

ORDINANCE _____

AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE CITY OF MESA, MARICOPA COUNTY, ARIZONA, REPEALING IN ITS ENTIRETY MESA CITY CODE, TITLE 1, CHAPTER 7 ENTITLED “CITY MAGISTRATES” AND REPLACING IT WITH A NEW TITLE 1, CHAPTER 7 ENTITLED “CITY MAGISTRATES AND THE PRESIDING CITY MAGISTRATE” AND AMENDING TITLE 2, CHAPTER 3 ENTITLED “JUDICIAL ADVISORY BOARD.”

WHEREAS, Mesa City Charter, Article IV, Section 401(D) sets forth that the City Council shall appoint City Magistrates.

WHEREAS, Mesa City Code, Title 1, Chapter 7 entitled “City Magistrates” sets forth certain requirements and the term of office for the position of City Magistrate.

WHEREAS, Mesa City Code, Title 2, Chapter 3 entitled “Judicial Advisory Board” sets forth certain duties of the Judicial Advisory Board, including recommending to the City Council the best persons qualified to be appointed and reappointed as City Magistrates.

WHEREAS, the City Council desires to formalize the position of Presiding City Magistrate, the terms of office served by the Presiding City Magistrate, and the process for appointing and reappointing the Presiding City Magistrate.

WHEREAS, the City Council desires to provide clarity regarding the terms of office served by City Magistrates and the process for appointing and reappointing City Magistrates.

WHEREAS, the City Council desires to provide clarity regarding the authority of the Presiding City Magistrate to appoint Magistrates Pro Tem.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MESA, MARICOPA COUNTY, ARIZONA, AS FOLLOWS:

Text written in BOLD AND ALL CAPS indicates new language and text written in strikethrough represents removed language.

SECTION 1. Mesa City Code, Title 1, Chapter 7 entitled “City Magistrates” is repealed in its entirety and replaced with a new Mesa City Code, Title 1, Chapter 7 entitled “City Magistrates and the Presiding City Magistrate” as follows:

CHAPTER 7 CITY MAGISTRATES AND THE PRESIDING CITY MAGISTRATE

SECTION:

1-7-1: DEFINITIONS

1-7-2: APPOINTMENT AND COMPENSATION

1-7-3: TERM OF OFFICE

1-7-1: DEFINITIONS

CITY MAGISTRATE: A CITY MAGISTRATE, OTHER THAN THE PRESIDING CITY MAGISTRATE OR A MAGISTRATE PRO TEM, APPOINTED TO THE MESA MUNICIPAL COURT BY THE MESA CITY COUNCIL PURSUANT TO MESA CITY CODE, TITLE 2, CHAPTER 3.

PRESIDING CITY MAGISTRATE: THE PRESIDING CITY MAGISTRATE APPOINTED TO THE MESA MUNICIPAL COURT BY THE MESA CITY COUNCIL PURSUANT TO MESA CITY CODE, TITLE 2, CHAPTER 3.

1-7-2: APPOINTMENT AND COMPENSATION

THE CITY COUNCIL SHALL APPOINT ONE (1) OR MORE CITY MAGISTRATES AND ONE (1) PRESIDING CITY MAGISTRATE, EACH OF WHOM SHALL BE A MEMBER OF THE ARIZONA BAR. COMPENSATION OF CITY MAGISTRATES AND THE PRESIDING CITY MAGISTRATE SHALL BE FIXED BY THE CITY COUNCIL.

1-7-3: TERM OF OFFICE

- A. THE TERM OF OFFICE FOR CITY MAGISTRATES AND THE PRESIDING CITY MAGISTRATE ARE TWO (2) COMPLETE YEARS FROM JULY FIRST FOR THE FIRST TERM, TWO (2) YEARS FOR THE SECOND TERM, AND FOUR (4) YEARS EACH FOR ANY SUBSEQUENT TERMS, AND SHALL BE DETERMINED AS FOLLOWS:**
- 1. THE FIRST TERM OF OFFICE FOR A CITY MAGISTRATE AND PRESIDING CITY MAGISTRATE APPOINTED ON JULY FIRST SHALL COMMENCE JULY FIRST AND TERMINATE ON THE SECOND THIRTIETH DAY OF JUNE THEREAFTER.**
 - 2. THE FIRST TERM OF OFFICE FOR A CITY MAGISTRATE AND PRESIDING CITY MAGISTRATE APPOINTED ON A DAY OTHER THAN JULY FIRST SHALL COMMENCE ON THE DATE OF APPOINTMENT AND TERMINATE ON THE THIRD THIRTIETH DAY OF JUNE THEREAFTER.**
 - 3. THE SECOND TERM OF OFFICE FOR A CITY MAGISTRATE AND PRESIDING CITY MAGISTRATE SHALL COMMENCE ON JULY FIRST OF THE YEAR OF REAPPOINTMENT AND TERMINATE ON THE SECOND THIRTIETH DAY OF JUNE THEREAFTER.**
 - 4. THE THIRD AND ANY SUBSEQUENT TERMS OF OFFICE FOR A CITY MAGISTRATE AND PRESIDING CITY MAGISTRATE SHALL COMMENCE ON JULY FIRST OF THE YEAR OF REAPPOINTMENT AND SHALL TERMINATE ON THE FOURTH THIRTIETH DAY OF JUNE THEREAFTER.**

