



**NOTICE OF A REGULAR MEETING OF THE
LEAGUE OF ARIZONA CITIES & TOWNS
EXECUTIVE COMMITTEE**

Friday, August 5, 2022, at 10:00 a.m.
League Office Building
1820 West Washington, Phoenix

Notice is hereby given to the members of the Executive Committee and to the general public that the Executive Committee will hold a meeting open to the public on August 5, 2022, at 10:00 a.m. Members of the Executive Committee will attend either in person or by Zoom Audio/Video conferencing. The Executive Committee may vote to recess the meeting and move into Executive Session on any item on this agenda. Upon completion of Executive Session, the Executive Committee may resume the meeting, open to the public, to address the remaining items on the agenda. A copy of the agenda is available at the League office building in Suite 200 or on the League website at www.azleague.org.

Agenda

All items on this agenda are scheduled for discussion and possible action, unless otherwise noted.

Call to Order; Pledge of Allegiance

1. Review and Adoption of Minutes
2. Legislative Update
3. Federal Policy Update
4. Legal Update
5. 2022 League Annual Conference Update
6. Resolution of Appreciation
7. Life Member Nomination

Additional informational materials are included in the agenda packet but are not part of the agenda.



EXECUTIVE COMMITTEE MEETING
Friday, August 5, 2022

Item #1 **Review and Adoption of Minutes**

Summary: Minutes of the previous meeting are enclosed for your review and approval.

Responsible Person: President Cathy Carlat

Attachments: May 13, 2022, Executive Committee Minutes

Action Requested: Approval

MINUTES
LEAGUE OF ARIZONA CITIES AND TOWNS
EXECUTIVE COMMITTEE MEETING

Friday, May 13, 2022, at 10:00 a.m.
League of Arizona Cities and Towns
1820 W. Washington St.
Phoenix, Arizona

MEMBERS

President

Cathy Carlat, Mayor, Peoria

Vice President

Douglas Nicholls, Mayor, Yuma*

Craig McFarland, Mayor, Casa Grande+
Kevin Hartke, Mayor, Chandler*
Alexis Hermosillo, Mayor, El Mirage+
Paul Deasy, Mayor, Flagstaff +
Brigette Peterson, Mayor, Gilbert+
Jerry Weiers, Mayor, Glendale
Cal Sheehy, Mayor, Lake Havasu City+
Thomas L. Schoaf, Mayor, Litchfield Park+
Ed Honea, Mayor, Marana
Christian Price, Mayor, Maricopa*
John Giles, Mayor, Mesa +

Kate Gallego, Mayor, Phoenix
Stephanie Irwin, Mayor, Pinetop-Lakeside+
Gail Barney, Mayor, Queen Creek*
Tom Murphy, Mayor, Sahuarita*
David Ortega, Mayor, Scottsdale+
Sandy Moriarty, Mayor, Sedona+
Rick Mueller, Mayor, Sierra Vista+
Mila Besich, Mayor, Superior*
Corey Woods, Mayor, Tempe
Regina Romero, Mayor, Tucson*

*Not in attendance

+ Attended via Zoom

President Cathy Carlat called the meeting to order at 10:01 a.m. She then led the Executive Committee in the Pledge of Allegiance.

1. REVIEW AND ADOPTION OF MINUTES

President Cathy Carlat requested a motion on the adoption of the minutes. Mayor Kate Gallego of Phoenix moved to approve the minutes of the February 4, 2022, Executive Committee Meeting; Mayor Ed Honea of Marana seconded the motion and the motion carried unanimously.

2. LEGISLATIVE POLICY OVERVIEW AND SESSION UPDATE

President Cathy Carlat of Peoria introduced and welcomed Legislative Staff to provide a legislative policy overview.

Legislative Director Tom Savage informed the committee that it is the 124th day of the legislative session with 1,780 introduced bills, 233 bills passed, 228 bills signed by the Governor. League staff has weighed in on about 80 bills and testified on 41 measures.

Governor's Budget

Executive Director Tom Belshe commented on the Governor's Budget. The primary expenditure in the Governor's budget is for the Arizona Department of Revenue (AZDOR) integrated tax system project to modernize software. The League will have the opportunity to provide feedback on the new software's procurement process. Legislative Director Tom Savage also noted that this measure may be a state-funded measure.

Legislative Director Tom Savage informed the committee that due to the Arizona Supreme Court's ruling to overturn Proposition 307 and Proposition 208 adopted in the previous legislative session, the initiative to repeal and replace Prop 307 is no longer needed.

Short Term Rentals

A short-term rental work group created by the League has been meeting to draft reforms and provide feedback. Legislative staff have used the workgroup's feedback to negotiate on Senate Bill 1168. This bill will not include density caps on short term rentals due to significant opposition by the short-term rental industry and Arizona Association of Realtors. There is ongoing discussion on the establishment of regulatory license requirements for short term rental operators to enforce city and town codes and ordinances. The League expects the industry will ask for a moratorium on future short-term rental legislation. The League has not agreed to a moratorium. The League did negotiate a compromise amendment that was included in the House of Commerce Committee adopting some of the reforms the League has requested.

Repeal of Residential Rental Tax

Legislative Director Tom Savage reported that a last-minute effort to repeal the residential rental tax has stalled in the House and is not likely to move forward. This repeal effort, if passed, would adversely impact 71 cities and towns across the state who levy this tax.

Street Homelessness

Senate Bill 1581 sponsored by Senator David Livingston copies a bill from the Cicero Institute in Texas which created a grant process for cities and towns to address street homelessness. A two-month negotiation process resulted in improved language and consensus by drafters to allocate \$50 million dollars for a competitive grant process which cities and towns would apply for to fund temporary shelter options. This allocation of money would need to be passed into the budget after adoption. The bill requires cities and towns to agree to reduce street homelessness by 40% within two years. There is no penalty should cities and towns not meet that goal. The bill also has a provision for cities with a population greater than 1 million to establish a special service area, such as the Human Services Campus in Phoenix, that would need to reduce its street homelessness by 50% in that half mile radius within two years. The final copy of the amendment is still underway.

Affordable Housing

House Bill 2674 to establish by right zoning in state statute did not move forward. Instead, it became a member housing supply study committee with an emergency measure. The committee will likely meet after the legislative session to begin a long study on housing shortage and needs.

Fireworks

Senate Bill 1275 sponsored by Senator Mesnard allows cities and towns to restrict the use of fireworks during the hours of 11 p.m. and 8 a.m. except on New Year's Eve and the Fourth of July. This bill was passed by the legislature. An amendment was adopted in the Senate Appropriations Committee stating that on any day of the year, the use of fireworks be allowed if it is related to a religious ceremony. This amendment does not withstand SB 1275 or the city's ability to restrict fireworks during certain hours and in areas of wild and urban interface areas during times of fire danger. The League opposes this amendment as it is problematic for local control.

Vaping/Tobacco Preemption

Senate Bill 1245, which was unfavorable for cities and towns due to preemption, did not pass through the Legislature. House Bill 2125, which was favorable for cities, did not pass through the legislature either. It is unlikely that any bill will move forward on tobacco or vaping during this legislative session.

Pension

Senate Bill 1268 by Senator Livingston would extend the DROP for Tier 1 members in Public Safety Personnel Retirement System (PSPRS) from 60 months to 84 months. The League opposed this bill in the Senate and in the assigned House committee. The bill is now stalled in House Rule and unlikely to move forward.

Prime Contracting and TPT

House Bill 2749 changes the limits for residential jobs to qualify for MRRA. This bill changes the language by stating that if residential jobs don't increase square footage, then they are considered materials only for tax purposes. If this bill passes, communities without material suppliers or retail locations where materials are sold will not see proceeds from taxes as contractors would purchase materials outside the community or state. The League is opposing this bill and does not believe there are enough votes to move it forward.

Trucking Restrictions Arterials

The Arizona Trucking Association drafted preemptive language to undo a city ordinance that restricts truck traffic on Camelback Road, a major arterial in the West Valley. The amendment would significantly affect cities and towns' abilities to restrict traffic on major multijurisdictional arterials and possibly minor arterials. The League is hoping to find a compromise between the involved city and Trucking Association to avoid any preemptive amendments from being added to House Bill 2481.

SB 1487 Expansion

In the previous legislative session, an expansion of SB 1487 that was unfavorable to cities was included in the Governor's Budget but was ruled unconstitutional by the Arizona Supreme Court. Two measures which were meant to accomplish the same expansion of SB 1487 appeared this legislative session. One failed to move forward, and the other failed a legislative vote.

3. FEDERAL POLICY UPDATE

Executive Director Tom Belshe explained that the Federal Government has provided local governments with an unprecedented amount of money through the American Rescue Plan Act. He stated that Deputy Director René Guillen has been pivotal in offering cities and towns continuous reporting guidance. Executive Director Tom Belshe learned from the National League of Cities that Arizona is one of two states that has near perfect compliance on reporting.

Deputy Director René Guillen provided a Federal Policy Update. Regarding ARPA compliance, Arizona has been successful overall in meeting compliance and reporting deadlines despite issues with the Treasury's website. Only seven out of the 68 "non-entitlement units" of local government (NEUs) in Arizona have not yet filed.

