarified that at a social event, it would be inappropriate for a Boardmember to engage in a conversation with the Mayor or a Councilmember regarding any Board discussions concerning the reappointment process.

Chairman Ali'varius thanked Mr. Smith for the presentation.

6. Hear an update on the Mesa City Court from Presiding Magistrate Matt Tafoya.

Presiding Magistrate Matt Tafoya addressed the Board and provided a brief overview of various programs and services that have been implemented at the new Mesa Municipal Court since it opened in February of this year. He reported that the facility was designed to accommodate a high volume of cases and said that implementation of the Case Management System (CMS) has improved the Court's computer system to meet modern day efficiencies.

Magistrate Tafoya briefly highlighted a series of statistical data concerning the Mesa Municipal Court as follows: that on an annual basis, the Court handles an estimated 270,000 customers; provides customer assistance to approximately 110,000 citizens; receives more than 200,000 calls; that Collections staff assisted more than 49,000 customers this year; that an estimated 12,000 cases were handled by the Custody Court; and that the Civil Traffic Court is fully automated, with trials conducted on a daily basis at 15 minute intervals.

Magistrate Tafoya remarked that as part of the CMS project, which took approximately one year to complete, staff reviewed and defined every business process performed in the Court, which set the foundation for the Court to be fully automated. He also noted that Court staff was participating in a project with the Arizona Supreme Court to modify a Statewide case management system. Magistrate Tafoya further advised that the Mesa Municipal Court implemented a program utilizing electronic monitoring devices (ankle bracelets) as an alternative to misdemeanor defendants being held on bond under pretrial conditions and added that last year, the program saved the City approximately \$350,000 in jail costs.

Magistrate Tafoya expressed appreciation to his staff for their professionalism, and in particular, Court Administrator Paul Thomas and Deputy Court Administrators Lenny Montanaro, Janie Moreno and Albert Lemke for their efforts and hard work.

Boardmember Austin thanked Magistrate Tafoya for the Mesa Municipal Court staff's professionalism and willingness to provide excellent customer service to the public.

In response to a question from Chairman Ali'varius, Magistrate Tafoya stated that one of the greatest needs of the Court was additional staff, but noted that has not been possible due to the City's current budgetary constraints.

Chairman Ali'varius expressed appreciation to Magistrate Tafoya for his presentation.

7. Review notebooks and discuss policies, schedule and work plan for the Board.

Chairman Ali'varius stated that each Boardmember was provided information relative to the reappointment of one Magistrate, who was seeking her first reappointment for a two-year term. She proposed that the January 5, 2011 meeting be cancelled and said that she would work with staff to complete the various administrative procedures for the reappointment process.

Chairman Ali'varius stated that it was the consensus of the Board that the January 5, 2011 meeting be cancelled and that the next meeting of the Judicial Advisory Board would be held on February 2, 2011.

8. Review and consider items related to the reappointment of one magistrate:

- a. Review reappointment schedule.

(See agenda item 7.)

9. Scheduling of meetings and general information.

(See agenda item 7.)

10. Adjournment.

It was moved by Boardmember Brooks, seconded by Boardmember Talamante, that the meeting of the Judicial Advisory Board be adjourned at 8:51 a.m.

Chairman Ali'varius declared the motion carried unanimously.

I hereby certify that the foregoing minutes are a true and correct copy of the minutes of the Judicial Advisory Board meeting of the City of Mesa, Arizona, held on the 6th day of October 2010. I further certify that the meeting was duly called and held and that a quorum was present.

LINDA CROCKER, CITY CLERK

THE OPEN MEETING LAW

A.R.S. 38-431 et. seq.

July 20, 2010
1

THE OPEN MEETING LAW

Arizona law states:

- ▶ All meetings of any public body shall be public meetings and all persons so desiring shall be permitted to attend and listen to the deliberations and proceedings. All legal action of public bodies shall occur during a public meeting. A.R.S. §38-431. 01(A)

PURPOSE OF THE OPEN MEETING LAW

- ▶ To ensure that the public has an opportunity to observe what the government is doing, and how it is being done.

