

# CITY COUNCIL AGENDA

CITY COUNCIL CHAMBERS . 11465 WEST CIVIC CENTER DRIVE . AVONDALE, AZ 85323

**WORK SESSION**  
**October 14, 2013**  
**6:00 PM**

## CALL TO ORDER BY MAYOR ROGERS

**1 ROLL CALL BY THE CITY CLERK**

**2 RECOGNITION OF SIX NEW FIRE-RESCUE PERSONNEL**

Staff will introduce to the Mayor and City Council six new fire-rescue personnel. The Mayor will administer the oath of office to the new personnel.

**3 COOPERATIVE AGREEMENT FOR YOUTH RECREATION PROGRAMMING**

City Council will receive an update on the City of Avondale Parks and Recreation Cooperative Agreement with Program Partners to provide jointly-sponsored sports, leisure, and academic programs and activities. For information, discussion and direction.

**4 FEASIBILITY OF UNDERGROUNDING THE EXISTING POWER ALONG DYSART ROAD FROM VAN BUREN STREET TO MAIN STREET (MC85/BUCKEYE ROAD)**

City Council will receive information regarding the feasibility of undergrounding the existing power lines along the eastside of Dysart Road from Van Buren Street to Main Street (MC85/Buckeye Road). For information, discussion and direction.

**5 PROPOSED AMENDMENT TO THE AVONDALE CITY CODE CHAPTER 5, ARTICLE II JUDICIAL APPOINTMENT ADVISORY BOARD**

Staff will present information regarding an amendment to the Avondale City Code Chapter 5 - Courts that would establish the authority and process to create a Judicial Appointment and Review Board. This item is for information, discussion and possible direction to staff.

**6 ADJOURNMENT**

Respectfully submitted,

A handwritten signature in cursive script that reads "Carmen Martinez".

Carmen Martinez  
City Clerk

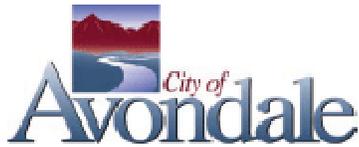
Individuals with special accessibility needs, including sight or hearing impaired, large print, or interpreter, should contact the City Clerk at 623-333-1200 or TDD 623-333-0010 at least two business days prior to the Council Meeting.

Personas con necesidades especiales de accesibilidad, incluyendo personas con impedimentos de vista u oído, o con necesidad de impresión grande o interprete, deben comunicarse con la Secretaria de la Ciudad at 623-333-1200 o TDD 623-333-0010 cuando menos dos días hábiles antes de la junta del Concejo.

Notice is hereby given that pursuant to A.R.S. § 1-602.A.9, subject to certain specified statutory exceptions, parents have a right to consent before the State or any of its political subdivisions make a video or audio recording of a minor child. Meetings of the City Council may be audio and/or video recorded and, as a result, proceedings in which children are present

may be subject to such recording. Parents, in order to exercise their rights may either file written consent with the City Clerk to such recording, or take personal action to ensure that their child or children are not present when a recording may be made. If a child is present at the time a recording is made, the City will assume that the rights afforded parents pursuant to A.R.S. § 1-602.A.9 have been waived.

De acuerdo con la ley A.R.S. § 1-602.A.9, y sujeto a ciertas excepciones legales, se da aviso que los padres tienen derecho a dar su consentimiento antes de que el Estado o cualquier otra entidad política haga grabaciones de video o audio de un menor de edad. Las juntas del Concejo de la Ciudad pueden ser grabadas y por consecuencia, existe la posibilidad de que si hay menores de edad presentes éstos aparezcan en estos videos o grabaciones de audio. Los padres pueden ejercitar su derecho si presentan su consentimiento por escrito a la Secretaria de la Ciudad, o pueden asegurarse que los niños no estén presentes durante la grabación de la junta. Si hay algún menor de edad presente durante la grabación, la Ciudad dará por entendido que los padres han renunciado sus derechos de acuerdo a la ley contenida A.R.S. § 1-602.A.9.



# CITY COUNCIL REPORT

**SUBJECT:**

Recognition of Six New Fire-Rescue Personnel

**MEETING DATE:**

October 14, 2013

**TO:** Mayor and Council

**FROM:** Paul Adams, Fire Chief (623) 333-6100

**THROUGH:** Charlie McClendon, City Manager

**PURPOSE:**

To introduce six new fire-rescue personnel to the Mayor and City Council and administer the oath of office.

**BACKGROUND:**

In preparation for the opening of station 174 in the northwest portion of the community in January six new fire-rescue personnel were hired in August. Those individuals have completed the necessary training and will be assigned to shift positions on October 14.

**DISCUSSION:**

This will provide an opportunity for staff to introduce the new fire-rescue personnel, formally issue their uniform badges and allow the Mayor to administer the oath of office.

The new personnel are:

- Matthew Artibey
- Travis Lambert
- Marlin Nightengale
- Calen Smith
- Raymond Smith
- Cory Whigham

**BUDGETARY IMPACT:**

Costs associated with these positions is included in the approved budget for FY 2013-14.

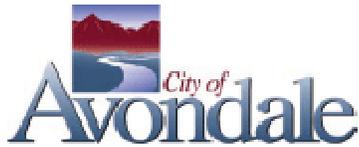
**RECOMMENDATION:**

This item is for information only.

**ATTACHMENTS:**

[Click to download](#)

No Attachments Available



# CITY COUNCIL REPORT

**SUBJECT:**

Cooperative Agreement for Youth Recreation Programming

**MEETING DATE:**

October 14, 2013

**TO:** Mayor and Council

**FROM:** Christopher Reams, Director of Parks, Recreation & Libraries 623-333-2412

**THROUGH:** Charlie McClendon, City Manager

**PURPOSE:**

The purpose of this report is to provide City Council with an update on the City of Avondale Parks and Recreation Cooperative Agreement program. This item is for information, discussion and possible Council direction to staff.

**BACKGROUND:**

Beginning in 2007, in response to financial pressures, the City of Avondale reduced staffing including Parks and Recreation personnel. The Parks and Recreation Department subsequently reduced program offerings. There was also a reduction in participation rates and an increase in outside organization requests for programming support. A majority of request were for assistance with field costs, marketing, and assistance with registration. In response to community requests, Staff developed the Cooperative Agreement program to provide opportunities for local organizations while increasing City program offerings with limited City staff and funding.

A Cooperative Agreement is an agreement between the City and local Non Profit organizations (Program Partners) to provide jointly-sponsored sports, leisure, and academic programs and activities. The Program Partner must have 501C3 non-profit status, and the activities must be held in the City of Avondale. All programming will be jointly agreed upon prior to the program start date.

Programs implemented under this agreement may include, but are not limited to, the following types of programs:

- Sports recreational and competitive leagues
- Tournaments
- Out of school programs
- Skills camps
- Developmental courses
- Leisure programs

Under the terms of the agreement the City will provide the facilities, marketing, and registration. The Program Partner will develop, implement, market, and manage the applicable programs. Program Partners may also register participants with the approval of the City. Non-City owned and operated facilities may be used for the programs with the agreement of both parties.

Staff, in conjunction with the City Attorney developed the Letter Agreement which stipulates the terms and conditions regarding the Cooperative Agreement. The term of the agreement is for one (1) year with a maximum of three (3) additional one-year terms. The additional terms must be agreed upon by both parties through an annual review of the letter agreement by a designated

representative of both parties. Either party can dissolve the agreement with cause after a 60 day notification. All agreements are non-exclusive. The City will continue to develop agreements with other organizations to enhance services and programs for City of Avondale residents.

### **DISCUSSION:**

The Cooperative Agreement provides benefits to both the City and the Program Partner. The City eliminates the direct cost of program staffing, equipment and materials; and the Program Partner eliminates the direct cost of facility rentals. Both parties benefit from increased marketing, program opportunities, community involvement, and grant eligibility.

