



OFFICE OF THE ARIZONA ATTORNEY GENERAL
SOLICITOR GENERAL'S OFFICE

MARK BRNOVICH
ATTORNEY GENERAL

MICHAEL S. CATLETT
DEPUTY SOLICITOR GENERAL

August 18, 2021

By First-Class Mail and Email

Michael G. Rankin
Tucson City Attorney
City Hall
255 W. Alameda
Tucson, AZ 85701
Mike.Rankin@tucsonaz.gov

**Re: Notice of Submission of Legislator Request for Investigation Pursuant to
A.R.S. § 41-194.01; Request for Written Response**

Mr. Rankin:

Enclosed with this letter is a complete copy of a Legislator Request for Investigation under A.R.S. § 41-194.01 (the "Request") regarding the enactment of Ordinance 11869 ("Ordinance") by the City of Tucson (the "City") on August 13, 2021. More specifically, the Request asserts that Ordinance 11869 violates "Executive Order 2021-18, A.R.S. 36-787, A.R.S. 36-114, A.R.S. 36-681 and A.R.S. 36-184." Section 41-194.01 provides that "[a]t the request of one or more members of the legislature, the attorney general shall investigate any ordinance, regulation, order or other official action adopted or taken by the governing body of a county, city or town that the member alleges violates state law or the Constitution of Arizona." With the Request's filing, the Office will now conduct an investigation and prepare a report that, under the statute, must be completed within 30 days. A.R.S. § 41-194.01(A), (B).

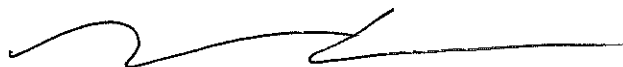
In the report, the Attorney General will reach one of three conclusions. *See id.*, § 41-194.01(B). If the City has not violated any provision of state law or the Arizona Constitution, the Office will take no further action. *Id.*, § 41-194.01(B)(3). If the City may have violated a provision of state law or the Arizona Constitution, the Attorney General will file an action in the Arizona Supreme Court. *See id.*, § 41-194.01(B)(2); *State ex rel. Brnovich v. City of Tucson*, 242 Ariz. 588 (2017). If the City has violated a provision of state law or the Arizona Constitution, the Office will notify the City in writing and state that the City has 30 days to resolve the identified violation. A.R.S. § 41-194.01(B)(1). If the Attorney General determines that the City failed to resolve the violation within 30 days, the Attorney General will

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notify the State Treasurer, who shall withhold and redistribute from the City state shared monies as provided by A.R.S. §§ 45-5029(L) and 43-206(F).

In light of the exigencies of the current circumstances, the Office hereby requests that the City voluntarily provide a written response to the Request by **5:00 p.m. on Wednesday, September 1, 2021.**

Please feel free to contact me if you have any questions.



Michael S. Catlett
Deputy Solicitor General
Government Accountability Unit



Office of Arizona Attorney General
Mark Brnovich
Legislator Request for Attorney General Investigation of
Alleged State-Law Violation by County, City, or Town



How to Submit a Request to Investigate

Under A.R.S. § 41-194.01, one or more members of the Legislature may ask the Attorney General to investigate whether an ordinance, regulation, order, or other official action adopted or taken by the governing body of a county, city, or town violates state law or the Arizona constitution. A request is made by submitting the form on pages 2-3 of this document to the Attorney General's Office (the "Office"). The physical address or email to submit the form is provided on the bottom of page 3.

Upon receiving a request, the Office will open an investigation. A request will not be deemed received, however, and therefore the 30-day investigation period will not start, until all required information is submitted. In addition, a separate request form must be submitted for each separate legal question. An attorney or staff member from the Office will reach out to the contact person identified in the request form to address any issues that prevent the Office from commencing an investigation.

How We Conduct Investigations

After a complete request is deemed received by the Office, the assigned attorney(s) and staff will conduct an investigation during a thirty-day period. The Office generally will contact the county, city, or town for a response to the allegations and any other relevant evidence. At the conclusion of this investigation period, the Attorney General will make a written report of findings and conclusions, including whether the complained-of action violates, may violate, or does not violate state law and the Arizona constitution. Copies of the report will be provided to the member(s) of the Legislature who made the request and other officials listed in A.R.S. § 41-194.01.

If the Attorney General determines the complained-of action violates state law, the Office will then provide notice to the county, city, or town that it has thirty days to resolve the violation. If the violation is not resolved within that timeframe, the Office will notify the Treasurer pursuant to A.R.S. § 41-194.01. If the Attorney General determines that the complained-of action may violate state law, the Office will take steps to obtain a judicial determination of the issue. If the Attorney General determines that the complained-of action does not violate state law, the Office will close the complaint file and take no further action.