Remaining issues include compliance by cities and towns with how funds are spent, as some cities and towns believe funds may be used to cover revenue losses. There is a possibility in the future that any recipient of ARPA funds may use ARPA funds as local dollars for the purpose of matching federal dollars for federal grants.

Deputy Director René Guillen next explained the Infrastructure and Investment in Jobs Act (IIJA) by the federal government. \$5.35 billion dollars in competitive grant funds will become available for transportation usage across the nation, and the Arizona Department of Transportation will be the primary recipient of these dollars. \$8.25 billion grant dollars have been put forth for wildfire resiliency and prevention efforts, and there is great coordination among Arizona agencies and offices to ensure that Arizona secures as much of this funding as possible in the competitive process.

The League created a 2022 League Candidate Survey and asked the Executive Committee to provide this to any candidates in the upcoming election cycle looking for endorsements. The purpose of the survey is to make conversations easier for municipal elected officials to ask where candidates stand on core local issues.

3. LEGAL UPDATE

General Counsel Nancy Davidson provided a legal update.

Amicus briefs may be filed to provide policy arguments on how outcomes in cases will impact the public interest. When cities are involved in lawsuits and cases where the outcome would affect other cities and towns, the committee may file an amicus brief.

Amicus Briefs the League has been working on include the *Southern Arizona Home Builders v. Marana* regarding impact fee authority they adopted due to impact on water and wastewater in cities and towns. *Mountainside v. City of Flagstaff* is a case that affects cities and towns' ability to charge sewer capacity fees under another statute. *Adam v. City of Surprise* is involved in a case which affects cities and towns' rights to immunity in a police shooting case. *Kizzem v. City of Peoria* has to do with a notice of claim statute provision requiring plaintiff to follow certain steps about settlement offers. *AZ GOP v. Hobbs* has to do with whether the Arizona Constitution allows early voting. This case was petitioned directly to AZ Supreme Court and the court denied the petition, stating the case will need to be heard first in Superior court.

General Counsel Nancy Davidson gave an update on the SB 1487 complaint filed with the Attorney General's (AG) office against Paradise Valley regarding short-term rental ordinance. The AG Office concluded that the Town's ordinance mostly complies with state law, and Paradise Valley has since amended its ordinance to address some of the provisions the AG believed violated state law.

Arizona created a task force to amend the rules that apply for city/town attorneys and prosecutors. This is due to complaints filed against the Attorney General that resulted in a confidential divergent agreement. The League recognized that the task force addressing the complaint did not have any local experience and wrote to the Chief Justice to be part of the force. The Chief Justice did not put anyone local on the task force but allowed the League to present to the Task Force.

General Counsel Nancy Davidson overviewed cases from other states include *Shurtleff v. City of Boston* regarding flag raising program at city hall and *City of Austin, Texas, v. Reagan* regarding distinction between on-premises signs and off-premises signs in the city of Austin's sign code and its constitutionality under the first amendment.

4. 2022 LEAGUE ANNUAL CONFERENCE UPDATE

Deputy Director Matt Lore gave an update on the 2022 League Annual Conference to take place August 30-September 2nd at the Renaissance in Glendale, Arizona. Registration will open in late May. Due to limited space at the hotel, there will be special procedures for committee members to pre-reserve rooms at the Renaissance. The League does not pay for rooms for committee members. Each city and town will also be able to pre-reserve two rooms at the Renaissance. Once the room block opens reservations will be on a first come, first served basis.

The League is halfway to its sponsorship goal of \$400,000 dollars in revenue. The League Annual Conference is the organization's second largest revenue source, and sponsorship is very important to cover the costs of conferences and League activities. Deputy Director Matt Lore encouraged the Executive Committee to inform the League of any potential sponsors.

An executive committee member requested that city and town clerks be copied on registration and hotel reservation emails.

5. LEAGUE BUDGET FOR 2022-2023

Executive Director Tom Belshe overviewed revisions of the League Annual Budget for Fiscal Year 2023.

The League contracts with affiliate organizations including the Arizona City/County Manager's Association (ACMA) and Government Officer's Association of Arizona (GFOAz). Updated contracts have resulted in revenue increases for the League.

A revision to the membership dues revenue was made to correct methodology that caused City of Tempe to pay a higher fee than if they were a CAP city.

The League identified cost-savings after ending its partnership with the company Ideas Collide as many of the services they provide can be done in-house.

The League contracts with Highground, Inc. and added additional funding to the contract for support on special issues, such as pensions. The League has added a contract with former Scottsdale City Clerk Carolyn Jagger for \$2,000.00 to support League General Counsel.

Due to inflation, expenses such as credit card usage fees and supplies have gone up.

The League has set aside funds to upgrade the League's conference rooms to offer cameras, microphones, closed circuit television from the legislature, and televisions. The League will also invest in upgraded electrical boxes and repairs, and improved parking lots. Estimated costs of electrical upgrades are \$12,000, and the parking lot is \$50,000. The League will use reserve funds for these one-time expenses.

President Cathy Carlat requested a motion on the adoption of the League Budget for 2022-2023. Mayor Jerry Weirs of Glendale moved to approve the League Budget for 2022-2023; Mayor Ed Honea of Marana seconded the motion and the motion carried unanimously.

President Cathy Carlat adjourned the Executive Committee Meeting at 11:16 a.m.



EXECUTIVE COMMITTEE MEETING
Friday, August 5, 2022

Agenda Item #2 Legislative Policy Overview and Session Update

Summary: The Second Regular Session of the Fifty-Fifth Arizona Legislature adjourned sine die on June 25, 2022. This session saw 1851 bills, with 388 signed into law and four vetoed. League staff tracked well over 500 measures, weighed in on about 80 bills, and testified in committee on 41 of those measures in both chambers throughout the session. League staff will report on the session related to issues of interest to cities and towns. Important topics for discussion include:

- State Budget
- Short-Term Rentals
- Residential Rental Tax
- Housing/Homelessness Bills
- Fireworks
- Deferred Retirement Option Plan Extension
- Prime Contracting Exemption
- Discussion on Legislative Recognition
- Roadshow Legislative Update

Responsible Person: Tom Belshe & League Legislative Staff

Attachments: Roadshow Presentation



1

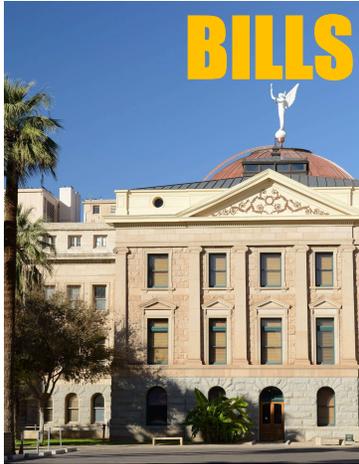
League of Arizona Cities and Towns ————— 2022 Legislative Wrap-up

SESSION AT A GLANCE

- Adjourned *sine die* on June 25th – 166 days!!!!
- Bills are effective on September 24
- 1747 bills introduced
- 392 passed
- 388 signed
- 4 vetoed
- League staff tracked about 550+ bills!!!!

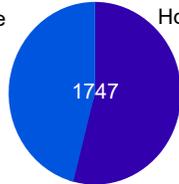
2022 LEGISLATIVE WRAP-UP

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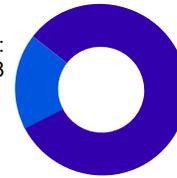
BILLS INTRODUCED VS ENACTED

Senate
803



House
944

Signed:
388



Introduced:
1747

- **22%** success rate of passage
- **28%** of passed measures impact cities & towns

2022 LEGISLATIVE WRAP-UP

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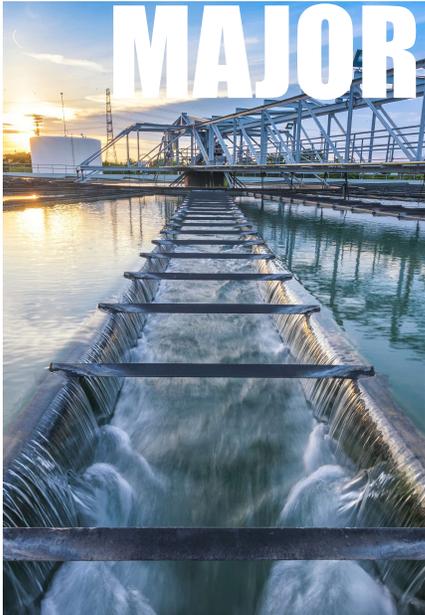
News-worthy Events of the Session

- Tight margins = Divisive and protracted session
- \$5.3 billion budget surplus
- Several newly appointed lawmakers sworn in
- 2022 election & campaign themes
- K-12 aggregate expenditure limitation
- Court struck Prop 208 from ballot
- Ethics complaints
- Universal school voucher expansion
- Looming recession & inflation impacts
- Long and tenuous budget process: \$18 billion bipartisan budget enacted, large investments in infrastructure, K-12, & water
 - \$14.7 billion in ongoing spending
 - \$1.7 billion in one-time priorities
 - \$2.3 billion in one-time priorities (TPT allocations)