The Cooperative Agreement also enhances the quality of life for Avondale residents; establishes community goodwill; encourages community involvement and outreach; promotes health and wellness; highlights the community; and attracts visitors to the City. In addition, the Cooperative Agreement is directly related to the following City Council goals:

- Goal - Community Involvement: Encourage effective coordination and involvement with community groups and other levels of government; promote community involvement among residents.
- Goal - Quality of Life: Provide quality of life options and opportunities in the community.

Each party to the Cooperative Agreement has specific obligations as follows:

#### City Obligations

- Appoint a staff member to serve as the City's representative to oversee the Agreement.
- Promote and market the programs and activities associated with this agreement as agreed upon by both Parties.
- Be responsible for oversight of all City employees and volunteers.
- Provide all fields and facilities as required and agreed upon
- Prepare all fields and facilities; and allocate time for agreed upon activities.

#### Program Partner Obligations

- Appoint a staff member to serve as the Club's representative to oversee the Program.
- Provide high quality instruction, personnel and equipment.
- Manage the day-to-day operations of the program, under City supervision.
- Select, train, and manage qualified staff and volunteers.
- Adhere to all City of Avondale codes, laws, rules, and regulations pertaining to any associated event.
- Provide free opportunities to Avondale residents each season (at a mutually agreeable time) at the Program facilities.
- Promote the City's "Let's Move" initiative of raising a healthier generation of kids through the overall operation of the Programs.
- Coordinate Program registration, recruitment and coordinating and scheduling of Program activities.
- Provide direct supervision and coordination of the Program and the Program participants.

The City has developed Cooperative Agreements with the following organizations:

- Right Touch Basketball
- World Net Soccer
- Art League West
- Urban Youth Athletic Association (RBI)

RBI has been the most successful Cooperative program to date. On April 13, 2013 Council approved a Cooperative Agreement between the City and RBI for jointly develop Coach Pitch, Kid Pitch and Jr. RBI, targeting kids ages 4-12. (See Attachment 1).

The City provides the fields, maintains the fields, and markets the program. RBI provided training for sixty (60) volunteer coaches, manages all required staff and umpires, co-produced the opening ceremonies with the City, provides free baseball clinics to Avondale youth in the off season, and allows for eligibility for Field Construction grants through the Arizona Diamondbacks due to the community partnership.

Over 500 children participated in the program, more than doubling the participation in the City's previous non-cooperative program. Ninety percent (90%) of all program participants are Avondale residents and 150 children received a full or discounted participation scholarships. The program fee income also doubled with only 1/3 of the previous City staffing requirements.

The Cooperative Agreement initiative is expected to continue to grow and enrich the community. Future expectations include additional partners and expanded opportunities for Avondale residents.

Examples of other organizations that are eligible to enter into a Cooperative Agreement include, but are not limited to, Avondale Little League; National Youth Sports (NYS); American Youth Sports Association (AYSO); the YMCA; Boys and Girls Club; Gangplank; and the Anderson School of Music.

#### **BUDGETARY IMPACT:**

All program cost and expenses are recoverable through program participation fees, sponsorships, and donations. The Program partners split any revenue 50/50 after all expenses have been paid.

#### **RECOMMENDATION:**

The purpose of this report is to provide City Council with an update on the City of Avondale Parks and Recreation Cooperative Agreement program. This is for information, discussion and possible Council direction to staff.

#### **ATTACHMENTS:**

Click to download

[RBI Cooperative Agreement](#)

**CONTRACTOR AGREEMENT  
BETWEEN  
THE CITY OF AVONDALE  
AND  
URBAN YOUTH ATHLETIC ASSOCIATION,  
d/b/a ARIZONA RBI**

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THIS CONTRACTOR AGREEMENT (this "Agreement") is made as of April 1, 2013, between the City of Avondale, an Arizona municipal corporation (the "City"), and Urban Youth Athletic Association, d/b/a Arizona RBI, an Arizona non-profit corporation (the "Contractor").

RECITALS

- A. The City desires to provide sports programs to Avondale youth.
- B. The Contractor is in the business of providing sports and educational programs and has the ability to provide sports programs and related activities for the City's youth.
- C. The City desires to enter into an Agreement with the Contractor to jointly manage and operate youth sports clinics, leagues, programs and special events (the "Services" or the "Programs") at the City's parks and American Sports Center (the "Facilities").

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated herein by reference, the following mutual covenants and conditions, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and the Contractor hereby agree as follows:

1. Term of Agreement. This Agreement shall be effective as of the date first set forth above and shall remain in full force and effect until March 31, 2014 (the "Initial Term"), unless terminated as otherwise provided pursuant to the terms and conditions of this Agreement. After the expiration of the Initial Term, this Agreement may be renewed for up to four successive one-year terms (each, a "Renewal Term") if (i) it is deemed in the best interests of the City, subject to availability and appropriation of funds for renewal in each subsequent year, (ii) at least 30 days prior to the end of the then-current term of the Agreement, the Consultant requests, in writing, to extend the Agreement for an additional one-year term and (iii) the City approves the additional one-year term in writing (including any price adjustments approved as part of this Agreement), as evidenced by the City Manager's signature thereon, which approval may be withheld by the City for any reason. The Consultant's failure to seek a renewal of this Agreement shall cause the Agreement to terminate at the end of the then-current term of this Agreement; provided, however, that the City may, at its discretion and with the agreement of the Consultant, elect to waive this requirement and renew this Agreement. The Initial Term and any Renewal Term(s) are collectively referred to herein as the "Term." Upon renewal, the terms and conditions of this Agreement shall remain in full force and effect.

2. Scope of Work. Contractor shall provide the Services as more particularly set forth in the Scope of Work attached hereto as Exhibit A and incorporated herein by reference.

3. Compensation. Upon completion of each Program, the City shall pay the Contractor an amount equal to 50 percent of the total fees collected, less total expenses paid or incurred by the City for each Program.

4. Registration. The City shall coordinate and perform the registration of participants utilizing the Programs.

5. Advertising. The City and the Contractor will each promote and market the Programs and activities associated with this Agreement as agreed upon by both parties. At its discretion, the City shall advertise the Programs through the normal City advertising mediums, including but not limited to, the City website, flyers and other promotional materials. Contractor may advertise other programs in conjunction with the Services provided under this Agreement.

6. Facilities. The Services shall be conducted at City Facilities as agreed upon in writing by the City and Contractor. The Contractor shall ensure that only its properly identified employees listed with the City are permitted on the premises of the City Facilities during the performance of the Contractor's duties. The Contractor will be held strictly liable for any damage or breach of security caused by its employees.

7. Maintenance. The Contractor shall be responsible, at its own expense, for maintaining, cleaning and keeping in good repair all Contractor property used in the performance of the Services. The City shall be responsible, at its own expense, for maintaining, cleaning and keeping in good repair all City property used in the performance of the Services. Notwithstanding the foregoing, the Contractor and the City shall be jointly responsible for cleaning up the portion(s) of City Facilities used in the performing the Services.

8. Damage to City Property. The Contractor shall conduct the operation of the Services in a manner that prevents damage to City property. In the event damage occurs to City property or any adjacent property by reason of any Contractor Service performed under this Agreement, the Contractor shall replace or repair the same at no cost to the City. If the City repairs or replaces the Contractor's damage, the cost of such repair or replacement shall be charged to the Contractor. The City shall be responsible for the repair of any damages to the City property that results directly from the City's use of the property.

9. Documents. All documents prepared and submitted to the City pursuant to this Agreement shall be the property of the City.

10. Contractor Personnel. The Contractor shall provide and supervise adequate, experienced, adult instructional staff trained in the proper methods and techniques in order to properly and satisfactorily perform the Services. All members of the Contractor's instructional staff who will be performing the Services must be 18 years of age or older. If a staff member under the age of 18 is performing the Services, then he/she must be accompanied by an adult member for the duration of the Services.

