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February 5, 2026

(via email only: Kathryn.Boughton@azag.gov)

Kathryn Boughton, Assistant Attorney General
Office of the Attorney General
2005 North Central Avenue
Phoenix, Arizona 85004

Re: Response to Legislator Request for Investigation under A.R.S. § 41-194.01 by Senator Lauren Kuby, dated January 23, 2026 (the "Investigation Request") related to Alleged Violation of A.R.S. § 9-463.06 by the Town of Chino Valley

Dear Ms. Boughton:

As requested in your letter of January 26, 2026, the following is the response on behalf of the Town of Chino Valley (the "Town") to the Investigation Request.

A. Summary of Allegations

The Investigation Request alleges a violation of various provisions of A.R.S. §§ 9-463.06 *et seq.* (the "Moratorium Statute") with respect to the Town's adoption of Ordinance 2025-956 (the "Solar Ordinance"). The allegations can be grouped into two categories:

1. Violation of the procedural due process requirements related to implementation of a moratorium on utility-scale solar projects.

2. Inconsistency with the general plan adopted by the Town, "*Make it Chino! 2040 General Plan*" (the "General Plan").

If you believe I have incorrectly summarized the issues described in the Investigation Request, please let me know.

B. Analysis

The Investigation Request (i) misapplies the Moratorium Statute to the adoption of the Solar Ordinance; (ii) reads non-existent preemptive language into the Moratorium Statute; and (iii) inappropriately ties the General Plan to the Moratorium Statute and then misreads provisions into the General Plan.

1. Inapplicability of the Moratorium Statute to the Solar Ordinance.

The Investigation Request (i) fails to show how the Moratorium Statute applies to the adoption of the Solar Ordinance, and (ii) improperly extends the scope and reach of the Moratorium Statute. On its face, Section 9-463.06(A) of the Moratorium Statute applies to a "moratorium on construction or land development," which the Solar Ordinance is not:

> "Moratorium on construction or land development" means engaging in a pattern or practice of delaying or stopping issuance of permits, authorizations or approvals necessary for the subdivision and partitioning of, or construction on, any land. *It does not include denial or delay of permits or authorizations because they are inconsistent with applicable statutes, rules, zoning or other ordinances.*[1] (emphasis added)

The Moratorium Statute affects the process of delaying the issuance of permits for construction under current regulations; as discussed below, it does not (and cannot) act as a limitation on the authority of the Chino Valley Mayor and Town Council (the "Town Council") to decide what zoning categories and regulations are appropriate for the Town.

2. The Moratorium Statute Does Not Impair Town Council's Legislative Discretion.

The Investigation Request conflates the Town Council's authority to make land-use determinations pursuant to its police power with the statutory process under the Moratorium Statute for limiting the times when a municipality can call a halt, or a pause, to building and construction that will overwhelm the municipality's infrastructure. The Investigation Request states, without citation, that "A city or town would be in clear violation of A.R.S. § 9-463.06 if it had enacted an outright prohibition on industrial uses or multifamily housing within its borders."[2] This statement flies in the face of long-established case law supporting the Town Council's authority under A.R.S. §§ 9-462 *et seq*. to determine the types of land uses to be permitted within the Town. *See*, *Bartolomeo v. Town of Paradise Valley*, 129 Ariz. 409 (1981) (upholding the Town's restriction of non-residential uses). The *Bartolomeo* Court clearly articulated the permissive nature of the applicable statute:

> First, we disagree because A.R.S. s 9-462.01.A.1 is a permissive statute. It provides that the legislative body of the Town may enact ordinances, "Regulating the use of buildings, structures and land as between agriculture, residence, industries, business and other purposes." The statute does not require, or even suggest, that any or all of these zones must be enacted by the town. Compare A.R.S. s 9-463.01. Reading the statute as a whole, it is clear that the legislature intended to leave these legislative questions for the Town to decide under its police powers.[3]

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[1] A.R.S. § 9-463.06(I)(3).
[2] Investigation Request, at 2.
[3] *Bartolomeo*, 129 Ariz. at 412.