2022 LEGISLATIVE WRAP-UP

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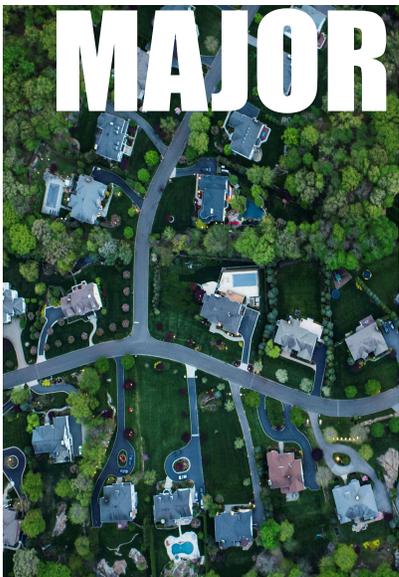
MAJOR LEGISLATIVE ISSUES

- Efforts by developers to restrict local zoning authority
- Legislation to repeal the residential rental tax
- Discussion on amending 2021 'flat tax' legislation
- Water augmentation & conservation efforts
 - Over \$1 billion investment
- Major Incident Division to investigate use of force incidents
- Lobbying prohibitions for public entities
- COVID-19/pandemic-related preemptions
- DOR assessment for new IT system
- Prop 400 extension
- Tobacco/Vape regulations
- Motion Picture Tax Credit
- League Resolutions



2022 LEGISLATIVE WRAP-UP

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MAJOR ISSUES: AFFORDABLE HOUSING

- **HB 2674 municipal zoning; by right housing:** Bipartisan effort, led by Representatives Kaiser & Chavez, introduced to override municipal zoning codes to allow residential housing almost anywhere.
- *"The single biggest barrier to increasing the housing supply are municipal regulations and restrictive zoning laws which impede growth. Our bill makes the home building process easier and faster to help ensure statewide housing supplies meet rising demand and Arizona families are able to find a home that they can afford."* – [Rep. Steve Kaiser](#) (LD 15)



2022 LEGISLATIVE WRAP-UP

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MAJOR ISSUES: AFFORDABLE HOUSING



- Established a 'by right housing' process with no requirement to make any new housing affordable.
- Multifamily projects would be approved administratively with no public process, eliminating the citizen review process for residential and multifamily developments.
- Would have allowed developments to circumvent voter-approved general plans
- Would have disrupted state or municipal economic development plans by converting commercial zoned property for economic development to by-right housing without regard for the carefully coordinated economic development plans.
- Strong opposition and communication from local leaders, neighborhood groups, business interests, environmental advocates, realtors, among others.

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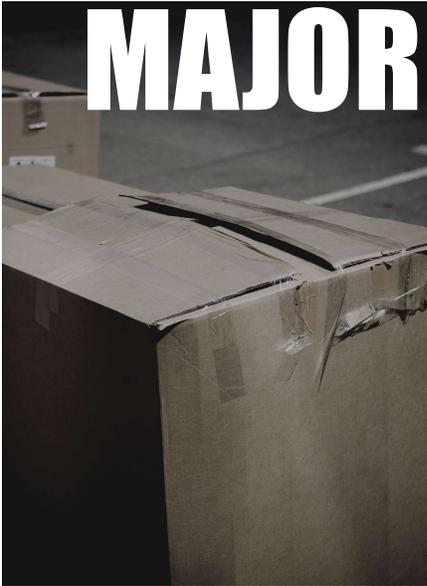
MAJOR ISSUES: AFFORDABLE HOUSING



- Due to significant opposition, HB 2674 was not considered in committee.
- It was later amended with a "strike-everything" amendment to create the Housing Supply Study Committee.
 - Multifamily Housing
 - Home Builders
 - Realtors
 - Municipal Representation
 - Housing Coalition
 - Arizona Department of Housing
- Committee holding hearings July – December with goal of compiling report with findings to guide legislation in 2023.

2022 LEGISLATIVE WRAP-UP

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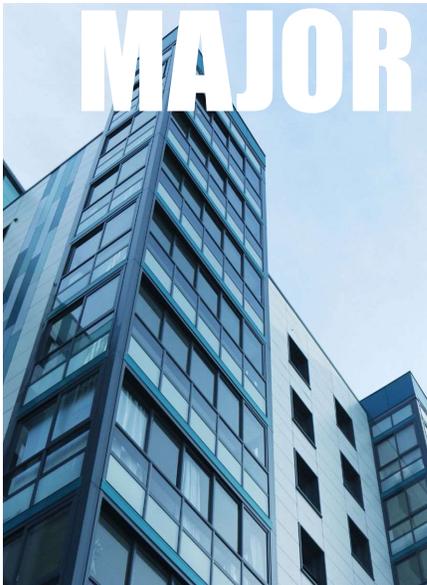


MAJOR ISSUES: HOMELESSNESS

SB 1581 housing; grants; homelessness; camping; appropriation

- Proposed by an out-of-state think tank to allocate \$50M to ADOH for competitive grants for local governments to fund temporary shelter and structured camping projects.
- Proposal included requiring cities and towns to enforce street camping ban ordinances despite *Martin v. Boise*.
- League opposed due to concerns of about lawsuits for violating the Boise decision.
- Bill did not pass the House due to various objections to the measure.

2022 LEGISLATIVE WRAP-UP

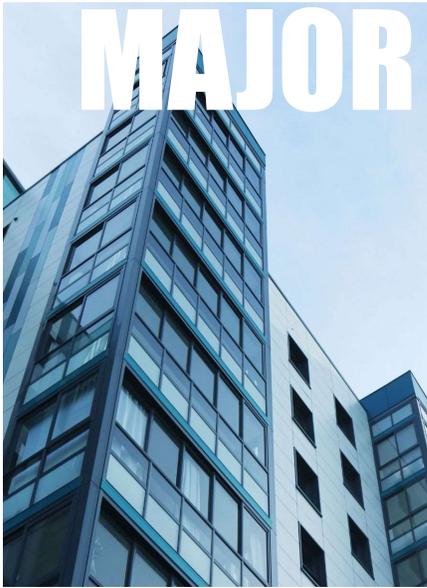


MAJOR ISSUES: RESIDENTIAL RENTAL TAX

- SB 1116 would have prohibited municipalities from levying a municipal tax on residential rentals.
 - If passed, the bill would have impacted **71** municipalities, and amounted to a **\$202 million** loss to cities & towns.
- Measure proposed as a 'strike-everything' amendment in late March. SB 1116 stalled in the House Rules committee for months, before moving forward for a vote in late June.
- Proponents argued that the bill was necessary to help struggling renters given the uptick in rental prices.
- Later became part of budget negotiations.



2022 LEGISLATIVE WRAP-UP



MAJOR ISSUES: RESIDENTIAL RENTAL TAX

- SB 1116 would have violated moratorium agreed to in 2019 Wayfair legislation on changes to model city tax code for 5 years.

• Sec. 33. Legislative intent
The legislature intends:

1. To conform to South Dakota v. Wayfair, Inc., ___ U.S. ___, 138 S. Ct. 2080 (2018), in which the United States Supreme Court overturned the physical presence rule of Quill Corp. v. North Dakota, 504 U.S. 298 (1992). Although a physical presence can still trigger a tax collection obligation, the Court held in Wayfair that an economic presence can create a sufficient basis for taxation. The legislature finds and declares that this act provides for the adoption of provisions on economic nexus, safe harbor and undue burden. To ensure that there is not an undue burden on the public, taxation related to retail sales shall be solely contained within section 42-5061, Arizona Revised Statutes, as amended by this act.

2. That further statutory changes will not occur for a period of five years from the effective date of this act for further codification in statute of the model city tax code for classifications of tax other than retail. This initial period will also provide municipalities and the department of revenue with stability to adapt to and implement the new regulatory structure created by this act.

- SB 1116 passed House 33 – 25, failed in Senate 15-11.
- Residential rental tax, food tax likely targets in future legislatures.



2022 LEGISLATIVE WRAP-UP

MAJOR ISSUES: ELECTION LAW AMENDMENTS

- Echoing 2021, several bills introduced in 2022 to address perceived election security issues.
- Efforts included:
 - Banning all voting by mail in elections for cities, towns and school districts.
 - Massive rewrite to elections laws (HB 2596) to repeal early voting, require hand counts, and allow the Legislature to reject an election.
 - HB 2492 requires election officials to verify citizenship status of individuals registering to vote using the federal form.
 - U.S. Department of Justice has sued the state over HB 2492.
 - Prohibiting ballot drop-off boxes (HB 2238) and banning emergency voting centers except for very specific events (HB 2602).
- Tight margins halted some measures from passing.



2022 LEGISLATIVE WRAP-UP

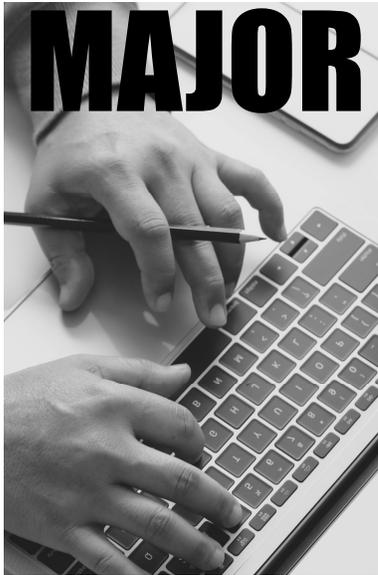


MAJOR ISSUES:

COVID-19/PANDEMIC LEGISLATION

- Several bills were introduced related to COVID-19 mitigation & preemption.
 - 17 bills introduced to address vaccine or mask mandates.
- Government mask requirement prohibition passed into law (HB 2453, HB 2616, HB 2371).
- COVID-19 Vaccine Preemption.
 - HB 2498 COVID-19; vaccination requirements; prohibition
- Measures introduced to shift liability onto employers for damages related to injuries from receiving a vaccine (if required by employers) failed (HB 2043).
- Efforts to limit local emergency powers (HB 2107).