10.1 Other Qualifications. The Contractor shall provide trustworthy, reliable employees and make a good faith effort to retain the same employees on the same schedule in the same area for as long as possible. The Contractor shall notify the City's administrator or designee prior to the change in staffing if possible or as quickly as possible thereafter. In addition, Contractor's staff members are required to: (A) read, write, speak and understand the English language, (B) have the necessary public relations skills to deal with employees and customers in a professional, courteous, businesslike manner and (C) be legally authorized to work in the State of Arizona.

10.2 Background. The Contractor or its employees shall not have been convicted of a felony or a crime involving moral turpitude in the last ten years. The Contractor and its employees shall submit to comprehensive background checks as deemed necessary by the City in its sole discretion.

10.3 Appearance. The Contractor's employees shall be neat and clean in appearance and shall wear a uniform or other identification that clearly identifies them as employees of the Contractor.

10.4 Certifications. The Contractor shall ensure that at least one staff member trained and certified in CPR and First Aid shall be present during any Program activity.

11. Inspection; Acceptance. Performance of the Services shall be subject to inspection and acceptance by the City at reasonable times during Contractor's performance. The Contractor shall provide and maintain a self-inspection system that is acceptable to the City. Quality service and strict adherence to this Agreement will be expected from the Contractor.

12. Licenses; Materials. Contractor shall maintain in current status all licenses, permits and certifications from the appropriate federal, state and local departments and the appropriate sports or recreational activity licensing, certification or sanctioning authority required for the operation of the business conducted by the Contractor. The City has no obligation to provide Contractor, its employees or subcontractors any business registrations or licenses required to perform the specific services set forth in this Agreement. The City has no obligation to provide tools, equipment or material to Contractor.

13. Performance Warranty. Contractor warrants that the Services rendered will conform to the requirements of this Agreement and to the highest professional standards in the field.

14. Indemnification. To the fullest extent permitted by law, the Contractor shall indemnify, defend and hold harmless the City and each council member, officer, employee or agent thereof (the City and any such person being herein called an "Indemnified Party"), for, from and against any and all losses, claims, damages, liabilities, costs and expenses (including but not limited to, reasonable attorneys' fees, court costs and the costs of appellate proceedings) to which any such Indemnified Party may become subject, under any theory of liability whatsoever ("Claims"), insofar as such Claims (or actions in respect thereof) relate to, arise out of, or are caused by or based upon the negligent acts, intentional misconduct, errors, mistakes or omissions, in connection with the work or services of Contractor, its officers, employees, agents

or any tier of subcontractor in the performance of this Agreement. The amount and type of insurance coverage requirements set forth below will in no way be construed as limiting the scope of the indemnity in this Section.

15. Insurance.

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15.1 General.

A. Insurer Qualifications. Without limiting any obligations or liabilities of Contractor, Contractor shall purchase and maintain, at its own expense, hereinafter stipulated minimum insurance with insurance companies authorized to do business in the State of Arizona pursuant to ARIZ. REV. STAT. § 20-206, as amended, with an AM Best, Inc. rating of A- or above with policies and forms satisfactory to the City. Failure to maintain insurance as specified herein may result in termination of this Agreement at the City's option.

B. No Representation of Coverage Adequacy. By requiring insurance herein, the City does not represent that coverage and limits will be adequate to protect Contractor. The City reserves the right to review any and all of the insurance policies and/or endorsements cited in this Agreement, but has no obligation to do so. Failure to demand such evidence of full compliance with the insurance requirements set forth in this Agreement or failure to identify any insurance deficiency shall not relieve Contractor from, nor be construed or deemed a waiver of, its obligation to maintain the required insurance at all times during the performance of this Agreement.

C. Additional Insured. All insurance coverage and self-insured retention or deductible portions, except Workers' Compensation insurance and Professional Liability insurance, if applicable, shall name, to the fullest extent permitted by law for claims arising out of the performance of this Agreement, the City, its agents, representatives, officers, directors, officials and employees as Additional Insured as specified under the respective coverage sections of this Agreement.

D. Coverage Term. All insurance required herein shall be maintained in full force and effect until all work or services required to be performed under the terms of this Agreement are satisfactorily performed, completed and formally accepted by the City, unless specified otherwise in this Agreement.

E. Primary Insurance. Contractor's insurance shall be primary insurance with respect to performance of this Agreement and in the protection of the City as an Additional Insured.

F. Waiver. All policies, except for Professional Liability, including Workers' Compensation insurance, shall contain a waiver of rights of recovery (subrogation) against the City, its agents, representatives, officials, officers and employees for any claims arising out of the work or services of Contractor. Contractor shall arrange to have such subrogation waivers incorporated into each policy via formal written endorsement thereto.

G. Policy Deductibles and/or Self-Insured Retentions. The policies set forth in these requirements may provide coverage that contains deductibles or self-insured retention amounts. Such deductibles or self-insured retention shall not be applicable with respect to the policy limits provided to the City. Contractor shall be solely responsible for any such deductible or self-insured retention amount.

H. Use of Subcontractors. If any work under this Agreement is subcontracted in any way, Contractor shall execute written agreements with its subcontractors containing the indemnification provisions set forth in this Section and insurance requirements set forth herein protecting the City and Contractor. Contractor shall be responsible for executing any agreements with its subcontractors and obtaining certificates of insurance verifying the insurance requirements.

I. Evidence of Insurance. Prior to commencing any work or services under this Agreement, Contractor will provide the City with suitable evidence of insurance in the form of certificates of insurance and a copy of the declaration page(s) of the insurance policies as required by this Agreement, issued by Contractor's insurance insurer(s) as evidence that policies are placed with acceptable insurers as specified herein and provide the required coverages, conditions and limits of coverage specified in this Agreement and that such coverage and provisions are in full force and effect. Confidential information such as the policy premium may be redacted from the declaration page(s) of each insurance policy, provided that such redactions do not alter any of the information required by this Agreement. The City shall reasonably rely upon the certificates of insurance and declaration page(s) of the insurance policies as evidence of coverage but such acceptance and reliance shall not waive or alter in any way the insurance requirements or obligations of this Agreement. In the event any insurance policy required by this Agreement is written on a "claims made" basis, coverage shall extend for two years past completion of the Services and the City's acceptance of Contractor's work or services and as evidenced by annual certificates of insurance. If any of the policies required by this Agreement expire during the life of this Agreement, it shall be Contractor's responsibility to forward renewal certificates and declaration page(s) to the City 30 days prior to the expiration date. All certificates of insurance and declarations required by this Agreement shall be identified by referencing this Agreement. A \$25.00 administrative fee shall be assessed for all certificates or declarations received without the appropriate reference to this Agreement. Additionally, certificates of insurance and declaration page(s) of the insurance policies submitted without referencing the appropriate reference to this Agreement, will be subject to rejection and may be returned or discarded. Certificates of insurance and declaration page(s) shall specifically include the following provisions:

(1) The City, its agents, representatives, officers, directors, officials and employees are Additional Insureds as follows:

(a) Commercial General Liability - Under Insurance Services Office, Inc., ("ISO") Form CG 20 10 03 97 or equivalent.

(b) Auto Liability - Under ISO Form CA 20 48 or equivalent.

(c) Excess Liability - Follow Form to underlying insurance.

(2) Contractor's insurance shall be primary insurance as respects performance of the Agreement.

(3) All policies, except for Professional Liability, including Workers' Compensation, waive rights of recovery (subrogation) against City, its agents, representatives, officers, officials and employees for any claims arising out of work or services performed by Contractor under this Agreement.

(4) If ACORD certificate of insurance form 25 (2001/08) is used, the phrases in the cancellation provision "endeavor to" and "but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives" shall be deleted. Certificate forms other than ACORD form shall have similar restrictive language deleted.

