



STATE OF ARIZONA
OFFICE OF THE ATTORNEY GENERAL

INVESTIGATIVE REPORT By MARK BRNOVICH ATTORNEY GENERAL January 16, 2020	No. 19-002 Re: Whether City of Phoenix Ordinance G-6650 Violates Article IX, § 25 of the Arizona Constitution
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To: The Honorable Doug Ducey, Governor of Arizona
The Honorable Karen Fann, President of the Arizona Senate
The Honorable Rusty Bowers, Speaker of the Arizona House of Representatives
The Honorable Nancy Barto, Requesting Member of the Arizona Legislature
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 City of Phoenix (“City”) Ordinance G-6650 (“Ordinance”), which amends, among other provisions, Chapter 4, Article IV, § 4–78 of the Phoenix City Code.¹ As explained below, the Attorney General has determined that the Ordinance very likely violates article IX, § 25 of the Arizona Constitution, and will seek declaratory relief against the City.

Simply put, the Ordinance violates the plain language of article IX, § 25. The Ordinance imposes new “trip fees” that authorized ground transportation providers must pay (and increases certain other “trip fees”) for the “privilege” to provide commercial ground transportation services to and from Phoenix Sky Harbor International Airport (“Airport”). These fees are encompassed

¹ Because the Ordinance does not take effect until February 1, 2020, this Report refers to the Ordinance’s text as it appears on the City’s website, along with relevant page numbers. See <https://www.codepublishing.com/AZ/Phoenix/ords/G-6650.pdf> (last visited January 16, 2020). All other references to the Phoenix City Code refer to the current sections contained in Chapter 4, Article IV, unless otherwise noted.

within the plain language of the constitutional prohibition against “impos[ing] or increas[ing] 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 ... any service performed in this state.” ARIZ. CONST. art. IX, § 25.

While the plain-language analysis of the Ordinance and the Constitution demonstrates a clear conflict, the following circumstances are also relevant to the Office’s statutory determination under § 41–194.01(B). First, this conflict arises from a recent amendment to the Arizona Constitution, which is broad in scope and has yet to be judicially interpreted. Second, there are non-frivolous arguments about how to best read the chief words and phrases here, which the Constitution does not itself define. Third, the City suggests that cities’ constitutional powers, for example under article XIII, § 5, prevail over the language that the people of Arizona added to the Constitution in article IX, § 25. The Office’s analysis best reconciles these constitutional provisions. Nonetheless, resolution of the Request may require harmonizing multiple constitutional provisions “to preserve the full expression of the voters’ intent[.]” See *Hughes v. Martin*, 203 Ariz. 165, 168, ¶ 17 (2002) (courts should reconcile constitutional amendments whenever possible to “give effect to both”).

For purposes of this Report (consistent with the Arizona Supreme Court’s prior statements), the Office therefore concludes that the Ordinance **may violate** the Arizona Constitution, and will expeditiously seek relief from the Arizona Supreme Court in the nature of a declaratory action against the City. See *State ex rel. Brnovich v. City of Tucson*, 242 Ariz. 588, 595, ¶ 25 (2017) (a “does violate” determination under A.R.S. § 41–194.01(B)(1) is for “when existing law clearly and unambiguously compels that conclusion”; otherwise, it is the Arizona Supreme Court’s “responsibility ‘to resolve the issue’” (citation omitted)).

II. Background

A. The Office's Investigation

On December 19, 2019, the Office received from Representative Nancy Barto a request for legal review of the Ordinance pursuant to A.R.S. § 41–194.01 (“Request”). The Office asked the City for a response. The City fully cooperated with the Office’s review, including by providing a voluntary response and supporting materials (“Response”). In performing the required investigation during the limited 30-day period proscribed in A.R.S. § 41–194.01, the Office reviewed relevant materials and authorities.

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

B. Relevant Constitutional Provisions

The Request asks whether the Ordinance violates article IX, § 25 of the Arizona Constitution—a constitutional amendment that voters passed in 2018 through an initiative measure, Proposition 126 (“Prop 126”). Section 25 states, in relevant part, that “any ... city ... created by law with authority to impose any tax, fee, ... or other assessment, shall not impose or increase any ... transaction-based ... fee ... on the privilege to engage in ... any service performed in this state.” ARIZ. CONST. art. IX, § 25. Taxes, fees, and other assessments that were already in effect on December 31, 2017, are not subject to this prohibition. *See id.*

Prop 126 also amended the “home rule charter” provision of the Arizona Constitution to expressly state that “[n]otwithstanding any provision of this section to the contrary, no charter shall provide a city with any power to violate article IX, section 25, which preempts such

power.” ARIZ. CONST. art. XIII, § 2; *see also City of Tucson*, 242 Ariz. at 598–99, ¶¶ 39–40 (discussing origin and purpose of the home rule charter provision).