2022 LEGISLATIVE WRAP-UP



MAJOR ISSUES:

DOR FEE FOR NEW IT SYSTEM

- Replace the Tax Administration System (TAS) with a new software system → the **Integrated Tax System Project (ITSP)**.
- Total estimated cost: **\$104 million** over 6 fiscal years
 - State share: **\$61 million**
 - Local jurisdiction share: **\$43 million**
- Transition to new system expected to take 6 years.
- \$43 million portion will be assessed on counties, municipalities, MAG & PAG based on proportion of revenues processed by DOR.
- Tax System Modernization Project Advisory Committee

2022 LEGISLATIVE WRAP-UP





MAJOR ISSUES:

LAW ENFORCEMENT OFFICER INVESTIGATIONS

- Major Incident Division (MID)
 - New division within DPS
 - Directs all law enforcement agencies to require the MID, a regional law enforcement task force or another LE agency to perform criminal investigations of any critical force incidents in the state.
 - **Effective date: July 1, 2026**
- Civilian Review Boards (HB 2721)
 - Two-thirds of members of any government committee, board, agency, department investigating law enforcement officer misconduct must be AZPOST certified.
 - Requires a majority vote from the committee, board, agency to investigate officer misconduct, recommend disciplinary actions, or impose discipline for officer misconduct.

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MAJOR ISSUES:

DEFERRED RETIREMENT OPTION PLAN EXTENSION

- Establishes an extended DROP of 24 months for Tier 1 (employed before January 1, 2012)
- For those who have entered DROP before the effective date, each member must receive approval from their employer to extend the DROP for an additional 24 months
 - Why? The DROP contract entered into by the employee and employer, which is irrevocable, cannot be forcefully extended by the state
 - If an employer decides to extend the DROP they are not required to extend the DROP for all employees in the program prior to the effective date
- For those who have not entered the DROP before the effective date, they must meet an age requirement of 51 years and a service requirement of 24.5 years of service in order to qualify for the 84-month DROP
 - If they do not meet the age and service requirements, they are only eligible for the 60-month DROP
- All accrued monies from the first 60 months as well as any new monies accrued from month 61 through 84 will be deposited into a defined contribution account
- **Effective date: July 6, 2022**

2022 LEGISLATIVE WRAP-UP



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MAJOR ISSUES:

TOBACCO/VAPE REGULATION

- Tobacco industry continues to pursue measures to preempt cities and towns from adopting any ordinances regulating the sale and marketing of these products.
- Provisions within **SB 1245** limited local zoning authority by only allowing local regulations to apply within 300 feet of a school – circumventing existing local regulations.
- Health advocates instead proposed measures reaffirming local zoning authority & establishing statewide tobacco retail licensing (HB 2125).
- We expect legislation to be introduced next session in this topic.



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• Support affordable housing & homelessness solutions

- HB 2674 Housing Supply Study Committee passed
- \$60 million for Housing Trust Fund in FY 23 budget
- SB 1581 held in House

• Short-term rentals

- HB 2625, HB 2663 died held in House Rules
- SB 1168 (STR Industry & League compromise) passed

• Dissolve Water & Wastewater Districts

- SB 1564 wastewater districts - died (bill used as vehicle)

• Fireworks

- SB 1275/HB 2226 passed, signed into law

Budget Amendments

- HB 2318 adopted local budget; amendments - no hearing



2022 LEGISLATIVE WRAP-UP

LEAGUE RESOLUTIONS

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BILLS WE FIXED

- SB 1333 neighborhood occupantless electric vehicles
- SB 1702 impounds; release; owners; spouse; notice
- HB 2255 fireworks; permissible use; Diwali
- HB 2431 emergency medical services; patient transport
- HB 2579 residential zoning; park model trailers
- HB 2724 assisted living; distance requirements; prohibition
- SB 1372 TPT; exemptions; motor vehicles; nonresidents (Pace)

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BILLS WE DEFEATED

1487 Expansions:

- HB 2276 state law; violation; schools; universities (*died pending COW*)
- HB 2009 violations of state law; schools (*failed House Third Read*)
- HB 2099 municipalities; membership dues; limit (*failed House Third Read*)
- HB 2375 urban revenue sharing; public safety (*withdrawn from committee*)
- SB 1158 attorney fees; costs; recovery (*failed Senate Third Read*)
- HB 2748 distribution; safe and smart fund (*failed House Third Read*)

2022 LEGISLATIVE WRAP-UP

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BILLS WE DEFEATED

- HB 2749 TPT; prime contracting; exemption; alterations (*Failed Senate Third Read*)
- SB 1198 local governments; lobbying; prohibition (*Failed Senate Third Read*)
- HCR 2028 minimum law enforcement expenditure amount (*died pending COW*)
- HB 2624 law enforcement expenditure; minimum amount (*died pending COW*)
- HB 2316 misconduct involving weapons; public places (*died pending Third Read*)

2022 LEGISLATIVE WRAP-UP

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NEXT SESSION

- **New Legislature / New Governor**
 - Republicans likely to pick up more seats in the Legislature
- **New Caucus Leadership**
- **Homelessness**
- **Affordable Housing / Zoning**
- **Tobacco/Vape Regulation**
- **More Preemption?**



2022 LEGISLATIVE WRAP-UP

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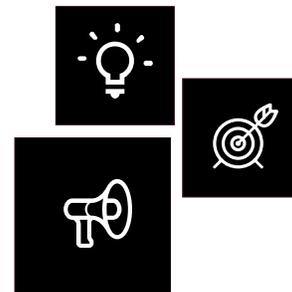
Other Bills of the Interest

- **HCR 2031** employee benefits; compensation; state preemption
- **HB 2156** tax credits; motion picture credits
- **HB 2685** transportation tax; Maricopa county; election (Prop 400 extension)
 - **Vetoed by Governor**
- **SB 1740** water infrastructure financing; supply; augmentation
- **SB 1239** appropriation; widening; I-10
- **SB 1258** government membership organizations; transparency
- **HB 2412** open meetings; digital recordings



2022 LEGISLATIVE WRAP-UP

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2022 LEGISLATIVE WRAP-UP



EXECUTIVE COMMITTEE MEETING
Friday, August 5, 2022

Agenda Item #3 Federal Policy Update

Summary: League Staff will provide updates on two federal laws impacting municipalities, namely the American Rescue Plan Act and the Infrastructure Investment and Jobs Act. The update will provide a look at recent developments including League efforts to aid cities and towns in maximizing possible benefits.

Responsible Person: Rene Guillen, Deputy Director



EXECUTIVE COMMITTEE MEETING
Friday, August 5, 2022

Agenda Item #4 Legal Update

Summary: League staff will provide updates on working groups, in-house projects, and case laws that impact cities and towns.

Responsible Person: Nancy Davidson, General Counsel

Attachments: Legal Update

Note: If necessary, the Executive Committee may vote to convene in executive session for the purpose of obtaining legal advice from the League attorney pursuant to A.R.S. § 38-431.03(A)(3).

Legal Update

1. Working groups

- Fireworks model ordinance
- Short term rental model ordinance

2. Publication updates in process:

- Elections Manual & website
- Anatomy of a Council Meeting
- Exploring Charter Government for Your City
- Charter Government Provisions in Arizona Cities
- Council-Manager Government in Arizona
- Guide for Annexation
- Guide to Preparing and Adopting Local Laws
- Municipal Incorporation in Arizona
- What Newly Elected Officials Need to Know
- You as a Public Official

2. Case law update:

[Arizona Supreme Court](#)
[Arizona Court of Appeals](#)
[Arizona district courts](#)
[Arizona Superior Courts](#)
[Ninth Circuit](#)
[U.S. Supreme Court](#)

Case law update

ARIZONA SUPREME COURT

James v. City of Peoria, CV-21-0125-PR, 2022 WL 2794359 (Ariz. July 18, 2022).

The Arizona Supreme Court was asked to decide whether a notice of claim is invalid, under § 12-821.01, if it provides that the claimant's settlement offer will terminate less than 60 days after the notice is served. The Court concluded that **a notice of claim otherwise in compliance with § 12-821.01(A) is not invalid because it purports to set a deadline for settlement prior to the 60-day period in § 12-821.01(E)**. Therefore, the plaintiff's statement in her notice of claim to the City of Peoria (that her settlement offer was "valid for thirty (30) days") did not invalidate her notice of claim. The City had argued that the notice of claim was invalid because the "compromise to settle is valid for thirty (30) days from the date of this letter," and it did not allow the City 60 days to consider and respond to the offer as required by § 12-821.01(E). The Court disagreed, stating "there is nothing in § 12-821.01(A) or (E) that burdens the *claimant* with a requirement to keep a settlement offer open for sixty days. In fact, § 12-821.01(E) does not set forth *any* requirements on the part of a claimant."

The League filed an amicus brief in this case in support of Peoria.