15.2. Required Insurance Coverage.

A. Commercial General Liability. Contractor shall maintain "occurrence" form Commercial General Liability insurance with an unimpaired limit of not less than \$1,000,000 for each occurrence, \$2,000,000 Products and Completed Operations Annual Aggregate and a \$2,000,000 General Aggregate Limit. The policy shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury. Coverage under the policy will be at least as broad as ISO policy form CG 00 010 93 or equivalent thereof, including but not limited to, separation of insured's clause. To the fullest extent allowed by law, for claims arising out of the performance of this Agreement, the City, its agents, representatives, officers, officials and employees shall be cited as an Additional Insured under ISO, Commercial General Liability Additional Insured Endorsement form CG 20 10 03 97, or equivalent, which shall read "Who is an Insured (Section II) is amended to include as an insured the person or organization shown in the Schedule, but only with respect to liability arising out of "your work" for that insured by or for you." If any Excess insurance is utilized to fulfill the requirements of this subsection, such Excess insurance shall be "follow form" equal or broader in coverage scope than underlying insurance.

B. Vehicle Liability. Contractor shall maintain Business Automobile Liability insurance with a limit of \$1,000,000 each occurrence on Contractor's owned, hired and non-owned vehicles assigned to or used in the performance of the Contractor's work or services under this Agreement. Coverage will be at least as broad as ISO coverage code "1" "any auto" policy form CA 00 01 12 93 or equivalent thereof. To the fullest extent allowed by law, for claims arising out of the performance of this Agreement, the City, its agents, representatives, officers, directors, officials and employees shall be cited as an Additional Insured under ISO Business Auto policy Designated Insured Endorsement form CA 20 48 or equivalent. If any Excess insurance is utilized to fulfill the requirements of this subsection, such Excess insurance shall be "follow form" equal or broader in coverage scope than underlying insurance.

C. Professional Liability. [INTENTIONALLY OMITTED]

D. Workers' Compensation Insurance; Relationship. Contractor shall maintain Workers' Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction over Contractor's employees engaged in the performance of work or services under this Agreement and shall also maintain Employers Liability Insurance of not less than \$500,000 for each accident, \$500,000 disease for each employee and \$1,000,000 disease policy limit.

15.3 Cancellation and Expiration Notice. Insurance required herein shall not expire, be canceled, or materially changed without 30 days' prior written notice to the City.

16. Termination; Cancellation.

16.1 For City's Convenience. This Agreement is for the convenience of the City and, as such, may be terminated without cause after receipt by Contractor of written notice by the City. Upon termination for convenience, Contractor shall be paid for all undisputed services performed to the termination date.

16.2 For Cause. This Agreement may be terminated by either party upon 30 days' written notice should the other party fail to substantially perform in accordance with this Agreement's terms, through no fault of the party initiating the termination. In the event of such termination for cause, payment shall be made by the City to the Contractor for the undisputed portion of its fee due as of the termination date.

16.3 Due to Work Stoppage. This Agreement may be terminated by the City upon 30 days' written notice to Contractor in the event that the Services are permanently abandoned. In the event of such termination due to work stoppage, payment shall be made by the City to the Contractor for the undisputed portion of its fee due as of the termination date.

16.4 Conflict of Interest. This Agreement is subject to the provisions of ARIZ. REV. STAT. § 38-511. The City may cancel this Agreement without penalty or further obligations by the City or any of its departments or agencies if any person significantly involved in initiating, negotiating, securing, drafting or creating this Agreement on behalf of the City or any of its departments or agencies is, at any time while the Agreement or any extension of the Agreement is in effect, an employee 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.

16.5 Gratuities. The City may, by written notice to the Contractor, cancel this Agreement if it is found by the City that gratuities, in the form of economic opportunity, future employment, entertainment, gifts or otherwise, were offered or given by the Contractor or any agent or representative of the Contractor to any officer, agent or employee of the City for the purpose of securing this Agreement. In the event this Agreement is canceled by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold from the Contractor an amount equal to 150% of the gratuity.

16.6 Agreement Subject to Appropriation. This Agreement is subject to the provisions of ARIZ. CONST. ART. IX, § 5 and ARIZ. REV. STAT. § 42-17106. The provisions of

this Agreement for payment of funds by the City shall be effective when funds are appropriated for purposes of this Agreement and are actually available for payment. The City shall be the sole judge and authority in determining the availability of funds under this Agreement and the City shall keep the Contractor fully informed as to the availability of funds for the Agreement. The obligation of the City to make any payment pursuant to this Agreement is a current expense of the City, payable exclusively from such annual appropriations, and is not a general obligation or indebtedness of the City. If the City Council fails to appropriate money sufficient to pay the amounts as set forth in this Agreement during any immediately succeeding fiscal year, this Agreement shall terminate at the end of then-current fiscal year and the City and the Contractor shall be relieved of any subsequent obligation under this Agreement.

17. Miscellaneous.

17.1 Independent Contractor. The Contractor acknowledges and agrees that the Services provided under this Agreement are being provided as an independent contractor, not as an employee or agent of the City. Contractor, its employees and subcontractors are not entitled to workers' compensation benefits from the City. The City does not have the authority to supervise or control the actual work of Contractor, its employees or subcontractors. The Contractor, and not the City, shall determine the time of its performance of the services provided under this Agreement so long as Contractor meets the requirements of its agreed Scope of Work as set forth in Section 2 above. Contractor is neither prohibited from entering into other contracts nor prohibited from practicing its profession elsewhere. City and Contractor do not intend to nor will they combine business operations under this Agreement.

17.2 Applicable Law, Venue. This Agreement shall be governed by the laws of the State of Arizona and suit pertaining to this Agreement may be brought only in courts in Maricopa County, Arizona.

17.3 Laws and Regulations. Contractor shall keep fully informed and shall at all times during the performance of its duties under this Agreement ensure that it and any person for whom the Contractor is responsible abides by, and remains in compliance with, all rules, regulations, ordinances, statutes or laws affecting the Services, including but not limited to, the following: (A) existing and future City and County ordinances and regulations, (B) existing and future State and Federal laws, (C) existing and future Occupational Safety and Health Administration standards and (D) existing and future regulations specifically related to the Services.

17.4 Amendments. This Agreement may be modified only by a written amendment signed by persons duly authorized to enter into contracts on behalf of the City and the Contractor.

17.5 Provisions Required by Law. Each and every provision of law and any clause required by law to be in the Agreement will be read and enforced as though it were included herein and, if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party, the Agreement will promptly be physically amended to make such insertion or correction.

17.6 Severability. The provisions of this Agreement are severable to the extent that any provision or application held to be invalid by a Court of competent jurisdiction shall not affect any other provision or application of the Agreement which may remain in effect without the invalid provision or application.

17.7 Relationship of the Parties. It is clearly understood that each party will act in its individual capacity and not as an agent, employee, partner, joint venturer, or associate of the other. An employee or agent of one party shall not be deemed or construed to be the employee or agent of the other for any purpose whatsoever. The Contractor is advised that taxes or Social Security payments will not be withheld from any City payments issued hereunder and Contractor agrees to be fully and solely responsible for the payment of such taxes or any other tax applicable to this Agreement.

17.8 Entire Agreement; Interpretation; Parol Evidence. This Agreement represents the entire agreement of the parties with respect to its subject matter, and all previous agreements, whether oral or written, entered into prior to this Agreement are hereby revoked and superseded by this Agreement. No representations, warranties, inducements or oral agreements have been made by any of the parties except as expressly set forth herein, or in any other contemporaneous written agreement executed for the purposes of carrying out the provisions of this Agreement. This Agreement shall be construed and interpreted according to its plain meaning, and no presumption shall be deemed to apply in favor of, or against the party drafting the Agreement. The parties acknowledge and agree that each has had the opportunity to seek and utilize legal counsel in the drafting of, review of, and entry into this Agreement.

17.9 Assignment. No right or interest in this Agreement shall be assigned or delegated by Contractor without prior, written permission of the City signed by the City Manager. Any attempted assignment or delegation by Contractor in violation of this provision shall be a breach of this Agreement by Contractor.

17.10 Subcontracts. No subcontract shall be entered into by the Contractor with any other party to furnish any of the material or services specified herein without the prior written approval of the City. The Contractor is responsible for performance under this Agreement whether or not subcontractors are used.

