



STATE OF WASHINGTON
OFFICE OF GOVERNOR JAY INSLEE

February 1, 2022

Kathleen Otto
Clark County Manager
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Dear Ms. Otto and Members of the Clark County Council,

It is my understanding that the Council will hold a public hearing on February 1, 2022, to consider an ordinance, proposed by mini-initiative petition, “prohibiting all mandates within Clark County that discriminate against a citizen’s health status and/or health information privacy.”¹ The proposed ordinance appears to be directed at statewide public health measures in response to the COVID-19 pandemic; for example, it states—erroneously—that “Governor Jay Inslee has unilaterally, without legal authorization from the legislative branch, required all government employees, healthcare workers, school employees and volunteers and many large employers to vaccinate against CoVid-19 [sic].”²

The proposed ordinance, if passed, would be invalid and unenforceable to the extent it contradicts the Governor’s emergency proclamations or other state law. While I understand that a hearing is being held pursuant to Clark County’s Home Rule Charter based on the mini-initiative petition’s receipt of a small percentage of voters’ signatures, the Council must decline to enact an ineffectual ordinance that discourages compliance with statewide public health measures.

Over the past two years, COVID-19 has claimed over 10,000 Washingtonians’ lives. As you are aware, during the course of the pandemic, Governor Inslee has enacted various statewide emergency measures in response to changing conditions and the best available science and data. One such measure, Proclamation 21-14, prohibits health care, education, and state workers from engaging in work after October 18, 2021, without being fully vaccinated against COVID-19—subject to religious and medical exemptions consistent with applicable law. Proclamation 21-14 is an exercise of the Governor’s emergency powers pursuant to RCW 43.06.220, has the force

¹ Clark County Council, Notice of Public Hearing, https://clark.wa.gov/sites/default/files/media/document/2022-01/020122%20Mini%20Initiative_ProhibitingMandates.pdf.

² Clark County Group, Ordinance Text, <https://www.clarkcountygroupp.com/>. The proposed ordinance also contains various erroneous statements about the COVID-19 vaccines and constitutional and statutory law.

and effect of law, and subjects covered employers and workers to criminal penalties for violating the law.

Washington state and federal courts have consistently upheld Proclamation 21-14 and other COVID-19 emergency measures as constitutional and lawful exercises of the Governor's statutory authority. *See, e.g., Cleary v. Inslee*, No. 21-2-01674-34 (Thurston Cty. Super. Ct.); *Johnson v. Inslee*, No. 21-2-01827-34 (Thurston Cty. Super. Ct.); *Fish & Wildlife Officers' Guild v. State*, No. 21-2-07684-1 (Pierce Cty. Super. Ct.); *Pilz v. Inslee*, No. 3:21-cv-05735-BJR (W.D. Wash.); *Wise v. Inslee* (E.D. Wash.); *Larson v. Inslee*, No. 2:21-cv-01596-BJR (W.D. Wash.); *see also Bacon v. Woodward*, No. 2:21-cv-0296-TOR (E.D. Wash.). In the wake of legal challenges based on a variety of meritless claims, the Governor's proclamations remain in full force and effect statewide.

As such, to the extent the proposed ordinance purports to override Proclamation 21-14 or other lawful statewide COVID-19 measures, it would be contrary to state law and unenforceable if enacted. Couching the ordinance as a land-use regulation does nothing to change this conclusion. And, by purporting to subject violators to fines and denial or revocation of permits, the proposed ordinance would discourage Clark County residents and business owners, to their detriment, from complying with state law.

During this pandemic, the health of the public is paramount. Governor Inslee has consistently and vigorously opposed efforts to undermine emergency public health measures and will continue to do so. The Council must decline to pass any ordinance that contradicts state law or undermines public health.

Sincerely,



Kathryn Leathers
General Counsel
Office of Governor Jay Inslee

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