

# AGENDA MATERIAL

**Katrina Martinez**

DATE 5/21/20 ITEM NO. PA4

**From:** Julie Castaneda  
**Sent:** Thursday, May 21, 2020 7:57 AM  
**To:** COB\_mail  
**Subject:** FW: Call for further changes to May 13 Proclamation re: Residential Community Pools

**Importance:** High

**From:** Michael Shupe <mike@gshoalaw.com>  
**Sent:** Wednesday, May 20, 2020 5:20 PM  
**To:** District1 <District1@pima.gov>  
**Subject:** Call for further changes to May 13 Proclamation re: Residential Community Pools  
**Importance:** High

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Good afternoon, my name is Michael Shupe. I am an attorney, and my legal partner and I represent several hundred homeowners associations, condominium associations, and cooperative housing associations throughout Pima County, including District 1. I am appreciative of Supervisor Miller's actions in advocating for changes to the May 13 proclamation regarding the measures for reopening of certain business and activities, but I am writing to urge further consideration and changes as to how the measures are causing significant concern and unrest among the residents of common-interest communities with community pool facilities.

The media's coverage of last week's Proclamation has largely focused on the impact of such measures on restaurants and dine-in establishments. While I understand that these businesses have legitimate concerns and interests in finding a balance between the health and safety of their clientele and the public at large and the ability to operate, the Proclamation also impacts other non-commercial sectors of the community with effects on 10s of thousands of Pima County homeowners.

Specifically, Section 3 of the Proclamation adopts measures applicable to semi-public pools. At first blush to many, semi-public pools evoke images of pool facilities found at health clubs, gyms, and hotel/resorts. However, according to the Pima County health code regulations, semi-pools also include pools within common-interest communities, such as HOAs and condominiums. What sets such community pools apart from their commercial counterparts, is the nature of their use and the resources, personnel and even insurance coverage dedicated or available to residential community associations. Except for few of the largest residential community associations whose facilities include clubhouses and other substantial amenities that require staffing by numerous service-industry employees, the vast majority residential community associations with community pools exist in developments with homes numbering between a few hundred to a few dozen. These associations are charged with maintenance and operation of the pools; which is performed largely by volunteers, with the part-time assistance of a pool contractor in many instances, but without custodial staff or attendants who are common-place and necessary at gyms and resorts.

**CLERK'S NOTE:**  
**COPY TO SUPERVISORS**  
**COUNTY ADMINISTRATOR**

DATE 5/21/20 *(Signature)*

MAY 21 2020 08:17 PM CLK OF BD

Also, unlike members of a gym, or guests of a resort, members of community associations are required to pay mandatory dues for so long as they own their home in the community. If you like to swim, and your local gym shuts down its pool, you can terminate your membership and look for another Gym. If the resort you are staying at closes the pool, you seek a refund or voucher, or stay at another property. You have no such choice with your community association. In fact, as an owner of a home, members have legal rights to the access and enjoyment of common areas, including community pools that differ from the simple license granted by gym membership.

The associations' sole source of funds for maintenance and operation of the pool is the mandatory dues, which are based on constrained budgets. Even if we assume that there are service-providers available in the marketplace for associations to hire full- or part-time pool attendants to ensure compliance with the types of measures established in Section 3 of last week's Proclamation, such services would constitute new unbudgeted expenses of several thousands of dollars per month.

While seeking volunteers in the community to perform such tasks may be a reasonable option so as to form the basis of a strategy of "best practices" to ensure a reasonable level of safety, the specific mandates in the form of "minimum measures" in the Section 3 of the Proclamation, particularly requiring sanitation after each sitting, and otherwise documented cleaning of all public areas every 2 to 3 hours set a bar too high to rely solely on volunteers and good faith. The failure to follow such minimum standards not only subjects associations to civil penalties for each infractions, but constitutes per se negligence from which a community association has little if any defense. Even the individual Directors, who volunteer their time to guide the operations of the associations face possible personal liability should they proceed to open their community pools in disregard of any of the County mandates. Furthermore, the insurance policies available to community association's include exclusions as to claims arising due to communicable disease like COVID 19. In all, unless community associations can comply perfectly with all measures, Directors are faced with opening pools without a safety net and the possibility of bankrupting the association. As you might imagine, given this gauntlet to run, many community pools will remain closed – much to the furor of the residents of the communities. In the end, although the volunteer Directors take much of the heat from their neighbors, their only response is to point to the County's measures as the reason for such closures.

For all of the foregoing reasons, I urge Supervisor Miller to advocate for further modifications to the temporary measures so as to provide necessary relief for residents in community associations across Pima County. The simplest fix is to recognize that community associations with community pools are distinct from their commercial counterparts, and that all of the measures, while crafted with the public health and safety in mind, should only be applicable as guidelines, and not as enforceable mandates. With even this change, community associations could reopen their community pools for residents to use and enjoy, incorporating much of the well-meaning guidance provided by the County, State, and even Federal-level agencies, while creating strategies that are crafted to meet the needs and concerns of their communities' unique circumstances.

Thousands of residents in the communities that we represent will be watching Thursday night to see if a reasonable outcome can be achieved, or if weeks if not months of homeowner discontent can be expected.

Thank you so much for your time and efforts.

Respectfully,

***Michael S. Shupe, Esq.***



6700 North Oracle Road, Suite 240  
Tucson, AZ 85704

tel: 520.265.4HOA (4462)  
fax: 520.622.5176

[Mike@gshoalaw.com](mailto:Mike@gshoalaw.com)  
[www.gshoalaw.com](http://www.gshoalaw.com)

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