C. The City’s Ordinance

On December 18, 2019, the City adopted the Ordinance, amending Chapter 4, Article IV of the Code, which governs “commercial ground transportation vehicles rules and regulations.” As relevant here, the Ordinance: (1) creates a new type of “trip fee” (“drop-off” fee) that all authorized ground transportation providers must pay; and (2) increases another type of “trip fee” (“pick-up” fee) for some providers. *See* Ordinance at 25–26; City Code § 4-67 (defining “trip fee” as “a fee imposed pursuant to [§] 4-78”).

1. “Drop-Off” Fee

First, the Ordinance establishes new “drop-off” fees that are assessed against transportation network companies (“TNCs”) and “non-TNC authorized providers.” Ordinance at 25–26; *see also id.* at 6 (expanding the definition of “trip” to include “dropping off a passenger on an airport”); City Code § 4-67 (defining “transportation network company” as “an entity that has been issued a permit by the State of Arizona, that operates in the State of Arizona, that uses a digital network or software application to connect passenger(s) to transportation network services provided by transportation network company drivers, and that may but is not deemed to own, operate or control a personal motor vehicle of a transportation network driver”).

The Ordinance requires TNCs to pay a “drop-off” fee of \$4.00, which is scheduled to increase to \$5.00 by 2024. Ordinance at 25. Beginning in 2025, this fee “will automatically increase annually at the greater rate of three percent or the percentage change in the most current consumer price index for all urban consumers (CPI-U)” (“Automatic Increase provision”). *Id.* For non-TNC authorized providers, the “drop-off” fee is between \$1.75 and \$5.00, depending on

the vehicle size. *Id.* at 26. Beginning in 2021, the “drop-off” fees for non-TNC authorized providers will “automatically increase” at the same rate as set forth in the Automatic Increase provision. *Id.*

2. “Pick-Up” Fee

Second, the Ordinance increases existing “pick-up” fees (currently labeled “trip fees”) that are assessed against TNCs. Ordinance at 25; *see also* City Code § 4–67 (defining “trip” as “an authorized provider picking up a passenger on an airport”); *id.*, § 4–78(A) (establishing “trip fees”). The Code does not distinguish between TNCs and other authorized providers to determine the applicable “trip fees”; instead, the Code sets “trip fees” in amounts ranging from \$2.25 to \$9.00, depending on the vehicle size and the date on which an authorized provider was “permitted.” *See* City Code, § 4–78(A)(1)–(3).

By definition, TNC vehicles do not exceed eight passengers. *See id.*, § 4–67. The “trip fees” for vehicles equipped with one to eight seats ranged from \$2.25 to \$3.25 in calendar years 2017, 2018, and 2019; these “trip fees” were scheduled to increase somewhat (“at the lesser of three percent or the percent of change in the most current [CPI-U]”) on January 1, 2020. *See id.*, § 4–78(A)(1)–(3), (6). The City confirmed that the 2019 (and present) trip fee for TNCs operating at the Airport is \$2.66. *See* City Council Agenda Report, Attachment A (December 18, 2019); Response at 7.

The Ordinance re-labels the “trip fee” as “pick-up” fee, increases the fee from \$2.66 to \$4.00 for TNCs, and establishes a schedule that increases the “pick-up” fee to \$5.00 by 2024. Ordinance at 25. Under the Ordinance, starting in 2025, the pick-up fee for TNCs will rise on an annual basis at the same rate as set out in the Automatic Increase provision that the Ordinance similarly establishes for drop-off fees. *See id.*

III. Analysis

The Request asks whether the Ordinance violates the Arizona Constitution’s prohibition against “impos[ing] or increas[ing] 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 ... any service performed in this state.” ARIZ. CONST. art. IX, § 25. As a preliminary matter, the Ordinance and the Request characterize the charges at issue as “fees” and the constitutional text unambiguously includes fees. As discussed below, the Office concludes that the new “drop-off” fees and increased “pick-up” fees qualify as transaction-based fees on the privilege to engage in a service performed in Arizona. It is therefore unnecessary, for purposes of this Report, to address whether the “trip fees” are also or alternatively “tax[es]” or “other assessment[s]” within the meaning of article IX, § 25 of the Arizona Constitution.

