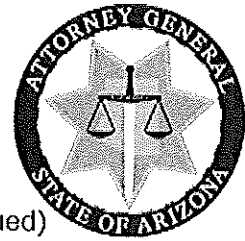




Office of Arizona Attorney General

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):

Representative Vince Leach

*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: State Representative Vince Leach

*Email address: VLeach@azleg.gov

*Phone number: 602.926.3106

*Mailing address: 12995 N Oracle Rd., Ste. 141 MS 113

Tucson, AZ 85739-9528

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

Did the Town of Patagonia violate Arizona law by adopting an ordinance

restricting the total number of trips made by a "heavy duty truck?"

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

Town of Patagonia

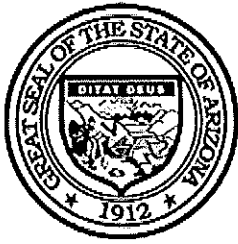
*The specific ordinance, regulation, order, or other official action adopted or taken by the governing body of the county, city, or town and the date thereof:

Ordinance 17-01

November 29, 2017

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

A.R.S. § 28-1106; A.R.S. § 28-1103(F)



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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 Attachments A, B, and C.

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

Attachments A, B, and C.

*Any litigation involving this issue of which you are aware (include case name, number, and court where filed) : None.

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: VINCE *Last Name: LEACH

*Signature: [Signature] *Date: 12-18-17

Please submit the completed form to: Arizona Attorney General's Office Attn: Civil Litigation Division/A.R.S. § 41-194.01 2005 N Central Avenue Phoenix, Arizona 85004 cldinvestigations@azag.gov

* required field Rev. 8-2016

Attachment A

1487 Complaint of Representative Vince Leach Regarding Town of Patagonia Truck Regulation Ordinance

On November 29, 2017, the Town of Patagonia adopted Ordinance 17-01 (the “Ordinance”), which places limits on the total number of trips made by a “heavy duty truck.” A “heavy duty truck” is defined as a truck with “more than two non-steering axles.” Specifically, § 11-4-3(A) of Patagonia’s ordinance states as follows:

No person, firm or entity shall drive or cause to be driven upon any Town street a heavy duty truck or trucks for more than a cumulative total of one hundred trips per week, and of those no more than twenty trips per week may occur between the hours of 10:00 p.m. and 6:00 a.m.

The Town’s Ordinance requires a permit and fee to exceed the “maximum trip restrictions” and Town’s weight and load regulations. § 11-4-5.

The Ordinance is unlawful because the Town’s restrictions exceed the authority granted to it under Arizona law.¹ *See City of Scottsdale v. Superior Court*, 103 Ariz. 204, 205 (1968) (city or town has “no greater powers than those delegated to [it] by the constitution and the general laws of the state”). The Town claims it has authority to enact the trip restrictions under A.R.S. § 28-1106(C). But A.R.S. § 28-1106(C) only permits the Town to “prohibit by ordinance or resolution the operation of trucks or other commercial vehicles,” or “impose limitations as to the weight of vehicles on designated highways.” The proposed trip limitations do neither.

The Ordinance does not “prohibit . . . the operation of trucks or other commercial vehicles,” instead it allows trucks or other commercial vehicles to operate so long as they stay under the Town’s arbitrary trip limits. These trip limits are based out of a desire to block Arizona Mining Inc.’s proposed mine, not protect certain roads from commercial trucks. After all, the Ordinance separately prohibits “the operation of trucks or other commercial vehicles” on select roads by imposing route restrictions. *See* § 11-4-2. These route restrictions are what § 28-1106(C) authorizes, not arbitrary limits on the number of trips. Further, the proposed trip limitations do not “impose limitations as to the weight of vehicles on designated highways.” In fact, the limitations are based exclusively on whether the vehicle contains “more than two non-steering axles,” and have nothing to do with weight. And again, the Ordinance separately imposes weight restrictions apart from the trip restrictions. *See* § 11-4-1.

Simply, under Arizona law the Town can either prohibit the operation of trucks or limit their weight, but it has not been granted authority to make any other limitations, including limiting the number of trips a “heavy duty truck” can make.

¹ The Town originally proposed this ordinance in February 2017, but tabled it pending the outcome of *State ex rel. Brnovich v. City of Tucson*, 242 Ariz. 588 (2017).