17.11 Rights and Remedies. No provision in this Agreement shall be construed, expressly or by implication, as waiver by the City of any existing or future right and/or remedy available by law in the event of any claim of default or breach of this Agreement. The failure of the City to insist upon the strict performance of any term or condition of this Agreement or to exercise or delay the exercise of any right or remedy provided in this Agreement, or by law, or the City's acceptance of and payment for services, shall not release the Contractor from any responsibilities or obligations imposed by this Agreement or by law, and shall not be deemed a waiver of any right of the City to insist upon the strict performance of this Agreement.

17.12 Attorneys' Fees. In the event either party brings any action for any relief, declaratory or otherwise, arising out of this Agreement or on account of any breach or default hereof, the prevailing party shall be entitled to receive from the other party reasonable attorneys' fees and reasonable costs and expenses, determined by the court sitting without a jury, which

shall be deemed to have accrued on the commencement of such action and shall be enforced whether or not such action is prosecuted through judgment.

17.13 Liens. All materials or services shall be free of all liens and, if the City requests, a formal release of all liens shall be delivered to the City.

17.14 Offset.

A. Offset for Damages. In addition to all other remedies at law or equity, the City may offset from any money due to the Contractor any amounts Contractor owes to the City for damages resulting from breach or deficiencies in performance or breach of any obligation under this Agreement.

B. Offset for Delinquent Fees or Taxes. The City may offset from any money due to the Contractor any amounts Contractor owes to the City for delinquent fees, transaction privilege taxes and property taxes, including any interest or penalties.

17.15 Notices and Requests. Any notice or other communication required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given if (A) delivered to the party at the address set forth below, (B) deposited in the U.S. Mail, registered or certified, return receipt requested, to the address set forth below or (C) given to a recognized and reputable overnight delivery service, to the address set forth below:

If to the City:           City of Avondale  
11465 West Civic Center Drive  
Avondale, Arizona 85323  
Attn: Charles P. McClendon, City Manager

With copy to:           GUST ROSENFELD, P.L.C.  
One East Washington Street, Suite 1600  
Phoenix, Arizona 85004-2553  
Attn: Andrew J. McGuire, Esq.

If to Contractor:       Urban Youth Athletic Association  
d/b/a Arizona RBI  
19 South 10th Avenue  
Phoenix, Arizona 85007  
Attn: Lisa Coleman

With copy to:           The Pritchett Law Firm, PLLC  
2700 North Central Avenue, Suite 1250  
Phoenix, Arizona 85004  
Attn: Jason Pritchett, Esq.

or at such other address, and to the attention of such other person or officer, as any party may designate in writing by notice duly given pursuant to this subsection. Notices shall be deemed received (A) when delivered to the party, (B) three business days after being placed in the U.S.

Mail, properly addressed, with sufficient postage or (C) the following business day after being given to a recognized overnight delivery service, with the person giving the notice paying all required charges and instructing the delivery service to deliver on the following business day. If a copy of a notice is also given to a party's counsel or other recipient, the provisions above governing the date on which a notice is deemed to have been received by a party shall mean and refer to the date on which the party, and not its counsel or other recipient to which a copy of the notice may be sent, is deemed to have received the notice.

17.16 Confidentiality of Records. The Contractor shall establish and maintain procedures and controls that are acceptable to the City for the purpose of ensuring that information contained in its records or obtained from the City or from others in carrying out its obligations under this Agreement shall not be used or disclosed by it, its agents, officers, or employees, except as required to perform Contractor's duties under this Agreement. Persons requesting such information should be referred to the City. Contractor also agrees that any information pertaining to individual persons shall not be divulged other than to employees or officers of Contractor as needed for the performance of duties under this Agreement.

17.17 Records and Audit Rights. To ensure that the Consultant and its subcontractors are complying with the warranty under subsection 17.18 below, Consultant's and its subcontractor's books, records, correspondence, accounting procedures and practices, and any other supporting evidence relating to this Agreement, including the papers of any Consultant and its subcontractors' employees who perform any work or services pursuant to this Agreement (all of the foregoing hereinafter referred to as "Records"), shall be open to inspection and subject to audit and/or reproduction during normal working hours by the City, to the extent necessary to adequately permit (A) evaluation and verification of any invoices, payments or claims based on Consultant's and its subcontractors' actual costs (including direct and indirect costs and overhead allocations) incurred, or units expended directly in the performance of work under this Agreement and (B) evaluation of the Consultant's and its subcontractors' compliance with the Arizona employer sanctions laws referenced in subsection 13.17 below. To the extent necessary for the City to audit Records as set forth in this subsection, Consultant and its subcontractors hereby waive any rights to keep such Records confidential. For the purpose of evaluating or verifying such actual or claimed costs or units expended, the City shall have access to said Records, even if located at its subcontractors' facilities, from the effective date of this Agreement for the duration of the work and until three years after the date of final payment by the City to Consultant pursuant to this Agreement. Consultant and its subcontractors shall provide the City with adequate and appropriate workspace so that the City can conduct audits in compliance with the provisions of this subsection. The City shall give Consultant or its subcontractors reasonable advance notice of intended audits. Consultant shall require its subcontractors to comply with the provisions of this subsection by insertion of the requirements hereof in any subcontract pursuant to this Agreement.

17.18 E-verify Requirements. To the extent applicable under ARIZ. REV. STAT. § 41-4401, the Contractor and its subcontractors warrant compliance with all federal immigration laws and regulations that relate to their employees and compliance with the E-verify requirements under ARIZ. REV. STAT. § 23-214(A). Contractor's or its subcontractor's failure to comply with such warranty shall be deemed a material breach of this Agreement and may result in the termination of this Agreement by the City.

17.19 Scrutinized Business Operations. Pursuant to ARIZ. REV. STAT. §§ 35-391.06 and 35-393.06, the Contractor certifies that it does not have scrutinized business operations in Sudan or Iran. For the purpose of this subsection the term "scrutinized business operations" shall have the meanings set forth in ARIZ. REV. STAT. §§ 35-391 or 35-393, as applicable. If the City determines that the Contractor submitted a false certification, the City may impose remedies as provided by law including terminating this Agreement pursuant to subsection 16.2 above.

17.20 Non-Exclusive Contract. This Agreement is entered into with the understanding and agreement that it is for the sole convenience of the City. The City reserves the right to obtain like goods and services from another source when necessary.

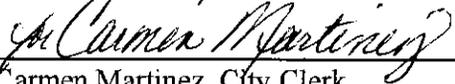
IN WITNESS WHEREOF, the parties hereto have executed this instrument as of the date and year first set forth above.

"City"

CITY OF AVONDALE, an Arizona  
municipal corporation

  
Charles P. McClendon, City Manager

ATTEST:

  
  
Carmen Martinez, City Clerk

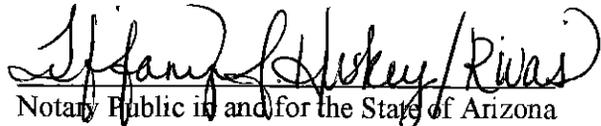
(ACKNOWLEDGMENT)

STATE OF ARIZONA     )  
  ) ss.  
COUNTY OF MARICOPA )

This instrument was acknowledged before me on <sup>July</sup> ~~April~~ 18, 2013, by Charles P. McClendon, the City Manager of the CITY OF AVONDALE, an Arizona municipal corporation, on behalf of the City of Avondale.



(affix notary seal here)

  
Notary Public in and for the State of Arizona

“Contractor”

URBAN YOUTH ATHLETIC ASSOCIATION,  
d/b/a ARIZONA RBI, an Arizona non-profit  
corporation

By: *Lisa Jean Coleman*

Name: Lisa Coleman

Title: Director of Community Relations

(ACKNOWLEDGMENT)

STATE OF ARIZONA        )  
  ) ss.  
COUNTY OF MARICOPA )

This instrument was acknowledged before me on <sup>as July</sup> April 17, 2013, by Lisa Coleman, the Director of URBAN YOUTH ATHLETIC ASSOCIATION, d/b/a ARIZONA RBI, an Arizona non-profit corporation, on behalf of the corporation.