In construing a constitutional provision, the primary goal “is to effectuate the electorate’s intent in adopting it.” *Saban Rent-a-Car LLC v. Ariz. Dept. of Revenue*, 246 Ariz. 89, 95, ¶ 21 (2019). If the provision’s meaning is discerned “from its language alone,” it is applied “without further analysis.” *Id.*; *see also Calik v. Kongable*, 195 Ariz. 496, 498, ¶ 10 (1999) (“With only a few exceptions, if the language [of an initiative] is clear and unambiguous, we apply it without using other means of statutory construction.”). “Each word, phrase, and sentence must be given meaning so that no part will be [void], inert, redundant or trivial.” *City of Phoenix v. Yates*, 69 Ariz. 68, 72 (1949).

When the Arizona Constitution does not further define a term, courts “look to their ‘natural, obvious, and ordinary meaning.’” *Kotterman v. Killian*, 193 Ariz. 273, 284, ¶ 33 (1999); *see also DBT Yuma, L.L.C. v. Yuma Cty. Airport Auth.*, 238 Ariz. 394, 396, ¶ 9 (2015) (“Absent statutory definitions, courts generally give words their ordinary meaning ... and may

look to dictionary definitions[.]” (internal citations omitted)). “It is a ‘fundamental principle of statutory construction (and indeed, of language itself) that the meaning of a word cannot be determined in isolation, but must be drawn from the context in which it is used.’” *Ariz. Dept. of Water Resources v. McClennen*, 238 Ariz. 371, 376, ¶ 26 (2015) (quoting *Deal v. United States*, 508 U.S. 129, 132 (1993)).

“City ... ordinances are to be construed by the same rules and principles which govern the construction of statutes[.]” *City of Phoenix v. Orbitz Worldwide Inc.*, 247 Ariz. 234, ¶ 10 (2019) (quoting *Rollo v. City of Tempe*, 120 Ariz. 473, 474 (1978)).

A. The Ordinance Very Likely Violates Article IX, § 25 Of The Arizona Constitution

The Ordinance very likely violates article IX, § 25 of the Arizona Constitution. Section 25 states, in relevant part, that “any ... city ... created by law with authority to impose any tax, fee ... 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 ... any service performed in this state.” ARIZ. CONST. art. IX, § 25. As discussed below, the Ordinance falls within the plain language of the constitution’s prohibition. The City is vested with the authority to impose the types of taxes, fees, and assessments to which § 25 is directed; the Ordinance imposes and increases a fee, tax, stamp requirement or assessment within the meaning of § 25; and the “trip fees” at issue are “transaction based” within the meaning of § 25.

1. The City Is Created By Law With Authority To Impose A Tax, Fee, Or Other Assessment

It is beyond dispute that the City is “created by law with authority to impose” fees within the meaning of article IX, § 25. *See State v. McLamb*, 188 Ariz. 1, 3 (App. 1996) (“The City of

Phoenix, as authorized by the Arizona Constitution, Article 13, Section 2, has adopted a charter permitting it to enact municipal ordinances.”); *see also* ARIZ. CONST. art. XIII, § 2 (authorizing a city with a population of more than 3,500 to “frame a charter for its own government consistent with, and subject to, the Constitution”).

2. The Ordinance “Impose[s]” And “Increase[s]” A Fee, Tax, Stamp Requirement Or Assessment

The Ordinance imposes *and* increases “trip fees” within the meaning of § 25. *See* ARIZ. CONST. art. IX, § 25 (cities “shall not impose or increase...”). The City argues that the new “trip fees” are not “impose[d]” as that term is used in § 25 because according to a Merriam-Webster Dictionary definition, “impose” means “to establish or apply by authority” or to “establish or bring about as if by force.” Response at 12. The City contends that “[a] fee that is voluntarily paid is not ‘imposed’” and that there is no “element of compulsion or coercion” associated with the “trip fees” here. *Id.*

The City’s argument is perplexing to say the least. First, the City appears to take a remarkably myopic and government-empowering view of what makes a tax, fee, or assessment voluntary. By the City’s logic, a city income tax, or road tax, or practically any other tax would be voluntary in nature, and exempt from § 25, because state residents could always leave the City or never enter in the first place. In addition, the word “impose” appears twice in § 25, and to adopt the City’s reasoning would mean interpreting “impose” as meaning two different things in the same sentence. This violates a basic canon of statutory construction. *Sorenson v. Sec’y of the Treasury*, 475 U.S. 851, 860 (1986) (“[I]dential words used in different parts of the same act are intended to have the same meaning.”).

