



STATE OF ARIZONA

OFFICE OF THE ATTORNEY GENERAL

INVESTIGATIVE REPORT	No. 22-001
By MARK BRNOVICH ATTORNEY GENERAL	Re: Whether the Town of Paradise Valley Ordinance Regulating Short-Term Rentals Violates State Law
March 30, 2022	

To: The Honorable Doug Ducey, Governor of Arizona  
The Honorable Karen Fann, President of the Arizona State Senate  
The Honorable Rusty Bowers, Speaker of the Arizona House of Representatives  
The Honorable Warren Petersen, Requesting Member of the Arizona Senate  
The Honorable Katie Hobbs, 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 whether Ordinance 2022-03 (the “Ordinance”) adopted by the Town of Paradise Valley (“PV”) violates A.R.S. § 9-500.39, A.R.S. § 9-841, or A.R.S. § 12-1131 et seq. Our Office has determined that most of the regulations contained in the Ordinance are within the City’s statutory authority but that a few of them are contrary to state law.

Arizona law limits how cities and towns may regulate short-term and vacation rentals (referred to herein as an “STR” or “STRs”). *See* A.R.S. § 9-500.39(A). A city or town cannot ban STRs and are prohibited from restricting the use of or regulating STRs based on their classification. *See* A.R.S. § 9-500.39. The Legislature, however, did provide four specific types of regulations

that cities and towns can enact regarding STRs. *See* A.R.S. § 9-500.39(B)(1-4). Under those exceptions, cities and towns may regulate STRs for the purpose of (1) protecting public health and safety, (2) adopting and enforcing residential use and zoning ordinances, (3) limiting or prohibiting the use of STRs for particular purposes (e.g., housing sex offenders or conducting adult-oriented businesses), and (4) requiring the owner of an STR to provide the local government with contact information for the owner or the owner’s designee who is responsible for responding to complaints. *See id.*

The statute makes clear that “[a] vacation rental or short-term rental may not be used for nonresidential purposes[.]” *See* A.R.S. § 9-500.39(F). And finally, the law provides that “[u]nless authorized by federal, state or local law, a city or town may not apply a regulation to a qualified marketplace platform if the purpose of that regulation is to regulate a business that provides goods or services directly to the customer.” A.R.S. § 9-841(B).

On January 27, 2022, PV adopted the Ordinance regulating STRs. *See* PV Town Council January 27, 2022 Meeting Action Summary at 5, available at <https://paradisevalleyaz.legistar.com/View.ashx?M=E1&ID=909548&GUID=61D9A817-E0AF-4E1C-8DD6-C74BBAE78CF2>. More specifically, the Ordinance provides that STRs cannot be used for non-residential purposes, including use as an Event Center. PV Town Code (“Code”) § 10-14-4(I). The Ordinance defines an Event Center as “any dwelling unit (i) for which the occupant has made payment for transient use of the dwelling unit and (ii) is used for social gatherings or Special Events more than two (2) times within a period of twelve (12) consecutive months.” Code § 10-14-2.

The Ordinance also provides that STRs must be registered and sets forth the information required to be provided to PV when doing so. Code § 10-14-3(A)-(B). The Ordinance requires

that certain information be provided to PV within certain time periods of booking. Code § 10-14-3(C). The Ordinance sets forth penalties for “[a]ny person, entit[ies], or Online Lodging Marketplace who offers for rent or accepts a fee for booking an STR” without first registering with PV. Code § 10-14-3(D).

The Ordinance further requires that an owners of an STR must obtain liability insurance from a private insurance carrier or an Online Lodging Marketplace. Code § 10-14-5(B)(1)(a). Owners of STRs must also obtain at least one landline telephone or modern equivalent for every floor of an STR. Code § 10-14-5(B)(6).

Finally, the Ordinance sets forth civil and criminal penalties for violating the regulations pertaining to STRs. *See* Code § 10-14-6.

Based on a review of relevant authorities and materials during the limited 30-day period proscribed by A.R.S. § 41-194.01(B), the Office has determined that much of the Ordinance does not violate state law. A few select provisions, however, do violate state law. More specifically, the Office has determined that Code § 10-14-4(I) and § 10-14-2 generally do not violate A.R.S. § 9-500.39(B); it is permissible for PV to prohibit STRs from housing sex offenders, operating or maintaining a sober living home, selling illegal drugs, liquor control or pornography, obscenity, nude or topless dancing, and other adult-oriented business, as well as regulating nonresidential uses. The Ordinance, however, violates state law as to its regulation of “social gathering[s],” which the Ordinance does not define, to the extent such gatherings are residential in nature.

