Jennifer Bonham
Principal Assistant City Attorney
255 W. Alameda Street, Tucson, AZ 85701
Jennifer.Bonham@tucsonaz.gov

December 9, 2022

VIA EMAIL ONLY

Michael S. Catlett
Deputy Solicitor General and Chief Counsel of Special Litigation
Office of the Attorney General
Solicitor General's Office
2005 N. Central Avenue
Phoenix, AZ 85004
michael.catlett@azag.gov

Re: Response to Representative Toma's Request to Investigate

Dear Mr. Catlett:

I. Introduction

The City of Tucson is experiencing a housing crisis due to the rising cost of housing in the Tucson area over the past several years. The housing crisis impacts low-, moderate-, and high-income families alike with median rent rising 40% since 2017 and home values increasing at an even greater pace, from $176,199 in 2017 to $287,288 by the end of 2021.[1] The effect of such rapid cost increases is that over 75,000 Tucson households are paying too much of their income on housing.[2]

To address this crisis, Mayor and Council directed the City's Department of Housing and Community Development (HCD) to create an affordable housing strategy for Tucson. This resulted in the Housing Affordability Strategy for Tucson (HAST). Although the HAST is focused primarily on expanding housing affordability for low-income families, the strategies are intended to help all Tucsonans across the socio-economic spectrum. The plan is focused on ten key areas to increase affordable housing stock. One subsection (Subsection 3.2) of the extensive, multipronged strategy considers changes to the City's human relations code, which led directly to the code amendment regarding source of

[1] City of Tucson Housing and Community Development, *Housing Affordability Strategy for Tucson (HAST)*, December 21, 2021, at 17 (https://www.tucsonaz.gov/files/hcd/HAST_Plan_Document.pdf).
[2] *Id.* at 19.

income that is the topic of Representative Ben Toma's Request for Investigation (the "Complaint").

Source of income protections are an increasingly common, evidence-based approach to increase housing choice voucher (HCV), formerly known as Section 8, utilization.[3] Consequently, the number of local jurisdictions that have adopted source of income protections has been on the rise since the early 2000s.[4] The recognition of the effectiveness of the approach has reached the highest levels of government and spans party lines. Notably, in 2018, there was a bipartisan effort in Congress to amend the federal Fair Housing Act to include source of income protection. *See* S. 3612, 115th Congress, 2nd Sess. (2017–2018).

The negative stereotyping in the Complaint demonstrates why these anti-discrimination protections are needed.[5] Source of income laws reinforce protections for those who might be denied housing due to the mere fact of receiving income from an alternative source, which is then used as a pretext for a prohibited type of discrimination.[6] Regardless, the results of the code amendment are already clear: More people are finding affordable housing. Between January 1, 2022 and September 30 2022, HCD averaged 14 requests for tenancy approval (RTAs)[7] per day. Since passage of the code amendment, HCD is averaging 40 RTAs per day. Additionally, prior to the passage of the amendment, HCD would be working on at most 80 lease startups at any one time; since October 2022, HCD has been working on over 200 lease startups at any given time.

---

[3] *See* Alison Bell *et al.*, *Prohibiting Discrimination Against Renters Using Housing Vouchers Improves Results*, Ctr. on Budget & Pol'y Priorities (Dec. 20, 2018), https://www.cbpp.org/research/housing/prohibiting-discrimination-against-renters-using-housing-vouchers-improves-results.

[4] *Id.*

[5] The Shankar Vedantam article quoted in the Complaint concerns a "very specific subset of people": men in Houston who received a voucher, did not relocate after receipt of the HCV, and had a criminal history. The City does not prevent property owners from conducting criminal background checks and does not have the same crime rates as Houston. And, it bears noting that the article states that arrests went up, not convictions. Additionally, the article goes on to state that, as with any large federal program, sometimes money is used wisely and sometimes unwisely. This was seen broadly with the Paycheck Protection Program (PPP) loan forgiveness during the COVID-19 pandemic, of which Representative Toma was a recipient. Finally, the same author found no effect on crime in a later study in the same population. *See* Jillian B. Carr and Vijetha Koppa, *Housing Vouchers, Income Shocks and Crime: Evidence from a Lottery* (Aug. 1, 2019), https://www.researchgate.net/profile/Vijetha-Koppa/publication/324671147_Housing_Vouchers_Income_Shocks_and_Crime_Evidence_from_a_Lottery/links/5dbeae8c4585151435e27473/Housing-Vouchers-Income-Shocks-and-Crime-Evidence-from-a-Lottery.pdf. *See* Talis Shelbourne, "*False narratives": How a new study of Milwaukee and other cities punctures the myth of housing vouchers correlating with crime,* Milwaukee Journal Sentinel (Nov. 15, 2022), https://www.jsonline.com/story/news/2022/11/15/study-finds-black-voucher-recipients-dont-increase-crime-in-the-suburbs/69615583007/ (discussing recent research showing that fears of increased crime resulting from the presence of HCV tenants are "not well supported" by evidence).