- B. IF A CURRENT SITTING CITY MAGISTRATE IS APPOINTED TO THE POSITION OF PRESIDING CITY MAGISTRATE, THE FIRST TERM OF OFFICE AS PRESIDING CITY MAGISTRATE SHALL BE GOVERNED BY SUBSECTIONS 1-7-3(A)(1) AND (2), THE SECOND TERM OF OFFICE AS THE PRESIDING CITY MAGISTRATE SHALL BE GOVERNED BY SUBSECTION 1-7-3(A)(3), AND ANY SUBSEQUENT TERMS OF OFFICE AS THE PRESIDING CITY MAGISTRATE SHALL BE GOVERNED BY SUBSECTION 1-7-3(A)(4).**

SECTION 2. Mesa City Code, Title 2, Chapter 3 entitled “Judicial Advisory Board” is amended as follows:

2-3-1: CREATION OF BOARD

There is hereby created a citizen board to be known as the Judicial Advisory Board. Board members shall serve without salary or compensation.

2-3-2: PURPOSE OF BOARD

The purpose of the Judicial Advisory Board is to recommend to the City Council the best qualified persons to become City Magistrates, ~~and~~ to evaluate the performance of ~~appointed~~ CITY Magistrates, and advise the City Council about retaining ~~them~~ CITY MAGISTRATES, AND, IF SO ELECTED BY THE CITY COUNCIL, TO RECOMMEND THE BEST PERSON TO BECOME THE PRESIDING CITY MAGISTRATE, TO EVALUATE THE PERFORMANCE OF THE PRESIDING CITY MAGISTRATE, AND TO ADVISE THE CITY COUNCIL REGARDING RETENTION OF THE PRESIDING CITY MAGISTRATE.

2-3-3: DEFINITIONS

BOARD: THE JUDICIAL ADVISORY BOARD OF THE CITY OF MESA.

CITY MAGISTRATE: A CITY MAGISTRATE, OTHER THAN THE PRESIDING CITY MAGISTRATE OR A MAGISTRATE PRO TEM, APPOINTED TO THE MESA MUNICIPAL COURT BY THE MESA CITY COUNCIL.

MAGISTRATE PRO TEM: A MAGISTRATE APPOINTED BY THE PRESIDING CITY MAGISTRATE TO SERVE ON THE MESA MUNICIPAL COURT ON AN AS-NEEDED BASIS AS DETERMINED BY THE PRESIDING CITY MAGISTRATE.

PRESIDING CITY MAGISTRATE: THE PRESIDING CITY MAGISTRATE APPOINTED TO THE MESA MUNICIPAL COURT BY THE MESA CITY COUNCIL.

2-3-34: MEMBERSHIP

- A. The Board shall be composed of seven (7) persons, as follows:
1. The Presiding Judge of the Arizona Superior Court for Maricopa County, or designee.

2. An Arizona Appellate Court Judge to be appointed by the Chief Justice of the Arizona Supreme Court.
 3. An active member of the State Bar of Arizona who shall reside in the City of Mesa and who shall be appointed by the Mayor, with the concurrence of the City Council, from among three (3) nominees recommended by the State Bar's Board of Governors.
 4. A member of the Maricopa County Bar Association who shall reside in the City of Mesa and who shall be appointed by the Mayor, with the concurrence of the City Council, from among three (3) nominees recommended by the Association's Board of Directors.
 5. Three (3) Mesa electors who are not City employees, Judges in any official capacity, retired Judges, nor members of the State Bar of Arizona, but who have distinguished themselves through their public service, impartiality, and objectivity.
- B. Subject to the concurrence of the City Council, the Mayor shall appoint the members of the Board for staggered terms of three (3) years each. At the time of the initial appointment, the Mayor shall designate the length of term for each such member to provide for staggered terms.
 - C. No member of the Board shall serve for more than two (2) complete consecutive terms; however, a member may be reappointed after the lapse of three (3) years from the end of the previous term.
 - D. Absences of any member from meetings of the Board shall, at the discretion of the City Council, render such member liable for immediate removal from the Board by the **CITY** Council. Any member absent from three (3) consecutive meetings without being excused by the chairperson shall be considered as having vacated his or her appointment.

