MEMORANDUM

Date: March 25, 2021

To: The Honorable Laura Conover
   Pima County Attorney

From: C.H. Huckelberry
   County Administrator

Re: Governor’s Executive Orders and the Ability of Pima County to Continue to Enforce Certain Public Health Mandates During a Public Health Emergency Related to the Coronavirus Pandemic

Attached are two Governor’s Executive Orders that were released today that would appear to significantly relax public health standards in preventing the spread of COVID-19 as well as prohibiting the County from enacting or enforcing certain public health standards and/or requirements.

As you know, the County has passed a series of emergency related public health resolutions, in particular those mandating specific physical distancing and the wearing of masks. In comparing the Governor’s Executive Orders to our pandemic related public health precautions through resolutions and ordinances, which, if any, do we need to modify to be consistent with the Governor’s Executive Orders?

If the Board of Supervisors believe the Governor’s Executive Orders are not consistent with public health standards during a public health emergency, what authority does the Board have to sustain, in particular, the present mask requirement?

This is important since a variety of COVID variants have been identified in circulation across the US and in Arizona now since January. Here, in Pima County we began detection of the UK B117 variant among cases in early March. Shortly thereafter we began to see the UK variant identified in wastewater surveillance testing, confirming its widespread presence in the County. This variant in particular is concerning because it is more easily transmitted and also potentially more likely to cause severe disease and even death. This type of variant expansion is not uncommon or unexpected, but it does create greater urgency in order to achieve a level of community immunity before the new variants take hold. Therefore, a public health reason to remain vigilant and retain rules related to preventing the spread of COVID-19 and its variants.

In addition, I have directed that all County employees, while at work, continue to comply with the Board’s requirements and that the mask as well as physical distancing requirements remain in place for all County buildings and properties.
The Honorable Laura Conover  
Re: Governor’s Executive Orders and the Ability of Pima County to Continue to Enforce Certain Public Health Mandates During a Public Health Emergency Related to the Coronavirus Pandemic  
March 25, 2021  
Page

I am directing this inquiry to your office and those in the Civil Division who may be responding to this request.

Attachments

c: The Honorable Chair and Members, Pima County Board of Supervisors  
Tamara Mulembo, Chief Deputy County Attorney  
Lesley Lukach, Deputy County Attorney, Pima County Attorney’s Office  
Daniel Jurkowitz, Supervising Attorney, County Administrator’s Office  
Jan Lesher, Chief Deputy County Administrator  
Francisco Garcia, MD, MPH, Deputy County Administrator & Chief Medical Officer, Health and Community Services  
Terry Cullen, MD, MS, Public Health Director, Pima County Health Department
WHEREAS, on March 11, 2020, pursuant to A.R.S. §§ 26-303 and 36-787, I, as Governor of the State of Arizona, issued a declaration of a Public Health State of Emergency due to the necessity to prepare for, prevent, respond to, and mitigate the spread of COVID-19; and

WHEREAS, on March 30, 2020, the Director of the Arizona Department of Health Services (ADHS), based on an epidemiological assessment of Arizona specific data and in alignment with the Centers for Disease Control and Prevention (CDC) guidance, recommended the State implement enhanced mitigation strategies which are continuing; and

WHEREAS, on May 12, 2020, Executive Order 2020-36, Stay Healthy, Return Smarter, Return Stronger, was issued directing businesses, institutions, professions and entities to develop, establish and implement policies to mitigate COVID-19; and

WHEREAS, on June 17, 2020, Executive Order 2020-40, Containing the Spread of COVID-19, was issued requiring businesses to enforce COVID-19 mitigation protocols and allowing local governments to adopt policies regarding the wearing of face coverings in public to mitigate the spread of COVID-19 while still keeping businesses open to the greatest extent possible; and

WHEREAS, on June 29, 2020, due to rising case numbers in the state, Executive Order 2020-43, Pausing of Arizona’s Reopening, was issued pausing the operations of certain business determined high risk by public health entities and limitations of organized public events were put in place to limit the spread of COVID-19 and was continued by Executive Order 2020-52 and portions regarding public events were amended by Executive Order 2020-59, Further Mitigation Requirements for Events; and

