

THE TOWN OF PARADISE VALLEY’S ORDINANCE 2022-03 ADDRESSING SHORT-TERM AND VACATION RENTALS VIOLATES STATE LAW

Overview: In 2016, the Arizona State Legislature adopted S.B. 1350 establishing how and to what extent municipalities can regulate short-term and vacation rentals (collectively “STRs”). Codified in Arizona Revised Statutes (“A.R.S.”) section 9-500.39, under S.B. 1350 municipalities may only regulate STRs in the following ways:

- Towns may regulate STRs in order to protect the public’s health and safety by adopting rules and regulations related to fire and building codes, health and sanitation, transportation or traffic control, solid or hazardous waste and pollution control, and requiring the designation of an emergency point of contact, if the town is able to demonstrate that the rule or regulation is for the primary purpose of protecting the public’s health and safety.
- Towns may regulate STRs by adopting ordinances related to noise, protection of welfare, property maintenance and other nuisances if the ordinance is applied in the same manner as to other forms of residential property.
- Towns may limit or prohibit the use of STRs 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 businesses.
- Towns may require owners of STRs to provide the town with contact information for the individual responsible for responding to complaints in a timely manner. A.R.S. § 9-500.39(B)(1)-(4).

In 2016, the Legislature also adopted S.B. 1524 (A.R.S. § 9-841), which provides general protections against municipalities taking action to increase regulatory burdens on businesses absent a legitimate threat to the health, safety and welfare of the public. A.R.S. § 9-841(A)-(B). Specifically, Section 9-841 prohibits municipalities from taking 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). Section 9-841(B) provides that municipalities 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” unless otherwise authorized by federal, state or local law.

On January 27, 2022, the Paradise Valley Town Council (“Town Council”) adopted Ordinance 2022-03 (the “PV Ordinance”), containing a series of amendments to the Town’s code regulating STRs. In connection with the PV Ordinance’s adoption, the Town Council acknowledged that Arizona State law limited the Town’s ability to regulate STRs, but that it believed the Ordinance fell within the narrow space carved out in A.R.S. section 9-500.39 to allow local governments to regulate STRs for the purpose of protecting the public’s health and safety. However, as detailed herein, the PV Ordinance violates both S.B. 1350 and S.B. 1524 in numerous ways. Primarily, it:

- **Imposes “special or differing requirements” on STRs.** S.B. 1350 requires ordinances related to noise, protection of welfare, property maintenance and other nuisances to be applied to STRs in the same manner as to other forms of residential property. The PV Ordinance imposes numerous restrictions related to protection of welfare, property maintenance and other nuisances on STRs that do not apply to other residential property in the Town. The Town attempts to circumvent the law by claiming that the special requirements are necessary to protect the “public’s health and safety”, but the many of these requirements are not “rules and regulations related to fire and building codes, health and sanitation, transportation or traffic control, solid or hazardous waste and pollution control, and requiring the designation of an emergency point of contact”, and, accordingly, must be applied in the same manner across the Town.
- **Imposes significant new administrative, financial, and disclosure obligations on property owners offering their homes for STRs.** While the Town claims these are necessary to protect “public’s health and safety”, administrative, financial, and disclosure regulations are not “rules and regulations related to fire and building codes, health and sanitation, transportation or traffic control, solid or hazardous waste and pollution control, and requiring the designation of an emergency point of contact.” These regulations, which also implicate privacy concerns, appear primarily designed to make it more difficult and unattractive for property owners to offer their homes as STRs, and run afoul of A.R.S. section 9-500.39.
- **Increases regulatory burdens on businesses by subjecting platforms to new liability and disclosure requirements in violation of state and federal law.** The Town’s law is squarely preempted by A.R.S. section 9-841(B) because it, among other things, prohibits platforms from receiving a fee for facilitating short-term rentals based on the short-term rental (and the provider of that rental) violating the law. It therefore does exactly what it seems the law is meant to prevent, by regulating a platform in order to indirectly regulate the conduct of platform users. And while the Town might argue that its regulations are “authorized by state or local law,” that language should not be construed too broadly, or it would completely defeat the purpose of the preemption provision.

In addition to directly conflicting with both A.R.S. sections 9-500 and 9-841, the PV Ordinance also raises significant constitutional concerns related to free speech, freedom of assembly, privacy, and due process. While it is clear the PV Ordinance as a whole fails as a matter of law, we have prepared the chart below providing a few key examples of select PV Ordinance provisions that directly conflict with State law. The

chart is meant to provide an overview of the types of improper regulations contained in the PV Ordinance, but is not meant to serve as comprehensive list of all of the provisions that fail as a matter of law. We can provide a complete chart analyzing each of the PV Ordinance’s provisions at your request.

