



MARK BRNOVICH
ATTORNEY GENERAL

OFFICE OF THE ARIZONA ATTORNEY GENERAL
SOLICITOR GENERAL'S OFFICE

MICHAEL S. CATLETT
DEPUTY SOLICITOR GENERAL

December 1, 2021

Michael G. Rankin,
Tucson City Attorney
City Hall
255 W. Alameda
Tucson, AZ 85701
(520) 791-4221
mike.rankin@tucsonaz.gov

VIA EMAIL and First Class Mail

**Re: Legislator Request for Investigation regarding whether Tucson
Administrative Directive 2.03-7 violates A.R.S. § 23-206**

Dear Mike:

Enclosed with this letter is a complete copy of a Legislator Request for Investigation under A.R.S. § 41-194.01 (the "Request") regarding whether the City of Tucson ("Tucson") Administrative Directive 2.03-7 violates A.R.S. § 23-206. With the Request's filing, the Office will now conduct an investigation and prepare a report that, under the statute, must be completed in no later than 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 Tucson 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 Tucson 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 Tucson has violated a provision of state law or the Arizona Constitution, the Office will notify Tucson in writing and state that Tucson has 30 days to resolve the identified violation. A.R.S. § 41-194.01(B)(1). If the Attorney General determines that Tucson failed to resolve the violation within 30 days, the Attorney General will notify the State Treasurer, who shall withhold and redistribute from Tucson state shared monies as provided by A.R.S. §§ 42-5029(L) and 43-206(F).

Letter to Mike Rankin
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In light of the exigencies of the current circumstances, the Office hereby requests that Tucson voluntarily provide a written response to the Request by 5:00 p.m. on Thursday, December 9, 2021.

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

Sincerely,



Michael S. Catlett
Deputy Solicitor General
Government Accountability Unit

Enclosure



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: Senator Kelly Townsend

*Email address: ktownsend@azleg.gov

*Phone number: 602-926-4467

*Mailing address: 1700 W. Washington St

Phoenix, AZ 85007

State Senate Building

*The specific question for the Attorney General to investigate is: Does the Phase III Vaccination requirement of the Tucson

Administrative Directive 2.03-7, as added October 27th, 2021, violate A.R.S. 23-206?

*The name of the county, city, or town that is the subject of this request: City of 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: Tucson Administrative Directive 2.03-7

*The specific Arizona statute(s) and/or constitutional provision(s) with which the action conflicts : A.R.S. 23-206



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 Tucson Administrative Directive 2.03-7

[Empty text boxes for facts]

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

[Empty text boxes for legal authority]

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

[Empty text boxes for litigation]

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: *Last Name:

*Signature: *Date:

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



ADMINISTRATIVE DIRECTIVE

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I. PURPOSE

To provide and maintain a safe and healthy workplace for employees and their families; to promote and protect the health and safety of the public; to prevent or limit the spread of COVID-19; to mitigate the severity of illness from COVID-19 in the event of infection; to limit the hazards and enormous human and financial costs presented by the COVID-19 pandemic; and to preserve the ability and capacity of the City of Tucson (COT) to provide essential services to the residents, businesses and visitors of Tucson.

II. SCOPE AND EFFECTIVE DATE

Scope: This policy applies to all city employees, including but not limited to all employees in the classified service, all at-will/appointed employees and officers (including those outside the classified service), and all temporary, seasonal or other employees, including those who are employed by contract through temporary employment agencies or similar.

This policy also applies to all applicants and candidates for employment by the City, including those who are already involved in a job recruitment process on the effective date of this policy (August 13, 2021).

Employees who are subject to this policy will be deemed exempt or eligible for accommodation ONLY as provided in Section VI below.

Effective Date: The requirements of this policy, including specifically the Vaccination Requirement established in Section IV below, initially went into effect on August 20, 2021; and the revisions establishing the Phase III Vaccination Requirement are effective on and after October 27, 2021.

III. DEFINITIONS-

Disability Accommodation: is the process whereby the City of Tucson (COT) in accordance with Administrative Directive 2.05-2, Reasonable Accommodation of Applicants and Employees with Disabilities, provides reasonable accommodations, absent undue hardship, to qualified individuals with disabilities that enable them to perform their job duties. A reasonable accommodation may include adjustment or modification of policies, including this mandatory vaccination policy.