The Office has further determined it is permissible for PV to require the owner of an STR to provide the town with contact information for an individual who is responsible for timely responding to complaints. *See* Code § 10-14-3(A). Similarly, PV may require evidence of registration with the Maricopa County Assessor’s Office and evidence of a valid transaction

privilege tax license. *See* Code §§ 10-14-3(B)(2) and 10-14-3(B)(3). However, the remaining registration requirement contained in Code § 10-14-3(B)(1) and the booking information disclosure requirements contained in Code § 10-14-3(C) are not permitted and do violate state law.

The Office has determined that PV’s liability insurance and landline requirements are permissible; however, PV may not require the owner of an STR to meet in person with guests prior to the beginning of any occupancy and verbally explain and describe all rules and regulations applicable to the use of the property as an STR. *See* Code §§ 10-14-5(B)(1) and 10-14-5(A)(2). Finally, the Office has determined that most of the penalty provisions of the Ordinance are permissible; however, the Ordinance violates Arizona law to the extent it allows a fine to be imposed against an “Online Lodging Marketplace.” *See* Code § 10-14-3(D). Beyond these specific provisions, the Office has determined that the Ordinance, on its face, does not otherwise violate the identified provisions of state law discussed herein.

## **II. The Office’s Investigation**

On February 28, 2022, the Office received a request from Senator Warren Petersen, pursuant to A.R.S. § 41-194.01, for legal review of PV’s Ordinance.<sup>1</sup> The Office asked PV for a voluntary response to Senator Petersen’s request to investigate. PV fully cooperated by providing a voluntary response letter and supporting materials on March 18, 2022 (“PV’s Response”). In performing the required investigation during the limited 30-day period, the Office reviewed relevant materials and authorities.

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<sup>1</sup> In 2006, Arizona voters passed Proposition 207 (codified at A.R.S. § 12-1131 *et. seq.*) which generally requires state and local governments to reimburse private property owners for decreased property values that result from regulations, unless an exception applies. *See* A.R.S. § 12-1134. However, after review of the Ordinance, and for purposes of this investigation, there does not appear to be a conflict with A.R.S. § 12-1131 *et. seq.* and thus this report does not address these statutes.

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

### **III. Background**

#### **A. Relevant State Law**

In 2016, the Legislature enacted S.B. 1350, which expressly permitted STRs statewide, and limited the areas where a city or town can regulate STRs. *See* 2016 Ariz. Sess. Laws ch. 208, § 1 (2d Reg. Sess.).<sup>2</sup> In 2019, the Legislature passed H.B. 2672 which allowed a city or town to require an owner of an STR to provide contact information for an individual responsible for responding to complaints and required a city or town to make a reasonable attempt to notify the owner of an STR of a citation. *See* 2019 Ariz. Sess. Laws ch. 240, § 1 (1st Reg. Sess.).

Specifically, A.R.S. § 9-500.39(A) provides that “[a] city or town may not prohibit vacation rentals or short-term rentals.” The next section, A.R.S. § 9-500.39(B), further prohibits a city or town from restricting the use of or regulating STRs based on their classification, but lists four exceptions where a city or town may impose regulations on STRs. Subsection B now reads in full:

B. A city or town may not restrict the use of or regulate vacation rentals or short-term rentals based on their classification, use or occupancy except as provided in this section. A city or town may regulate vacation rentals or short-term rentals for the following purposes:

1. Protecting the public’s health and safety, including rules and regulations related to fire and building codes, health and sanitation, transportation or traffic control, solid or hazardous waste and pollution control, and designation of an emergency point of contact, if the city or town demonstrates that the rule or

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<sup>2</sup> The relevant statutes when S.B. 1350 was originally enacted have since been renumbered. This report references the current versions of these statutes.

regulation is for the primary purpose of protecting the public's health and safety.

2. Adopting and enforcing residential use and zoning ordinances, including ordinances related to noise, protection of welfare, property maintenance and other nuisance issues, if the ordinance is applied in the same manner as other property classified under §§ 42-12003 and 42-12004.

3. Limiting or prohibiting the use of a vacation rental or short-term rental for the purposes of housing sex offenders, operating or maintaining a sober living home, selling illegal drugs, liquor control or pornography, obscenity, nude or topless dancing and other adult-oriented businesses.

4. Requiring the owner of a vacation rental or short-term rental to provide the city or town with contact information for the owner or the owner's designee who is responsible for responding to complaints in a timely manner in person, over the phone or by email at any time of day before offering for rent or renting the vacation rental or short-term rental.