Arizona Republican Party v Katie Hobbs, CV-22-0048-SA (Arizona Supreme Court, April 5, 2022) and Arizona Republican Party v. Hobbs, CV-2022-00594 (Mohave County Superior Court, June 6, 2022).

The Arizona Supreme Court declined to take up a lawsuit by the state Republican Party arguing that early voting is unconstitutional. The Arizona GOP then refiled the case in Mohave County Superior Court. On June 6, 2022, Judge Lee Jantzen upheld no-excuse early voting, citing Arizona's long history of mail-in voting and concluding: "There is nothing in the Arizona Constitution which expressly prohibits the legislature from authorizing new voting laws, including 'no-excuse' mail-in ballots."

The League filed an amicus brief with the Arizona Supreme Court (in support of no party) to explain the potential impacts of the decision on local elections.

Cal-Am Properties Inc. v. Edais Eng'g Inc., 253 Ariz. 78, 509 P.3d 386 (2022).

While this decision does not involve any government entities, it may be relevant to negligence actions associated with city or town construction projects. A project owner brought a negligence

action against an engineering subcontractor (hired by contractor), which placed survey stakes in the wrong locations, resulting in the construction of a banquet and concert hall in the wrong place and eliminated eight parking spaces. The Arizona Supreme Court held that:

- (1) foreseeability is not a factor to be considered by courts when making determinations of duty in negligence actions (abrogating *Donnelly Construction Company v. Oberg/Hunt/Gilleland*, 139 Ariz. 184, 677 P.2d 1292);
- (2) there was no special relationship between the project owner and the engineering subcontractor giving rise to any duty;
- (3) the statutes and administrative regulations governing qualification and minimum standards for design professionals and surveyors did not establish any duty in the negligence action; and
- (4) Restatement provision did not establish any duty in the negligence action (abrogating *McCutchen v. Hill*, 147 Ariz. 401, 710 P.2d 1056).

Ross v. Pearson, CV-22-0104-AP/EL, 2022 WL 1450021, at *1 (Ariz. May 9, 2022).

The Arizona Supreme Court held that the trial did not clearly err in relying on the County Recorder's Petition Verification Summary Report ("PVS Report") to find that 355 of the signatures on a candidate's petition were invalid.

Wakely v. Howard, CV-22-0110-AP/EL, 2022 WL 1467512, at *1 (Ariz. May 9, 2022).

The Arizona Constitution requires an Arizona legislator to have been a resident of Arizona for three *consecutive years immediately* prior to the election in question. Here, the appellant timely submitted nomination petition signatures to appear on the 2022 Republican primary ballot for the office of State Senator. The appellant was a registered voter in the State of Maryland and voted in Maryland in the General Election in October 2020. As a result, the Arizona Supreme Court concluded the appellant could not have been a resident of for three consecutive years.

Martinez v. Wood, CV-22-0101-AP/EL, 2022 WL 1467514, at *1–3 (Ariz. May 9, 2022).

The Arizona Supreme Court held that the use of the general county register to determine signature validity is proper.

S. Point Energy Ctr. LLC v. Arizona Dep't of Revenue, 508 P.3d 246 (Ariz. 2022).

Non-Indian lessee of land owned by the federal government in trust for Indians initiated lawsuits seeking refund of payments for county property taxes imposed on power plant it operated on the land. The Arizona Supreme Court held that: (1) as a matter of first impression, the Indian Reorganization Act does not expressly exempt state and local taxes imposed on permanent

improvements affixed by non-Indian lessees to land owned by the federal government in trust for Indians when the parties agree that the lessee owns those improvements, and (2) the ad valorem tax imposed on power plant was not preempted by the Act.

Morgan v. Dickerson in & for Cnty. of Cochise, CV-21-0198-PR, 2022 WL 2125879 (Ariz. June 14, 2022).

At issue was the superior court's use of "innominate juries" for all criminal jury trials. Under that procedure, prospective and impaneled jurors are referred to by numbers rather than by names throughout open-court proceedings, although the court and the parties know their identities. Consequently, although *voir dire* examinations and trials are open for public viewing, observers are not provided jurors' names absent order of the court. The issue was whether the First Amendment prohibits the court's routine use of innominate juries. The Arizona Supreme Court held that the First Amendment does not prohibit the court's practice.

ARIZONA COURT OF APPEALS

Mountainside MAR, LLC v. City of Flagstaff, 1 CA-CV 21-0002, 2022 WL 2350073, at *1 (Ariz. Ct. App., Div. I, June 30, 2022).

The Court of Appeals ruled in favor of Flagstaff regarding a city's authority to charge water and sewer capacity fees under A.R.S. §§ 9-511 and 9-511.01.

As background, the plaintiff (Mountainside) developed two apartment complexes in Flagstaff. As a condition to connecting its developments to the Flagstaff's water and sewer systems, Flagstaff assessed water and sewer capacity fees pursuant to § 9-511 and § 9-511.01. Mountainside paid the fees under protest, arguing that Flagstaff's fees were invalid because they were in fact "development fees" that had not been adopted in accordance with A.R.S. § 9-463.05 and thus could not lawfully be assessed. Mountainside claimed that § 9-463.05 establishes the *exclusive* means by which cities can lawfully assess capacity fees. On this basis, Mountainside filed three lawsuits against Flagstaff seeking a return of the fees it paid, as well as mandamus relief. The parties stipulated to consolidating the cases.

Flagstaff moved to dismiss the actions for failure to state a claim, arguing it could lawfully assess the capacity fees under § 9-511 and § 9-511.01. Mountainside moved for summary judgment, arguing the fees were invalid and could not be lawfully assessed. The superior court agreed that Flagstaff had authority under § 9-511 and § 9-511.01 and granted the city's motion to dismiss. Mountainside appealed. The League filed an amicus brief in support of Flagstaff.

The Court of Appeals affirmed: “Based upon the statutory authority for the City to own and operate water and wastewater systems, including to increase water and wastewater rates, fees, or service charges under § 9-511 and § 9-511.01, we hold that **the City also possesses the implied powers necessary to perform those functions**, including to adopt and assess fees to offset costs associated with new or expanded infrastructure required by new connections to the City’s water and wastewater systems. Because the City had power under § 9-511 and § 9-511.01 to assess capacity fees on Mountainside, dismissal of the complaints was proper, as was the denial of Mountainside’s motion for summary judgment and request for mandamus relief.”

The League filed an amicus brief in this case arguing for this result (Avondale, Queen Creek, and Show Low joined the brief).

McMichael-Gombar v. Phoenix Civil Serv. Bd., 1 CA-CV 21-0469, 2022 WL 2252438, at *1 (Ariz. Ct. App., Div. I, June 23, 2022), as amended (June 23, 2022), as amended (July 11, 2022).

A retired City of Phoenix police officer appealed from the superior court's order declining special action jurisdiction over her complaint against Phoenix, the Phoenix Civil Service Board, and the individual members of the Board, for failing to allow her to present evidence that disciplinary action taken against her violated her First Amendment rights.

As background, the City suspended the police officer because of her post on a private Facebook page that allegedly violated the Police Department’s Social Media Policy. She appealed the suspension to a hearing officer and argued that the Policy was “overbroad and unconstitutional” and the discipline was “excessive” given that her post was “private.” The City moved to preclude her from presenting evidence on the constitutionality of the Policy or “how it impacted her ability to participate in her private affairs and express her First Amendment rights.” The hearing officer granted the City’s motion and upheld her suspension. The officer then appealed to the Civil Service Board, which upheld the suspension without considering her constitutional arguments. The Board’s attorney advised that, consistent with the Board’s legal position since 1979, the Board’s role did not include considering constitutional issues, noting that “[w]e have volunteers from the community on the Civil Service Board. They are not constitutional scholars.” The superior court declined to take jurisdiction.

The Court of Appeals held that, as a matter of first impression, the unique language of the Phoenix City Charter requires the Civil Service Board to consider the police officer’s argument and evidence that the disciplinary action against her violated her First Amendment rights as a citizen. The Court of Appeals vacated the superior court's order and remanded for further proceedings consistent with the opinion.

In its opinion, the Court of Appeals cited to the League’s publication called *Charter Government Provisions in Arizona Cities*.

Doe v. Arizona Bd. of Regents, 1 CA-CV 21-0509, 2022 WL 2310671 (Ariz. Ct. App., Div. I, June 28, 2022).

Even if a new law revives a plaintiff's cause of action that would otherwise have been time barred, the Arizona Court of Appeals held that it does not alter the obligation to serve a notice of claim under A.R.S. § 12-821.01 because the new law does not explicitly provide an exception to (or repeal) the notice of claim requirement in A.R.S. § 12-821.01(A).

Shea v. Maricopa Cnty., 1 CA-CV 21-0233, 2022 WL 2035798 (Ariz. Ct. App., Div. 1, June 7, 2022).

This case is included because it deals with the judicial review of a county board of adjustment's decision (similar to the city/town equivalent in 9-462.06.K). As background, property owners sought review of a county board of adjustment's determination that they violated zoning ordinances by building structures without proper zoning, building and drainage permits. The superior court dismissed the property owners' request for lack of subject matter jurisdiction and granted the county's motion for summary judgment. The Court of Appeals held that: (1) the property owners' noncompliance with Administrative Review Act deprived the trial court of subject matter jurisdiction, and (2) the county was entitled to enforce the payments imposed by the county against property owners.

ARIZONA DISTRICT COURTS

United States v. Arizona (July 5, 2022).