Fully vaccinated against COVID-19: has the same meaning as provided by the US Centers for Disease Control and Prevention, which as of the effective date of this policy means as follows:

People are considered fully vaccinated against COVID-19:

2 weeks after their second dose in a 2-dose series of an approved 2-dose vaccine, namely the Pfizer or Moderna vaccines, or



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2 weeks after an approved single-dose vaccine, namely the Johnson & Johnson's Janssen vaccine.

Medical Exemption: means an exemption that is allowed when an individual has a medical condition that prevents them from receiving a vaccine. A medical exemption may be required when an individual has an allergy to a vaccine or a specific medical condition that precludes a vaccination. An employee may qualify for a medical exemption even if they do not have a condition that would qualify as a disability under federal, state, or local law.

Religious Accommodation: is the process where an employee may request the COT provide a reasonable accommodation, absent undue hardship to the COT, to an employee with sincerely held religious beliefs, observances or practices that conflict with getting vaccinated.

Sincerely held religious beliefs and practices: means those that are protected from religious discrimination under Title VII of the Civil Rights Act of 1964. They do not include social, political, or economic philosophies, or personal preferences or beliefs, that are not religious beliefs protected under Title VII.

IV. POLICY; DISCIPLINE FOR FAILURE TO COMPLY

A. General Policy: The policy of the City of Tucson is that all City employees subject to this policy must be fully vaccinated against COVID-19 as soon as reasonably possible following the effective date of this policy; and that City employees must submit proof to the City of vaccination as provided in this policy, all as a condition of continued employment, unless a reasonable accommodation or medical exemption is approved as provided in Section VI below. The time frame for vaccination established in this policy have been established with the goal of having all employees (other than those who are granted exemptions or accommodations) fully vaccinated by December 15, 2021. Accordingly, employees must submit proof of compliance with the imposed vaccination requirements within the time frames established below; or must submit their requests for available accommodations or exemption within the same time frames, also as described below. **Failure to comply with the requirements of this policy and the time limits as described constitutes just cause for discipline; and any employee who fails to comply with this policy is hereby put on notice that discipline will be administered as described in this policy.**

B. Vaccination Requirement and Specific Time Frames for Compliance: each employee who is subject to the requirements of this policy must submit proof of vaccination for COVID-19 (or submit a completed request for accommodation and/or exemption) to the City as follows:

Phase I. On or before **4:00 p.m., August 24, 2021**, the employee must submit written proof (which may include an attestation signed by the employee, subject to subsequent written documentation upon the City's request) demonstrating that on or before that date the employee has received at least the first dose of the approved 2-dose vaccines (Pfizer or Moderna) or alternatively the single dose of the Johnson and Johnson vaccine.



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Phase II. For employees who timely submitted a request for a medical exemption, an accommodation for a disability, or an accommodation for a sincerely held religious belief, and that request was denied, the employee is in compliance only if they received the first dose of either the Pfizer or Moderna vaccine, or the single dose of the Johnson and Johnson vaccine, on or before **October 5, 2021**.

Phase III. Effective **October 27, 2021**, each employee who has not been granted an exemption or accommodation must have received **both** doses of either the Pfizer or Moderna vaccine or the single dose of the Johnson and Johnson vaccine on or before **December 1, 2021** to avoid termination (IV.E.2 below).

C. Employees’ responsibility to schedule vaccination - Each of the described vaccines is readily available at various locations throughout the City, and in fact throughout the United States; and they are free of charge. **It is the responsibility of each employee to schedule and secure his or her or their own vaccination(s)**. Information about the vaccines and where to receive them is available here:

<https://webcms.pima.gov/cms/One.aspx?portalId=169&pageId=669257>

D. Employees’ responsibility to request a reasonable accommodation or medical exemption in a timely manner.

- 1. Accommodation** - If an employee believes they need an accommodation regarding this policy because of a disability or a sincerely held religious belief, they are responsible for requesting a reasonable accommodation from the Occupational and Health Leaves (OHL) division of Human Resources.