A.R.S. § 9-500.39(B). A provision added in 2019 also makes clear that “[a] vacation rental or short-term rental may not be used for nonresidential uses, including for a special event that would otherwise require a permit or license pursuant to a city or town ordinance or state law or rule or for a retail, restaurant, banquet space or other similar use.” A.R.S. § 9-500.39(F).

The Legislature also enacted A.R.S. § 9-841, providing that “a city or town may not take any action that materially increases the regulatory burdens on a business unless there is a threat to the health, safety and welfare of the public that has not been addressed by legislation or industry regulation within the proposed regulated field.” A.R.S. § 9-841(A). That statute also prohibits a city or town from “apply[ing] a regulation to a qualified marketplace platform if the purpose of that regulation is to regulate a business that provides goods or services directly to the customer.” A.R.S. § 9-841(B).

Finally, in 2006, Arizona voters passed Proposition 207 (codified at A.R.S. § 12-1131 *et seq.*) which generally requires state and local governments to reimburse private property owners

for a reduction in existing rights to use, divide, sell or possess private real property caused by land use laws. *See* A.R.S. § 12-1134(A). The requirements do not apply to land use laws that are “for the protection of the public’s health and safety” or “[d]o not directly regulate an owner’s land.” *See* A.R.S. § 12-1134(B)(1), (6). A “land use law” is defined as “any statute, rule, ordinance, resolution or law enacted by this state or a political subdivision of this state that regulates the use or division of land or any interest in land[.]” A.R.S. § 12-1136(3).

**B. The Ordinance**

PV adopted the Ordinance on January 27, 2022. While not at issue, the Ordinance amended several portions of PV’s Town Code defining nuisance and unruly gathering complaints, violations, and penalties. *See* PV Town Code Chapter 8 § 8-8-1 *et seq.* (“Nuisance Regulation”); Chapter 10 § 10-13-1 *et seq.* (“Unruly Gathering Regulation”).

The Ordinance also amended requirements under Chapter 10, article 14, titled Short-Term Rentals Responsible Party Requirements and Other Violations. PV’s stated purpose for these amendments is

to protect the peace, health, safety, and welfare of the Town’s residents and visitors by enacting reasonable regulations that mitigate the harmful abuses common to the short-term rental of residential property within the Town while preserving property owners’ rights to rent their property in a manner that does not disturb the peace or harm public health, public safety, or general public welfare. Such harmful abuses deplete law enforcement and public safety resources and can leave other areas of the Town with compromised levels of police protection so as to create a significant threat to the safety of both citizens and police officers alike.

*See* Code § 10-14-1.

Those portions of the Ordinance at issue here can be grouped into the following four categories: (1) regulations regarding how STRs are used (e.g., Code § 10-14-4), (2) regulations regarding operating requirements for STRs (e.g., Code § 10-14-5(B)), (3) regulations regarding

information disclosure to PV (e.g., Code § 10-14-3), and (4) regulations imposing penalties for violating other provisions (e.g., Code § 10-14-3(D), § 10-14-6).

As to the first category—regulations regarding how STRs are used—the Ordinance, in relevant part, provides as follows:

Except when permitted by a Special Event permit under Article 8-8, no Short-Term Rental or Vacation Rental may be used for any Nonresidential Uses, including but not limited to, an event that requires a permit or license pursuant to a Town ordinance or State law or rule; a retail, restaurant, Banquet Space, Event Center, or other similar use, such as weddings and pop-up bars; or any use prohibited in a residentially-zoned district pursuant to the Zoning Ordinance.

Code § 10-14-4(I). The Ordinance defines the term “Event Center” as “any dwelling unit (i) for which the occupant has made payment for transient use of the dwelling unit and (ii) is used for social gatherings or Special Events more than two (2) times within a period of twelve (12) consecutive months.” Code § 10-14-2. The term “social gathering” is not defined in the Ordinance. The Ordinance defines “Special Event” as “a wide variety of events or short-term activities . . . that may impact neighboring properties, and that involve any one of” a list of characteristics. Code §§ 10-14-2, 8-8-2 (listing characteristics). The term “Special Event” includes, but is not limited to, “parades or processions, block parties, film production events, charitable fundraising events, designer and/or showcase home events, home and garden tours, weddings, banquets, pop-up bars, valet parking via public rights-of-way, and fireworks displays.” Code § 8-8-2. “Special Events,” however, do not include a “Minor Event,” defined as “an event on private property: (i) that has a minimal impact on neighboring properties; (ii) that lasts for less than twenty-four (24) consecutive hours; (iii) that does not meet the Special Event criteria; and (iv) during which the Owner or non-transient occupant is on site for the entire duration of the event.” *Id.*



The second category of regulations is comprised of requirements for information disclosure about STRs to PV. As relevant here, the Ordinance requires that the owner of an STR register the STR with PV before offering the STR for rent and must update the registration if the information contained therein changes. *See* Code § 10-14-3(A). The registration must include, among other information, the name and contact information of the owner, the STRs' physical address, the name, address, and contact information for an individual responsible for responding to complaints, and the phone number for the STRs' landline telephone. *See id.* Upon registering an STR, the owner must also “[c]onsent to and authorize any Online Lodging Marketplace on which the Short-Term Rental is listed to provide to the Town the Owner’s listing (including the address of the listing), rental activity, and contact information.” Code § 10-14-3(B)(1).

