

# MINUTES OF THE PUBLIC TRANSIT ADVISORY COMMITTEE MEETING

April 16, 2019

LET IT BE REMEMBERED, the Public Transit Advisory Committee in and for the County of Collier, having conducted business herein, met on this date at 3:00 P.M. in REGULAR SESSION at Administrative Building "F", Third Floor, Collier County Government Complex Naples, Florida with the following members present:

## ADVISORY COMMITTEE MEMBERS PRESENT:

Chairman: Mr. John DiMarco  
Vice-Chairman: Mr. John Jenkins  
Mr. James Caton  
Mr. Arthur Dobberstein  
Mr. Cliff Donenfeld  
Mr. Harold Weeks

## MEMBERS ABSENT:

Ms. Sonja Lee Samek - Excused

## ALSO PRESENT:

Ms. Michelle Arnold, Director, Public Transit and Neighborhood Enhancement  
Mr. Omar DeLeon, Senior Planner, Public Transit and Neighborhood Enhancement  
Ms. Colleen Greene, Assistant County Attorney  
Mr. Braian Morales, General Manager, MV Transportation, Inc.

**I. Call to Order**

Mr. Dobberstein called the meeting to order at 3:15 P.M.

**II. Roll Call**

Roll call was taken, with an initial failure to establish a quorum, however two additional members subsequently arrived, with a quorum established.

**III. Approval of Agenda**

Approval of the agenda was initially deferred, pending the late arrival of two Advisory Committee members who arrived at approximately 3:30 p.m., thus establishing a quorum for the meeting.

*Mr. Weeks entered a motion to approve the April 16, 2019 meeting agenda. Mr. Dobberstein seconded the motion. All were in favor. The motion was carried.*

**IV. Approval of Minutes**

**a. March 19, 2019**

Approval of the March 19, 2019 minutes was initially deferred, pending the late arrival of two Advisory Committee members who arrived at approximately 3:30 p.m., thus establishing a quorum for the meeting.

*Mr. Weeks entered a motion to approve the March 19, 2019 meeting minutes. Mr. Jenkins seconded the motion. All were in favor. The motion was carried.*

**V. Reports and Presentations**

**a. Ethic Ordinance & Sunshine Laws Presentation – Ms. Colleen Greene, Assistant County Attorney**

Ms. Greene addressed the Advisory Committee to discuss the Florida Sunshine Law and the Public Records Law, and how these laws affect the members of County Advisory Boards. Ms. Greene first described the two ordinances which govern Advisory Committees; the General Advisory Board Ordinance, which provides the rules for all members of County Advisory Boards, as well as the specific ordinance which established the Public Transit Advisory Committee. The General Advisory Board Ordinance was briefly discussed. Members are appointed to an advisory board by the Board of County Commissioners (BCC). One requirement of advisory board membership is that all members must be residents and electors of Collier County (unless specifically exempted by ordinance), and who have demonstrated an interest in the activity or service identified as the purpose of the board. Reasons for loss of advisory board membership include cessation of Collier County resident status, candidacy for political office (exemption may apply), named as a plaintiff in a lawsuit against Collier County, absence from more than half of advisory board meetings, or removed by the BCC with or without cause. It was pointed out that advisory board members do not represent Collier County and only speak on behalf of themselves, and not on behalf of the advisory board or Collier County.

An exemption is an instance where one individual is delegated to represent the advisory board at a specific meeting.

“Florida’s Government in the Sunshine Law” was next discussed, which is a state law applying to all local government boards. The Sunshine Law is defined as “applicable to any gathering, whether formal or casual, of two or more members of the same board or commission to discuss some matter on which foreseeable action will be taken by the public board or commission.”

The three basic requirements of the Sunshine Law state that meetings must be open to the public, with reasonable notice given of such meetings, and that minutes of the meeting must be taken. Specifically, the meeting location must be accessible and of sufficient size to accommodate turnout. The facility cannot discriminate based on age, race, etc. Public access may not be unreasonably restricted. The meeting must be held within Collier County (exception may apply), and the public shall be given the opportunity to be heard on a proposition before the board or commission. Notice of meetings must be given, with Staff liaisons publicly noticing meetings in a “reasonable” timeframe, approximately 10 days to 2 weeks in advance of the meeting, or with a “short notice” of 72 hours. Emergency meetings may be the exception.