OHL will engage in an interactive process with the employee to determine the precise limitations of his or her ability to comply with this mandatory vaccination policy and explore potential reasonable accommodations. The COT is not required to make the specific accommodation requested and may provide an alternative effective accommodation, to the extent any reasonable accommodation can be made without imposing an undue hardship on the COT or posing a direct threat to the employee or others in the workplace.

- 2. Medical Exemption** - Exemptions for other medical reasons may be available on a case-by-case determination using the process and forms established by Human Resources for conditions such as pregnancy, breastfeeding, or a history of certain allergic reactions, and any other medical condition that is a contraindication to the COVID -19 vaccination, even if they do not qualify as a disability under federal, state, or local law. The COT will engage in interactive dialogue to determine whether an exemption is appropriate and can be granted without imposing an undue hardship on the COT or pose a direct threat to the employee or others in the workplace.



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However, the COT reserves the right to take any necessary and appropriate steps, including imposing alternative COVID-19 prevention measures to ensure the individual does not pose a direct threat to the health or safety of others in the workplace.

3. **Time for Submittal** - Requests for Accommodation or Exemption as provided under this policy must be submitted on or before the date described in this policy for compliance with the Vaccination Requirement. Specifically, to be in compliance with this policy and to avoid discipline for failure to comply through proof or attestation of vaccination for each of the 3 Phases described in Section IV(B) above, an employee must:

- a. For Phase I compliance: submit the request for accommodation or exemption on or before **AUGUST 24, 2021**.
- b. Since Phase II specifically involves employees whose requests for accommodation or exemption were denied, Phase II compliance required proof the first dose of either the Pfizer or Moderna vaccine, or the single dose of the Johnson and Johnson vaccine, on or before October 5, 2021.
- c. For Phase III compliance: to avoid termination for failure to comply through proof or attestation of vaccination through the employee's receipt of **both** doses of either the Pfizer or Moderna vaccine or the single dose of the Johnson and Johnson vaccine, the employee must submit a **completed** request for an exemption or accommodation on or before **November 23, 2021**.

E. Discipline for Failure to Comply - Failure to comply with the requirements of this policy and the time limits as described above constitutes just cause for discipline; and any employee who fails to comply with this policy is hereby put on notice that progressive discipline will be administered as follows:

1. **Failure to Comply with the Phase I and/or Phase II Vaccination Requirement:** (*i.e., proof of first vaccination shot or timely submittal of request for exemption/accommodation*): the discipline shall be a five (5) day suspension, without pay. An employee can NOT use any accrued leave during the period of the suspension; the suspension will be imposed without pay.
2. **Noncompliance with the Phase III Vaccine Requirement at 5:00 p.m. on DECEMBER 1, 2021:** Employees who have not come into compliance with the Phase III Vaccine Requirement on or before **5:00 p.m. on December 1, 2021**, will be terminated.

In addition to the described discipline, the COT may establish other requirements for employees who do not satisfy the Phase I and/or Phase II Vaccination Requirements, including but not limited to mandatory testing on a weekly or more frequent basis, enhanced mask wearing requirements, restrictions on eligibility for certain assignments, travel restrictions, and other requirements.



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V. ADMINISTRATION; USE OF LEAVE

A. **Vaccination during work hours; leave usage; overtime** - Employees may schedule their vaccination shots/appointments during work hours and will not be required to use accrued vacation or sick leave to attend those appointments so long as the time away from work does not exceed ninety (90) minutes and the employee has secured prior department approval for the time away from work. Employees are required to contact their supervisor to coordinate the scheduling of these appointments to avoid disruption of work operations. The City will NOT pay overtime or comp time for an employee's time spent scheduling or securing a vaccination, unless first approved by the employee's department director. In the event that the City Manager provides for pandemic leave that can be used by employees for the purpose of securing a vaccination during non-work hours, then the employee may use that pandemic leave for that purpose subject to the terms and conditions related to that leave usage.