The Ordinance also requires the owner of an STR to provide, within 24 hours, information about every booking at the STR. Code § 10-14-3(C). Specifically, the owner must provide PV with (1) a copy of the advertisement or listing and the name of the Online Lodging Marketplace through which the booking occurred; (2) the dates booked and the number of people in the booking party; (3) evidence of compliance with the STR registration requirements; and (4) evidence that the booking guest has acknowledged receipt of a statement of rules and regulations prepared by PV. *See id.*

The third category of regulations—those imposing operating requirements for STRs—require owners of STRs to respond to complaints, meet in-person with guests prior to commencement of the occupancy, keep trash and refuse out of public view, and display a notice. *See* Code § 10-14-5(A)(1)-(4). The Ordinance provides that the owner of an STR “shall meet in person with their Short-Term Rental guests prior to the commencement of the occupancy or during check-in and verbally explain and describe all rules and regulations[.]” Code § 10-4-5(A)(2).

The third category also includes certain health, safety, and sanitation requirements. Of particular relevance here, the Ordinance requires that owners of STRs obtain liability insurance of at least \$1 million in the aggregate, but allows owners to have such coverage provided for “through the Online Lodging Marketplace through which the property is booked.” Code § 10-14-5(B)(1)(a). The Ordinance defines an “Online Lodging Marketplace” as “a person that provides a digital platform for compensation through which an unaffiliated third party offers to rent lodging accommodations in this state to an occupant.” *See* Code § 10-14-2 (referencing A.R.S. § 42-5076(E)(1)). The Ordinance further requires that “[a]t least one (1) landline telephone or modern equivalent with the ability to call 911 and receive inbound calls shall be available on every floor of the Short-Term Rental.” *See* Code § 10-14-5(B)(6).

Last, the fourth category of regulations is comprised of two sections setting forth penalties for violating the Ordinance’s requirements. One section states that “[a]ny person, entity, or Online Lodging Marketplace who offers for rent or accepts a fee for booking” an STR without first registering the STR pursuant to Code § 10-14-3(A) shall be fined \$150.00 per violation per day. Code § 10-14-3(D). The other section sets penalties for violating any provision of the Ordinance—\$500 for the first offense, \$1,000 for a second offense within twelve months of the first offense, and \$1,500 for a third and any subsequent offense within twelve months of the first offense. *See* Code § 10-14-6(B). That section also provides that “[a]ny Vacation Rental Owner, agent, or renter who causes, permits, facilitates, aides, or abets any violation of any provision of this Article or fails to perform any act or duty required by this Article is guilty of a Class 1 misdemeanor.” Code § 10-14-6(D).

#### IV. Legal Analysis

The legal issue the Office must resolve here is whether PV's Ordinance violates the identified provisions of state law for purposes of A.R.S. § 41-194.01. The legal analysis herein is therefore necessarily limited to that question and is not intended to apply more broadly.

When interpreting a statute, courts follow the rules of statutory construction and first look to the statutory language. *State v. Williams*, 175 Ariz. 98, 100 (1993); *Patterson v. Mahoney*, 219 Ariz. 453, 456, ¶9 (App.2008). “When construing a statute, [the courts’] goal ‘is to fulfill the intent of the legislature that wrote it.’” *City of Sierra Vista v. Dir., Ariz. Dep’t of Env’t. Quality*, 195 Ariz. 377, 380 ¶10 (App. 1999). If the statutory language is clear and unequivocal, it is determinative. *Patterson*, 219 Ariz. at 456, ¶9; *see also* A.R.S. § 1-213. If a statute is ambiguous, on the other hand, courts look to rules of statutory construction and “consider the statute’s context; its language, subject matter, and historical background; its effects and consequences; and its spirit and purpose.” *Callan v. Bernini*, 213 Ariz. 257, 260 ¶13 (App. 2006).