6 *See* Rebecca Tracy Rotem, *Using Disparate Impact Analysis in Fair Housing Act Claims: Landlord Withdrawal From the Section 8 Voucher Program*, 78 Fordham L. Rev. 1971, 1981 (2010).

[7] This is a form that property owners submit to HCD after the property owner has agreed to lease to an HCV tenant.

The Complaint attempts to discredit this innovative, first-of-its-kind-in-Arizona approach to increase the supply of affordable housing. As discussed below, far from conflicting with Arizona's constitution and laws, the code amendment furthers state and federal objectives on fair and affordable housing.

II. The Amendment

On September 27, 2022, the Mayor and Council amended existing provisions of the City's fair housing code to prohibit property owners from refusing a person access to housing solely based on that person's "source of income" (the "Ordinance" or the "Amendment"). "Source of income" is defined as:

> any lawful source of income or support that provides funds to or on behalf of a renter or buyer of housing and is verifiable as to amount, regularity, receipt, and length of time received or to be received, including, but not limited to, wages, salaries, child support, spousal support, foster care subsidies, rental assistance, security deposit or downpayment assistance, income derived from social security or disability insurance, veterans' benefits, or any other form of governmental assistance, benefit, or subsidy. Source of income includes any requirement of any such program, assistance, benefit, or subsidy.

T.C § 17-51(f).

The Ordinance further states, in pertinent part, that the following are unlawful acts under the fair housing provisions of the City code:

> (a) To refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, ancestry, sex, age, disability, national origin, sexual orientation, gender identity, familial status or marital status, or source of income.
> (b) To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, religion, ancestry, sex, age, disability, national origin, sexual orientation, gender identity, familial status or marital status, or source of income.

T.C § 17-52(a)–(b).

Although Representative Toma focuses his Complaint on Tucson's HCV program and its participants, he fails to recognize that the Amendment reinforces protections for those who could experience source of income discrimination as a proxy for their protected class, such as individuals with disabilities (who receive social security disability) and foster families (who receive foster care subsidies). As a representative with his own constituency that includes protected classes, veterans (who receive veterans' benefits), and the elderly (who receive social security benefits), it is surprising that Representative Toma would not see the value of these protections.

Representative Toma states that the Ordinance "compels" landlords to rent to HCV applicants even if other prospective tenants are "better qualified lessees" (without even attempting to indicate what "better qualified lessee" means). Contrary to what the Complaint states, the Ordinance does not require property owners to rent to tenants because they have HCVs nor force them to prioritize HCV holders over other qualified applicants. The City has been clear that property owners may continue to apply non-discriminatory screening criteria for prospective tenants.[8] *See* 24 C.F.R. § 982.307(a)(3) (Property owners who rent to HCV tenants are responsible for screening and listing screening factors.). Furthermore, federal fair housing regulations that implement the HCV program allow property owners to impose the same security deposit requirements (24 C.F.R. § 982.313), charge market-rate rents (24 C.F.R. § 982.507), negotiate lease terms with a tenant (24 C.F.R. § 982.308), and terminate a tenancy for serious or repeated lease violations (24 C.F.R. § 982.310).

The purpose of the City's fair housing code is and always has been to level the playing field for all potential tenants that are fully qualified to rent. This is important, now more than ever, given the scarcity of affordable housing in our state. The aim of the Amendment is to ensure further that the screening of well-qualified tenants is free of discriminatory criteria such as prohibiting HCVs or other forms of rental assistance.

