



# NEWS RELEASE

Arizona House of Representatives

Representative Steve Montenegro (R-29)

1700 West Washington • Phoenix, Arizona • 85007

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Monday, April 24, 2023

FOR IMMEDIATE RELEASE

## State Representative Montenegro Files 1487 Complaint Regarding Tempe's Special Election on Entertainment District Development

**STATE CAPITOL, ARIZONA** — Arizona State Representative Steve Montenegro today submitted an SB1487 complaint to Attorney General Kris Mayes, seeking an investigation of the City of Tempe's ordinances, resolution, and a development agreement connected to Tempe's special election this month.

Tempe's resolution and ordinances have been referred to the voters for decision concerning the possible creation of a Tempe Entertainment District. In his complaint, Representative Montenegro asks whether the Arizona Constitution and state law allow a private developer, Bluebird Development LLC – who stands to benefit from the City's Special Election and appears to be acting at the City's direction – to spend private money by referring the measures to the voters and paying for costs, expenses, and fees associated with Tempe's Special Election.

The City's Special Election is scheduled for May 16, but voting is underway as ballots have been mailed to Tempe voters.

**“[T]he Arizona Constitution does not allow the City to directly refer measures to the ballot, but the development agreement with Bluebird appears to be an indirect and unconstitutional attempt to do so,”** writes Representative Montenegro. **“The City's agreements with Bluebird also appear to violate A.R.S. § 16-407.01, which prohibits cities from expending private monies for preparing for, administering or conducting an election.”**

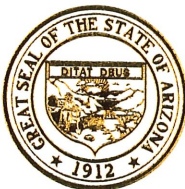
Under [A.R.S. §41-194.01](#), legislators may request of the Arizona Attorney General to investigate and report as to whether an ordinance violates state law. Once submitted, the Attorney General's Office has 30 days to issue a report of its conclusion.

A copy of Representative Montenegro's letter to the Attorney General is attached.

*Steve Montenegro is a Republican member of the Arizona House of Representatives serving Legislative District 29 in West Phoenix & Surprise and is Chairman of the House Health & Human Services Committee. Follow him on Twitter at @SteveMontenegro.*

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DISTRICT 29

## Arizona House of Representatives

Phoenix, Arizona 85007

April 24, 2023

Via Email and U.S. Mail

Hon. Kris Mayes  
Arizona Attorney General  
2005 North Central Avenue  
Phoenix, Arizona 85004

**Re: Request for Investigation Pursuant to A.R.S. § 41-194.01**

Attorney General Mayes:

Pursuant to A.R.S. § 41-194.01, and as a current member of the Arizona House of Representatives, I respectfully submit this request for an investigation of ordinances and other official actions of the City of Tempe, in connection with the City's upcoming Special Election on May 16, 2023. Specifically, I request an investigation of the following question:

**Does the City of Tempe's Ordinance No. O2022.56, Ordinance No. O2022.57, Resolution No. R2022.170, or § 12.9 or § 17 of the Development and Disposition Agreement between the City and Bluebird Development LLC violate article IV, part 1, § 1(8) of the Arizona Constitution or A.R.S. § 16-407.01?**

The following information may be relevant to your investigation and legal analysis.

### Factual Background

On November 29, 2022, the Tempe City Council approved Ordinance No. O2022.57, authorizing Mayor Woods to execute a Development and Disposition Agreement ("DDA") with Bluebird Development LLC ("Bluebird"), a Delaware limited liability company, in contemplation of a new entertainment district featuring an arena for the Arizona Coyotes professional hockey team. That same day, as part of the overall development package, the Tempe City Council also approved two related measures—Ordinance No. O2022.56, which rezones the land in question, and Resolution R2022.170, which amends the City's general plan.<sup>1</sup>

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<sup>1</sup> A summary of the City's legal actions taken on November 29, 2022, is available at: [https://tempe.hylandcloud.com/AgendaOnline/Documents/ViewDocument/City\\_Council\\_Special\\_Meeting\\_1460\\_Summary\\_11\\_29\\_2022\\_6\\_00\\_00\\_PM.pdf?meetingId=1460&documentType=Summary&itemId=undefined&publishId=undefined&isSection=false](https://tempe.hylandcloud.com/AgendaOnline/Documents/ViewDocument/City_Council_Special_Meeting_1460_Summary_11_29_2022_6_00_00_PM.pdf?meetingId=1460&documentType=Summary&itemId=undefined&publishId=undefined&isSection=false). The City has posted the approved DDA at this link: <https://www.tempe.gov/home/showpublisheddocument/99272/638042185728370000>

Section 12.9 of the DDA requires Bluebird to submit the project to Tempe voters for approval, stating in relevant part as follows:

12.9 Indemnity and Defense of Referendum Related Suits. Developer has indicated that **Developer shall submit the PAD, the General Plan Amendment, and the Development Agreement to Tempe voters in accordance with Title 19 of the Arizona Revised Statutes, as amended (the “Referral”) by filing petitions for the Referral to qualify for a special election (the “Referendum Election”)** subject to City and County undertaking actions relating thereto pursuant to Applicable Laws. In connection with seeking to qualify the Referral for the Referendum Election, Developer acknowledges that City’s City Council must undertake a “call” for an election (a “Call for Election”).