2-3-45:BOARD OFFICERS

- A. The Board's officers shall consist of a chairperson and vice chairperson, each selected by the Board from the Board's members.
- B. Board officers shall serve one (1) year terms. No member shall serve more than two (2) terms as chairperson or two (2) terms as vice chairperson, not including any term filled for the remainder of another member's unexpired term.

2-3-56:BOARD REPRESENTATION

- A. Pursuant to Administrative Order ~~93-17~~ **2000-80** of the Arizona Supreme Court, and such subsequent orders as may issue which address this objective, in selecting ~~Judicial Advisory~~ Board members, the appointing authorities shall be sensitive to representation reflecting the racial, ethnic, gender, and political diversity of the community served by the Mesa ~~City~~ **MUNICIPAL** Court.
- B. The appointing authority for each ~~Advisory~~ Board member shall advise each Board member they appoint that the Board member's responsibilities include recruitment of qualified **CITY** Magistrate applicants, including qualified minority and women applicants, who may not otherwise apply.

2-3-67:BOARD MEETINGS

- A. Promptly upon learning of a ~~City Magistrate~~ vacancy, anticipated vacancy, or the expiration of the existing term of a City Magistrate **OR UPON LEARNING THAT CITY COUNCIL ELECTED TO FOLLOW THE APPOINTMENT PROCESS FOR THE PRESIDING CITY MAGISTRATE OF SUBSECTION 2-3-8(B)(1)(b) OR THE REAPPOINTMENT PROCESS FOR THE PRESIDING CITY MAGISTRATE OF SUBSECTION 2-3-8(B)(2)(b),** ~~or the need for a continuing appointment of a Pro Tempore Magistrate,~~ the chairperson of the Board shall issue a call for a meeting of the Board.
 1. ~~A continuing appointment of a Pro Tempore Magistrate refers to a Magistrate who is anticipated to work on a regular basis over an extended period of time and not just in response to emergencies.~~
 2. ~~The Presiding Magistrate, with the approval of the City Manager, may appoint Magistrates Pro Tempore who do not work pursuant to a continuing appointment but, instead, are needed on an emergency basis, such as to fill in temporarily for regular Magistrates who are ill, on vacation, or attending training.~~
- B. All Board meetings shall comply with the Arizona Open Meeting Act (A.R.S. § 38-431 et seq.) and Public Records Law (A.R.S. § 39-121 et seq.), as amended.
- C. The City Clerk's Office and the ~~Personnel Office~~ **HUMAN RESOURCES DEPARTMENT** shall jointly act as secretary to the Board by preparing notices of meetings, minutes, sending information packets to members, and fulfilling all other clerical responsibilities of the Board.

2-3-78: APPOINTMENT AND REAPPOINTMENT PROCESS OF CITY MAGISTRATES, THE PRESIDING CITY MAGISTRATE, AND MAGISTRATES PRO TEM

A. APPOINTMENT AND REAPPOINTMENT OF CITY MAGISTRATES

1. Through the City's ~~Personnel Office~~ **HUMAN RESOURCES DEPARTMENT**, the Board shall advertise notice to the public and licensed attorneys of the vacancy or reappointment **OF A CITY MAGISTRATE AS FOLLOWS.**
 - a. ~~In the case of a vacancy~~**FOR VACANCIES OF CITY MAGISTRATES**, the Board members shall actively seek and encourage well-qualified individuals to apply. The Board shall advertise the vacancy in a manner designed to provide reasonable notice of the opening, but shall at least publish notice in a professional newspaper once a week for two (2) successive weeks.
 - b. ~~In the case of a reappointment~~**FOR REAPPOINTMENTS OF CITY MAGISTRATES**, the Board shall solicit public and professional comment in a manner designed to elicit constructive appraisals of the **CITY** Magistrate's performance, but shall at least publish notice of the potential reappointment in a daily newspaper of general circulation in Mesa once a week for two (2) successive weeks.
2. All applicants for appointment or reappointment **OF A CITY MAGISTRATE POSITION** shall complete an application containing such information as the Board and the ~~Personnel Office~~ **HUMAN RESOURCES DEPARTMENT** deem necessary and appropriate to comply with **THE** law and provide relevant

information about the ability of the applicant to perform an outstanding job as a City Magistrate.