The plain language of A.R.S. § 9-500.39 establishes the framework in which municipalities may permissibly regulate STRs. First, a city or town may not prohibit STRs. *See* A.R.S. § 9-500.39(A). Second, a city or town may not restrict the use of or regulate STRs based on their classification, use or occupancy unless such restriction or regulation falls within one of four statutory exceptions. *See* A.R.S. § 9-500.39(B). Finally, under A.R.S. § 9-841(B), a city or town may not apply a regulation to a qualified marketplace platform if the purpose of that regulation is to regulate a business that provides goods or services directly to consumers.

One of the statutory exceptions—A.R.S. § 9-500.39(B)(1)—allows restriction or regulation of STRs to “protect[] the public’s health and safety.” A city or town body bears the burden of establishing by a preponderance of the evidence that a regulation’s primary purpose is for protecting the public’s health, safety, and welfare. *See Sedona Grand, LLC v. City of Sedona*,

229 Ariz. 37, 41-42, ¶¶20-22 (App. 2012). Moreover, a mere declaration by a city or town that the purpose of an ordinance regulating STRs was for the protection of the public’s health, safety, and welfare is insufficient. *See id.* On the other hand, Arizona courts will typically “accord municipalities considerable deference and upset their legislative decisions only if they are shown to be arbitrary and without factual justification.” *Home Builders Assoc. of Central Arizona v. City of Scottsdale*, 187 Ariz. 479, 482-83 (1997).

Here, PV has not purported to prohibit STRs, and thus the statutory restriction in § 9-500.39(A) is not at issue. The Ordinance does, however, restrict the use of or regulate STRs based on their classification, use, or occupancy. *See* PV’s Response at 3. Moreover, certain portions of the Ordinance, particularly one provisions setting allowing a fine for violation of the Ordinance’s registration requirements, apply to qualified marketplace platforms. Thus, the Ordinance violates state law unless an exception contained in § 9-500.39(B) or A.R.S. § 9-841, respectively, applies. The following analysis concludes that certain provisions of the Ordinance violate A.R.S. § 9-500.39(B) or A.R.S. § 9-841(B). For the most part, however, the Ordinance does not violate state law.

**A. The First Category of Regulations—Use Restrictions**

The Ordinance’s restrictions of the use of STRs violate state law in part. The Ordinance provides that that an STR “may not be rented, advertised, or used for . . . housing sex offenders, operating or maintaining a sober living home, selling illegal drugs, liquor control or pornography, obscenity, nude or topless dancing, and other adult-oriented business[.]” Code § 10-4-4(F). The Ordinance then requires that “[w]ithin twenty-four (24) hours of every booking, the Owner shall perform a background check on every guest to ensure that there are no sex offenders at the Short-Term Rental.” *Id.* Neither the term “guests” nor “sex offender” is defined. *See id.*

The Ordinance also provides that STRs may not be used for any “Nonresidential Uses” without a permit. *See* Code § 10-14-4(I). The Ordinance defines “Nonresidential Uses” and lists a number of examples of such uses. *See id.*; Code 10-14-2. Among the examples listed is use of an STR as an “Event Center.” Code § 10-14-4(I). But Event Center is broadly defined to include any dwelling unit used by a transient occupant more than two times a year for “social gatherings.” *See* Code § 10-14-2. The Ordinance does not define the term “social gatherings.” *See id.*

The Office concludes that most of the Ordinance’s use restrictions do not violate state law. Specifically, A.R.S. § 9-500.39(B)(3) provides that a city or town may limit or prohibit “the use of a vacation rental or short-term rental for the purposes of housing sex offenders, operating or maintaining a sober living home, selling illegal drugs, liquor control or pornography, obscenity, nude or topless dancing and other adult-oriented businesses.” Moreover, A.R.S. § 9-500.39(F) provides that “[a] vacation rental or short-term rental may not be used for nonresidential uses, including for a special event that would otherwise require a permit or license pursuant to a city or town ordinance or a state law or rule or for a retail, restaurant, banquet space or other similar use.”

Those use restrictions in the Ordinance that do not fall within the scope of § 9-500.39(F) are required to fall within one of the exceptions in A.R.S. §§ 9-500.39(B)(1), (B)(2), or (B)(3). The Office concludes that, other than one portion of the use restrictions discussed below, PV has satisfied its burden to show that the use restrictions are for the purpose of limiting or prohibiting the use of STRs for particular purposes (A.R.S. § 9-500.39(B)(3)), adopting and enforcing residential use and zoning ordinances (A.R.S. § 9-500.39(B)(2)), or protecting the public’s health and safety (A.R.S. § 9-500.39(B)(1)). The Office further concludes that the use restrictions in the

Ordinance, other than one portion of the use restrictions discussed below, do not violate A.R.S. § 12-1134(A).<sup>3</sup>