If two or more advisory board members attend the same non-publicly noticed meeting, they are advised to sit separately. If one member speaks on a subject which may be a matter on which foreseeable action may be taken by their respective advisory board, then the other member present should not speak. If two or more members of an advisory committee were tasked with working together on an initiative approved by the committee, they must do so within a subcommittee, which must also comply with all elements of the Sunshine Law.

Mr. Donenfeld suggested rescheduling future advisory committee meetings which are in time conflict with other local meetings pertaining to Transit, in order to allow for full participation and to capture contact information which may be helpful in supporting transit initiatives.

Mr. Caton inquired as to why the Sunshine Law would restrict communication between members of the advisory committee, who participate in an advisory capacity as individuals and not as representatives of Collier county, and who have no budgetary approval capability or the ability to mandate. Ms. Greene stated this is dictated by State law, and that decisions are made by the advisory committee in the form of recommendations, thus fulfilling the right for public access in government decision-making processes.

Ms. Greene noted that sound recordings and written minutes of the advisory committee meetings are required and are considered public record upon being drafted. Minutes must also record votes taken by the advisory committee.

Subcommittee issues were discussed. A subcommittee is defined as a subordinate committee chosen from among the members of a main committee to carry out special assignments. All members of the subcommittee must be members of the advisory board. Subcommittees are fully governed by the Sunshine Law.

The appearance of an impropriety was discouraged, and advisory board members were reminded to avoid pre or post meeting discussions, private conversations on the dais, and texting on the dais. Non-members may also not be used as liaisons between board members.

Two-way communication includes written correspondence, which may be sent by a board member to other board members on matters coming before the board, provided there are no responses or interactions related to the documents among the board members prior to the public meeting. Ms. Greene suggested written documents be forwarded to the Staff liaison so that it is maintained on the county network, and Staff will disseminate the documents to the entire board. Written correspondence is public record.

All elements of the Sunshine Law are also applicable for inspection trips; publicly noticed, open to the public, and with minutes taken.

Social events and other community events are permissible, however advisory board members must refrain from discussing any matter which may be discussed at advisory board meetings. Private organizations, such as homeowner's associations are exempt from Sunshine law requirements, which only applies to local government boards. Further, one advisory board member may meet with one member of a separate board, such as a meeting with one County Commissioner.

It was noted that corrective action may be taken for some Sunshine Law violations, however, it is a second-degree misdemeanor to knowingly violate the Sunshine Law, punishable with a fine of up to \$500 and up to 60 days imprisonment.

Public Records laws were discussed and defined as "encompassing all materials made or received by an agency pertaining to official business used to perpetuate, communicate or formalize knowledge, regardless of whether the materials are in final form." Public records include all physical forms or transmissions made or received pursuant to law in connection with official business by the agency. The creator or custodian of each document is required to maintain a record of the document for a specified period. Advisory board members were again encouraged to email such documents to the Staff liaison so that the information may be maintained on the County computer network. It was noted that communication via email concerning County business renders the email address and individual's name, as well as that of the recipient, as public record. Some public records are exempt from disclosure and include records prepared for or in anticipation of legal proceedings, social security numbers of employees and former employees, sealed bids or proposals, and home addresses of current and former law enforcement officers, including code enforcement officers. Public records requests may be made verbally or in writing by any individual.

Mr. Caton inquired as to whether advisory board members would be notified in the event that public records information pertaining to their board membership was requested by an individual. Ms. Greene replied there would most likely be no notification of a public records request of this nature.

Social media is governed by Florida's Sunshine Law as well, including such platforms as Facebook, Twitter, Instant Messaging, YouTube, and Instagram. Pitfalls of social media commentary includes the potential for a two-way communication regarding advisory board related business, as well as the creation of a public record which would need to be maintained. "Liking" or "sharing" a post is acceptable, however commenting is discouraged.