III. Legal Discussion

A. Tucson Code Section 17-52 does not conflict with state law.

1. Tucson is legally allowed to enact ordinances. The Ordinance was a lawful exercise of the City's authority.

The City operates under the authority of the Tucson City Charter, which was adopted and ratified pursuant to art. XIII, § 2 of the Ariz. Const. "Accordingly, the city may exercise all powers granted by its charter, provided that the exercise is not inconsistent with either

[8] *See* City of Tucson Source of Income Ordinance Website, FAQ, *Will I be able to deny a tenant with a Housing Choice Voucher for other reasons?* (https://sourceofincome-cotgis.hub.arcgis.com/pages/faq).

the constitution or general laws of the state." *City of Tucson v. Rineer*, 193 Ariz. 160, 161–62, ¶ 2 (App. 1998).

According to the Tucson Charter, the City's Mayor and Council are authorized pursuant to Chapter VII to pass all manner of ordinances to execute the powers vested in the City by the Charter, including to "regulate . . . the carrying on of any and all professions, callings, occupations and kinds of business carried on within the limits of [the] city," (Chapter IV Sec. 1(18)) and to "make and enforce all such…regulations as are deemed expedient…to…promote the public morals and welfare, and preserve the health of the inhabitants of the city." (Chapter IV Sec. 1(19)). T.C. § 10B-4 empowers HCD to develop and deploy City initiatives that focus on housing and community development needs, and A.R.S. § 36-1403(A)(12) also supports HCD authority to make recommendations to address issues in connection with providing housing for low-income families.

2. The City's fair housing code is consistent with the text and purpose of A.R.S. §§ 9-500.09 and 41-1491.06(C).

In May 1988, pursuant to its Charter, and in recognition of the City's policy goal to "provide fair housing opportunities for all of its citizens," the City adopted Ordinance No. 6947. That ordinance added Article VII, entitled "Fair Housing," to Chapter 17 of the Tucson Code to "conform" with Title VIII of the federal Civil Rights Act of 1968 [the federal Fair Housing Act]."

In 1992, the state specifically authorized cities to adopt fair housing ordinances pursuant to A.R.S. §§ 9-500.09 and 41-1491.06(C), both of which provide that cities, including Tucson, may adopt a fair housing ordinance by January 1, 1995. As indicated above, pursuant to its Charter, the City had already adopted a fair housing ordinance in 1988 consistent with the intent of the legislature that the state and local jurisdictions "undertake vigorous steps to provide equal opportunity in housing, resolve housing discrimination disputes at the local level in a timely, cost efficient and effective manner, . . . and obtain substantial equivalency with the federal government's housing discrimination enforcement efforts." H.B. 2546, 40th Leg., 2nd Reg. Sess. (Ariz. 1992), Sec. 1.

3. Amendments to the City's 1988 fair housing program are allowed.

The Complaint refers broadly to preemption cases but fails to lay out the test for state preemption. A municipal ordinance is preempted by state law when "(1) the municipality creates a law in conflict with the state law, (2) the state law is of statewide concern, and (3) the state legislature intended to appropriate the field through a clear preemption policy." *City of Scottsdale v. State*, 237 Ariz. 467, 470, ¶ 10 (App. 2015). "The existence of a preemptive policy must be clear. Absent a clear manifestation of legislative intent to preclude local control, there is no preemption." *Wonders v. Pima Cnty.*, 207 Ariz. 576, 579,

¶ 9 (App. 2004) (cleaned up). "And, to be preempted, a municipal ordinance must actually conflict with governing state law. Mere commonality of some aspect of subject matter is insufficient . . . ." *Id.*

Representative Toma asserts that A.R.S. §§ 9-500.09 and 41-1491.06(C) "expressly preempt" municipal fair housing laws enacted after 1994 and concludes therefore that the Amendment conflicts with state law. This assertion is wrong for at least five reasons.

First, the statutes cited contain nothing close to an express statement or clear manifestation of intent regarding preemption. Indeed, rather than preempt local legislation, they expressly permit local jurisdictions to adopt fair housing codes. A.R.S. §§ 9-500.09 and 41-1491.06(C). "When a statute recognizes that there may be local legislation on the same subject matter, no inference of preemption is warranted." *Wonders*, 207 Ariz. at 579, ¶ 10.

Second, although those statutes permit a local jurisdiction to enact a fair housing code by January 1, 1995, they do not expressly prohibit enactments prior to that date or amendments after that date.

Third, even assuming for the sake of argument that enactments after 1994 are prohibited, the City did not make an enactment after 1994. The City enacted its fair housing code in 1988, nearly seven years before the purported deadline.