The Office concludes that the Ordinance’s use restrictions violate state law to the extent they prohibit transient occupants of STRs from using an STR for “social gatherings” more than twice per year. Such a restriction does not fall within A.R.S. §§ 9-500(B)(2) or (B)(3), and the City has not satisfied its burden to show that the primary purpose of restricting undefined “social gatherings” from occurring more than twice per year is to protect public health and safety. **Thus, the Office concludes that only Code § 10-14-4(I), in conjunction with the inclusion of undefined term “social gatherings” in the definition of “Event Center” in Code § 10-14-2, violates the identified provisions of state law.**

**B. The Second Category of Regulations—Information Disclosure Requirements**

The Ordinance’s information disclosure regulations violate state law in part. Those regulations require an owner of STR to register with PV before offering an STR for rent. *See* Code § 10-14-3(A). When registering an STR, an owner must consent to any Online Lodging Marketplace providing certain information to PV and provide evidence of registration with the Maricopa County Assessor and of having obtain a valid transaction privilege tax license. *See* Code § 10-14-3(B). Finally, the owner of an STR must provide detailed booking information to PV within 24 hours of every booking. *See* Code § 10-14-3(C).

The Legislature contemplated that a city or town would be permitted to require the owner of an STR to disclose certain information about the STR. The exception in A.R.S. § 9-500.39(B)(4) provides that a city or town may regulate STRs for the purpose of “[r]equiring the

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<sup>3</sup> Because the compensation requirement in A.R.S. § 12-1134(A) only applies to laws that “directly regulate an owner’s land,” the use restrictions in Code § 10-14-4 are the only portions of the Ordinance potentially subject to A.R.S. § 12-1134(A). *See* A.R.S. § 12-1134(B)(6).

owner of a vacation rental or short-term rental to provide the city or town with contact information for the owner or the owner’s designee who is responsible for responding to complaints in a timely manner in person.” The Legislature did not otherwise allow a city or town to require information disclosure despite clearly knowing how to do so. *Cf. In re Estate of Winn*, 225 Ariz. 275, 278 ¶13 (App. 2010) (pointing to statutory language as demonstrating that the Legislature knows how to do something when it chooses to do so).

PV argues, however, that it is permitted to enact additional information disclosure requirements pursuant to the other exceptions contained in A.R.S. § 9-500(B). The Office disagrees. Again, if the Legislature had intended to allow additional information disclosure requirements, it would have said as much in A.R.S. § 9-500.39(B)(4). It did not do so.<sup>4</sup> Moreover, allowing a city or town to enact expanded information disclosure requirements through another exception would render A.R.S. § 9-500.39(B)(4) superfluous. *See Fann v. State*, 251 Ariz. 425, 434 ¶25 (2021) (“We also avoid interpreting a statute in a way that renders portions superfluous.”). For example, there would have been no reason for the Legislature to create the exception in § 9-500.39(B)(4) in 2019 if a city or town could previously enact the same requirement through § 9-500.39(B)(1) for the purported protection of public health or safety. Moreover, the statute’s specific provision regarding allowable information disclosure requirements governs over the more general exceptions contained in § 9-500.39(B). *Lavidas v. Smith*, 195 Ariz. 250, 253 ¶13 (App. 1999) (“Generally, a more recent, specific statute governs over [an] older, more general statute.”)

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<sup>4</sup> It is particularly telling that the information disclosure requirement exception was added in 2019, three years after the original legislation limiting a city or town from regulating STRs was passed in 2016. *See* 2019 Ariz. Sess. Laws ch. 240, § 1 (1st Reg. Sess.). This is strong evidence that the original legislation as passed in 2016 did not allow a city or town to create information disclosure regulations. It is also strong evidence that the Legislature was purposeful in carving out an additional exception in A.R.S. § 9-500.39 allowing a city or town to require an owner of an STR to provide contact information, but not permitting any additional requirements.

(alteration in original)). Thus, to comply with state law, PV's information disclosure requirements must fall within the specific information disclosure exception in § 9-500.39(B)(4).

The Office concludes that the registration requirements contained in Code § 10-14-3(A) fall within the information disclosure exception in § 9-500.39(B)(4). That exception allows a city or town to require the owner of an STR to provide the city or town with a contact information for an individual who is responsible for timely responding to complaints. The registration information required by Code § 10-14-3(A) is consistent with that exception. Similarly, the registration requirement in Code § 10-14-3(B)(2)—requiring evidence of registration with the Maricopa County Assessor's Office—is permitted under A.R.S. § 9-500.39(E) and does not appear to be a requirement based on the classification, use or occupancy of STRs. Similarly, the registration requirement in Code § 10-14-3(B)(3)—requiring evidence of a valid transaction privilege tax license—is not a requirement imposed based on the classification, use or occupancy of STRs.

