



STATE OF ARIZONA

OFFICE OF THE ATTORNEY GENERAL

<p>INVESTIGATIVE REPORT</p> <p>By</p> <p>MARK BRNOVICH ATTORNEY GENERAL</p> <p>January 17, 2018</p>	<p>No. 17-005</p> <p>Re: Town of Patagonia's Heavy Duty Truck Use Restriction Ordinance</p>
---------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------

To: The Honorable Doug Ducey, Governor of Arizona
The Honorable Steve Yarbrough, President of the Arizona Senate
The Honorable J.D. Mesnard, Speaker of the Arizona House of Representatives
The Honorable Vince Leach, Requesting Member of the Arizona Legislature
The Honorable Michele Reagan, Secretary of State of Arizona

I. Summary

Pursuant to Arizona Revised Statutes ("A.R.S.") § 41-194.01, the Attorney General's Office ("Office") has investigated Town of Patagonia ("Town") Ordinance 17-01 ("Ordinance"), which presently places certain limits, including trip-limits and time-limits, on the use of Town streets by heavy duty trucks. Based on a review of relevant authorities and materials during the limited 30-day period in § 41-194.01(B), the Attorney General has determined that the Ordinance **does not violate** state law.

II. Background

A. The Office's Investigation

On December 18, 2017, the Office received a request for legal review of the Ordinance pursuant to A.R.S. § 41-194.01 from Representative Vince Leach ("Request"). The Office asked the Town to provide a voluntary response. The Town cooperated with the Office's review, including by providing a voluntary written response. In performing the required investigation during the limited 30-day period, the Office reviewed relevant materials and authorities.

The Office's legal conclusions are set forth below. The facts recited in this report serve as a basis for these conclusions, but they are not administrative findings of fact and are not made for purposes other than those set forth in A.R.S. § 41-194.01.

B. Relevant State Laws

The Request, which asked whether the Town "violate[d] Arizona law by adopting an ordinance restricting the total number of trips made by heavy duty trucks," identifies the Ordinance as potentially conflicting with A.R.S. §§ 28-1103(F) and -1106. Those provisions fall within Title 28, Chapter 3 of the Arizona Revised Statutes, which regulates traffic and vehicles. Among other things, Chapter 3 imposes restrictions upon, and grants power to, local authorities.¹ Section 28-1106 grants local authorities the power to "prohibit by ordinance or resolution the operation of trucks or other commercial vehicles" or to "impose limitations as to the weight of vehicles on designated highways." A.R.S. § 28-1106(C). A.R.S. § 28-1103(F) provides in relevant part that if a local authority issues permits pursuant to A.R.S. § 28-1103 to vehicles that do not conform to the requirements in Chapter 3:

the local authority shall adopt and enforce ordinances that are substantially identical to rules adopted by the [Department of

¹ "Local authority' means any county, municipal or other local board or body exercising jurisdiction over highways under the constitution and laws of this state." A.R.S. § 28-101(33).

Transportation] that relate to overdimensional or overweight commercial vehicles, and the local authority may adopt ordinances relating to infrastructure restrictions, route restrictions and time-of-day restrictions.

A.R.S. § 28-1103(F).

In addition to the restrictions and grants of power in A.R.S. §§ 28-1103(F) and -1106, Title 9 provides a general grant of authority to the Town. In particular, A.R.S. § 9-240 allows the common council of incorporated towns to “exercise exclusive control over the streets, alleys, avenues and sidewalks of the town” and take action in furtherance of that authority. *See* A.R.S. § 9-240(B)(3).

C. The Ordinance

The Ordinance amends two pertinent sections of the Patagonia Town Code. First, the Ordinance places restrictions on heavy duty trucks, which are defined as “truck[s] with more than two non-steering axles.” Patagonia Town Code Chapter 11, Article 4, Section 2(C). Specifically, the Ordinance limits the number of trips and time of trips that heavy duty trucks may take on Town streets:

No person, firm or entity shall drive or cause to be driven upon any Town street a heavy duty truck or trucks for more than a cumulative total of one hundred trips per week, and of those no more than twenty trips per week may occur between the hours of 10:00 p.m. and 6:00 a.m.

Patagonia Town Code Chapter 11, Article 4, Section 3(A). Second, the Ordinance allows for the Town to issue permits if a truck exceeds size, weight, or load limits, or if the truck exceeds the maximum trip restrictions set forth in the Ordinance.

III. Analysis

The Ordinance does not conflict with A.R.S. § 28-1103(F) or A.R.S. § 28-1106. Pursuant to A.R.S. § 9-240(B)(3) the Town has broad authority to regulate and control the streets

in the Town. This includes the ability to “exercise exclusive control over the streets,” “[t]o prevent and punish for the encumbering thereof,” and to “regulate, grade, clean or otherwise improve the same.” A.R.S. § 9-240(B)(3)(a)-(c). The Ordinance falls within the scope of the general authority granted to the Town. Therefore, the Ordinance is valid unless there is a more specific statute which conflicts with the Ordinance. *See State v. Maricopa Cty. Community College Dist. Bd.*, 242 Ariz. 325, 332 (App. 2017) (“Basic principles of statutory interpretation instruct that ‘specific statutes control over general statutes,’ and, ‘when a general and a specific statute conflict, we treat the specific statute as an exception to the general.’”).

Neither A.R.S. § 28-1103(F) nor A.R.S. § 28-1106 are in conflict with the Ordinance. First, the Ordinance’s heavy duty truck restrictions and the related permit issuance provisions do not violate A.R.S. § 28-1103(F). In accordance with A.R.S. § 28-1103(F), in issuing its own truck use permits, the Town of Patagonia: (1) “*shall* adopt and enforce ordinances that are substantially identical to rules adopted by the department that relate to overdimensional or overweight commercial vehicles” and (2) “*may* adopt ordinances relating to infrastructure restrictions, route restrictions and time-of-day restrictions.” The portion of the Town’s Ordinance that relates to overweight commercial vehicles appears to be substantially identical to those adopted by the Department of Transportation—for instance, the Town imposes the same weight restrictions on single axles, tandem axles, and maximum vehicle weight as the Department. *Compare* Patagonia Town Code Chapter 11, Article 4, Section 1, *with* Ariz. Admin. Code § 17-6-102 Table 1. The only aspect of the Ordinance identified as not being “substantially identical” to the Department’s rules is the trip restrictions on heavy duty trucks. But in setting limits on heavy duty trucks related to the number of trips and the times of those trips, the Town is in compliance with A.R.S. § 28-1103(F), which specifically vests the Town

with discretion to “adopt ordinances relating to infrastructure restrictions, route restrictions and time-of-day restrictions.”

Second, neither relevant section of the Ordinance violates A.R.S. § 28-1106. Section 28-1106(C) permits a local authority to “prohibit . . . the operation of trucks or other commercial vehicles” or “impose limitations as to the weight of vehicles on designated highways.” This grant of power does not bar exercise of other power or diminish the grant of power set out in A.R.S. § 9-240(B)(3).² As such, there is no conflict between the Ordinance and Section 28-1106(C).

IV. Conclusion

The Office concludes under A.R.S. § 41-194.01(B) that the Town’s Ordinance **does not violate** state law. Pursuant to A.R.S. § 41-194.01(B)(3), “the attorney general shall take no further action.”



Oramel H. (O.H.) Skinner
Chief of Government Accountability
& Special Litigation Unit

² Another possible grant of authority lies in A.R.S. § 28-1103(F), which allows the Town to adopt ordinances limiting the number of trips and the times that those trips may be taken by heavy duty trucks.