Fourth and related, Representative Toma improperly conflates enactment of a code structure with amendment of an enacted code provision.[9] Once the City enacted its fair housing code, state law specifically authorized the City to amend it. A.R.S. § 9-240(b)(28) states that towns shall have the power to make, amend, or repeal ordinances, and A.R.S. § 9-499.01 grants charter cities all the same powers as towns. Thus, the City was empowered to amend the fair housing code once it was in place. The City enacted the code in 1988 then amended it in 1999 and again in 2022. Representative Toma has cited no instances in which anyone challenged passage of the 1999 amendment. Therefore, Representative Toma's argument against this recent amendment implies there is no issue with the City's 1999 amendment.

Fifth, nothing in A.R.S. §§ 9-500.09 or 41-1491.06(C) could be construed to be a prohibition on amendments to an enacted code provision as already allowed by A.R.S. §§ 9-240(b)(28) and 9-499.01.

Representative Toma also makes the argument that the Amendment imposes "additional regulatory mandates and prohibitions that far eclipse federal and state fair housing directives." This statement is incorrect for two reasons. First, case law is clear that "[w]hen

[9] Some portions of the Complaint correctly recognize that the Ordinance amended the code. *See* Complaint p 2 (requesting investigation of the City's "recent amendment," specifically T.C. § 17-52 "as amended").

an issue affects both local and statewide interests, both the locality and the state may enact relevant laws." *Wonders*, 207 Ariz. at 579, ¶ 9. And where, as here, there is no conflict, an ordinance may parallel or even go beyond the provisions of a statute. *City of Tucson v. Consumers For Retail Choice Sponsored by Wal-Mart*, 197 Ariz. 600, 603, ¶ 6 (App. 2000). Second, the federal regulations both on fair housing and on HCVs permit local jurisdictions to protect additional characteristics, just as the City is doing here. *See* 24 C.F.R. § 115.204(h) ("If a state or local law is different than the [Fair Housing Act] in a way that does not diminish coverage of the [Fair Housing Act], including, but not limited to, the protection of additional prohibited bases, then the state or local law may still be found substantially equivalent."); 24 C.F.R. § 982.53(d) ("Nothing in [the regulations implementing the HCV program] is intended to pre-empt operation of State and local laws that prohibit discrimination against [an HCV] voucher-holder because of status as [an HCV] voucher-holder.").

As discussed above, "to be preempted a municipal ordinance must actually conflict with governing state law." *Winkle v. City of Tucson*, 190 Ariz. 413, 416 (1997). *See Union Transportes de Nogales v. City of Nogales*, 195 Ariz. 166, 171, ¶ 21 (1999) (emphasizing there must be an actual conflict between the statute and the local ordinance for the ordinance to be preempted). The Complaint fails to identify any actual conflict with state law. As a result, the Attorney General should close this matter without further action. If the Attorney General takes a different view, the City provides the following additional information.

4. The state has not occupied the field, and there is no preemption policy.

Regarding the second prong of the preemption analysis, Representative Toma does not clearly argue that, or explain how, state laws that specifically allow for local housing codes somehow justify a finding that the matter is of solely statewide concern. Instead, he makes a vague, passing reference to Arizona's economy and unspecified "social, normative and legal issues that "transcend municipal boundaries."[10] Because Representative Toma fails to develop this argument, and, at any rate, the Complaint must fail because—as discussed above—there is no conflict with state law, the City turns to third prong of the preemption analysis: whether the legislature intended to occupy the field.

Representative Toma argues that the Legislature has occupied the field of fair housing regulation. For support, he points, in part, to the Arizona Fair Housing Act ("AFHA") and the Arizona Landlord Tenant Act, which includes detailed regulations concerning

[10] It is unclear whether Representative Toma's argument is that the Legislature has occupied the field of housing or the field of fair housing or both. He states that the Legislature has occupied "the regulatory field of fair housing regulation," but he cites for support the Arizona Landlord Tenant Act. Whatever his position, he is incorrect.

residential property rentals.[11] But this ignores controlling Arizona case law that states the "mere fact" that a legislative body has enacted a detailed regulatory scheme does not by itself imply preemption. *Kadera v. Superior Court*, 187 Ariz. 557, 560–61 (App.1996) ("[T]he mere fact that the National Housing Act is an extremely detailed regulatory scheme does not *per se* imply preemption."). This is particularly the case where, as here, the Legislature also is expressly permitting local housing ordinances.