Advisory Board members are also governed by State Ethics Laws and County Ordinance. Of note, Collier County enforces a \$0 gift limit regarding any gift given with the intent to influence the board member's work on the board.

Committee members were encouraged to contact Transit Staff or the County Attorney's office with any questions related to this discussion.

#### **b. MV Transportation Contract**

Mr. DeLeon provided the Advisory Committee with an overview of the new contract with MV Transportation, Inc., which the Board of County Commissioners unanimously approved at their April 9, 2019 meeting. Contract cost, services and expectations related to performance standards and liquidated damages were shared.

It was noted that performance standards were established in order to ensure a high level of service from the Contractor to maximize productivity, without negatively impacting service quality. Incentives for meeting or exceeding performance standards are defined, as well as disincentives for failure to meet the standards. Further, liquidated damages may be assessed if there is a demonstrated failure of compliance with Federal and State requirements.

#### **Appendix 2, Liquidated Damages:**

**LD4:** Mr. Dobberstein requested clarification of liquidated damages to be assessed for violations related to the development of EEO, Title IV, and Drug and Alcohol policies and programs consistent with Federal, State, and local requirements. Mr. DeLeon clarified that the number of violations and corresponding fines are assessed to MV Transportation, Inc., and not to an individual.

**LD12:** Mr. Dobberstein inquired whether closed runs due to the unavailability of drivers has been a problem in the past. Mr. DeLeon stated that a shortage of drivers to operate the paratransit system in the past had resulted in some closed runs.

Mr. Dobberstein noted the flat \$250 fine per occurrence to be ineffectual for repeated closed runs. Mr. DeLeon clarified that language within the contract allows for revisions to be made if significant issues of service deficiencies are identified.

**LD18:** Mr. Dobberstein noted that the contractual standard of twice weekly trash removal from bus shelters may be inadequate for more heavily used shelters, such as at Coastland Mall. Mr. DeLeon stated that if a specific bus shelter was in need of an additional trash pickup, a call would be made to MV Transportation, Inc., who is very responsive to such requests, and the situation would be rectified at no additional cost. Further, Mr. DeLeon noted that shopping carts which are left at bus shelters and at the transfer stations are returned to the appropriate retail locations.

**LD20:** Mr. Dobberstein requested clarification of the fines assessed for Contractor lack of compliance with a drug and alcohol program, and maintenance of documentation of all results and practices. Mr. DeLeon noted that the liquidated damage amounts are per state and federal guidelines. Mr. Dobberstein inquired as to whether there was a plan in place to address individual driver actions in private vehicles, as well as company vehicles. Mr. DeLeon replied that MV Transportation, Inc. follows stringent local requirements. Mr. Morales stated that this is covered in their employee handbook, which details a point system for accidents and safety infractions. Further a surveillance camera is placed in vehicles, which work with a G-sensor (accelerometer). Drivers are allowed a maximum of 6 points of violations in an 18-month period.

**LD25:** Mr. Dobberstein inquired as to whether the Contractor obligation to perform a minimum of 20% scheduled trips in non-County-owned vehicles is monitored. Mr. DeLeon clarified that this is monitored on a monthly basis using current software.

**LD29:** Mr. Dobberstein requested clarification regarding Contractor failure to have a driver assigned to each fixed route and CAT Connect run, with required backup driver; would a fixed route take precedence over a paratransit run? Mr. DeLeon stated that the single vendor concept allows for the ability to draw from a pool of trained driver resources within MV Transportation, in that employees at all levels are cross-trained to operate vehicles. If in the unlikely event that a driver shortfall occurs, Mr. DeLeon stated that he or the Director would be tasked with identifying which route would be cut; which Mr. Morales clarified would ultimately be a paratransit run.

Mr. DeLeon stated the new contract will go into effect in May 2019; however, much of the content was present in the previous contract as well. Mr. Jenkins inquired as to the major differences between the previous contract and the new contract. Mr. DeLeon stated that with consolidation to one vendor, MV Transportation, Inc. is now also responsible for administrative functions. Further, changes were made with respect to performance standards and associated liquidated damages, with fines carried over to the following month cost to the vendor.