WHEREAS, on July 9, 2020, Executive Order 2020-47, Reducing the Risk, Slowing the Spread, was issued limiting capacity of restaurants to slow and limit the spread of COVID-19 while still keeping them open; and

WHEREAS, on August 10, 2020, the Director of ADHS, under the authority delegated by A.R.S. § 26-307, adopted Emergency Measure 2020-02, Slowing the Spread of COVID-19: Phased Reopening, which implemented capacity requirements for high and medium risk businesses to mitigate the spread of COVID-19 while ensuring they were able to stay open and operate to the greatest extent possible; and

WHEREAS, since that time and into January 2021, Arizona saw increases in cases and deaths that exceeded those seen during Arizona’s first wave of COVID-19; and

WHEREAS, as of March 5, 2021, there have been 823,384 diagnosed cases of COVID-19 in Arizona including 16,269 deaths; and

WHEREAS, Operation Warp Speed (“OWS”) accelerated development, production and distribution of COVID-19 vaccines, therapeutics, and diagnostics to produce and deliver doses of safe and effective vaccines; and
WHEREAS, Arizona has taken the position that immunization with a safe and effective COVID-19 vaccine is a critical component of the whole government strategy to reduce COVID-19 related illnesses, hospitalizations, and deaths and to help restore societal functioning; and

WHEREAS, on December 16, 2020, Arizona administered its first COVID-19 vaccines and since that date has inoculated two million Arizona citizens; and

WHEREAS, in continuing efforts to mitigate, respond and recover from COVID-19, the deployment of the COVID-19 vaccine in Arizona has become a game changer in mitigating and responding to COVID-19; and

WHEREAS, as more and more of Arizona’s population becomes vaccinated, the risk previously posed by COVID-19 that our healthcare institutions will exceed capacity is decreasing as Arizona has seen the number of cases continue to decrease over the last seven weeks; and

WHEREAS, with this decreasing risk there is the ability to strategically loosen some restrictions while others remain in place; and

WHEREAS, it is necessary to ensure clarity on those mitigation efforts that continue to remain in effect; and

WHEREAS, even as some restrictions are lifted, the data must continue to be monitored to determine the impacts of opening businesses on the rates of COVID-19 Like Illnesses (CLI) in our community to ensure that such actions are not negatively impacting the strides made to our healthcare system; and

WHEREAS, pursuant to A.R.S. § 36-787(A), during a State of Emergency declared by the Governor, ADHS has primary jurisdiction, responsibility and authority for:

1. Planning and executing public health emergency assessment, mitigation, preparedness response and recovery of the State;
2. Coordinating public health emergency response among State, local and tribal authorities;
3. Collaborating with relevant federal government authorities, elected officials or other states, private organizations and private sector companies; and
4. Coordinating recovery operations and mitigation initiatives subsequent to public health emergencies.

NOW, THEREFORE, I, Douglas A. Ducey, Governor of the State of Arizona, by virtue of the authority vested in me by the Constitution and laws of the State, including but not limited to A.R.S. §§ 26-303 and 36-787, and after consultation with the Director of ADHS, do hereby order that effective immediately:

1. Businesses shall continue to assist in efforts to contain the spread of COVID-19 following all guidance from the CDC, U.S. Department of Labor, Occupational Safety and Health Administration (OSHA) and ADHS to limit and mitigate the spread of COVID-19.