(Emphasis added.)

As required by § 12.9 of the DDA, Bluebird collected enough signatures to refer the development project to the ballot, and a Special Election has been scheduled by the City for May 16, 2023. The City’s Resolution No. R2022.170 and Ordinance Nos. O2022.56 and O2022.57 appear on the ballot as Propositions 301, 302, and 303, respectively.<sup>2</sup>

Significantly, § 17 of the DDA appears to require Bluebird to fund the City’s Special Election. Section 17 states: “Developer shall bear the third-party, nonrecoverable actual costs, expenses, and fees associated with the Referral and the Referendum Election, including all third-party, non-recoverable actual costs that may be incurred by City in connection with the Referendum Election.” DDA, § 17.

And Bluebird—through the organization “Tempe Wins”—appears to have registered voters in anticipation of the upcoming Special Election. *See* [www.tempewins.com](http://www.tempewins.com).

#### Relevant Legal Authority

Article IV, part 1, § 1(8) of the Arizona Constitution provides that the referendum power is “reserved to the qualified electors of every incorporated city, town and county as to all local, city, town or county matters on which such incorporated cities, towns and counties are or shall be empowered by general laws to legislate.” This provision also requires cities to “prescribe the manner of exercising said powers within the restrictions of general laws.” Ariz. Const. art. IV, pt. 1, § 1(8).

Section 16-407.01 expressly prohibits “[a] city ... that conducts or administers elections” from “receiv[ing] or expend[ing] private monies for preparing for, administering or conducting an election, including registering voters.” A.R.S. § 16-407.01. This law took effect on September 29, 2021 and does not appear to have been the subject of any previous litigation.

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<sup>2</sup> *See* <https://www.tempe.gov/government/city-clerk-s-office/election-information/may-16-2023-special-election>

The City's actions here appear to violate article IV, part 1, § 1(8) of the Arizona Constitution by requiring Bluebird to exercise referendum power on the City's behalf, thus usurping qualified electors' constitutional right to refer matters to the ballot. *See Arrett v. Bower*, 237 Ariz. 74, 77 (App. 2015) (recognizing the importance of and respect for "citizens' constitutional right to challenge a government's legislative actions by referring a duly enacted measure to the ballot for a vote") (citation omitted). As our supreme court stated a century ago, "[i]t is axiomatic in law that what cannot be done directly may not be done by indirection[.]" *Black & White Taxicab Co. v. Standard Oil Co.*, 25 Ariz. 381, 396 (1923).

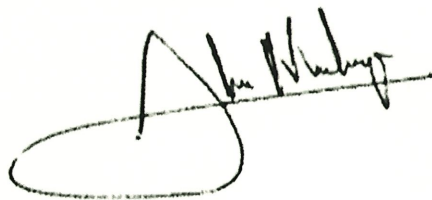
Constitutional concerns aside, the fact remains that the City Council required Bluebird to refer the measures to the voters, and the DDA states that adverse consequences will occur if Bluebird fails to "take those steps required of it by Title 19 of the Arizona Revised Statutes." *See* DDA, § 17. Section 12.9 of the DDA violates A.R.S. § 16-407.01 by requiring Bluebird to expend private monies to prepare for the Special Election. And as noted above, the funding provision of the DDA (§ 17) appears to violate the plain, unambiguous language of A.R.S. § 16-407.01.

In sum, the Arizona Constitution does not allow the City to directly refer measures to the ballot, but the development agreement with Bluebird appears to be an indirect and unconstitutional attempt to do so. The City's agreements with Bluebird also appear to violate A.R.S. § 16-407.01, which prohibits cities from expending private monies for preparing for, administering or conducting an election.

Please investigate this complaint and issue a written report of your findings and conclusions in accordance with A.R.S. § 41-194.01. Although A.R.S. § 41-194.01(B) requires a report to be issued "within thirty days," the City's Special Election will occur in 22 days. I just learned of the City's actions and decided to bring this matter to your attention as quickly as possible. I would greatly appreciate an expedited report, to the extent you are able to do so.

Thank you for your consideration of this request.

Respectfully,

A handwritten signature in black ink, appearing to read "Steve Montenegro", written over a horizontal line.

Steve Montenegro  
Legislative District 29