*Charles Greenwood*  
Notary Public in and for the State of Arizona



EXHIBIT A  
TO  
CONTRACTOR AGREEMENT  
BETWEEN  
THE CITY OF AVONDALE

---

AND  
URBAN YOUTH ATHLETIC ASSOCIATION,  
d/b/a ARIZONA RBI

[Scope of Work]

See following pages.

## SCOPE OF WORK

1. Introduction. The Contractor will provide high quality instruction, personnel and equipment in cooperatively conducting sports clinics, leagues, programs and special events for the City's youths.

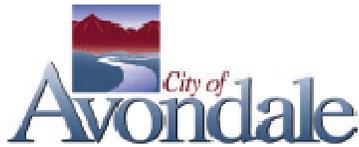
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2. Contractor Responsibilities. The Contractor shall be responsible for the following:
  - 2.1 The Contractor shall appoint a staff member to serve as the Contractor's representative to oversee the Programs.
  - 2.2 The Contractor shall be responsible for providing direct supervision and coordination of the Program and the Program participants.
  - 2.3 Contractor will be responsible for the organization of teams, divisions, playoffs and championships.
  - 2.4 Contractor shall be responsible for the posting/dissemination of player and coach code of conduct, team standings and game schedules.
  - 2.5 Contractor shall be responsible for the selection and retention of qualified coaches and umpires.
  - 2.6 Contractor shall obtain player, coach and umpire liability waivers prior to allowing such individuals to participate in a Program.
  - 2.7 Contractor shall provide a free baseball clinic each season (at a mutually agreeable time) at the City's Facilities, which clinic shall be open to all Avondale youth.
  - 2.8 Contractor shall promote the City's "Let's Move" initiative of raising a healthier generation of kids through the overall operation of the Programs.
  - 2.9 The Contractor shall be responsible for oversight of all Contractor employees and volunteers.
  - 2.10 The Contractor shall notify the City at least 24 hours in advance of a scheduled activity if it becomes necessary for the Contractor to cancel or reschedule a Program activity at the Facility.
  - 2.11 Contractor, along with the City, shall ensure that all team names, attire and logos are in accordance with applicable law, including copyright, trademark and other intellectual property protections.

3. City's Responsibilities. The City shall be responsible for the following:
- 3.1 The City shall appoint a staff member to serve as the City's representative to oversee the Agreement.

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  - 3.2 The City shall be responsible for oversight of all City employees and volunteers.
  - 3.3 The City will prepare all fields and allocate time for agreed upon practice and play times.
  - 3.4 The City shall notify the Contractor at least 24 hours in advance of a scheduled activity if it becomes necessary for the City to cancel or reschedule a Program activity at the specified City Facility.
  - 3.5 City, along with the Contractor, shall ensure that the use of all team names, attire and logos are in accordance with applicable law, including copyright, trademark and other intellectual property protections.



# CITY COUNCIL REPORT

**SUBJECT:**

Feasibility of Undergrounding the Existing Power along Dysart Road from Van Buren Street to Main Street (MC85/Buckeye Road)

**MEETING DATE:**

October 14, 2013

**TO:** Mayor and Council

**FROM:** Charles Andrews, P.E., City Engineer, 623-33-4216

**THROUGH:** Charlie McClendon, City Manager

**PURPOSE:**

Staff will provide an overview to the Mayor and City Council on the feasibility of undergrounding the existing power lines along the eastside of Dysart Road from Van Buren Street to Main Street (MC85/Buckeye Road).

**BACKGROUND:**

In previous Council discussions, Council Members have noted the pedestrian obstructions and the visual clutter along Dysart Road south of Van Buren to Buckeye Road.

This one mile stretch of Dysart Road has approximately 38 power poles that are located along the east side of Dysart Road. The double-strand 12KV lines pose several issues for pedestrians and vehicular traffic. The existing power poles are located in the sidewalk, creating accessibility obstructions for pedestrians and bicyclists. The Americans with Disabilities Act (ADA), requires a minimum 5 feet width for sidewalks. Less than 5 feet of sidewalk width is allowed, if passing areas of 5 feet or wider are provided at 200 feet intervals.

Dysart Road, from Van Buren Street to Buckeye Road does not provide a lane for bicyclists. Bicyclists may use the discontinuous sidewalk which is often not desirable. In addition, sidewalk facilities on the east and west side are discontinuous and in some areas, non-existent. Furthermore, the majority of driveways are not ADA compliant. Rights-of-way (ROW) vary along the east and west side of Dysart Road. If measured from the back of the existing gutter, the existing ROW varies anywhere from 17 feet to 0 feet. In areas where there is no ROW, the City cannot install sidewalks unless additional ROW is acquired.

Discussions with Arizona Public Service (APS) places the costs of removing the poles, installing the required electrical equipment, removing the overhead wiring from the main poles and providing underground service from the main line to each existing customer at approximately \$300/lf, totaling approximately \$1.6M. This fee does not include the costs for the required trenching, conduit, backfill, pavement replacement, sidewalk improvements or any other miscellaneous improvement.

**DISCUSSION:**

Staff has developed three scenarios and cost alternatives for undergrounding the existing power lines along the eastside of Dysart Road from Van Buren Street to Buckeye Road.

Alternative No.1 is the least cost Alternative. It includes the \$1.6M APS fee, plus trenching, boring conduit, backfill, pavement replacement, sidewalk replacement after pole removal, street lighting, and all incidental and overhead items. It would not include any new sidewalk or driveway

improvements, and no acquisition of additional ROW. The total cost of Alternative No. 1 is approximately \$2.4M

Alternative No. 2 would also include the \$1.6M APS fee, trenching, boring conduit, backfill, pavement replacement, sidewalk replacement after pole removal, and street lighting. However, it also includes all required sidewalk and driveway entrance improvements to make this alternative ADA compliant. It would also include the necessary acquisition of additional ROW. The total cost of Alternative 2 is approximately \$2.8M.

Alternative 3 is exactly the same as Alternative 2 with the addition of restriping Dysart Road to allow for bike lanes, landscaping, and landscape irrigation. This alternative totals approximately \$3.0M.

Regardless of the chosen alternative, the elimination of the overhead power would provide the following benefits:

- Eliminate visual clutter
- Eliminate potential safety issues for vehicular traffic
- Reduce existing pedestrian accessibility issues
- Enhance overall public safety
- Improve the corridor's aesthetic appearance
- Improve property values
- Provide an incentive for the creation of new businesses along the corridor
- Improve electrical power service reliability

Alternatives 2 and 3 would provide the following additional benefits:

- Sidewalk and bicycle connectivity
- ADA compliance
- Greater aesthetic appearance

### **Potential Next Steps:**

The following is a list of potential next steps:

- Enter into a Design Agreement with APS. This will refine and validate the APS fee
- Request a credit from APS for the street lighting conflict. It appears that APS does not have "prior rights." According to the Franchise Agreement, APS must relocate their poles into an easement provided by the City when in conflict with a proposed City improvement project. Since the City wishes to underground, APS would provide a credit equalizing the costs associated with relocating approximately 38 poles.
- Research and evaluate/confirm existing ROW and easements. This information can be used to firm up the costs associated with acquiring new ROW.
- Pursue grants to fund sidewalk improvements.
- Pursue a joint trench with other utility stakeholders such as Southwest Gas, CenturyLink, and Cox Communications and enter into a cost-share agreement.

### **BUDGETARY IMPACT:**

There is no budgetary impact at this time. This item is presented for information, discussion and Council direction.

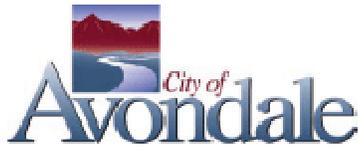
### **RECOMMENDATION:**

This item is presented for information, discussion and Council direction.