The Office concludes that the remaining registration requirements contained in Code § 10-14-3(B)(1) and the booking information disclosure requirements contained in Code § 10-14-3(C) clearly do not fall within the information disclosure exception in § 9-500.39(B)(4). Each of those requirements goes well beyond obtaining the contact information for an individual to respond to complaints and is instead aimed at obtaining information about every booking that occurs at an STR. Had the Legislature intended that a town or city require disclosure of such detailed information, it would have said as much. The Legislature stopped well short of doing so. **Thus, the Office concludes that only Code § 10-14-3(B)(1) and Code § 10-14-3(C) violate the identified provisions of state law.**<sup>5</sup>

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<sup>5</sup> The Office also does not believe that PV has carried its burden of showing that such detailed disclosure about every booking would, if applicable, fall with the public health and safety exception in A.R.S. § 9-500.39(B)(1).



### C. The Third Category of Regulations—Operating Requirements

The Ordinance's requirements for operating STRs violate state law in part. The request from Senator Petersen identifies two specific operating requirements. First, the Ordinance requires an owner of an STR to obtain liability insurance of at least \$1 million, with the option of obtaining such insurance from an Online Lodging Marketplace (as defined in the Ordinance). *See* Code § 10-14-5(B)(1). Second, the Ordinance requires each STR to have at least one landline telephone or modern equivalent on each floor of the STR. *See* Code § 10-14-5(B)(6).

The Office has reviewed each of the operating requirements contained in the Ordinance. The Office has concluded that, with only one exception discussed below, each of those requirements, including the liability insurance and landline requirements, falls within the exceptions contained in A.R.S. §§ 9-500.39(B)(1) and (B)(2). PV's Response (at 9-11) adequately explains why the primary purpose of the liability insurance and landline requirements, as applied to PV, is to protect public health and safety.<sup>6</sup> *Cf. Packard v. Banton*, 264 U.S. 140, 143-45 (1924) (sustaining a New York liability insurance requirement for hired motor vehicles as a reasonable exercise of local police powers to promote public safety).

The Office concludes, however, that Code § 10-14-5(A)(2) does not fall within any of the four exceptions contained in A.R.S. § 9-500.39(B). That provision requires the owner of an STR to meet in person at the STR with guests prior to the beginning of any occupancy and verbally explain and describe all rules and regulations applicable to the use of the property as an STR. The only potentially applicable exception in § 9-500.39 is the exception for the protection of public health and safety in § 9-500.39(B)(1). The Office concludes, however, that PV has not adequately established that requiring the owner of an STR to meet in person with guests prior to every booking

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<sup>6</sup> For the same reason, the liability insurance and landline operating requirements do not violate A.R.S. § 9-841(A).

to provide verbal notification (as opposed to providing written or electronic notification) of all rules and regulations has the primary purpose of protecting public health and safety. **Thus, the Office concludes that only Code § 10-14-5(A)(2) violates the identified provisions of state law.**<sup>7</sup>

**D. The Fourth Category—Penalties For Violation**

The Ordinance’s remedies for violation of the Ordinance violate state law in part. The Ordinance contains two penalty provisions. First, the Ordinance imposes a \$150.00 penalty per day to “[a]ny person, entity, or Online Lodging Marketplace” who offers for rent or accepts a fee for booking an STR that is not registered under Code § 10-14-3(A). *See* Code § 10-14-3(D). Second, the Ordinance sets forth a schedule of escalating penalties for other violations of the Ordinance. *See* Code § 10-14-6(B). The same provision makes violation of the Ordinance a class 1 misdemeanor offense. *See* Code § 10-14-6(D).

For the most part, the penalty provisions in the Ordinance do not violate state law. Assuming an STR regulation falls within one of the four exceptions contained in A.R.S. § 9-500.39(B), there is nothing in § 9-500.39 that prohibits a city or town from attaching penalties to violation of such a regulation.

The Legislature, however, has imposed additional restrictions when it comes to regulating a “qualified market platform.” Arizona law provides that “[u]nless authorized by federal, state or local law, a city or town may not apply a regulation to a qualified market platform if the purpose of that regulation is to regulate a business that provides goods or services directly to the consumer.” A.R.S. § 9-841(B). The law defines a “qualified marketplace platform” as “an organization . . .