The Ordinance also appears to violate A.R.S. § 28-1103(F). In March 2017, Governor Ducey signed HB 2371, which makes clear that the Town's restrictions on trucks and vehicles must be "substantially identical to rules adopted by the [Arizona Department of Transportation]." See A.R.S. § 28-1103(F).²

If a local authority issues permits pursuant to this section, the local authority shall adopt and enforce ordinances that are substantially identical to rules adopted by the department that relate to overdimensional or overweight commercial vehicles, and the local authority may adopt ordinances relating to infrastructure restrictions, route restrictions and time-of-day restrictions.

The Town's restrictions on total trips is not substantially identical to the State's rules for overdimensional or overweight commercial vehicles. Because the trip restrictions "are not substantially identical to rules adopted by the department that relate to overdimensional or overweight commercial vehicles," they are unlawful.

Finally, it is worth noting that the Ordinance was unlawfully deliberated in violation of Arizona's open meeting laws. Under Arizona law, email communications can constitute a meeting for purposes of Arizona's Open Meeting Law. See 2005 Op. Ariz. Att'y Gen. I05-004. The email communications shown in **Attachment C** demonstrate that in an email to the Town Mayor, Vice Mayor, and Council Members, Council Members Michael Stabile and Ron Reibslager deliberated the Ordinance. Further, it appears that Council Members Michael Stabile spoke with the Town Marshall, Joe Patterson, regarding the Ordinance. I would request that the Attorney General investigate this and any other violations of Arizona's Open Meeting Law that may have occurred and may possibly void the Ordinance.

² "If a local authority issues permits pursuant to this section, the local authority shall adopt and enforce ordinances that are substantially identical to rules adopted by the department that relate to overdimensional or overweight commercial vehicles." A.R.S. § 28-1103(F) (effective Aug. 9, 2017).

Attachment B

DRAFT ORDINANCE TABLED FEBRUARY 8, 2017 PENDING FURTHER STUDY AND RESULTS OF PENDING LITIGATION BEFORE ARIZONA SUPREME COURT.

Article 11-4 Vehicle Weight, Use and Noise Restrictions on Town Streets

Sec. 11-4-1 Weight Restrictions On Town Roads

A. The maximum gross vehicle weight for all vehicles traveling on Town streets shall be 80,000 pounds except where lower gross vehicle weight is dictated by the bridge formula set forth below in subsection D.

B. The maximum gross weight upon any one axle, including any one axle of a group of axles, or a vehicle is 20,000 pounds.

C. The maximum gross weight on tandem axles is 34,000 pounds.

D. No vehicle or combination of vehicles shall be moved or operated on any town road when the gross weight on two or more consecutive axles exceeds the limitations prescribed by the following formula, referred to as the Bridge Gross Weight Formula:

$$W = 500 \left(\frac{LN}{N-1} + 12N + 36 \right)$$

except that two consecutive sets of tandem axles may carry a gross load of 34,000 pounds each if the overall distance between the first and last axle is 36 feet or more. In no case shall the total gross weight of a vehicle exceed 80,000 pounds.

W = maximum weight in pounds that can be carried on a group of two or more axles to the nearest 500 pounds.

L = spacing in feet between the outer axles of any two or more consecutive axles

N = number of axles being considered

This limitation is further set forth in the federal "Bridge Formula Table" adopted as if fully set forth herein by this reference.

Sec. 11-4-2 Town Truck Routes

A. All heavy duty trucks transiting through the Town to or from county roads and SR-82 shall be restricted to the following Town Truck Routes:

1. To access Blue Heaven Road: Fourth Avenue to Pennsylvania Avenue to Blue Heaven Road.
2. To access Temporal Road: First Avenue to Gringo Road to Temporal Road.
3. To access Harshaw Road: Taylor Avenue to McKeown Avenue to Columbia Road to Harshaw Road.

B. Notwithstanding the above, a heavy duty truck making a delivery or pick up or parking at a final destination within the Town may travel the shortest reasonable route through Town.

C. As used in this article, "heavy duty truck" means a truck with more than two non-steering axles.

Sec. 11-4-3 Heavy Duty Truck Use Restrictions

A. No person, firm or entity shall drive or cause to be driven upon any Town street a heavy duty truck or trucks for more than a cumulative total of one hundred trips per week, and of those no more than twenty trips per week may occur between the hours of 10:00 p.m. and 6:00 a.m.

