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VIA EMAIL

Tempe City Council
P.O. Box 5002
Tempe, AZ 85280
councilcommunicator@tempe.gov

Re: Support for Tempe's Outdoor Worker Extreme Heat Ordinance

Dear Tempe City Councilmembers:

I am writing in support of the City of Tempe's ("City") proposed Heat Safety Standards for Outdoor Workers Ordinance ("Ordinance").¹ The Ordinance is a meaningful, positive step toward protecting outdoor workers and preventing heat-related illnesses and deaths. I am also writing to recommend three changes to the Ordinance that would better protect outdoor workers and promote compliance with the Ordinance.

I am heartened to see the City act to protect Arizona workers from the dangers of extreme heat, which can be life threatening without adequate precautions. Every year, far too many Arizonans become seriously ill and even die due to extremely hot weather. Extreme heat-related health risks are particularly pronounced for outdoor workers that spend long hours outside, engage in vigorous physical work, or wear protective gear while working.

City- and county-level efforts to protect outdoor workers from extreme heat are vital. The Attorney General's Office ("AGO") may prosecute employers that knowingly violate the General Duty Clause by failing to furnish to their 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."² Likewise, AGO can prosecute violations of standards or regulations adopted by the legislature or the Industrial Commission of Arizona

¹ [Ordinance No. O2025.19](#).

² A.R.S. § 23-403(A).

that cause the death of an employee.^{3,4}

Prosecuting worker-related extreme heat cases is often difficult because the General Duty Clause does not provide guidance to employers on their duties surrounding workplace extreme heat exposure. Only a state or federal occupational health standard can do so. I am optimistic that workers across Arizona will one day be protected by extreme heat-related occupational health standards that reflect our state's unique climate. Until then, however, initiatives like the Ordinance are necessary to protect outdoor workers from preventable illness, injury, and death.

The Ordinance builds on work by Phoenix, Tucson, Pima County, and countless other jurisdictions beyond Arizona to protect outdoor workers from extreme heat. The Ordinance's Heat Safety Plan ("Plan") requirements are the most extensive I have seen in Arizona and incorporate many of the suggestions I made to Pima County about its heat ordinance last August.⁵ The Ordinance's definition of key terms like "shade" and "substantial period of time" will protect workers, provide employers clear guidance on Ordinance requirements, and will aid Tempe's Ordinance enforcement efforts. Likewise, scoring contractor bids in part on the quality of a bidder's Plan and the bidder's compliance with past Plans is likely to foster innovative new ways to protect outdoor workers and incentivize future compliance.

In the spirit of continuing to raise the bar on worker extreme heat protections and in full recognition that you all are best positioned to understand the needs and capabilities of the City and its contractors, I respectfully recommend three changes that would further the Ordinance's worker protection goals and improve contractor compliance.

First, add language barring contractors or subcontractors from deducting pay from their workers for taking Ordinance-related breaks. Hourly workers may hesitate to take needed breaks if doing so reduces their take-home pay. Second, and relatedly, include language that adds or extends cooling breaks the hotter it gets outside. 10 minutes every two hours may not be enough to prevent heat-related illness during the hottest periods of the summer.

³ A.R.S. § 23-418(E).

⁴ AGO may also investigate and bring a civil action 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. A.R.S. § 44-1524.

⁵ Attorney General Kris Mayes, [Re: Proposed Heat Ordinance](#), August 6, 2024.

Third, in addition to requiring jobsite signage about anonymous reporting to the Occupational Safety and Health Administration (“OSHA”) and the Arizona Division of Occupational Safety and Health (“ADOSH”), the Ordinance should require employers provide information about anonymous reporting to a City point of contact. Given their geographically expansive responsibilities, it is unclear whether OSHA or ADOSH will investigate Ordinance violations. By contrast, establishing a City point of contact to receive and forward worker reports to the relevant City department will aid City enforcement efforts and is far more likely to ensure contractors and subcontractors comply with the Ordinance.

Collectively, these changes will better prevent heat illness and injury and strengthen the Ordinance’s enforceability. Thank you in advance for your consideration of my comment and thank you for acting to protect outdoor workers from one of Arizona’s most serious public health and safety problems.

Sincerely,



Kris Mayes
Attorney General
State of Arizona