State Policy A.R.S. 38-431.09

- ▶ Meetings of public bodies shall be conducted openly
- ▶ Notices and agendas provided for meetings with information reasonably necessary to inform the public of matters to be discussed or decided
- ▶ Construe OML in favor of “open and public meetings”

COMMITTEES AND SUBCOMMITTEES

- ▶ Open meeting law applies to all public officials discussing or conducting public business.
- ▶ Applies to advisory boards and subcommittees.

WHAT IS A MEETING?

- ▶ Meeting: the gathering, in person or through technological devices, of a quorum of members of a public body at which they discuss, propose or take legal action, including any deliberations by a quorum with respect to such action. A.R.S. §38-431(4).

What if only social event?

- ▶ A.G. recommends that you post the event if a quorum will be present.
- ▶ Identify time, date, location, and purpose.
- ▶ State that no legal action will be taken.

FACTORS TO CONSIDER

- ▶ Quorum of the Committee/Subcommittee
 - 7 member committee: Quorum = 4 members
 - 3 member subcommittee: Quorum = 2 members
- ▶ Subject that is reasonably likely to come before the committee/subcommittee.

FACTORS CONTINUED

- ▶ **Methods of communications**
 - Phone call
 - E-mail
 - Letters
 - Blogs
 - Using staff to transmit information

COMMUNICATION WITH STAFF

- ▶ Council may communicate with staff.
- ▶ Staff can provide the Council with factual information outside a public meeting.
- ▶ Staff cannot be used to side step the open meeting law.

Agenda

- ▶ Must be posted 24 hours in advance (excludes Sundays and Legal Holidays).
- ▶ Back up material must be available 24 hours in advance.
- ▶ Must “reasonably” inform public of issues to be discussed.
- ▶ All discussions must be “reasonably” related to an agenda item.

Conducting Meetings

- ▶ The Chair manages the meeting, subject to motions approved by the Board.
- ▶ Public bodies may impose reasonable time, place, and manner restrictions on speakers.

Conducting Meetings, cont.

- ▶ Robert's Rules are guidance only.
- ▶ Board may require speakers on same side with no new comments to select a spokesperson.
- ▶ Open Call to the Public is permitted, but not required.

AGENDA

- ▶ Even during a public meeting:
 - Cannot discuss any item that is not on the agenda.
- ▶ Reason: People that are interested in this issue may not be present because did not know that the committee would discuss this issue.

Public Access Only

- ▶ The OML gives the public the right to attend the meeting, and listen to the deliberations.
- ▶ G/R: The OML does not give the public the right to speak at a meeting.
- ▶ Exception: for zoning ordinances, a public hearing is required at planning commission. A.R.S. 9-462.04(A).

Minutes

- ▶ Date, time, place of meeting
- ▶ Members present/absent
- ▶ Description of matters discussed
- ▶ Description of legal action proposed, discussed or taken
- ▶ Name of person who made motion
- ▶ Name of each person making comment
- ▶ Vote results

Minutes, cont.

- ▶ Must be available to public within 3 working days after the meeting.
- ▶ May be stamped “draft” until approved by public body.
- ▶ Also need to post on internet either a recording of the meeting or statement of legal actions taken (marked agenda) w/in 3 working days after the meeting.

Executive Session

- ▶ Must be properly posted and agendized.
- ▶ Majority of Council must vote to convene into executive session.
- ▶ Only members of the public body and those individuals whose presence is reasonably necessary for the public body to carry out its duty are permitted to attend the executive session.

Executive Session, cont.

- ▶ Personnel Matters
- ▶ Legal Advice
- ▶ Litigation, Contract Negotiations, and Settlement Discussions
- ▶ Purchase, Sale or Lease of Real Property

Executive Session, cont..

- ▶ Discussion ONLY.
- ▶ Can give direction in some cases.
- ▶ All legal action must be in public meeting.
- ▶ Must keep minutes of e-session.
- ▶ Minutes are confidential except in limited circumstances.

◆ QUESTIONS???