- a. For all appointments under ~~this Chapter~~ **SUBSECTION 2-3-8(A)**, the Board may use as a guide the "Application for Nomination to Judicial Office," formulated under Rule 74 of the Arizona Supreme Court's Uniform Rules of Procedure for Commissions on Appellate and Trial Court Appointments.
 - b. For all reappointments under ~~this Chapter~~ **SUBSECTION 2-3-8(A)**, the Board may use as a guide all surveys, questionnaires, data forms, and reports, formulated under Rule 6 of the Arizona Supreme Court's Rules of Procedure for Judicial Performance Review in Arizona.
3. Applicants shall be given a meaningful opportunity to supplement their applications with letters of recommendation.
 4. The Board shall not limit its investigation of applicants to the applications and letters of recommendation received, but shall **ALSO** ~~hold public hearings,~~ **CONDUCT** personal interviews, and ~~conduct such~~ investigations into the background, performance, and qualifications of the applicants **AND MAY HOLD PUBLIC HEARINGS**, as the Board deems necessary and appropriate.
 5. Consistent with and in addition to the requirements of this Chapter, the Board is authorized to develop such procedures as it deems reasonable to select and retain outstanding City ~~Court~~ Magistrates on the basis of merit. In that regard, at a minimum the Board shall:
 - a. Conduct at least one (1) public hearing soliciting public input concerning sitting **CITY** Magistrates seeking reappointment.
 - b. Personally interview at least six (6) candidates for initial appointment as a City Magistrate. ~~or for a continuing appointment as a Pro Tempore Magistrate.~~

B. APPOINTMENT AND REAPPOINTMENT OF THE PRESIDING CITY MAGISTRATE

1. **THE CITY COUNCIL MAY APPOINT A PRESIDING CITY MAGISTRATE BY EITHER OF THE FOLLOWING PROCESSES AND WILL NOTIFY THE BOARD OF WHICH PROCESS WILL BE USED.**
 - a. **THE CITY COUNCIL MAY APPOINT A CURRENT SITTING CITY MAGISTRATE TO FILL A VACANCY OF THE POSITION OF PRESIDING CITY MAGISTRATE. THE CITY COUNCIL MAY USE SUCH PROCEDURES AS IT DEEMS REASONABLE TO SELECT A PRESIDING CITY MAGISTRATE ON THE BASIS OF MERIT, WHICH MAY INCLUDE: CONSIDERING ALL SURVEYS, QUESTIONNAIRES, DATA FORMS, AND REPORTS FORMULATED UNDER RULE 6 OF THE ARIZONA SUPREME COURT'S RULES OF PROCEDURE FOR JUDICIAL PERFORMANCE REVIEW IN ARIZONA, AND ANY OTHER INFORMATION RELEVANT TO DETERMINE THE CITY MAGISTRATE BEST SUITED AND MOST QUALIFIED FOR THE POSITION OF PRESIDING CITY MAGISTRATE.**

- b. **THE CITY COUNCIL MAY ELECT THAT THE APPOINTMENT PROCESS FOR THE PRESIDING CITY MAGISTRATE WILL BE THE SAME AS THE PROCESS FOR CITY MAGISTRATES, INCLUDING THE REQUIREMENTS AND PROCESSES IN SUBSECTION 2-3-8(A) AND SECTION 2-3-9.**
- 2. **THE CITY COUNCIL MAY MAKE A REAPPOINTMENT DECISION REGARDING THE PRESIDING CITY MAGISTRATE AS FOLLOWS:**
 - a. **THE CITY COUNCIL MAY MAKE A REAPPOINTMENT DECISION REGARDING THE PRESIDING CITY MAGISTRATE ON THE BASIS OF MERIT. THE CITY COUNCIL MAY DEVELOP SUCH PROCEDURES IT DEEMS NECESSARY TO MAKE THE REAPPOINTMENT DECISION, WHICH MAY INCLUDE THE PROCEDURES OF SUBSECTION 2-3-8(B)(1)(a). IF THE CITY COUNCIL ELECTS THIS REAPPOINTMENT PROCESS, IT WILL NOTIFY THE BOARD.**
 - b. **IF THE CITY COUNCIL DOES NOT ELECT THE REAPPOINTMENT PROCESS UNDER SUBSECTION 2-3-8(B)(2)(a), THE REAPPOINTMENT PROCESS FOR THE PRESIDING CITY MAGISTRATE WILL BE THE SAME AS THE PROCESS FOR CITY MAGISTRATES, INCLUDING THE REQUIREMENTS AND PROCESSES IN SUBSECTION 2-3-8(A) AND SECTION 2-3-9.**