B. For the purpose of this section, each time a truck enters upon a Town street directly from a county or state highway shall be deemed a separate trip.

C. All emergency vehicles shall be exempt from the limitations of this section, whether or not they are responding to an actual emergency.

Sec. 11-4-4 Overweight Permits for One-Time Deliveries

The Town Manager is hereby authorized to issue overweight permits upon application in writing and good cause shown, for one-time deliveries of a load exceeding the weight limits of Sec. 11 – 4 – 1 upon any town road under the following terms:

A. The load shall be nondivisible or otherwise not reasonably susceptible of transport by truck or trucks meeting the weight limits of Sec. 11 – 4 – 1.

B. The route shall be reviewed for clearance of all obstacles.

C. A permit fee of thirty dollars per 10,000 lbs. over the limits set forth in Section 11-4-1 shall be charged.

D. The permit shall be issued in conformity with A.R.S. title 28, ch. 3, art. 18 (§§ 28-1091 et seq.).

E. The Town Manager may condition the approval of a permit upon the posting of security to assure against damage to roadway surface or foundation or other property and such other reasonable limitations that are necessary to protect the safety of property and persons, and said conditions shall have the force and effect of law when approved by the Town Council.

F. A permit issued pursuant to this section shall be carried in the vehicle and shall be open for inspection by any peace officer or agent of the Town.

G. Any violation of a condition of a permit issued pursuant to this section shall be a civil infraction subject to a fine of up to five hundred dollars, which shall be in addition to being civilly liable for any damage that may be caused by the delivery.

Sec. 11-4-5 Permits to Exceed Weight or Use Restrictions

A. The Town Council, upon application in writing and good cause being shown therefor at a public meeting properly noticed pursuant to law, and after hearing from all interested parties desiring to be heard thereon, may issue a special permit in writing authorizing the applicant to operate or move a vehicle or combination of vehicles of a size or weight of vehicle or load exceeding the maximum specified in Sec. 11-4-1 relating to size, weight and load regulations, or to exceed the maximum trip restrictions of Section 11-4-3, upon any designated route under the jurisdiction of the Town.

B. The permit provided for in subsection (A) of this section shall be issued for no more than one year, and in substantial conformity to the procedures adopted by ADOT pursuant to A.R.S. § 28-1104.

C. Each permit shall include the following conditions and restrictions:

- (1) Designation of specific routes to be used;
- (2) Times during which hauling or movement may occur;
- (3) Limitation on acceptable level of noise emitted from the overweight vehicle, but in no event greater than 90 dB at a five-foot distance;
- (4) Designation of specific locations and times of day access will be made to and from Town streets;

(5) Provision for safety precautions, such as the use of barricades, warning or traffic signs, flagmen or police officers for traffic control;

(6) Payment of a cash bond in the amount of five hundred dollars per vehicle or such other amount as the council in its sole discretion determines is necessary to secure the cost of the removal of any spillage of hauled materials or the cleaning of the right-of-way by the Town. Such bond shall be returned to the applicant if no spillage occurs or if any spillage is removed and the right-of-way cleaned by the applicant to the satisfaction of the Town Manager.

(7) Such other conditions that the council in its sole discretion deems necessary to secure the peace, safety and welfare of the residents of the Town.

D. The permit limitations and conditions as provided in this section shall have the force and effect of law when submitted to and approved by the Council.

E. If the permit as provided for in subsection (A) is issued, the Town Council may establish seasonal or other time limitations within which the vehicles described may be operated upon the Town's preferred truck routes or otherwise limit and prescribe conditions of operation of the vehicle or vehicles when necessary to assure against undue damage to the road foundations, surfaces or structures, and may require such undertaking or other security as may be deemed necessary to compensate for any risk of damage to any roadway or road structure or to public safety.

F. A permit issued pursuant to this section shall be carried in the vehicle or combination of vehicles to which it refers and shall be open to inspection by any peace officer or agent of the Town and no person shall violate any of the terms and conditions of the special permit.

G. A one-hundred dollar fee shall be assessed for each permit issued in accordance with the provisions of this section, except as provided in subsection (H) of this section.

H. A thirty-day permit may be issued for the movement of overweight vehicles as long as any load to be carried within the thirty-day period does not exceed the permitted weight and the same equipment will be used for the same type load during the thirty-day period. A fee of forty-five dollars shall be assessed for each thirty-day permit.