The U.S. Department of Justice (DOJ) filed a lawsuit against the State of Arizona challenging Arizona's proof of citizenship requirement in House Bill 2492. The bill requires Arizonans using federal registration forms to provide documents proving their citizenship and requires election officials to provide the Arizona attorney general with a list of voters who do not provide satisfactory proof of citizenship for investigation. The DOJ asks the federal district court in Arizona to block the enforcement of H.B. 2492, alleging that the proof of citizenship scheme violates Section 6 of the National Voter Registration Act (NVRA) of 1993 and Sections 4 and 5 of H.B. 2492 violate the Materiality Provision of Section 101 of the Civil Rights Act.

Copy of the complaint: <https://www.justice.gov/opa/press-release/file/1517491/download>

SUPERIOR COURT

***Workers for Responsible Development v. City of Tempe et al.*, No. CV 2022-003530 (Maricopa Cny. Sup., June 20, 2022).**

The superior court issued a ruling in favor of Tempe regarding a referendum petition that was rejected by the clerk for failing to comply with A.R.S. 19-101. The residents sought to challenge a Tempe ordinance that approved a development agreement. Judge Hannah concluded the petition failed to **strictly comply** with the format prescribed by statute because it placed the “petition for referendum” language above the “referendum description,” not below it as required by statute. The residents have appealed the ruling.

Brnovich et al. v. Hobbs, No. PI300CV202200269 (Yavapai County Superior Court, June 17, 2022).

The Attorney General (AG) and the Yavapai Republican Party sued the Secretary of State (SOS) over the SOS’s proposed update to the state’s biennial election procedures manual. The judge ruled against the plaintiffs, concluding that the SOS “properly exercised her discretion” in coming up with rules in the proposed manual. According to the judge, the SOS provided the proposed manual before the Oct. 1 deadline to both the AG and the Governor for their legally required review as required by law. The judge added that, rather than negotiate areas of differences with the SOS, the AG and Governor rejected the SOS’s proposed manual, refused to negotiate with the SOS, and failed to explain how the contents of the manual exceeded any authority or violated the law. As a result, the judge ordered the continued use of the 2019 election procedures manual for the 2022 elections subject to changes in state law (since it was previously approved by both the Governor and the AG as required by law).

State of Arizona v. Jann-Michael Greenburg and the Scottsdale Unified School District (SUSD), (Maricopa County Sup. Ct., June 22, 2022).

On June 20, 2022, the Arizona Attorney General filed a lawsuit today against current school board member and former president, Jann-Michael Greenburg, along with the entire Scottsdale Unified School District (SUSD). The complaint alleges SUSD violated the Open Meeting Law (OML) by knowingly structuring an agenda and meeting so as to prohibit public comment about a proposed mask mandate and other subjects within the jurisdiction of the SUSD Governing Board, knowingly applying unauthorized content-based restrictions on public comment made during a board meeting, and knowingly cutting off or otherwise interrupting speakers during a call to the public. Among other things, the lawsuit seeks to have Greenburg removed and impose civil penalties on SUSD board members.

Copy of the complaint: https://www.azag.gov/sites/default/files/docs/press-releases/2022/complaints/State_v_Greenburg_Compl_w_Exhs.pdf

State of Arizona v. Vernal Lee Crow,

Crow was sentenced on May 24, 2022, to two concurrent terms of probation after being convicted on two counts of Conflict of Interest in connection with his appointed position as Vice Chairman of the Arizona School Facilities Board (SFB). Crow failed to disclose his interest and his son's interest in a business while participating in three SFB decisions benefitting this business. In a plea his conflict of interest and not recusing himself when he voted for an award of \$111,800 in taxpayer funds for replacement piping at an elementary school in the Snowflake Unified School District. His son's business was paid \$12,050 of those funds.

Plea agreement: https://mcusercontent.com/cc1fad182b6d6f8b1e352e206/files/12cbfcd7-a995-d1be-803d-1b5b92a9cdeb/Vern_Crow_Plea.pdf

NINTH CIRCUIT

Adame v. City of Surprise, 37 F.4th 656 (9th Cir. 2022).

The Ninth Circuit issued an order in *Adame v. Surprise*, certifying various questions to the Arizona Supreme Court. The underlying case involves a police shooting fatality. Specifically, a Surprise police officers shot the decedent when the decedent began disobeying the officer's commands and started driving off in a stolen vehicle with the officer precariously perched half in and half out of the vehicle. The decedent's family sued Surprise and the officer. Surprise argued that either the shooting was justified (Surprise's position) and therefore no liability attached - or if unjustified (the plaintiffs' position), Surprise had immunity under §12-820.05(B) as any unjustified shooting would constitute a felony and Surprise had no knowledge of the officer's propensity for such conduct. Surprise also argued that the motor vehicle exception applies only to the *public employee's* use or operation of a motor vehicle, not a third party's (the decedent in this case) use or operation of a motor vehicle. Surprise alternatively argued that even if the decedent's use or operation of his own (stolen) motor vehicle could invoke the motor vehicle exception, the exception was still inapplicable because the requisite direct causal connection between that use or operation of the motor vehicle and the alleged loss was absent.

The district court denied Surprise's claim to immunity (and motion for summary judgment). Surprise timely appealed, and the district court invited the parties to argue whether the Ninth Circuit has jurisdiction to consider an interlocutory appeal of the denial of immunity.

The Ninth Circuit is now asking the Arizona Supreme Court to answer the following questions:

Does § 12-820.05(B) provide immunity from liability?

- If **yes**, the Arizona Supreme Court need not answer any further questions because the Ninth Circuit would lack jurisdiction over the City's interlocutory appeal.
- If **no**, the Arizona Supreme Court is asked to answer the additional questions below.

A. With respect to the first sentence of § 12-820.05(B):

- If a law enforcement officer causes a death by the use of “excessive force” (here, a firearm), has the law enforcement officer committed “a criminal felony” as a matter of law? If not, is a conviction of a felony required?
- If not, is the determination whether the law enforcement officer committed “a criminal felony” a question of fact for the jury or a question of fact only for “the court”?
- How does the determination whether an officer’s use of “excessive force” was “justified” or “unjustified” pursuant to § 13-413 affect this inquiry? Is the determination for the jury to make, or for the court to make? If this determination is for the court to make, for purposes of summary judgment, in applying § 12-820.05(B), is the reviewing court required to assume that the relevant acts or omissions of the public employee were “unjustified,” given § 13-413?

B. With respect to the second sentence of § 12-820.05(B): Does this sentence apply only to a *public employee’s* operation or use of a motor vehicle?

- Or, if the public employee’s act takes place because another person operates or uses a motor vehicle (where, for example, a law enforcement officer fires because someone else is stealing a car or driving a car dangerously toward another person), does the public employee’s act nonetheless “aris[e] out of the operation or use of a motor vehicle”?
- What is the required degree of causal connection, if any, between the “acts or omissions arising out of the operation or use of a motor vehicle” and the “losses that arise out of and are directly attributable to an act or omission determined by a court to be a criminal felony”?

The League filed an amicus brief with the Ninth Circuit in support of Surprise.

Opinion: <https://cdn.ca9.uscourts.gov/datastore/opinions/2022/06/14/21-16031.pdf>

Lemos v. Cnty. of Sonoma, 19-15222, 2022 WL 2813736 (9th Cir. July 19, 2022).

The plaintiff filed a claim against a county under 42 U.S.C. Section 1983, alleging that a sheriff’s deputy used excessive force in arresting her. The district court held that the plaintiff’s claim was barred by *Heck v. Humphrey*, 512 U.S. 477 (1994), because the plaintiff was convicted of willfully resisting, delaying, or obstructing the deputy during the same interaction in violation of Cal. Penal Code section 148(a)(1).

The *en banc* Ninth Circuit court reversed the district court’s summary judgment in favor of the County. The court held that because the record did not show that the plaintiff’s section 1983 action necessarily rested on the same event as her criminal conviction, success in the former would not necessarily imply the invalidity of the latter.

Heck would bar the plaintiff from bringing an excessive force claim under section 1983 if that claim were based on force used during the conduct that was the basis for her section 148(a)(1) conviction. Crucially, the criminal jury was told that it could find the plaintiff guilty based on any one of four acts she committed during her interaction with the Deputy. Because the jury

returned a general verdict, it is not known which act it thought constituted an offense. Although any of the four acts could be the basis for the guilty verdict, the plaintiff's section 1983 action was based on an allegation that the Deputy used excessive force during only the last one. The court held that if the plaintiff were to prevail in her civil action, it would not necessarily mean that her conviction was invalid; and the action was therefore not barred by *Heck*.

Opinion: <https://cdn.ca9.uscourts.gov/datastore/opinions/2022/07/19/19-15222.pdf>

Arizona v. Yellen, 34 F.4th 841 (9th Cir. 2022).

The State of Arizona filed a lawsuit against the Secretary of U.S. Treasury, arguing the offset provision of American Rescue Plan Act (ARPA) (which prohibits states from using federal funds intended to address economic harms caused by COVID-19 pandemic to offset reduction in net tax revenue) violates the Spending Clause and Tenth Amendment. The district court dismissed the lawsuit for lack of subject matter jurisdiction. The state appealed. The Ninth Circuit reversed, holding the state has standing to challenge ARPA because there is a realistic danger of ARPA's enforcement and there is a justiciable challenge to the sovereignty of the state (which alleges infringement on its authority to set tax policy and its interest in being free from coercion impacting its tax policy). The Ninth Circuit remanded for the district court to consider the merits of Arizona's Spending Clause and Tenth Amendment claims.