Moreover, the legislative history of the AFHA demonstrates the Legislature's intent not to preempt local legislation. In July 1988, the Arizona Legislature initially enacted fair housing rules, including former A.R.S. § 41-1491.12, which explicitly preempted local governments from adopting their own fair housing ordinances. S.B. 1286, 38th Leg., 2nd Reg. Sess. (Ariz. 1988), Sec. 2.[12] In other words, as preemption was not explicitly included in the 1988 session, the Legislature made an express statement of preemption. Then, in 1991, the Legislature repealed former A.R.S. § 41-1491.12, indicating its intent not to preempt local fair housing ordinances any longer. *See* S.B. 1293, 40th Leg., 1st Reg. Sess. (Ariz. 1991), Sec. 3. "[W]hen the legislature has intended to preclude local legislation, it has done so expressly." *Rineer*, 193 Ariz. at 163, ¶ 5. Since that repeal, the Legislature has enacted no other preemption provision. The Legislature having previously explicitly preempted local fair housing ordinances, then explicitly repealed the preemption on such ordinances, one cannot possibly argue that the current version of the AFHA somehow implicitly preempts local ordinances.

Completely ignoring this legislative history, Representative Toma argues that A.R.S. § 41-1491.13, which allows the attorney general to refer AAFHA complaints to local jurisdictions, requires for its effective and efficient administration congruity between state and local fair housing laws. First, given the clear requirements for statutory preemption set forth above, this is simply not a sufficient basis for finding preemption. Second, the problem he has identified is non-existent. A complaint alleging income discrimination never would be enforced by the state because, at least currently, source of income is not protected at the state level. Obviously then, the state would not receive income discrimination complaints from the City. Conversely, the City, having received a source of income complaint, would not refer it to the State for investigation. The City investigates source of income complaints, and they are (as will be discussed further below) a matter of local concern.

---

[11] The Complaint also cites A.R.S. § 9-461.16(A), regarding land use, for the proposition that the state prohibits enactments that favor certain classes of residents. This ignores subsection (B) of that statute, which allows municipalities to adopt land use regulations designed to increase the supply of affordable housing, i.e., take measures benefitting low-income residents.

[12] Even as enacted, former A.R.S. § 41-1491.12 provided an exception for charter cities that enact a fair housing program, receive substantial equivalency status from the U.S. Department of Housing and Urban Development and enter an intergovernmental agreement with the attorney general. The statute contained a non-exhaustive list of characteristics that such a fair housing program would be required to protect (program must include race, color, religion, sex, and national origin, and may include "additional factors."). Former A.R.S. § 41-1491.12(C)(1).

B. The City lawfully can prohibit landlords from discriminating on the basis of HCVs.

Representative Toma's claim that "[the Amendment] compels property owners who charge rents that are eligible for [HCV] reimbursement to enroll in the program" reveals a fundamental misunderstanding of the HCV program. To clarify the misstatements, the City first provides some basic information on the HCV program and how it is administered.

For starters, the HCV program is not a program that property owners enroll in. Rather, it is program where low-income families applying and chosen by lottery receive housing subsidies for all or a portion of their monthly rent. The program, while federally funded, is administered locally and is a matter of local concern. It is the responsibility of Tucson's HCD to distribute HCVs to residents. *See* 24 C.F.R. §§ 982.201 (local public housing agency may establish additional eligibility criteria) and 982.503 (local public housing agency sets income limits and payment standards). Residents then are responsible for locating housing suitable to their needs. Once a tenant has secured housing, HCD works directly with the property owner to make rental payments on behalf of the tenant. Any difference between the amount of the HCV and amount of rent due is to be paid by the tenant.

Whenever a property owner enters a lease agreement, the property owner assumes the responsibility to provide the services agreed to in the lease. The requirements for contracting with HCV holders is similar in scope and the additional requirements for compliance with the HCV program are de minimus. For instance, it should be incidental to a property owner to offer rental units that have working electrical outlets, adequate heat in all living spaces, and running water. *See* 24 C.F.R. § 982.401 (setting housing quality standards to ensure that properties are in decent, safe, and sanitary condition); A.R.S. § 33-1324(A) (requiring landlords to supply running water and reasonable heat and to maintain all electrical, among other requirements).