Second, the City’s explanation is belied by the facts. The City has mandated compliance with the Ordinance and satisfaction of the “trip fees” provision; there is nothing voluntary about

the payment of the “trip fees” for those who enter the Airport. *See* City Code, Ch. 4, Art. I, § 4–2 (“[a]ny person who is granted permission by the City of Phoenix or Aviation Director ... to enter or use any part of the airport *shall comply* with the airport rules and regulations” and “rules, regulations or other airport requirements” established by the Aviation Director “shall have the force and effect of law”) (emphasis added). Commercial ground transportation providers must have a permit to engage in commercial activities at the Airport. *See* City Code, § 4–68. The “trip fees” are imposed under § 4–78, which trigger an authorized provider’s “decision to comply with the legally imposed regulations and fees[.]” *See Jachimek v. State*, 205 Ariz. 632, 636, ¶¶14–17 (App. 2003) (reasoning that a City of Phoenix ordinance “imposed [an] assessment upon those subject to its regulatory control” and that “[b]ecause [a] fee is charged for each transaction, the charge is imposed”).

Moreover, the Constitution prohibits both imposing *and* increasing fees. ARIZ. CONST. art. IX, § 25. Even if it were accepted that the new drop-off fees are not imposed, these fees still constitute an “increase” in “trip fees.” The City states that the Ordinance “updated” the fee schedule (Response at 7), but the City makes no argument suggesting that the Ordinance did not “increase” the “trip fees” by creating new “drop-off” fees and increasing the existing “pick-up” fees. The Ordinance thus both imposes and increases fees.

3. The “Trip Fees” Are “Transaction-Based” And Are Imposed On “The Privilege To Engage In” A “Service Performed In This State”

The “trip fees” fall within the meaning of “transaction-based” fees that are imposed “on the privilege to engage in ... any service performed in this state.” ARIZ. CONST. art. IX, § 25 (cities “shall not impose or increase any sales tax, transaction privilege tax, luxury tax, excise tax, use tax, or *any other transaction-based tax, fee* ... on the privilege to engage in ... any service performed in this state.”...). The ordinary meaning of “transaction” is “[t]he act or an

instance of conducting business or other dealings; especially, the formation, performance, or discharge of a contract,” “a business agreement or exchange,” or “any activity involving two or more persons.” Black’s Law Dictionary (11th ed. 2019); *accord* A.R.S. § 44-7002(17) (“‘Transaction’ means an action or set of actions occurring between two or more persons relating to the conduct of business, commercial or governmental affairs”). “Service” is generally understood as “labor performed in the interest or under the direction of others; specifically, the performance of some useful act or series of acts for the benefit of another, usually for a fee.” Black’s Law Dictionary (11th ed. 2019).

Notably, the constitution prohibits “*any* ... transaction-based ... fee” imposed on the privilege to engage in “*any* service.” ARIZ. CONST. art. IX, § 25 (emphasis added). “Read naturally, the word ‘any’ has an expansive meaning, that is, ‘one or some indiscriminately of whatever kind.’” *United States v. Gonzales*, 520 U.S. 1, 5 (1997) (quoting Webster’s Third New International Dictionary 97 (1976)). The Arizona Supreme Court has repeatedly recognized this principle—that “the word ‘any’ is ‘broadly inclusive.’” *City of Phoenix v. Glenayre Electronics, Inc.*, 242 Ariz. 139, 144, ¶ 17 (2017) (quoting *City of Phoenix v. Tanner*, 63 Ariz. 278, 280 (1945), citing *Gonzales*, 520 U.S. at 5, and rejecting City’s argument for a narrow construction of the phrase, “[n]otwithstanding any other statute”). The electorate’s approval of the word, “any,” therefore supports an expansive reading of “transaction-based” and “service.” However, neither of these terms should be read in isolation. *See Ariz. Dept. of Water Resources*, 238 Ariz. at 376, ¶ 26. Instead, “transaction-based” and “service” must be read in context of the entire clause. *Id.*

The Office agrees with the City’s observation that the constitutional text explains that the transaction-based fee is charged “*on the privilege* to engage in ... any service[.]” *See* ARIZ.