## **ATTACHMENTS:**

**[Click to download](#)**

No Attachments Available



# CITY COUNCIL REPORT

**SUBJECT:**

Proposed Amendment to the Avondale City Code  
Chapter 5, Article II Judicial Appointment Advisory  
Board

**MEETING DATE:**

October 14, 2013

**TO:** Mayor and Council

**FROM:** David Fitzhugh, Assistant City Manager 623-333-1014

**THROUGH:** Charlie McClendon, City Manager

**PURPOSE:**

Staff will present information regarding amending the Avondale City Code - Chapter 5 Courts that would establish the authority and process to create a Judicial Advisory and Review Board. This item is for information and discussion only. No action is required.

**BACKGROUND:**

Avondale City Charter, Article XI, Section 3 provides authority to the City Council to appoint a city judge as the presiding judge, and other judges if necessary, of the City Court of the City of Avondale. The Charter also sets the term of the appointment, basis of compensation, and minimum qualifications for the city judge. It also authorizes the the Council to appoint a judicial advisory committee to recommend judicial candidates for the position of city judge.

The Avondale City Code, Chapter 5, Article I provides additional minimal direction regarding said appointment of the city judge. At this time, additional factors used to determine the qualifications and performance of applicants for the position or the reappointment of a sitting judge have not been formalized. While this process has worked well for the Council, the public's increasing desire for transparency and participation provides an opportunity to explore other evaluation opportunities and tools for Council consideration.

Staff researched judicial evaluation and performance review processes in the towns of Buckeye and Gilbert and the cities of El Mirage, Glendale, Peoria, Scottsdale, Surprise, and Tempe to better understand accepted practices and as a basis for a proposed code amendment. A proposed draft of the code is attached for your review and comment.

**DISCUSSION:**

The implementation of a Judicial Advisory and Review Board (JARB) is accomplished through the adoption of an ordinance amending Chapter 5, Courts, Article II of the Avondale City Code. The purpose of the JARB is to recommend to the City Council the best qualified persons to become full-time city judges, to evaluate the performance of incumbent judges and to advise the Council about retaining them in office.

The ordinance will be prepared in accordance with all applicable state statutes and rules of procedure and standards. It will specify the make-up of the Board, appointment process, length of appointment, conflict of interest disclosures, frequency and purpose of meetings, appointment and reappointment processes, form of recommendations and council reporting requirements.

The JARB is proposed to be made up of two (2) sitting judges, two (2) attorneys, and three (3) Avondale electors each serving a four (4) year term. The JARB would meet as necessary to perform their duties for the appointment or reappointment of a City Judge.

The appointment or reappointment evaluation process substantially follows the Arizona Supreme Court's Uniform Rules of Procedure for Commissions on Appellate and Trial Court Appointments, Rules 6, 7, 8, and 9. The JARB will have the authority to conduct surveys of users of the courts, hold public hearings to take public comment, make inquiries of the Arizona Commission on Judicial Conduct and the Arizona State Bar for information on pending or past disciplinary actions. All applicants for appointment or reappointment will submit an application containing information required by the JARB.

In addition to the above, the JARB will consider the administrative performance and work load of the applicant, to the extent their review does not conflict with judicial independence, which may include case aging, case load, time to rule on matters, court administration, and rulings that have been reversed or affirmed on appeal.

#### **BUDGETARY IMPACT:**

As a new and ongoing advisory board, the creation of a Judicial Advisory and Review Board will require additional clerical and administrative staff support, primarily in the Human Resources Department. The department will make every effort to absorb this staff support with existing resources, and will further evaluate and communicate staffing impacts as part of the next budget cycle.

In addition to required staff support, approximately \$15,000-\$20,000 may be expended annually for such items as public advertising and notices regarding judicial vacancies, reappointments and public hearings; and consulting support to conduct written surveys to assess the performance of incumbent City Judges. Such costs would be primarily be borne in the years involving the reappointment of the sitting judge or appointment of a new judge when there is a vacancy in the position.

#### **RECOMMENDATION:**

Staff recommends the Council provide direction regarding an amendment to the Avondale City Code Chapter 5 - Courts creating a Judicial Appointment and Review Board.

#### **ATTACHMENTS:**

Click to download

[Draft Ordinance](#)

CITY OF AVONDALE  
JUDICIAL ADVISORY AND REVIEW BOARD ORDINANCE,  
OCTOBER 21, 2013

## Article II – Judicial Advisory and Review Board

- 5-10 - Creation of board.
- 5-11 - Purpose of board.
- 5-12 - Membership.
- 5-13 - Board officers.
- 5-14 - Disclosure of conflict, ineligibility to vote.
- 5-15 - Board representation.
- 5-16 - Board meetings.
- 5-17 - Appointment and reappointment process.
- 5-18 - Recommendation process.
- 5-19 - Council decision.

### 5-10 - Creation of board.

There is hereby created a citizen board to be known as the Judicial Advisory and Review Board. Board members shall serve without salary or compensation.  
(Ord. No. §)

### 5-11 - Purpose of board.

The purpose of the Judicial Advisory and Review Board is to evaluate and recommend to the city council the best-qualified persons to become full-time city judges, to evaluate the performance of incumbent full-time city judges, and to advise the city council about retaining them in office.  
(Ord. No. §)

### 5-12 - 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, who is a superior court judge. The presiding judge or designee must reside in Maricopa County;
  - (2) An Arizona appellate court judge to be appointed by the Chief Justice of the Arizona Supreme Court or designee. The appointed judge must reside in Maricopa County;
  - (3) An active member of the State Bar of Arizona, who shall reside in Maricopa County and who shall be appointed by the city council, from among three (3) nominees recommended by the State Bar of Arizona board of governors;
  - (4) A member of the Maricopa County Bar Association, who shall reside in Maricopa County and who shall be appointed by the city council (Article

V of Avondale City Charter) from among three (3) nominees recommended by the Maricopa County Bar Association board of directors;

- (5) Three (3) Avondale electors appointed by the city council, who are not 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. None of Avondale electors shall be an employee of the city.
  - (6) There shall be no ex-officio members of the board.
  - (b) Voting members shall serve staggered terms of four (4) years, which shall expire on July 1. In order to create staggered terms, the following members shall be appointed to an initial term that shall expire on the second July 1 following the appointment: the Arizona judge appointed by the Chief Justice of the Arizona Supreme Court, the State Bar of Arizona member, and one Avondale elector.
  - (c) Members shall serve without salary or compensation.
  - (d) No public member shall have been a party to any matters pending before any division of the Avondale Municipal Court for the five (5) years preceding his or her appointment.
  - (e) Meetings will be held as needed for the purpose of reviewing applications for appointment or to conduct a reappointment review.
  - (f) Unless otherwise expressly stated in this article, the bylaws adopted pursuant to section 27-3 of the Avondale City Code shall govern the operation of the board.
- (Ord. No. §)

#### 5-13 - 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-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.
- (Ord. No. §)

#### 5-14 - Disclosure of conflict, ineligibility to vote.

- (a) At the earliest possible opportunity, a member shall disclose to the board at a public meeting:

- (1) Any relationship with an applicant (such as business, personal, or attorney-client) that results in an actual conflict of interest or prejudice;
  - (2) All applicants who constitute “relatives” under the Arizona Conflict of Interest Law (A.R.S. § 38-501 et seq.), as amended;
  - (3) All efforts to recruit a specific applicant; and
  - (4) Any information that could reasonably create the appearance of conflict of interest or appearance of prejudice.
- (b) Any member with a relationship with an applicant required to be disclosed under subsection (a)(1) and (a)(2) above shall be ineligible to vote.
  - (c) Any member that discloses information as required under subsection (a)(3) and (a)(4) above may be declared ineligible to vote on a specific recommendation if such member announces an intent to abstain from voting on the item, or a majority of voting members present affirmatively vote to declare an actual conflict or prejudice to exist on the item.
  - (d) Member participation in the selection and recommendation process under this Article shall not be limited on any application submitted by persons the member recruited to apply, as long as the member has disclosed to all board members the nature of their efforts to recruit the applicant, and the member is not otherwise prohibited from participating under this section.