Mr. Jenkins inquired as to whether changes were made to the previous contract in response to any history of vendor deficiencies. Mr. DeLeon stated that the expansion of language pertaining to performance standards and liquidated damages was done to delineate specific issues and not as a result of past Contractor performance deficit. Further, the metrics and standards of the previous dual vendor contracts have mostly been maintained for the new single contract, but with some overly stringent points relieved. Mr. Caton stated that some of the performance goal percentages seemed low; Mr. DeLeon replied that performance is monitored on an ongoing basis and adjustments may be made as necessary. Mr. Dobberstein requested that areas of chronic shortcoming or issues in performance goals be shared with the Advisory Committee for discussion and recommendations for corrective action. Mr. Caton remarked upon the new County 311 app which allows citizen commentary regarding Public Transit and suggested this feedback be aligned with the vendor contract and performance goals. Mr. Caton inquired as to whether the vendor contract performance parameters are available online for public viewing, as well as vendor response to performance issues. Mr. DeLeon stated the information would be made available as a request for public information; however, was uncertain as to whether the information was online for immediate public access.

## **VI. Committee Action**

### **a. Endorsement of FY20 Budget Expansion Request**

Endorsement by the Advisory Committee was sought by Staff for the proposed FY20 budget expansion request which had been presented at the previous meeting. The schedule for the budget process was shared, with a review by the County Manager of the initial budget “ask” scheduled for May 16, 2019. The top priorities were identified as replenishing the current shortfall amount of \$413K to make the Division “whole,” as well as to adjust the budget in order to cover the contract with MV through 2020. The proposed service enhancements are second priority at this time, with the third priority identified as a Service Development grant request to enhance route #13. Permission to apply for the grant funding is sought from the BCC due to the requirement of a 50% match funding commitment by the County. If the proposed budget request is not approved, note was made of route 29, the existing seasonal beach bus route, being discontinued. Mr. Dobberstein made note of the BCC’s commitment to bear the cost of the previous \$1.1+M shortfall for FY19 by funding the entire three-year vendor contract, leaving only the current \$413K budget deficit.

Mr. Donenfeld suggested requesting funding for an expanded marketing budget as an additional priority, to include television and social media video blasts to reach a larger audience within the County and to support growth of Transit within the County infrastructure. Ms. Arnold stated there is presently a marketing budget in place which is being utilized, but it is unclear as to whether funds are available for television marketing. Mr. Caton suggested follow up information from Staff at a subsequent meeting regarding marketing responsibilities in relation to the MV contract. A discussion ensued regarding tabling the Committee’s endorsement to a later date, to possibly include funding for additional marketing, however Ms. Arnold pointed out that the date for submittal had passed and the meeting with the County Manager was scheduled for the following month.

Mr. Caton suggested Committee member attendance at BCC workshops as the most impactful way of making a case for additional or reprioritization of funding for marketing.

Mr. Weeks entered a motion to endorse the proposed FY20 Budget Enhancement Request. Mr. Caton seconded the motion, however further discussion ensued prior to a vote on the motion regarding the inclusion of language for the possibility of an additional budget request for marketing in the future. Mr. Weeks and Mr. Caton agreed to amend their motions.

*Mr. Jenkins entered a motion to endorse the FY20 Budget Expansion Request, with a proviso that a marketing budget addendum may be forthcoming. Mr. Donnenfeld seconded the motion. All were in favor. The motion was carried.*

**VII. Member Comments**

There were no additional member comments.

**VIII. Public Comments**

There were no public comments.

**IX. Next Meeting Date – May 21, 2019**

**X. Adjournment**

There being no further business for the good of the County, the meeting was adjourned by order of the Chair.

**Public Transit Advisory Committee**

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**John DiMarco, Chairman**

These minutes approved by the Committee on \_\_\_\_\_ as presented \_\_\_ or as amended\_\_\_.