CONST. art. IX, § 25 (emphasis added). Response at 9. And as the City notes, a privilege “grants someone the legal freedom to do ... a given act,” and “[m]ore broadly,” it “refers to the right or license to operate a business offering that service.” Response at 10 (citing Black’s Law Dictionary and *Ariz. State Liquor Bd. v. Poulos*, 112 Ariz. 119, 121 (1975) (“[A] liquor license is ... a privilege to engage in a business subject to the regulation of the state.”)).

The Ordinance itself confirms that the “trip fees” are “transaction-based” and charged on authorized providers’ “privilege” to offer passengers a transportation “service” to and from the Airport. To explain when “trip fees apply[,]” § 4–78(A)(3) provides as follows:

For authorized providers using global positioning system (GPS) trip tracking, trip fees apply each time a driver enters a geofence,² makes one or more stops, and completes a pick-up or drop off of one or more passengers. For all other authorized providers, trip fees apply each time a driver enters or exits an airport and stops at one or more designated passenger pick-up or drop-off locations.

Ordinance at 27.

Specifically, the “transaction” consists of entering or exiting the airport (a “pick-up” or “drop-off”), which involves “two or more persons” (drivers and passengers); the “trip fees” are charged on a “privilege” that the City grants authorized providers to operate a business at the Airport; and that privilege relates to the “service” performed by drivers, who give rides to passengers for a fee. *See* City Code, § 4–67 (defining “[a]uthorized provider” as “a person, authorized by the Aviation Director under permit or contract, to engage in commercial ground transportation” and defining “[d]river” as “any individual who drives, is driving, or is in actual physical control of, a ground transportation motor vehicle”); Ordinance at 6 (defining “[t]ransportation network driver” as a “person who receives connections to potential passenger(s)

² A “geofence” means “an electronic perimeter, designated by the Aviation Director, of airport property and sub-perimeters within airport property.” City Code, § 4–67.

and related *services* from a [TNC] in exchange for payment of a fee to the [TNC], and that is used by a transportation network driver to provide transportation network *services*”) (emphasis added).

The City, relying on the same provision above (§ 4-78(A)(3)), contends that the trip fees “are triggered only when a TNC vehicle enters the Airport and stops at valuable, limited Airport curb space to drop off or pick up customers” and argues that “[t]hese specific uses of Airport property are the ‘basis’ for the [f]ees.” Response at 11. But contrary to the City’s argument, the language of the Ordinance does not support a conclusion that the “trip fees” are based on the companies’ “use” of curb space. Nothing in the text of the Ordinance suggests that the trip fees are “use” or facility-related fees. To the contrary, they are “pick-up” and “drop-off” fees—two categories of “trip fees”—that are imposed when passengers are transported to and from the Airport. *See* Ordinance at 6 (defining “[t]rip” as “an authorized provider picking up or dropping off a passenger on an airport”).

Indeed, the Code contradicts the City’s assertion that the Ordinance “does not require payment of the [f]ees in exchange for the right or license to operate a rideshare business.” Response at 10. The trip fees are a condition of the permit issued by the Aviation Director. *See* Ordinance at 25 (“all authorized providers *will* pay the trip fees”) (emphasis added); City Code, Ch. 4, Art. I, § 4-2 (“rules, regulations or other airport requirements” established by the Aviation Director “shall have the force and effect of law”). In exchange for complying with the City’s fees and regulations, commercial ground transportation providers receive a privilege that is not given to others—the right to provide these services commercially at the Airport. *Cf. Jachimek*, 205 Ariz. at 636, ¶ 16 (reasoning that “the decision to become a pawnbroker is a voluntary one

... and in exchange for complying with the[] [city’s] fees and regulations, the pawnbroker receives a privilege not given to others—the right to engage in pawn transactions”).

The remedy for non-compliance with the Ordinance further confirms the Ordinance falls within the plain language of § 25’s requirement of a “privilege.” Authorized providers must pay the trip fees or risk losing their permit. *See* City Code, Ch. 4, Art. I, § 4–4 (“[t]he use of any portion of the airport for revenue-producing commercial activities or to solicit business or funds is prohibited unless authorized by the Aviation Director by lease, permit or license agreement under such terms and conditions that may be required by the Aviation Director[.]”).