Violation	Representative PV Ordinance Language/Provision	Brief Analysis
<u>Imposing “special or differing requirements” on STRs.</u>	10-10-4.I. 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.	<p>Pursuant to the PV Ordinance, an “Event Center” means any dwelling unit (i) for which the occupant has made payment for transient use of the dwelling unit and (ii) <u>is used for social gatherings</u> or Special Events more than two (2) times within a period of twelve (12) consecutive months.” Paradise Valley Town Code § 10-14-2 (emphasis added.). The Ordinance does not define “social gatherings.” The Law Insider dictionary provides that “[s]ocial gathering means an assembly of 2 or more individuals for any purpose, unless all of the individuals attending the assembly are members of the same household or immediate family.” Accordingly, under the PV Ordinance, arguably two unrelated persons could not be in a STR at the same time.</p> <p>While the Town creatively uses the name “Event Center” to create an apparent “Nonresidential Use”, the reality is prohibiting two or more non-family members from being together in a home is a clear restriction of an inherently residential use. Even if the Town did determine that prohibiting <i>all</i> social gatherings in homes was necessary for the protection of the Town’s welfare, this would be an “ordinance[] related to noise, protection of welfare, property maintenance and other nuisance issues”, and would need to be applied in the same manner to non-STR residential uses. See A.R.S. § 9-500.39(B)(2) (“A city or town may regulate vacation rentals or short-term rentals for the following purposes: ... 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.”); see also Ariz. Op. Atty. Gen. No. I18-004 (Ariz.A.G.) (“...a provision that imposed special or differing requirements on vacation or short-term rentals likely would conflict with A.R.S. § 9-500.39 ...”).</p> <p>We further note that this restriction on <u>all</u> social gatherings at STRs cannot be viewed as a “rule[] or regulation 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,” and there is not substantial evidence in the record that would support this interpretation. Accordingly, this provision would also run afoul of A.R.S. § 9-500.39(B)(1).</p>
<u>Imposing significant new administrative and disclosure obligations on property owners offering their</u>	<p>10-14-3.A. Short-Term Rental Registration Required. Before offering for rent or renting a Short-Term Rental or Vacation Rental within the Town, the Owner thereof shall register the Short-Term Rental with the Town, on a form or platform specified by the Town and obtain a valid transaction privilege tax license under A.R.S. Title 42. The Owner shall notify the Town, in writing, of all changes in the information required by this section, not less than ten (10) days prior to the effective date of the change. Every Short-Term Rental registration must include the following information, which shall be made publicly available: [listing required information]</p> <p>10-14-3.B. Consent and Certification. When registering a Short-Term Rental, the Owner must: 1.</p>	A.R.S. section 9-500.39(B)(4) expressly delineates what information a municipality can seek from a property owner offering their property as an STR: “[r]equiring 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.” Here, the PV Ordinance seeks significantly more information and requires public disclosures and information release consents. A.R.S. section 9-500.39(B)(4) preempts this. Further, administrative and disclosure obligations are not “rules or regulation 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.” Accordingly, this provision would also

Violation	Representative PV Ordinance Language/Provision	Brief Analysis
<u>homes as STRs.</u>	<p>Consent 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. ...</p> <p>10-14-3.C. ...the Owner of a Short-Term Rental shall promptly provide the information below to the Town, on a form or a platform specified by the Town, within twenty-four (24) hours of every booking; provided, that any booking for an occupancy beginning less than twenty-four (24) hours from the time of booking shall be reported within one (1) hour after the time of the booking: 1. A copy of the Short-Term Rental’s advertisement or listing upon which the relevant booking occurred, along with the name of the Online Lodging Marketplace accommodating the listing; 2. The dates for which a guest booked the Short-Term Rental and the number of people in their party; 3. Evidence of compliance with Section 10-14-5(B). 4. Evidence that the booking guest has acknowledged receipt of the statement of rules and regulations prepared by the Town, and has agreed by that acknowledgement to comply with such rules and regulations.</p>	run afoul of A.R.S. section 9-500.39(B)(1).
<u>Imposing significant new financial burdens on property owners offering their homes as STRs.</u>	<p>Section 10-14-5.B.1. Have either (1) liability insurance to cover the Short-Term Rental in an amount determined appropriate by the insurance company insuring such Short-Term Rental, but in no case, an amount less than one million dollars (\$1,000,000) in the aggregate, or (2) equal or greater insurance coverage is provided for the Short-Term Rental through the Online Lodging Marketplace through which the property is booked ...</p> <p>Section 10-14-5.B.6. Local phone service. At 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.</p>	The Town cannot demonstrate that the primary purpose for imposing these financial burdens on hosts is “protecting the public’s health and safety”, as required by A.R.S. section 9-500.39(B)(1). They are not “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.” The administrative record does not contain substantial evidence that would support an argument that requiring specific insurance levels or installing a landline phone would help to prevent any identified public health and safety concerns. Instead, these provisions appear to be designed to place additional burdens and expenses on property owners, making it more difficult and unattractive for property owners to offer their homes as STRs, Accordingly, this provision runs afoul of A.R.S. section 9-500.39(B)(1).
<u>Increases regulatory burdens on businesses by subjecting platforms to new liability and disclosure requirements in violation of state and federal law.</u>	Section 10-14-3.D. Any person, entity, or Online Lodging Marketplace who offers for rent or accepts a fee for booking a Short-Term Rental that is not registered with the Town pursuant to Section 10-14-3(A) or, where applicable, with the Maricopa County Assessor’s Office pursuant to A.R.S. sec. 33-1902, as amended, shall be fined one hundred fifty dollars (\$150) per violation per day. Each day’s failure to comply with a notice of violation or any other order shall constitute a separate violation.	The Town cannot demonstrate that a platform liability provision survives state preemption. Under A.R.S. section 9-500.39, local regulation is only permitted except as provided in this section, but the Town’s platform liability provision goes well beyond regulations permitted by state law because this provision does not fall within “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.” Moreover, under A.R.S. section 9-841(B), the Town’s law is also preempted because it does exactly what this law is meant to prevent, by regulating a platform in order to indirectly regulate the conduct of platform users. Allowing the Town to argue local regulation is permissible here would defeat the purpose of this preemption provision.