2. Any business, whether for-profit or non-profit, institution, profession or entity that physically operates in this state and serves the public or is an employer shall continue to implement, use and follow policies based on guidance from the CDC, U.S. Department of Labor, Occupational Safety and Health Administration (OSHA) and ADHS to limit and mitigate the spread of COVID-19 including the following:
   a. Promoting healthy hygiene practices;
   b. Intensifying cleaning, disinfection and ventilation practices;
   c. Monitoring for sickness;
   d. Ensuring physical distancing;
   e. Providing necessary protective equipment;
   f. Limitations on indoor standing room where patrons can congregate; and
   g. Encouragement of reservation or appointments where possible.
3. Capacity limits for businesses, implemented and outlined by Executive Order 2020-47, Reducing the Risk, Slowing the Spread, ADHS Emergency Measure 2020-02, Slowing the Spread of COVID-19: Phased Reopening, the ADHS COVID-19 Guidance for Businesses and related requirement documents from ADHS, are rescinded. All remaining requirements implemented by ADHS for specific businesses remain in effect including but not limited to mask use and appropriate physical distancing between parties or groups.

4. Notwithstanding any other executive order, Spring Training and Major League Sports may operate upon submission and approval of a plan to ADHS or the local public health agency that demonstrates implementation of safety precautions and physical distancing. Plans that have already been submitted and approved by ADHS or other local public health agency do not need to be resubmitted or reapproved pursuant to this order.

5. Any provisions of this Executive Order that conflict with Executive Orders 2020-36, Stay Healthy, Return Smarter, Return Stronger; 2020-43, Pausing of Arizona’s Reopening; 2020-47, Reducing the Risk, Slowing the Spread; 2020-52, Continuation of Executive Order 2020-43; or 2020-59, Further Mitigation Requirement for Events, govern.

6. If any provision of this Executive Order or its application to any person or circumstance is held invalid by any court of competent jurisdiction, this invalidity does not affect any other provision or application of this Executive Order, which can be given without the invalid provision or application. To achieve this purpose, the provisions of this Executive Order are declared to be severable.

7. This order shall remain in place until further notice, and shall be considered for repeal or revision at least every two weeks following issuance.

IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Arizona.

[Signature]

GOVERNOR

DONE at the Capitol in Phoenix on this fifth day of March in the year Two Thousand and Twenty One and of the Independence of the United States of America the Two Hundred and Forty-Fifth.

ATTEST:

[Signature]

Secretary of State
WHEREAS, on March 11, 2020, pursuant to A.R.S. §§ 26-303 and 36-787, I, as Governor of the State of Arizona, issued a declaration of a Public Health State of Emergency due to the necessity to prepare for, prevent, respond to, and mitigate the spread of COVID-19; and

WHEREAS, on March 30, 2020, the Director of the Arizona Department of Health Services (ADHS), based on an epidemiological assessment of Arizona specific data and in alignment with the Centers for Disease Control and Prevention (CDC) guidance, recommended the State implement enhanced mitigation strategies which are continuing; and

WHEREAS, on May 12, 2020, Executive Order 2020-36, Stay Healthy, Return Smarter, Return Stronger, was issued directing businesses, institutions, professions and entities to develop, establish and implement policies to mitigate COVID-19; and

WHEREAS, on June 17, 2020, Executive Order 2020-40, Containing the Spread of COVID-19, was issued requiring businesses to enforce COVID-19 mitigation protocols and allowing local governments to adopt policies regarding the wearing of face coverings in public to mitigate the spread of COVID-19 while still keeping businesses open to the greatest extent possible; and

WHEREAS, on June 29, 2020, due to rising case numbers in the state, Executive Order 2020-43, Pausing of Arizona’s Reopening, was issued pausing the operations of certain business determined high risk by public health entities and limitations of organized public events were put in place to limit the spread of COVID-19 and was continued by Executive Order 2020-52 and portions regarding public events were amended by Executive Order 2020-59, Further Mitigation Requirements for Events; and

WHEREAS, on July 9, 2020, Executive Order 2020-47, Reducing the Risk, Slowing the Spread, was issued limiting capacity of restaurants to slow and limit the spread of COVID-19 while still keeping them open; and

WHEREAS, on August 10, 2020, the Director of ADHS, under the authority delegated by A.R.S. § 26-307, adopted Emergency Measure 2020-02, Slowing the Spread of COVID-19: Phase I Reopening, which implemented capacity requirements for high and medium risk businesses to mitigate the spread of COVID-19 while ensuring they were able to stay open and operate to the greatest extent possible; and