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<sup>7</sup> For the same reason, Code § 10-14-5(C) violates state law to the extent it requires the owner of an STR to instruct a guest that “You must meet in person with the owner of this property during check-in.”

that operates a digital platform that facilitates the provision of goods and services to by qualified marketplace contractors to third-party individuals or entities seeking those goods or services.” A.R.S. § 9-841(C)(1). And the law defines a “qualified marketplace contractor” as any person or organization . . . that enters into an agreement with a qualified marketplace platform to use the qualified marketplace platform’s digital platform to provide goods or services to third-party individuals or entities seeking those services.” A.R.S. § 9-841(C)(2).

The Ordinance purports to subject an “Online Lodging Marketplace” to a fine for accepting a fee for a booking for an STR that is not properly registered with PV. The Ordinance states that “‘Online Lodging Marketplace’ has the same meaning given to it in A.R.S. § 42-5076, as amended.” Code § 10-14-2. The term “online lodging marketplace” is defined in A.R.S. § 42-5076, in relevant part, as “a person that provides a digital platform for compensation through which an unaffiliated third party offers to rent lodging accommodations in this state to an occupant, including a transient.” A.R.S. § 42-5076(E)(1).

The Office concludes that term “Online Lodging Marketplace” used in the Ordinance meets the definition of a “qualified marketplace platform” in A.R.S. § 9-841(C)(1). An “Online Lodging Marketplace” is a digital platform that facilitates STR transactions between those who own an STR and contract with the digital platform to provide short-term rental services to those who desire to rent an STR. *See id.*

The Office also concludes that, through Code § 10-14-3(D), PV is attempting to apply its registration regulations to qualified marketplace platforms. The only plausible reason for PV to fine a qualified marketplace platform for accepting a fee for booking an unregistered STR is to indirectly require that an STR ensures compliance with PV’s registration regulations. For the same reason, the Office concludes that the primary purpose of including an “Online Lodging

Marketplace” within the list of organizations subject to fine for failure to register “is to regulate a business that provides goods or services directly to the consumer.” A.R.S. § 9-841(B).

PV makes the circular argument that A.R.S. § 9-841(B) does not prevent it from regulating an “Online Lodging Marketplace” because § 9-841(B) allows regulations that are “authorized by federal, state or local law.” PV argues that because the Ordinance itself is a “local law” and authorizes a fine against an “Online Lodging Marketplace,” the Ordinance does not violate § 9-841(B). PV, in effect, argues that the Legislature intended that a city or town can simply exempt itself from § 9-841(B) by passing an ordinance allowing a regulation otherwise prohibited. PV’s reading would thus render the restriction in § 9-841(B) nugatory. The Office concludes that the correct reading of § 9-841(B)’s reference to “local law” does not include the law of the city or town attempting to regulate a qualified marketplace platform. In other words, the reference to “local law” does not permit a city or town to simply avoid application of § 9-841(B) by passing an ordinance that otherwise violates § 9-841(B). Instead, “local law” references other local jurisdictions with oversight of the city or town attempting to regulate a qualified marketplace platform. Because PV points to no federal, state, or local law other than the Ordinance as authorization for imposing a fine on “Online Lodging Marketplaces,” the exception in the introductory portion of § 9-841(B) does not save PV’s attempt to regulate “Online Lodging Marketplaces.” **Thus, the Office concludes that the Ordinance violates the identified provisions of state law only insofar as it subjects “Online Lodging Marketplaces” to a fine in Code § 10-14-3(D).**

## **V. Conclusion**

The Office has determined that **most of the Ordinance does not violate state law; however, the Ordinance does violate state law specific to the following provisions.** Code § 10-14-4(I) and § 10-14-2 violate A.R.S. § 9-500.39(B) to the extent they limit the use of STRs for

“social gatherings” that are residential in nature. Code § 10-14-3(B)(1) and § 10-14-3(C) violate A.R.S. § 9-500.39(B) by regulating STRs in the form of information disclosure beyond the scope of disclosure regulations permitted under A.R.S. § 9-500.39(B)(4). Code § 10-14-5(A)(2) violates A.R.S. § 9-500.39(B) by regulating STRs in the form of an operating requirement beyond the scope of allowable regulations. And Code § 10-14-3(D) violates A.R.S. § 9-841(B) to the extent it allows a fine to be imposed against an “Online Lodging Marketplace.” The Office has determined that the Ordinance, on its face, does not otherwise violate the provisions of state law discussed herein.

Because the Ordinance violates state law in part, PV must “resolve the violation” as set forth in § 41-194.01(B)(1). It must either repeal or amend the Ordinance such that it complies with A.R.S. § 9-500.39(B) and A.R.S. § 9-841(B), or the Attorney General will notify the State Treasurer, who shall withhold state shared monies pursuant to § 41-194.01(B)(1)(a). Please provide any further information to michael.catlett@azag.gov or 602-542-7751.

MARK BRNOVICH  
ATTORNEY GENERAL

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