R.J. Reynolds Tobacco Co. v. County of Los Angeles, no. 20-55930 (9th Cir. Mar. 18, 2022).

In a 2-1 decision, a Ninth Circuit panel held that the federal Tobacco Control Act's prohibition against state or local regulations that differ from the Act's provisions "relating to tobacco product standards" does not override a local ban on flavored products.

Kubiak v. Cnty. of Ravalli, 32 F.4th 1182 (9th Cir. 2022).

The Ninth Circuit held that, despite the district court's grant of a summary judgment in favor of a county defending a § 1983 action, the plaintiff's acceptance of the county's FRCP 68 settlement offer before the final summary judgment had been entered took precedence and would be enforced.

U.S. SUPREME COURT

Kennedy v. Bremerton Sch. Dist., 21-418, 2022 WL 2295034 (U.S. June 27, 2022).

The U.S. Supreme Court held that the First Amendment protects an assistant football coach who “knelt at midfield after games to offer a quiet prayer of thanks.” The Supreme Court also overruled *Lemon v. Kurtzman* (1971).

As background, a public employee lost his job as a high school football coach after he knelt at midfield to “offer his prayers” after games (while he was still “on duty”). He brought § 1983 action against school district, alleging violations of his rights under the First Amendment’s **Free Speech and Free Exercise Clauses**.

Justice Gorsuch, writing for the Court, concluded the coach was able to make the initial showing that the school district violated his free exercise of religion and free speech rights by not allowing him to pray on the field after games (during work hours). The Court looked at several factors:

- Prayer was not “ordinarily” within the scope of his duties as a coach (e.g., he was not “instructing players, discussing strategy, encouraging better on-field performance or engaging in other speech that the district paid him to produce as a coach”);
- The employee did not intend to convey a “government-created message”;
- The employee did not “speak pursuant to a government policy”;
- The prayers “did not owe their existence” to his responsibilities as a public employee.”
- The district acknowledged that he “offered prayer” during a time when employees were free to engage in private speech (i.e., when coaches were “free to attend briefly to social matters, such as checking sports scores on their phones” and “greeting friends and family”).
- The employee “offered his prayers when students were engaged in other activities like singing the school fight song [which] further suggests that those prayers were not delivered as an address to the team.”

Regarding the coach’s Free Exercise Clause claim, the Court concluded the school district burdened his sincere religious practice pursuant to a policy that is not “neutral” or applied in an “even-handed, across the board way.” The district’s actions were not neutral because “[b]y its own admission, the District sought to restrict [the coach’s] actions at least in part because of their religious character.” While the district stated it refused to rehire the coach because he “failed to supervise student-athletes after games,” the district “permitted other members of the coaching staff to forgo supervising students briefly after the game to do things like visit with friends or take personal phone calls.”

With respect to the government meeting its burden, the Court also concluded the coach’s right to pray outweighed any interest of the school district, regardless of whether intermediate scrutiny or strict scrutiny applied. The Court didn’t elaborate on this point other than to say the burden could not be justified on the ground that the coach’s suspension was essential to avoid an Establishment Clause violation.

This decision changes how local governments must assess issues related to the Establishment Clause. The Court replaced the previous *Lemon* and “endorsement” tests with a test that

requires public employers to analyze the Establishment Clause with “reference to historical practices and understandings” that reflect the “understanding of the Founding Fathers” (like the legislative prayer case, *Town of Greece v. Galloway*, 572 U.S. 565 (2014)). The Court said there is a long constitutional tradition of tolerating diverse expressive activities, but it did not elaborate on how to apply this new test or provide examples. As a result, it is unclear what “historical practices and understandings” refers to (it presumably refers to the practices in 1791 when the Establishment Clause was ratified, but the decision does not make that clear).

It is important to note that the majority and dissent disagreed on the facts of the case. The Dissent criticized the majority’s interpretation of the facts and new “history and tradition” test: “The Court now charts a different path, yet again paying almost exclusive attention to the Free Exercise Clause’s protection for individual religious exercise while giving short shrift to the Establishment Clause’s prohibition on state establishment of religion. . . . To the degree the Court portrays [the coach’s] prayers as private and quiet, it misconstrues the facts. The record reveals [the coach] had a longstanding practice of conducting demonstrative prayers on the 50-yard line of the football field. [He] consistently invited others to join his prayers and for years led student athletes in prayer at the same time and location. The Court ignores this history. The Court also ignores the severe disruption to school events caused by [his] conduct, viewing it as irrelevant because the [district] stated that it was suspending [him] to avoid it being viewed as endorsing religion. Under the Court’s analysis, presumably this would be a different case if the District had cited [his] repeated disruptions of school programming and violations of school policy regarding public access to the field as grounds for suspending him. As the District did not articulate those grounds, the Court assesses only the District’s Establishment Clause concerns. It errs by assessing them divorced from the context and history of [his] prayer practice.”

Opinion: https://www.supremecourt.gov/opinions/21pdf/21-418_i425.pdf

Houston Cmty. Coll. Sys. v. Wilson, 142 S. Ct. 1253, 212 L. Ed. 2d 303 (2022).

The U.S. Supreme Court held that the First Amendment does not restrict the authority of an elected body to issue a verbal censure in response to the speech of one of its members. Justice Gorsuch described the tenure of the elected official in this case as “stormy.” The elected official accused the community college board of violating its bylaws and ethics rules in the media, he hired a private investigator to determine whether another board member lived in the district that elected her, and he repeatedly sued the board. The board censured him stating his conduct was “not consistent with the best interests of the College” and “not only inappropriate, but reprehensible.” The Court held that the elected official has no actionable First Amendment free speech claim arising from the board’s *purely verbal* censure. It noted that “elected bodies in this country have long exercised the power to censure their members. According to the Court, the censure “did not prevent [the elected official] from doing his job, it did not deny him any privilege of office, and [the elected official] does not allege it was defamatory. At least in these circumstances, we do not see how the Board’s censure could have materially deterred an elected official . . . from exercising his own right to speak.” The Court distinguished the board’s power *to exclude* from the power to verbally reprimand the elected member. “While Congress

possesses no power to exclude duly elected representatives who satisfy the prerequisites for office prescribed in Article I of the Constitution, the power to exclude and the power to issue other, lesser forms of discipline 'are not fungible' under the Constitution.”

Opinion: https://www.supremecourt.gov/opinions/21pdf/20-804_j426.pdf

Oklahoma v. Castro-Huerta, 21-429, 2022 WL 2334307 (U.S. June 29, 2022).

This case does not deal with cities and towns, but it is relevant because of its impacts on state authority and tribal sovereignty. The U.S. Supreme Court held 5-4 that states (along with the federal government) may prosecute crimes committed by non-Indians against Indians in Indian country. “To be clear, the Court today holds that **Indian country within a State's territory is part of a State, not separate from a State.** Therefore, a State has jurisdiction to prosecute crimes committed in Indian country unless state jurisdiction is preempted. With respect to crimes committed by non-Indians against Indians in Indian country, the Court held that nothing preempts a State's authority to prosecute.

https://www.supremecourt.gov/opinions/21pdf/21-429_8o6a.pdf

Torres v. Texas Dep't of Pub. Safety, 20-603, 2022 WL 2334306 (U.S. June 29, 2022).

This case does not deal with a city or town, but it is interesting because it deals with **sovereign immunity of the state.** The U.S. Supreme Court held 5-4 that Congress's war powers allow it to subject non-consenting states to money damages lawsuits under the Uniformed Services Employment and Reemployment Rights Act (USERRA).

As background, a veteran filed an employment discrimination case under USERRA in Texas state court against his former state employer (Texas DPS) after it failed to provide relief for military injuries. The Texas courts held the veteran could not draw the state into his USERRA lawsuit using Texas courts. The veteran argued the text, history, and precedent of the Constitution's war powers require Texas to participate in the USERRA lawsuit. Texas DPS objected to jurisdiction by pleading sovereign immunity. The Court of Appeals also found in favor of DPS, concluding that, under the Supreme Court's decisions in *Seminole Tribe of Florida v. Florida* and *Alden v. Maine*, USERRA's purported abrogation of state sovereign immunity was invalid. The Supreme Court of Texas declined review.

Here, the U.S. Supreme Court held that **Congress has authority to authorize private damages suits against nonconsenting States and their units of government** – and that USERRA's purported abrogation of state sovereign immunity was not invalid. “By ratifying the Constitution, . . . the States agreed to sacrifice their sovereign immunity for the good of the common defense.”

Opinion: https://www.supremecourt.gov/opinions/21pdf/20-603_o758.pdf

New York State Rifle & Pistol Ass'n, Inc. v. Bruen, 142 S. Ct. 2111 (2022).

The U.S. Supreme Court held 6-3 that states and local governments may not require “proper cause” to obtain a license to carry a handgun outside the home. In particular, U.S. Supreme Court held that: (1) the Second and Fourteenth Amendments protect an individual's right to carry a handgun for self-defense *outside* the home (expanding previous decisions that held the Second Amendment protects the right to carry a handgun for self-defense *inside* the home); and (2) means-end scrutiny, such as strict or intermediate scrutiny, does not apply in the Second Amendment context (abrogating several cases); and (3) state and local governments cannot require “proper cause” to obtain a license to carry a handgun for self-defense outside the home (abrogating several cases).