The Town Council is clearly authorized to exclude certain uses from its zoning ordinance. "Practically all zoning restrictions have as a purpose and effect the exclusion of some activity or type of structure or a certain density of inhabitants." *Construction Industry Ass'n of Sonoma County v. City of Petaluma*, 522 F.2d 897 (9th Cir. 1975). The Courts are concerned only with whether there is a rational relationship between the regulation and a legitimate governmental interest, which the United States Supreme Court has determined includes preserving quiet, low-density neighborhoods[4] and rural character.[5] And the courts are not to substitute their judgment for that of the local legislative body by becoming a "super legislature" or determining anything but the "reasonableness, not the wisdom" of the local council's decision.[6]

The Town staff, working with an ad hoc committee (the "Solar Committee"), compiled extensive information for the Town Council to consider. The Town Council reviewed the information provided, took public comment, and engaged in robust discussion of solar and wind power uses in the Town, after which the Town Council determined that maintaining the Town's character required limiting the types of solar and wind projects within Town limits. Accordingly, and in its legislative discretion, the Town Council chose to modify the staff recommendation to more closely align with the General Plan's overall theme of preserving Chino Valley's rural character. The Town Council expressed its desire to maintain the rural character by limiting the solar and wind-generating facilities to those used by individual properties for their power needs.

The Investigation Request does not articulate how the enactment of the Moratorium Statute purports to limit the general police powers articulated in A.R.S. § 9-462.01(A)(1) (and confirmed by decades of case law), and there is nothing in the text of the Moratorium Statute to indicate that it was intended to rewrite the basic principles of the zoning enabling statutes or to eviscerate the legislative discretion and police powers of the Town Council. It is settled law that the courts should not substitute their judgment for that of the local legislative body; similarly, there is nothing in the law that compels the Town Council's legislative determination to be overridden by the desires of a single industry.

3. The General Plan is Not Related to the Moratorium Statute.

The Investigation Request starts with the mistaken premise that the General Plan's goals, policies, and plans are related to the Moratorium Statute, and then misreads those goals, policies, and plans to add a requirement that the Town Council allow utility-scale solar developments.

There is no connection between the Moratorium Statute and the General Plan. The Investigation Request highlights Goal CSF-7 and Implementation Plan items CSF.8 and CSF.9, which relate to solar, without ever drawing any connection between them and the Moratorium Statute. That is because there is none. Additionally, the Investigation Request further incorrectly presumes that the Town Council did not comply with the General Plan. The Town followed Implementation Plan items CSF.8 and CSF.9 by (i) forming the Solar Committee and (ii) exploring community-

[4] *See, Village of Belle Terre v. Boraas*, 416 U.S. 1, 94 S.Ct. 1536 (1974).
[5] *See, Ybarra v. City of Town of Los Altos Hills*, 503 F.2d 250 (9th Cir. 1974).
[6] *Petaluma*, 522 F.2d at 906.

scale solar and microgrids. Nothing in the General Plan's implementation language compels the Town Council to adopt the Solar Committee's recommendations or any solar-related zoning provisions, much less any that mandate allowing utility-scale facilities.

The Investigation Request does not take issue with the Town's execution of the General Plan's Implementation Plan; it only takes issue with the result. That is because the Investigation Request presumes that the General Plan goals and Implementation Plan would result in policies that support utility-scale solar within the Town's corporate limits. However, the General Plan does not predetermine the results of the study and evaluation process; it only outlines the goals and implementation steps. The Town Council followed the process in the General Plan and then made the decision, in its sole legislative discretion, to adopt solar provisions it believed support the rural nature of the community.

C. Conclusion

The Town appreciates the opportunity to provide information regarding the Investigation Request. As described above, we do not believe the Town is in violation of the Moratorium Statute because (i) it is inapplicable to the exercise of the Town's zoning power; (ii) the Town Council's authority to determine the land uses included in its zoning ordinance is derived from the zoning enabling act provisions in A.R.S. § 9-462 *et seq.* and decades of state and federal case law, and this authority is not preempted by the Moratorium Statute; and (iii) the Moratorium Statute and the General Plan are unrelated, and even if they were related, the Town Council followed the General Plan's implementation processes and adopted renewable energy provisions to preserve the Town's rural character, consistent with the General Plan. If you would like further information or have additional questions, please let me know. Thank you.

Sincerely,

Andrew McGuire
For the Firm

C: Mayor Armstrong
Terri Denemy
Erin Deskins
Laurie Lineberry
Will Dingee