#### 5-15 - Board representation.

- (a) Pursuant to Administrative Order 2000-80 of the Arizona Supreme Court and such subsequent orders as may issue which address this objective, in selecting Judicial Advisory and Review Board members, the appointing authorities shall be sensitive to representation reflecting the diversity of the community served by the Avondale Municipal Court.
- (b) The appointing authority for each Judicial Advisory and Review Board member shall advise each board member it appoints that the board member’s responsibilities include recruitment of qualified city judge applicants, including qualified minority and women applicants, who may not otherwise apply.

(Ord. No. §)

#### 5-16 - Board meetings.

- (a) The board may hold a meeting to handle the appointment and reappointment process, to review the board’s operating procedures and to handle other business relating to the board.

- (b) The chairperson of the board shall issue a call for a meeting of the board to begin the selection process for the appointment or reappointment of a current judge position no later than January 31 of the year in which the term of the current judge ends or within 30 days of being notified that a vacancy exists, whichever is earlier. To determine whether the board will be implementing the appointment or reappointment process, at least six months prior to the end of the judge's term, the chairperson shall inquire whether the current judge is seeking reappointment.
  - (c) All board meetings shall comply with the Arizona Open Meeting Law (A.R.S. § 38-431 et seq.) and Public Records Law (A.R.S. § 39-121 et seq.), as amended.
  - (d) A quorum shall be four (4) voting members.
  - (e) The affirmative vote of a majority of the voting members present at a meeting and eligible to vote shall be required to take action, unless otherwise set forth herein.
  - (f) The Human Resources Department shall act as administrative liaison to the board by preparing notices of meetings, minutes, sending information packets to members, and fulfilling all other clerical and administrative responsibilities of the board.
- (Ord. No. §)

5-17 - Appointment and reappointment process.

- (a) *Generally.*
  - (1) Through the city's Human Resources Department, the board shall advertise notice to the public and licensed attorneys of the vacancy or reappointment of a city judge position.
  - (2) All members shall consider all applicants in an impartial, objective manner, based only on the applicant's merit and without regard for race, religion, political affiliation or gender of the candidate.
  - (3) In considering initial appointments or reappointments, the board shall utilize the Arizona Supreme Court's Uniform Rules of Procedure for Commissions on Appellate and Trial Court Appointments, Rules 6, 7, 8, and 9; and the American Bar Associations Standing Committee on Judicial Independence, Report of the Commission on State Judicial Selection Standards, as guides.
  - (4) For each applicant, the board shall inquire of the Arizona Commission on Judicial Conduct and the State Bar of Arizona for information on pending or past disciplinary actions.

- (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 judges on the basis of merit.
  - (6) Costs associated with the selection and recommendation process shall be reported to council and shall be paid by the city at the direction of council.
- (b) *Application and advertising.*
- (1) All applicants for appointment or reappointment shall complete an application containing such information as the board and Human Resources Department deems necessary and appropriate to comply with the law and to provide relevant information about the ability of the applicant to perform the duties of a judge.
  - (2) *Initial Appointments.*
    - (i) For all appointments under this chapter, the board may use as a guide the “application for nomination to judicial office,” formulated under Rule 7 of the Arizona Supreme Court’s Uniform Rules of Procedure for Commissions on Appellate and Trial Court Appointments.
    - (ii) Applicants shall be given a meaningful opportunity to supplement their applications with a reasonable number of letters of recommendation.
    - (iii) The board, with the assistance of the Human Resources Department, shall advertise each vacant judge position in a manner designed to provide reasonable notice of the opening, but shall at least publish notice once in the Arizona Attorney magazine, or similar monthly publication; or, alternatively, in a professional newspaper once a week for two successive weeks.
    - (iv) Board members shall actively seek and encourage well-qualified individuals to apply.
  - (3) *Reappointments.*
    - (i) For all reappointments under this chapter, 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. The board may request that an outside contractor assist in this process.

- (ii) The board, with the assistance of the Human Resources Department, shall solicit public and professional comment in a manner designed to elicit constructive appraisals of a judge's qualification and prior performance, but shall at least publish notice of the potential reappointment once in the Arizona Attorney magazine, or similar monthly publication; or, alternatively, in a daily or weekly newspaper of general circulation once a week for two successive weeks.

(c) *Investigation and evaluation of qualifications.*

- (1) In addition to any other material submitted to the board, the board shall consider the administrative performance and workload of the applicant, to the extent such does not conflict with judicial independence, including but not limited to: case aging, case load, the time to rule on matters, rulings that have been reversed or affirmed on appeal, administrative findings of any Administrative Office of the Courts audits, personal actions or complaints filed with the City or through the Administrative Office of the Courts, record of financial management, and supervisory skills.
- (2) The board shall not limit its investigation of applicants to documents and material submitted to the board, but shall hold public hearings, personal interviews, and conduct such investigations into the background, performance, and qualifications of the applicants as the board deems necessary and appropriate.
- (3) The board shall conduct at least one public hearing soliciting public input concerning the appointment or reappointment of a judge.

(d) *Interviews.*

- (1) For initial appointments, the board shall personally interview at least three candidates for city judge; provided, however, the board may proceed to interview candidates if three candidates cannot be obtained after reasonable advertisement of the vacancy.
- (2) For appointments and reappointments, the interview shall consist of an applicant presentation and board follow-up questions and be limited to 90 minutes.
- (3) For appointments and reappointments, interview questions shall be drafted by the board in advance with assistance from the board secretary. Each applicant shall be given the interview questions and a copy of the material submitted to the board in relation to the applicant, prior to the interview.

- (4) For appointments and reappointments, each applicant will be given an opportunity to present answers to the interview questions and response to materials submitted. The board shall then ask follow up questions if necessary.

(Ord. No. §)

#### 5-18 - 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 incumbent city judge.
- (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 information on pending or past disciplinary actions against the city judge scheduled for reappointment consideration.
- (c) The names of applicants and their applications shall be disseminated to the public or the media upon request, at any time after the closing date for receiving applications. The release of this information shall be subject to redaction of home addresses, telephone numbers or other personal or confidential information.
- (d) The board shall interview candidates in accordance with the Arizona Open Meeting Law and may use as a guide Rules 8 and 9 of the Arizona Supreme Court's Uniform Rules of Procedure for Commissions on Appellate and Trial Court Appointments. 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 recommendations concerning initial city judge appointments to the city council, or an appropriate subcommittee of the council. The board shall identify, in alphabetical order, no less than three (3) best-qualified candidates for each vacancy subject to the exception stated in section 5-17(d)(1) and summarize the relative attributes of each final candidate.
  - (2) As soon as possible after the vote of the board, the board shall also deliver its written recommendations concerning reappointments of city judges to the city council, or an appropriate subcommittee of the council. The board shall state that the board does or does not recommend reappointment of the city judge, summarizing the reasons for the recommendations.
  - (3) Notwithstanding section 5-17, above, the city council may consider all candidates recommended by the Judicial Advisory and Review Board to fill the initial vacant position for any vacancies that arise within four (4) months of the effective date of the appointment to fill the initial vacant position. The council may direct the board to recommend additional candidates from existing applications, or initiate additional recruitment

action, or to exercise its discretion in determining whether to recommend additional candidates from existing applications or to initiate additional recruitment action.

- (4) The appointment of any candidate from existing applications pursuant to subsection 5-18(d)(3), above, must be made by the city council within the four (4) month period from the effective date of the appointment to fill the initial vacant position.
- (5) In the event that additional recruitment action is initiated pursuant to subsection 5-18(d)(3), above, either at the direction of the council, or in the exercise of the board's discretion, the board may elect to review existing applications and shall solicit additional applications. The board may waive reapplication and/or interview requirements as to existing applicants.

(Ord. No. §)

#### 5-19 - 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 and may request that the board recommend additional candidates for consideration.