The Complaint also states that by prohibiting landlords from discriminating based on source of income the Ordinance is at odds with the federal HCV program, which is "entirely voluntary." From there, Representative Toma claims the Ordinance conflicts with federal law and "by extension" with the supremacy clause of the Ariz. Const. art. II, § 3. There are numerous flaws with this argument.

First, Representative Toma fails to identify which provision of the federal regulations he believes makes the HCV program "entirely voluntary." Second, his claim is unsupported by the logic and objectives of a federal program whose goals are "aiding low-income families in obtaining a decent place to live" and "promoting economically mixed housing." 42 U.S.C. § 1437f(a). Unsurprisingly, Representative Toma fails to cite any of the numerous cases rejecting exactly the argument he makes. *See, e.g.*, *Comm'n on Human*

Rights & Opportunities v. Sullivan Associates, 739 A.2d 238, 246 (1999) ("Requiring landlords to extend rental opportunities to otherwise eligible [HCV] recipients, in accordance with the terms of [HCV] leases, is not an obstacle to the congressional agenda but serves instead to advance its remedial purpose."); *Franklin Tower One, L.L.C. v. N.M.*, 157 N.J. 602, 619–20 (1999) ("Nothing in the statute . . . mandates that landlord participation in the [HCV] program be voluntary, nor is there any provision that prohibits states from mandating participation."); *Bourbeau v. Jonathan Woodner Co.*, 549 F. Supp.2d 78, 88 (D.C.C. 2008) (local ordinance prohibiting source of income discrimination advances the central objective of the HCV program); *Montgomery Cnty. v. Glenmonth Hills Assocs. Privacy World*, 936 A.2d 325, 336 (Md. 2007) (same); *Austin Apt. Ass'n. v. City of Austin*, 89 F. Supp. 3d 886, 895 (W.D. Tex. 2015) (collecting cases).[13]

Finally, as noted above, Representative Toma indicates the Ordinance violates the Arizona Constitution's supremacy clause, which provides that the federal constitution overrides state law. The starting point for any 1487 investigation is whether the complaint alleges a violation of state law or the Arizona Constitution. A.R.S. § 41-194.01(A). The fact that the federal Constitution takes precedence over state and local laws does not provide a jurisdictional basis for alleging a violation of state law or the Arizona Constitution.

C. The Ordinance does not restrict lawful evictions. A late payment from a government program does not constitute a taking under the Arizona Constitution.

To clarify, a property owner may evict an HCV tenant if that tenant fails to pay their portion of the rent. What federal regulation prohibits is a landlord evicting an HCV tenant because the public housing agency is late on making the subsidy payment to the landlord. 24 C.F.R. § 982.310(b)(2).[14] Representative Toma fails to explain the mechanism by which the Ordinance "bars the eviction for nonpayment of rent of tenants who are eligible for rental assistance funding through even non-[HCV] government programs." This is a mischaracterization of the Ordinance, and there is simply no language in the Ordinance that bars evictions by any means outside of existing subsidy programs.

Representative Toma also posits that a late subsidy payment constitutes a regulatory taking under the Arizona Constitution. He is mistaken. A city ordinance will only violate the takings clause if the regulation deprives the property of "all economically beneficial or productive use of land." *Wonders*, 207 Ariz. at 580, ¶ 17. That does not and cannot happen here. Far from denying the property all economic value of the property, the HCV program

---

[13] *Salute v. Stratford Greens Garden Apartments* 136 F.3d 293 (2d Cir. 1998), cited by Representative Toma, hinged on the fact that, at the time the case was decided, there was no local source of income protection. *See Austin Apartment Ass'n.*, 89 F. Supp.3d at 896 (distinguishing *Salute* and *Knapp v. Eagle Property Management Corp.*, 54 F.3d 1272 (7th Cir.1995)).

[14] In this instance, the property owner could seek late fees from the public housing agency. 24 C.F.R. § 982.451(b)(5)(ii).

guarantees that the property owner will receive a monthly payment. A taking would also require that the Ordinance force a landlord accept to HCVs for something less than market rates, which it does not. In other words, there are no damages to be compensated. Moreover, nothing about the foregoing statements regarding regulatory takings in any way means the Ordinance conflicts with state law.