Finally, the City’s argument that the constitutional prohibition is “concerned with fees that are broadly applicable within a taxing jurisdiction” (Response at n.6) does not comport with the Constitution’s text. Section 25 does not contain any geographical limitations to support such a conclusion. Rather, the transportation services are “performed *in this state*” and the Constitution’s other requirements are satisfied. ARIZ. CONST. art. IX, § 25 (emphasis added).

Accordingly, the Office concludes that the Ordinance very likely violates the plain language of article IX, § 25 of the Arizona Constitution.³

B. Article XIII, § 5 Of The Arizona Constitution Does Not Alter The Outcome

In its Response, the City asserts, *inter alia*, that the Ordinance and article IX, § 25 do not conflict and that the “trip fees” are justified by municipal corporations’ constitutional authority “to engage in any business or enterprise which may be engaged in by a person, firm, or

³ In light of this conclusion, this Report does not address the City’s alternative arguments that are premised on potential ambiguities in the Constitution’s text. Response at 15. *See Rubin v. U.S.*, 449 U.S. 424, 430 (1981) (“When we find the terms of a statute unambiguous, judicial inquiry is complete, except in rare and exceptional circumstances.” (internal quotation marks and citation omitted)); *Calik*, 195 Ariz. at 498, ¶ 10 (“With only a few exceptions, if the language [of an initiative] is clear and unambiguous, we apply it without using other means of statutory construction.”).

corporation by virtue of a franchise from said municipal corporation.” ARIZ. CONST. art. XIII, § 5. Thus, the City contends it has wide latitude in operating its City-owned property and setting fees for companies to access and use the city-owned Airport. The City further contends that Prop 126 does not “bar municipalities from conditioning access to their property on the payment of [] fees” and that Prop 126 “was not intended to disadvantage municipal corporations when they act as owners and operators of business and property.” Response at 2–3.

These points are insufficient to save the “trip fees” here. For the reasons discussed above, and in light of the plain text of the Ordinance, the City’s “trip fees” are not imposed for “access” or “use” of City-owned property. Instead they are based on “drop-off[s]” and “pick-up[s].” Ordinance at 25–26. In any event, to the extent the City suggests that article XIII, § 5 creates tension between the Ordinance and article IX, § 25, the City is likely mistaken. Article IX, § 25 does not infringe upon cities’ constitutional power to engage in businesses or enterprises; it simply establishes a prohibition against new or increased transaction-based taxes, fees, and assessments on a privilege to engage in services performed in the state. The constitutional provisions govern different subject matter and are not incompatible or irreconcilable. And although the home rule charter provision in article XIII, § 2 gives charter cities autonomy, that autonomy must be “consistent with” and is “subject to” the Arizona Constitution. ARIZ. CONST. art. XIII, § 2.

The analysis above better harmonizes article XIII, § 5 with article IX, § 25 and gives effect to the constitutional provisions involved. *See Hughes*, 203 Ariz. at 167–68, ¶ 11 (“When constitutional amendments seemingly conflict, ‘it is the duty of the court to harmonize both so that the constitution is a consistent workable whole.’”).

* * *

In defending its choice to raise the “trip fees” at the Airport, the City relies upon operational challenges that the City believes rideshare companies place on the Airport’s roadways and designated pick-up and drop-off locations. However, policy arguments for why the City believes the increased and new “trip fees” are warranted or consistent with past practice cannot overcome the language that the voters put into the Constitution. Under the plain language of article IX, § 25, the City may not impose or increase transaction-based fees on services.

What the City seeks is to effectively rewrite the Constitution in light of the City’s policy preference, placing the powers of government above the rights of the people to whom the government must always answer. That cannot be. Whatever policy arguments are brought to bear, the Office’s fidelity is to the rule of law, which here includes a constitutional provision that protects the hard-working taxpayers of Arizona.

IV. Conclusion

The Ordinance, which imposes new “drop-off” fees and increases existing “pick-up” fees on companies that provide commercial ground transportation services to and from the Airport, very likely violates article IX, § 25 of the Arizona Constitution. The Office recognizes, however, that § 25 has not yet been interpreted by Arizona courts. Therefore, “existing law [does not] clearly and unambiguously compel[]” this conclusion. *See City of Tucson*, 242 Ariz. at 595, ¶ 25. The Office therefore concludes under A.R.S. § 41–194.01(B) that the Ordinance **may violate** the Arizona Constitution, and will expeditiously seek relief in the nature of declaratory judgment against the City in the Arizona Supreme Court.



Mark Brnovich
Attorney General