I. Any violation of the terms or conditions of the permit issued pursuant to this section may be prosecuted as a violation of Section 11-4-1. In addition, any such violation or written notification from the Town Marshal as to nuisance or safety concerns regarding the haul operation shall be sufficient grounds for the Town Manager to notice a public hearing with the Town Council at which the permit may be revoked.

Sec. 11-4-6 Liability for Damage

- A. Any person driving any overweight vehicle upon any street under the jurisdiction of the Town shall be liable for all damage to any street, light or sign of the Town, whether such transit was permitted, lawful or unlawful.
- B. Any person who causes or allows fill, excavation, ore, construction debris, mud, dirt, rock, sand, gravel, concrete or asphalt to be spilled, dumped or tracked onto public streets, alleys or sidewalks is responsible for all clean-up costs.
- C. When the driver is not the owner of the truck, but is so operating, driving or moving the same with the express or implied permission of the owner, then the owner and driver shall be jointly and severally liable for any damage.
- D. The costs to mitigate all such damage described herein may be recovered in a civil action brought by the Town.

Sec. 11- 4-7 Hauling Fill or Excavation; Permit; Fee and Cleanup Bond; Load Leaks.

A. It shall be unlawful to haul or cause to be hauled fill or excavation by truck on Town streets when the quantity of fill or excavation to be hauled exceeds ten thousand cubic yards, or when the duration of the haul is for more than twenty working days, i.e., Monday through Friday inclusive, except upon written application for and the issuance of a haul permit by the Town Manager. The Town Manager shall be responsible for the issuance of the permit, and may include conditions as may be reasonably necessary to prevent creation of a nuisance or hazard to the public. Such conditions may include but not be limited to:

- (1) Designation of specific routes to be used;
- (2) Designation of specific locations and times of day access will be made to and from public right-of-way;
- (3) Provision for safety precautions, such as the use of barricades, warning or traffic signs, flagmen or police officers for traffic control;
- (4) Payment of a cash bond in the amount of five hundred dollars in order to secure the cost of the removal of any spillage of fill or excavation and the cleaning of the right-of-way by the Town. Such bond shall be returned to the applicant if no spillage occurs or if any spillage is removed and the right-of-way cleaned by the applicant to the satisfaction of the Town Manager;

(5) Any violation of the terms or conditions of the permit, or written notification from the Town Manager shall be sufficient grounds to revoke the permit.

B. Notwithstanding the provisions of subsection (A) above:

(1) It shall be unlawful to cause or allow fill, excavation, construction debris, dirt, rock, sand, gravel, concrete or asphalt to be spilled or dumped onto improved public streets, alleys or sidewalks. Any person who violates this section shall be subject to a civil sanction for which the court shall impose a sanction in the amount of two hundred fifty dollars.

(2) Any person who owns, leases or occupies property in connection with which fill, excavation, construction debris, dirt, rock, sand, gravel, concrete or asphalt is hauled and caused or allowed to be spilled or dumped onto improved public streets, alleys, or sidewalks is subject to a civil sanction for which the court shall impose a sanction in the amount of two hundred fifty dollars.

(3) Any person who contracts to do work of any kind on property in connection with which fill, excavation, construction debris, dirt, rock, fill, gravel, concrete or asphalt is hauled and caused or allowed to be spilled or dumped onto public streets, alleys or sidewalks is subject to a civil sanction for which the court shall impose a sanction in the amount of two hundred fifty dollars.

C. Any person who violates the provisions of this section is subject to a civil sanction for which the court shall impose a sanction in the amount of two hundred fifty dollars.

Sec. 11-4-8 Weighing of Vehicles and Presumptive Weight

A. Any peace officer employed in the State of Arizona, having reason to believe that the weight of the vehicle and load does not conform to the provisions of this article is authorized to require the driver to stop and submit to a weighing of the vehicle by means of either portable or stationary scales and may require the vehicle to be driven to the nearest public scales, provided that the scales are within two miles.

B. The rated gross vehicle weight of the vehicle shall be presumptive evidence of the weight of the vehicle traveling upon any Town road.

Sec. 11-4-9 Penalties

A. A person who violates any of the provisions of this article, including exceeding the conditions of a permit issued pursuant to Section 11-4-4 or Section 11-4-5, is subject to