How You Can Help Us

To expedite an investigation, please provide as much specific information as possible about the alleged violation, including the specific county, city, or town action that constitutes the violation; the specific state law or Arizona constitutional provision violated; the relevant facts, such as the dates of key events and names of persons with relevant knowledge; and all legal authority you are aware of regarding your allegations. Please also attach any documents or other evidence relevant to your allegations.

Rev. 8-2016



Office of Arizona Attorney General
Mark Brnovich



Legislator Request for Attorney General Investigation of
 Alleged State-Law Violation by County, City, or Town (Continued)

*Identify the member(s) of the Legislature submitting this request for investigation (attach additional sheet if necessary):

Senator Kelly Townsend

*Provide a contact person for communications from the Attorney General's Office regarding this request (may be a Legislator listed above or an employee of the Legislature).

*Name: Kelly Townsend

*Email address: ktownsend@azleg.gov

*Phone number: 602-926-4467

*Mailing address: 1700 W. Washington St.

Phoenix, AZ 85007

*The specific question for the Attorney General to investigate is:

Is the Mayor of Tucson, Regina Romero & the Tucson City Council

in violation of Executive Order 2021-18 by requiring employees to receive a COVID vaccination as a term of employment?

*The name of the county, city, or town that is the subject of this request:

Tucson

*The specific ordinance, regulation, order, or other official action adopted or taken by the governing body of the county, city, or town and the date thereof:

Ordinance No. 11869

August 13, 2021

*The specific Arizona statute(s) and/or constitutional provision(s) with which the action conflicts :

Executive Order 2021-18 , A.R.S. 36-787, A.R.S. 36-114, A.R.S. 36-681 and A.R.S. 36-184



Office of Arizona Attorney General
Mark Brnovich
 Legislator Request for Attorney General Investigation of
 Alleged State-Law Violation by County, City, or Town (Continued)



*All relevant facts of which you are aware (attach separate sheet if necessary):

see attached ordinance

*All relevant legal authority, including federal and state case law, of which you are aware (attach separate sheet if necessary):

n/a

* Any litigation involving this issue of which you are aware (include case name, number, and court where filed) :

n/a

Check this box if you are attaching supporting documentation.



NOTE: This form and other information submitted to the Attorney General's Office is subject to the public records law, A.R.S. § 39-121 et seq.

I, a current member of the Legislature, verify that I and the other Legislators listed on the previous page (if any) are submitting this request for investigation under A.R.S. § 41-194.01.

*First Name: Kelly

*Last Name: Townsend

*Signature:

*Date:

8/17/2021

Please submit the completed form to:

Arizona Attorney General's Office
 Attn: Appeals and Constitutional Litigation/A.R.S. 41-194.01
 2005 North Central Avenue
 Phoenix, AZ 85004
governmentaccountability@azagov

* required field
 Rev. 8-2016

ADOPTED BY THE
MAYOR AND COUNCIL

August 13, 2021

ORDINANCE NO. 11869

RELATING TO PUBLIC HEALTH AND SAFETY AND THE PREVENTION OF SPREAD OF INFECTIOUS DISEASE; FINDING AND REAFFIRMING THAT THE COVID-19 PANDEMIC CONSTITUTES A CONTINUING LOCAL AND CIVIL EMERGENCY; AUTHORIZING AND DIRECTING THE CITY MANAGER TO EXECUTE, ADMINISTER, IMPLEMENT AND ENFORCE AN ADMINISTRATIVE DIRECTIVE IN ORDER TO PROMOTE AND REQUIRE CITY EMPLOYEES TO GET VACCINATED AGAINST COVID-19, AND TO CARRY OUT ITS VARIOUS PROVISIONS IN ORDER TO MITIGATE AGAINST THE SPREAD OF COVID-19 IN OUR WORKFORCE AND IN OUR COMMUNITY AND REGION; ESTABLISHING CERTAIN EXEMPTIONS AND ACCOMMODATIONS; ESTABLISHING PENALTIES; AFFIRMING THAT THE REQUIREMENTS OF THIS POLICY ARE MANAGEMENT RIGHTS OF THE CITY AS AN EMPLOYER; AUTHORIZING THE CITY MANAGER TO ESTABLISH HIGHER HEALTH CARE PREMIUMS FOR EMPLOYEE PARTICIPANTS WHO DO NOT SUBMIT PROOF OF VACCINATION, TO THE EXTENT AUTHORIZED BY LAW; AND DECLARING AN EMERGENCY.

