

Attachment A

Pursuant to A.R.S. § 41-194.01, I request that your office investigate the City of Phoenix's ("City") adoption of Ordinance G-6650 (the "Ordinance"). The Ordinance imposes new fees and increases existing fees on ride-sharing services to and from Phoenix Sky Harbor International Airport. It thus violates article IX, § 25 of the Arizona Constitution.

In 2018, Arizona voters overwhelmingly approved Proposition 126 ("Prop. 126"), which amended our Constitution to provide that:

The state, any county, city, town, municipal corporation, or other political subdivision of the state, or any district created by law with authority to impose any tax, fee, stamp requirement, or other assessment, shall not impose or increase any sales tax, transaction privilege tax, luxury tax, excise tax, use tax, or any other transaction-based tax, fee, stamp requirement or assessment on the privilege to engage in, or the gross receipts of sales or gross income derived from, any service performed in this state. This section does not repeal or nullify any tax, fee, stamp requirement, or other assessment in effect on December 31, 2017.

Ariz. Const. art. IX, § 25. The Constitution thus prohibits "any . . . city" from "impos[ing] or increas[ing] any . . . fee . . . on . . . any service performed in this state." *Id.* "[T]he plain language of this new amendment to our constitution" controls. *Knapp v. Martone*, 170 Ariz. 237, 239 (1992).

On December 18, 2019, the City adopted the Ordinance, which *imposes* a new fee and *increases* an existing fee on ride-sharing services at Sky Harbor, both in violation of Prop. 126. Before the Ordinance was adopted, the City assessed only a pick-up fee of \$2.66 for ride-sharing services at the airport; the City charged no drop-off fee. Under the Ordinance, the existing pick-up fee will increase from \$2.66 to \$4.00 next year, rise annually to \$5.00 by 2024, and then continue to rise according to the consumer price index each year after that. The Ordinance also imposes a new drop-off fee, which has the same rate structure as the pick-up fee. The fees take effect on February 1, 2020. Neither the increase in the pick-up fee nor the new drop-off fee was in effect on December 31, 2017.

The new charges on ride-sharing services at Sky Harbor clearly are "fees." The City itself repeatedly has characterized them as "fees." On November 26, 2019, the City gave notice under A.R.S. § 9-499.15 "of its intent to establish a new fee and to increase

an existing fee on Commercial Ground Transportation Providers at Phoenix Sky Harbor International Airport." See <https://www.phoenix.gov/public-notice-tax-and-fee-changes>. The City Council Report of the Ordinance says that the Ordinance "seeks to increase trip fees for [ride-sharing services], establish drop-off trip fees for providers, and provide for predictable, annual trip-fee rate increases." Phoenix City Council Report, 12/18/2019, Item No. 42 at 102; see also *id.* at 104 (in the attached summary sheet, stating that the Ordinance "[i]ncrease[s] certain pick-up fees" and "[c]reates new drop-off fees."). And the Ordinance amends Section 4-78 of the Phoenix City Code—titled "Fees"—to add "trip fees" for "Transportation Network Companies," otherwise known as ride-sharing services. See *id.* at 129; see also A.R.S. § 28-9551(3) (defining "Transportation network company").

It is also clear that both ride-sharing platforms and the drivers using them are providing a "service." State law already recognizes that ride-sharing platforms and drivers provide "services." A.R.S. § 28-9551(3)–(4), (6). This is consistent with the common meaning of that word. See *Service*, *Black's Law Dictionary* (11th ed. 2019) (defining "service" as "labor performed in the interest or under the direction of others, usually for a fee," and noting that "service denotes an intangible commodity in the form of human efforts, such as labor, skill, or advice.").

Arizona's Constitution prohibits cities from imposing or increasing fees on services performed in this state. Ariz. Const. art. IX, § 25. The City's Ordinance does exactly that—it imposes a new drop-off fee and increases an existing pick-up fee on ride-sharing services at Sky Harbor Airport. The Ordinance therefore violates our Constitution.