C. APPOINTMENT OF MAGISTRATES PRO TEM

- 1. **THE PRESIDING CITY MAGISTRATE, WITH APPROVAL FROM THE CITY MANAGER, MAY APPOINT MAGISTRATES PRO TEM ON AN AS-NEEDED BASIS, SUCH AS TO FILL IN FOR CITY MAGISTRATES WHO ARE UNAVAILABLE OR FOR TEMPORARY OR PART-TIME STAFFING OF THE MESA MUNICIPAL COURT.**
- 2. **THE DURATION OF THE APPOINTMENT OF A MAGISTRATE PRO TEM WILL BE DETERMINED BY THE PRESIDING CITY MAGISTRATE BASED ON THE NEEDS OF THE MESA MUNICIPAL COURT.**

2-3-89: RECOMMENDATION PROCESS

- A. All Board members shall consider all applicants in an impartial, objective manner, based only on the applicant's merit ~~as a potential or current City Magistrate.~~
- 1. At the earliest possible opportunity, a Board member shall disclose to all members of the Board:
 - a. All relationships with an applicant (such as business, personal, or attorney-client) or any possible cause for conflict of interest, bias, or prejudice.
 - b. All efforts to recruit a specific applicant.
 - c. All applicants who constitute "relatives" under the Arizona Conflict of Interest Laws (A.R.S. § 38-501 et seq.), as amended, or those applicants who are at present, or have been in the last ten (10) years, a coworker in

the same company or firm as the Board member or the Board member's spouse.

2. A Board member shall refrain from voting or otherwise participating in discussing all persons required to be disclosed in **SUBSECTION 2-3-9(A)(1)(a) AND (c).** ~~paragraph 1, subparagraphs (a) and (c), above.~~ Board members may discuss and vote on applications submitted by persons they recruit to apply, after having disclosed to all Board members the nature of their efforts to recruit the applicant.
- B. In considering initial appointments or reappointments, the Board shall consider comment from all interested members of the public at a public hearing or in writing. For reappointments, the Board shall also make inquiry of the Arizona Commission on Judicial Conduct for any adverse rulings against the City Magistrate **OR PRESIDING CITY MAGISTRATE** scheduled for reappointment consideration.
- C. Following Arizona Board of Regents v. Phoenix Newspapers, Inc., 167 Ariz. 254, 806 P.2d 348 (1991), or subsequent cases dealing with the same subject, the names of applicants and their applications shall not be disseminated to the public or the media. However, those applicants who both agree to be interviewed and who are selected to be interviewed shall become candidates whose names and applications, without the home addresses and telephone numbers, shall be made available, upon request, to the public and the media.
- D. The Board shall interview candidates in accordance with the Arizona Open Meeting Laws. The Board shall vote on the candidates in an open meeting.
 1. As soon as possible after the vote of the Board, the Board shall deliver its written **APPOINTMENT** recommendation ~~concerning an initial Magistrate or continuing Magistrate appointment~~ to the Mayor and City Council, or an appropriate Subcommittee of the **CITY** Council. The Board shall identify in alphabetical order the three (3) best qualified candidates for each vacancy and summarize the relative strengths and weaknesses of each final candidate.
 2. As soon as possible after the vote of the Board, the Board shall ~~also~~ deliver its written **REAPPOINTMENT** recommendation ~~concerning reappointment of a City Magistrate~~ to the Mayor and City Council, or an appropriate Subcommittee of the **CITY** Council. The Board shall state that the Board does or does not recommend reappointment of the ~~Magistrate~~, summarizing the reasons therefor.

2-3-910: CITY COUNCIL DECISION

The City Council may accept or reject the Board's advice and recommendations. The City Council may also refer a specific appointment or reappointment back to the Board for more investigation and findings. The **CITY** Council may also refer any judicial matter or issue to the Board for such review as the **CITY** Council may direct.

SECTION 3. RECITALS. The recitals above are fully incorporated in this Ordinance by reference.

SECTION 4. EFFECTIVE DATE. The effective date of this Ordinance shall be thirty (30) days following adoption by the City Council.

SECTION 5. PRESERVATION OF RIGHTS AND DUTIES. This Ordinance does not affect the rights and duties that matured, penalties that were incurred, or proceedings that were begun before the effective date of this Ordinance.

SECTION 6. SEVERABILITY. If any section, subsection, sentence, clause, phrase, or portion of this Ordinance or any part of the material adopted herein by reference is for any reason held to be invalid or unconstitutional by the decision of a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions thereof.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF MESA, MARICOPA COUNTY, ARIZONA, this 15th day of June, 2020.

APPROVED:

Mayor

ATTEST:

City Clerk