Justice Thomas, writing for the Court, articulated a standard to determine whether a law violates the Second Amendment that places the burden on the government: “When the Second Amendment’s **plain text** covers an individual’s conduct, the Constitution **presumptively protects that conduct**. **The government must then justify its regulation by demonstrating that it is consistent with the Nation’s historical tradition of firearm regulation.**”

The Court also stated it is “settled” that certain locations are “sensitive places” where carrying firearms can be prohibited consistent with the Second Amendment, such as **government buildings, schools**, legislative assemblies, polling places, and courthouses.

Opinion: https://www.supremecourt.gov/opinions/21pdf/20-843_7j80.pdf

Vega v. Tekoh, 142 S. Ct. 2095 (2022).

The U.S. Supreme Court held 6-3 that police officers can’t be sued for money damages for failing to recite *Miranda* rights.

Opinion: https://www.supremecourt.gov/opinions/21pdf/21-499_gfbh.pdf



EXECUTIVE COMMITTEE MEETING
Friday, August 5, 2022

Agenda Item #5 2022 League Conference Update

Summary: The 2022 League Conference will be held August 30 – September 2 at the Renaissance in Glendale. Staff will provide an update on conference activities and events.

Responsible Person: Matt Lore, Deputy Director



EXECUTIVE COMMITTEE MEETING
Friday, August 5, 2022

Agenda Item #6 Resolution of Appreciation

Summary: A Resolution of Appreciation for Mayor Christian Price of Maricopa is enclosed for action by the Executive Committee.

Responsible Person: President Cathy Carlat

Attachment: Resolution of Appreciation

Action Requested: Approval

RESOLUTION OF APPRECIATION FOR

Christian Price

A RESOLUTION EXPRESSING THE APPRECIATION OF THE EXECUTIVE COMMITTEE OF THE LEAGUE OF ARIZONA CITIES AND TOWNS TO **CHRISTIAN PRICE** FOR HIS DEDICATED SERVICE TO LOCAL GOVERNMENT IN ARIZONA.

WHEREAS, **CHRISTIAN PRICE** served the citizens of the City of Maricopa for ten years as Mayor; and

WHEREAS, **CHRISTIAN PRICE** has provided dedicated service to the League as a member of the Executive Committee from 2014-2022; and

WHEREAS, **CHRISTIAN PRICE** served as an officer of the League from 2016-2018 beginning with the post of Treasurer and culminating in service as President from 2018-2020; and

WHEREAS, **CHRISTIAN PRICE** served on or chaired the League Resolutions Committee, the League Nominating Committee and other special League committees; and

WHEREAS, **CHRISTIAN PRICE** was an active participant in Arizona and National League of Cities meetings and conferences as a speaker and a presiding officer; and

WHEREAS, **CHRISTIAN PRICE** made frequent trips to the Capitol at the request of the League to meet with Legislators and the Governor and was always available to provide support, counsel and advice to League staff,

NOW, THEREFORE BE IT RESOLVED, that the appreciation of the League of Arizona Cities and Towns be extended to **CHRISTIAN PRICE** for his dedicated service to local government in Arizona and to the League.



EXECUTIVE COMMITTEE MEETING

Friday, August 5, 2022

Agenda Item #7 Life Member Nomination

Summary: By tradition, past presidents of the League are granted Life Membership by the Executive Committee. The nomination for Christian Price is enclosed for action by the Executive Committee.

Responsible Person: President Cathy Carlat

Attachment: Life Member Resolution

Action Requested: Approval

**LIFE MEMBERSHIP RESOLUTION FOR
CHRISTIAN PRICE**

**A RESOLUTION CONFERRING LIFE MEMBERSHIP IN THE LEAGUE OF ARIZONA
CITIES AND TOWNS TO FORMER PRESIDENT CHRISTIAN PRICE.**

WHEREAS, **CHRISTIAN PRICE** provided outstanding leadership as President of the League from 2018-2020; and

WHEREAS, **CHRISTIAN PRICE** began his service to the League as a member of the Executive Committee in 2014 and served as Treasurer prior to assuming the office of President in 2018; and

WHEREAS, **CHRISTIAN PRICE** served the City of Maricopa for ten years as Mayor which exemplifies his dedication to local government and to his City;

NOW, THEREFORE BE IT RESOLVED that the Executive Committee bestows Life Membership in the League of Arizona Cities and Towns upon **CHRISTIAN PRICE**.



**Additional Informational Materials
Not Part of the Agenda**

League Budget Report

Property Corporation Budget Report

League of Arizona Cities & Towns
FY 2021-2022 Budget vs. Actual
July 2021 through June 2022

	Jul '21 - Jun 22	Budget	\$ Over Budget	% of Budget
Ordinary Income/Expense				
Income				
4000 · Affiliate Group Contribution	147,954.24	137,950.00	10,004.24	107.3%
4005 · Annual Conference	606,420.67	400,000.00	206,420.67	151.6%
4010 · Dues	2,226,243.00	2,226,243.00	0.00	100.0%
4020 · Miscellaneous	16,801.83	14,000.00	2,801.83	120.0%
4016 · Partnership Programs	37,361.67	48,500.00	-11,138.33	77.0%
4030 · Risk Pool	166,970.68	165,000.00	1,970.68	101.2%
4035 · Seminars & Meetings	35,845.00	40,000.00	-4,155.00	89.6%
4040 · Interest Income	6,618.32	20,000.00	-13,381.68	33.1%
Total Income	3,244,215.41	3,051,693.00	192,522.41	106.3%
Expense				
5005 · Annual Conference (Expense)	410,157.05	230,000.00	180,157.05	178.3%
5010 · Benefits	511,589.26	542,000.00	-30,410.74	94.4%
5015 · Capital Outlay	17,062.14	10,000.00	7,062.14	170.6%
5030 · Equipment Rental & Maintena...	5,042.95	9,000.00	-3,957.05	56.0%
5035 · Executive Committee	2,524.91	6,000.00	-3,475.09	42.1%
5050 · Insurance	8,076.53	9,000.00	-923.47	89.7%
5055 · Postage & Shipping	3,425.42	6,000.00	-2,574.58	57.1%
5057 · PR & Communications	55,271.22	51,000.00	4,271.22	108.4%
5060 · Printing	10,170.83	10,000.00	170.83	101.7%
5065 · Professional Services				
5065-1 · Accounting Services	48,074.23	48,000.00	74.23	100.2%
5065-3 · Legal Services	26,001.36	36,000.00	-9,998.64	72.2%
5065-2 · Contract Lobbying & Cons...	200,820.00	165,000.00	35,820.00	121.7%
Total 5065 · Professional Services	274,895.59	249,000.00	25,895.59	110.4%
5070 · Rent	105,000.00	105,000.00	0.00	100.0%
5071 · Salaries	1,519,084.03	1,520,000.00	-915.97	99.9%
5075 · Seminars and Meetings	50,363.63	44,000.00	6,363.63	114.5%
5085 · Subscriptions & Dues	96,890.66	63,000.00	33,890.66	153.8%
5090 · Supplies	58,883.38	38,000.00	20,883.38	155.0%
5095 · Telecommunications	25,445.56	24,000.00	1,445.56	106.0%
5100 · Travel	18,790.41	20,000.00	-1,209.59	94.0%
5115 · Prop Corp-Bldg Improvement ...	10,000.00	10,000.00	0.00	100.0%
Total Expense	3,182,673.57	2,946,000.00	236,673.57	108.0%
Net Ordinary Income	61,541.84	105,693.00	-44,151.16	58.2%
Net Income	61,541.84	105,693.00	-44,151.16	58.2%

Property Corporation
FY 2021-2022 Budget vs. Actual
July 2021 through June 2022

	Jul '21 - Jun 22	Budget	\$ Over Budget	% of Budget
Ordinary Income/Expense				
Income				
4003 · Building Improvement Fund	10,000.00	10,000.00	0.00	100.0%
4000 · Rental Income	130,622.10	129,696.00	926.10	100.7%
4005 · Miscellaneous	0.00	2,300.00	-2,300.00	0.0%
4010 · Interest	14.97	35.00	-20.03	42.8%
Total Income	140,637.07	142,031.00	-1,393.93	99.0%
Expense				
5000 · Maintenance Services/Agreements	44,700.58	41,000.00	3,700.58	109.0%
5015 · Utilities	23,089.24	24,000.00	-910.76	96.2%
5020 · Repairs and Maintenance	11,060.29	12,000.00	-939.71	92.2%
5025 · Operating Expenses	3,172.74	5,000.00	-1,827.26	63.5%
5030 · Accounting and Auditing	7,620.00	7,600.00	20.00	100.3%
5035 · Insurance	4,904.39	6,500.00	-1,595.61	75.5%
5040 · Capital Outlay	8,106.80	21,000.00	-12,893.20	38.6%
Total Expense	102,654.04	117,100.00	-14,445.96	87.7%
Net Ordinary Income	37,983.03	24,931.00	13,052.03	152.4%
Net Income	37,983.03	24,931.00	13,052.03	152.4%