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EXECUTIVE OFFICE

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August 6, 2024

VIA EMAIL

Pima County Board of Supervisors
33 N. Stone Ave., 11th Floor
Tucson, AZ 85701-1404
HeatOrdinance@pima.gov

Re: Proposed Heat Ordinance

Dear Pima County Supervisors:

I am writing to you to express my support for the adoption of a heat ordinance (“the Ordinance”)¹ in Pima County that enhances protections for workers. I am also respectfully suggesting some additions to the Ordinance that would both strengthen the protection it affords and promote compliance with it.

At the outset, I would like to recognize Pima County’s leadership on this issue. Pima County is at the forefront of Arizona counties extending heat-related protections to workers covered by the Ordinance. As Pima County clearly recognizes in proposing a heat standard, exposure to extreme heat may (and all too often does) lead to serious illness, such as heat stroke, and even death. Extreme heat can be particularly perilous for employees working long hours outdoors, engaging in heavy or vigorous physical work, or wearing protective clothing or gear while working. Expanding protections to workers and ensuring that employers are prepared to address, reduce, and remove heat-related hazards are essential to preventing dire outcomes.

The Attorney General’s Office (“AGO”) helps enforce Arizona’s occupational safety and health laws. AGO may prosecute any employer that knowingly either (1) fails to furnish to employees “employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm,” known as the General Duty Clause,² or (2) violates any standard or regulation adopted by the legislature or the Industrial Commission of Arizona, and that failure or violation causes the death of an employee.³ Likewise, AGO is empowered by the Consumer Fraud Act to investigate and to bring an action

1 Pima County Board of Supervisors, Notice of Heat Ordinance Public Hearing (July 19, 2024), <https://www.pima.gov/3119/Proposed-Pima-County-Taxes-and-Fees>.

2 A.R.S. § 23-403(A).

3 A.R.S. § 23-418(E).

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against any company that makes false or deceptive statements about its employee safety commitment or record in connection with the sale or advertisement of its merchandise.⁴

As the Ordinance recognizes, in the absence of a federal or state standard, counties and cities may pass their own standards to address workers' exposure to extreme heat. Although the General Duty Clause provides some critical protection to workers, it is necessarily written in general terms. It does not provide specific guidance on an employer's duties with respect to heat-related hazards, it does not provide clarity on the precise conditions under which heat represents a recognized hazard, and it does not outline steps an employer must take to mitigate or eliminate the hazard. While I would prefer to see the development of a state heat standard that reflects the unique needs and realities of Arizona, I support the efforts of counties and cities that have taken the initiative to protect workers by adopting standards of their own, as Pima County proposes to do here.

The Ordinance would require a contractor (or subcontractor) working on a County contract whose employees perform work in an "outdoor environment" (as defined in the Ordinance) to have "on file," and to produce upon the County's request, a "Heat Illness and Injury Prevention and Safety Plan" that "details preventative and remedial measures to provide protection and relief from heat hazards."⁵ In addition, the Ordinance would require a contractor to provide the County, upon request, with "documentation of heat safety and mitigation efforts implemented" by the contractor.⁶ Finally, the proposal would require that the plan be posted "where it is accessible to employees."⁷

The Ordinance would, if adopted, be an improvement over current heat-related worker protections. To make the protection the Ordinance provides more meaningful, substantial, and effective, however, I respectfully suggest that the proposal prescribe some required elements for a Heat Illness and Injury Prevention and Safety Plan ("Plan"). To be effective, a Plan should include the following elements when the temperature reaches a prescribed threshold at which heat becomes a greater risk: (1) a sufficient amount of cool water; (2) rest (with regular breaks increasing in frequency as the temperature rises and as needed); (3) shade (and/or alternative cooling methods, preferably including air-conditioning where available); (4) an opportunity to acclimatize to the heat for employees who are not used to such heat exposure; (5) close monitoring and observation of employees working in the heat, potentially including a buddy system; and (6) a ready means of communication between supervisors and employees. Any Plan should also include procedures in the event of an emergency and annual training for supervisors and employees that address environmental and personal risk factors related to heat, the symptoms and signs of heat illness and injuries, and the policies and procedures in place to prevent and remedy heat-related harm.

To ensure contractors and subcontractors are complying with the Ordinance in practice and not just on paper, I further respectfully suggest the Ordinance include (1) language clearly

4 A.R.S. § 44-1524.

5 Pima County Board of Supervisors, Notice of Heat Ordinance Public Hearing (July 19, 2024), <https://www.pima.gov/3119/Proposed-Pima-County-Taxes-and-Fees>.

6 *Id.*

7 *Id.*

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mandating compliance with the Plan (rather than simply requiring having a Plan in place and having to document general efforts to implement the Plan), (2) a mechanism for the County to directly monitor compliance with the Ordinance, including through inspections, interviews, and audits, and (3) a clear channel for employees and others to report violations. With such measures in place, contractors and subcontractors will understand that the risk of any violations being detected (and ultimately potentially losing the relevant contract) is much greater than it would otherwise be, and they will have every incentive to comply. An Ordinance with these suggested additions would afford a greater degree of protection to employees against largely preventable heat illnesses and injuries.

I thank you in advance for your consideration of this comment on this critical issue, and I look forward to Pima County enacting a heat ordinance that protects workers.

A handwritten signature in black ink, appearing to read 'Kris Mayes', with a stylized flourish at the end.

Kris Mayes
Attorney General
State of Arizona