WHEREAS, since that time and into January 2021, Arizona saw increases in cases and deaths that exceeded those seen during Arizona’s first wave of COVID-19; and
WHEREAS, as of March 25, 2021, there have been 837,987 diagnosed cases of COVID-19 in Arizona including 16,874 deaths; and

WHEREAS, Operation Warp Speed ("OWS") accelerated development, production and distribution of COVID-19 vaccines, therapeutics, and diagnostics to produce and deliver doses of safe and effective vaccines; and

WHEREAS, Arizona has taken the position that immunization with a safe and effective COVID-19 vaccine is a critical component of the whole government strategy to reduce COVID-19 related illnesses, hospitalizations, and deaths and to help restore societal functioning; and

WHEREAS, Arizona's mass distribution of the vaccine has resulted in the administration of 3,041,773 doses of COVID-19 vaccine to 1,927,278 individuals in Arizona, including 1,185,986 who have been fully vaccinated; and

WHEREAS, the availability of vaccines has grown allowing for additional vaccine appointments to be opened to more age groups; and

WHEREAS, a recent evaluation by the CDC ranks Arizona among the best states in the nation for getting the COVID-19 vaccine to vulnerable communities; and

WHEREAS, as more and more of Arizona's population becomes vaccinated, the risk previously posed by COVID-19 that our healthcare institutions will exceed capacity is decreasing as Arizona has seen the number of cases, hospitalizations, and deaths continue to decrease over the last seven weeks; and

WHEREAS, recently the federal government has promised that every American will have the opportunity to be vaccinated by May 1, 2021; and

WHEREAS, on March 24, 2021, registration at Arizona's state-operated COVID-19 vaccination sites in Maricopa, Pima and Yuma counties opened to all Arizonans 16 and older.

NOW, THEREFORE, I, Doug Ducey, Governor of the State of Arizona, by virtue of the authority vested in me by the Constitution and laws of the State, including but not limited to A.R.S. §§ 26-303 and 36-787, and after consultation with the Director of ADHS, do hereby order that effective immediately:

1. Restrictions on organized public events as outlined in Executive Orders 2020-43, Pausing of Arizona's Reopening; 2020-52, Continuation of Executive Order 2020-43; and 2020-55, Further Mitigation Requirement for Events, are lifted and shall no longer be enforcec. Organizers should continue to encourage adequate safety precautions, including physical distancing to limit and mitigate the spread of COVID-19.

Businesses, whether for-profit or non-profit, institutions, professions or entities that physically operate in this state and serve the public or are employers are encouraged to continue to take actions recommended by the CDC, U.S. Department of Labor, Occupational Safety and Health Administration (OSHA) and ADHS to limit and mitigate the spread of COVID-19. ADHS shall update its guidance accordingly. These entities still maintain the
right to institute and enforce policies to mitigate against COVID-19 spread including the use of face coverings and physical distancing, and retain the right to refuse service to those who do not comply with the policies.


3. Pursuant to A.R.S. § 26-307, no county, city or town may make or issue any order, rule or regulation that conflicts with or is in addition to the policy, directives or intent of this or any other Executive Order relating to the COVID-19 public health emergency, or any other order, rule or regulation that was not in place as of March 11, 2020. This includes but is not limited to mandated use of face coverings. Any city, town or county that has a rule, regulation or ordinance not in place as of March 11, 2020 that is in conflict with the provisions of this order shall not be enforced. Political subdivisions maintain the right to set and enforce mitigation policies in their own government buildings and on public transportation, including, but not limited to, requiring face coverings.

4. This order shall expire upon the termination of the Public Health Emergency unless amended.

IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Arizona.

[Signature]
GOVERNOR

DONE at the Capitol in Phoenix on this twenty fifth day of March in the year Two Thousand and Twenty One and of the Independence of the United States of America the Two Hundred and Forty-Fifth.

ATTEST:

[Signature]
Secretary of State