WHEREAS, the Mayor and Council of the City of Tucson make the following findings:

1) Chapter IV, Section 1(10) of the Tucson Charter provides that the City has the power "to make regulations to prevent the spread of diseases;" and Chapter VII, Section 1(28) of the Tucson Charter provides that the Mayor and Council have the power to make all regulations which may be necessary or expedient for the preservation of the health and the suppression of disease; and to make regulations to prevent the introduction of contagious, infectious, or other diseases into the city; and

2) The State of Arizona is under a continuing Declaration of Public Health

Emergency, as ordered by Governor Douglas A. Ducey, due to the necessity to prepare for, prevent, respond to, and mitigate the spread of COVID-19;

3) The City of Tucson is under a continuing Declaration of Emergency or Local and/or Civil Emergency, as proclaimed by Mayor Regina Romero and as supported by motions adopted by unanimous votes of the Mayor and Council on multiple dates, including but not limited to March 24, April 21 and June 9, 2020, due to the COVID-19 pandemic; and

4) the most current local data relating to COVID-19 as provided by Pima County (part of which is included in the agenda material for this August 13, 2021 Special Session meeting) show that Pima County and the City of Tucson are experiencing substantial and in fact now “high” community-based transmission of COVID-19, and an increasing pace of viral spread that constitutes another surge of this pandemic. This surge is largely attributable to the increasing spread of the Delta variant, and the increase in infections and serious illness/hospitalization is overwhelmingly attributable to transmission among persons who have chosen not to be vaccinated against the COVID-19 virus, despite the widespread (and free of cost) availability of the approved vaccines; and

5) hospitalization and death among the vaccinated population remains exceedingly rare, demonstrating that the vaccines are extraordinarily effective; but the instances of breakthrough infections (infection of vaccinated persons) are growing; and

6) vaccination remains the single most important tool that needs to be leveraged in our local community’s pandemic response if we are to prevent needless hospitalizations and deaths in the City of Tucson and throughout Pima County; and

7) a recent survey of City employees demonstrates that it is reasonable to believe that an estimated 1,000 City employees remain unvaccinated against the COVID-19 virus; and

8) the City of Tucson, as an employer (and by and through its City Manager and ultimately through its legislative body), has a legal duty to provide and maintain a safe and healthy workplace for its employees; and

9) the actions included in this Ordinance and its attachments are reasonable and necessary to provide a safe workplace for City employees, the majority of whom have been vaccinated but who face increased threat of infection from unvaccinated coworkers; and these actions are reasonable and necessary to protect public health throughout our community and to ensure the City's ongoing capacity to provide essential services:

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF TUCSON, ARIZONA AS FOLLOWS:

SECTION 1. The Mayor and Council find and reaffirm that the COVID-19 pandemic constitutes a continuing emergency, local emergency and civil emergency that endangers life within the City of Tucson, and requires extraordinary measures to protect public health and safety, all as provided under the Tucson Charter, Arizona Revised Statutes and Tucson Code.

SECTION 2. The Mayor and Council authorize and direct the City Manager to execute, administer, implement and enforce the provisions of the Administrative Directive attached hereto as Exhibit A, in order to promote and require City employees to get vaccinated against COVID-19, and to carry out its provisions in order to mitigate

against the spread of COVID-19 in our workforce and in our community and region. This authorization and direction supplements the authority already vested in the City Manager pursuant to the Tucson Charter and City Code, and does not limit or otherwise modify the authority that the City Manager holds under the Charter, Code, and other laws.

SECTION 3. The Mayor and Council authorize the City Manager to revise and amend the attached Administrative Directive, without need for further action by the Mayor and Council, for the purposes of carrying out its intent and to make any changes needed or convenient for its efficient administration and/or to satisfy legal requirements.

SECTION 4. The Mayor and Council find that the requirements of City employees as approved under this Ordinance and as established under the attached Exhibit A are lawfully imposed under the scope of "management rights" as that term is used in Chapter 14 of the Tucson Code and elsewhere, and hereby declare that the requirements of this Ordinance and the attached Exhibit A are necessary, reasonable and expedient to promote public health and the suppression of disease; and to prevent the introduction and/or spread of contagious, infectious, or other diseases within the City.

SECTION 5. The Mayor and Council also authorize the City Manager to implement an incentive for City employees to submit proof that they have been vaccinated against the COVID-19 virus, under which qualifying employees may receive leave benefits as specified by the City Manager through a separate Administrative Directive or similar communication.

SECTION 6. The Mayor and Council further authorize the City Manager to establish revised requirements relating to employee premiums under the City's health care coverage plan(s); under which employees who fail to demonstrate that they are fully vaccinated against the COVID-19 virus shall be responsible for higher premium payments than employees who choose to provide such proof. Any such changes must comply with all applicable federal and state laws and regulations.

SECTION 7. WHEREAS, it is necessary for the preservation of the peace, health, and safety of the City of Tucson that this Ordinance become immediately effective, an emergency is hereby declared to exist, and this Ordinance shall be effective immediately upon its passage and adoption.

PASSED, ADOPTED AND APPROVED by the Mayor and Council of the City of Tucson, Arizona, August 13, 2021.

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

REVIEWED BY:

CITY ATTORNEY

CITY MANAGER

MR/dg
8/12/21