IV. Factual Corrections

It is true that as a social and economic fact Tucson's housing rental supply is not where it needs to be to match population growth. Representative Toma provides as evidence of the City's alleged mismanagement of housing policy the number of building permits issued for the past 17 years. However, in the press release that he issued relative to the Complaint, he admits that the housing shortage is a statewide issue. [15] Moreover, the census data relied on in the study quoted for building permits issued in Tucson shows that the numbers follow the overall trend for Arizona as a whole.[16]

To confront and correct Representative Toma's unfortunate misinformation regarding the City's HCV program, it is useful to consider the full context of the quote from Council Member Kozachik referenced in the Complaint. While Council Member Kozachik noted a history of the program having long wait times to get payment and apartments that were left in poor condition by tenants, [17] he followed this by emphasizing that the actions the City has taken to address landlord complaints about the HCV program have resulted in performance that "turned a corner five years ago" and put the program "back on the rails."[18]

As further support for concluding that the Complaint is out of touch with what is actually taking place on the ground in Tucson, local landlords have recognized the upward trajectory of the HCV program.[19] In fact, at the September 27, 2022 open meeting where Mayor and Council adopted the Ordinance, the advocate for the Arizona Multifamily Housing Association, a trade association for the apartment industry, praised the City's HCV program by stating "[the City] has done miracles of turning that department around, so much so that we have been working with them to communicate our members and

---

[15] *News Release: Speaker-Elect Toma Files 1487 Complaint After City of Tucson Forbids Consideration of Source of Income on Rental Housing Applications*, Nov. 19, 2022 (Housing Supply Study Committee formed to "examine the root causes for our state's (and Tucson's) housing shortage.").

[16] https://www.census.gov/construction/bps/data_visualizations/index.html.

[17] The City also receives funds to cover security deposits, which can be used to address this concern.

[18] Mayor and Council Study Session, December 21, 2022 at 1:35:53,https://youtu.be/re2Q8e1BWgg?t=5752 . *See also* Mayor and Council Opening Meeting, Sept. 27, 2022 at 6:13:05, Statement of Mayor Romero (commending HCD for "exceeding" in how they are getting payments to landlords and describing the role of the Landlord Support Team), https://youtu.be/zJq9fehgEz4?t=22383.

[19] Mayor and Council Study Session, December 21, 2022 at 1:40:08, Statement of Director of HCD, https://youtu.be/re2Q8e1BWgg?t=6007 (HCD has been hearing from landlords that the City is doing a good job administering the HCV program.).

encourage them to sign up for the [HCV program] once again."[20] It is clear why HCVs are valuable. Under the program, the property owner is guaranteed a monthly payment that is backed by the local public housing agency. It is no wonder that vouchers are coveted by recipients, and anyone fortunate enough to obtain one would do their best to maintain their eligibility for the program.[21] Furthermore, and in contrast to Representative Toma's statement that the City is taking a "retrogressive" approach to increasing housing supply, the advocate urged the City to move forward with numerous innovative recommendations contained in the HAST.

V. Conclusion

Beginning in 2019, the City took a hard look at the issues facing its HCV program and worked these issues intensely. HCD implemented staff changes and created a "Landlord Support Team" to assist landlords with understanding program requirements, completing and processing paperwork in a timely manner, and addressing other tenant issues. By December 2020, the results were clear: The turnaround time for scheduling inspections was down from 13 days to four days and time for landlords to receive their initial payment was down from 39 days to 15 days. The City also created an online portal where landlords can track payments and inspections and began putting on informational sessions for landlords on a twice monthly basis. The City has been public about the past failings of the HCV program, but it also has affirmed repeatedly its commitment to take action to strengthen the program. It is evident that those actions are having a positive impact for residents and landlords alike. With these improvements to the HCV program in place, the City has taken the next logical step to address external factors preventing HCV tenants from obtaining the housing they so desperately need.

For the reasons outlined above, no part of the Amendment conflicts with A.R.S. §§ 9-500.09, 41-1491.06(C), 33-1368, 33-1377, or Ariz. Const. art. II, §§ 3 and 17, and the City respectfully asks that the Attorney General "take no further action" on the Complaint. A.R.S. § 41-194.01(B)(3).

Sincerely,

Jennifer Bonham

Jennifer Bonham
Principal Assistant City Attorney

[20] Statement of Ben Buehler-Garcia, Mayor and Council Meeting, September 27, 2022 at 5:45:44, https://youtu.be/zJq9fehgEz4?t=20746.
[21] When HCD opens its HCV waitlist in January 2023, it expects to receive 20,000 new applications for 5,300 HCVs.