B. **Leave for vaccination side effects** - The City Manager may establish additional leave benefits, e.g., pandemic leave, that employees may use if they experience side effects from vaccination doses that prevent them from working in the hours/days after receiving the vaccination dose(s). Employees may use those leave benefits under the terms and conditions as separately established by the City Manager. Employees who may experience prolonged side effects that require them to miss work beyond any leave periods that might be eligible for pandemic (or similar) leave may request to use other accrued leave (e.g. sick leave) for that time off from work.

C. Proof of vaccination:

1. Proof of vaccination as required under this policy must be submitted to the City's Human Resources Director. The City will accept the following documentation ONLY:
 - a. Written proof of vaccination from a vaccine administrator or as provided via CDC-issued vaccination card or photo image of such documentation. This documentation must include vaccination place, date(s) and your name. This documentation may be submitted digitally/electronically (e.g. by photo image); **or**
 - b. An attestation signed by the employee that confirms that the employee has been vaccinated against the COVID-19 virus, in a form as approved by the COT; **or**
 - c. Other documentation or employee attestation ONLY if separately provided by written amendment to this policy.

Any employee who submits a false or fraudulent document or attestation in an attempt to show proof of vaccination as required under this policy will be terminated from employment, and may be subject to prosecution



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for any related criminal offenses (including but not limited to false swearing).

- 2. Proof of vaccination must be provided to the Human Resources Director by the dates as provided under this policy.

D. Confidentiality - Documentation that is submitted in compliance with this policy – including specifically any proof of vaccination - will be maintained by the City as confidential information in the same manner as a confidential medical record and will be maintained separately from any personnel files. HR will serve as depository for all confidential information related to this policy.

VI. REQUESTS FOR EXEMPTION/ACCOMMODATION

To assist any employee who is disabled or who has a qualifying medical condition that contraindicates the vaccination, or who objects to being vaccinated on the basis of *sincerely held religious beliefs and practices*, the City will engage in an interactive process to determine if a reasonable exemption and/or accommodation can be provided so long as it does not create an undue hardship for the City and/or does not pose a direct threat to the health or safety of others in the workplace and/or to the employee. To request an exemption/accommodation for one of the above reasons and avoid the vaccination requirements as described above, an employee must notify Human Resources in writing and submit the request form (using the form approved by the City and provided as an attachment to this policy) **NOT LATER THAN DATES AS DESCRIBED ABOVE**. Once the City is aware of a timely request for an accommodation, the City will engage in an interactive process to identify possible accommodations that do not create an undue hardship for the City and/or a threat to the health or safety of others in the workplace and/or to the employee. An employee may request an accommodation without fear of retaliation, as further provided below.

Requests for exemption or accommodation that are submitted AFTER AUGUST 24, 2021, will still be processed and reviewed for approval, but will NOT relieve employees from discipline for failure to comply with the Phase I Vaccination Requirement as described above. Any employee who desires to avoid discipline for failure to comply with the Phase I Vaccination Requirement must submit the request for exemption or accommodation NOT LATER THAN August 24, 2021. Any employee who desires to avoid termination for failure to comply with the Phase III Vaccination Requirement must submit a completed exemption or accommodation request NOT LATER THAN **November 23, 2021**.

VII. RETALIATION PROHIBITED

An employee may request exemption and accommodation from the requirements of this policy as provided under Section VI above without fear of retaliation. No employee who submits a timely request for exemption/accommodation as provided under Section VI above shall be subject to retaliation.



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VIII. VIOLATIONS; AMENDMENTS TO POLICY

Failure to provide proof of vaccination or to seek an exemption or accommodation in a timely manner will be a violation of this mandatory policy. Any violation of this policy will result in discipline as described in this policy and in accordance with Civil Service Rules and applicable Administrative Directives.

This policy may be amended, and additional requirements and penalties for noncompliance may be established, by the City Manager.

Forms

- [COVID-19 AD Acknowledgement Form](#)
- [COVID-19 Vaccination Attestation Form](#)
- [COVID-19 Medical Exemption Form](#)
- [COVID-19 Religious Accommodation Form Request](#)

References

AD 2.05-2 Reasonable Accommodation of Applicants and Employees with Disabilities

Review Responsibility and Frequency

The HR Director will review this directive as needed.

Authorized



 City Manager
 Michael J. Ortega



 Date