



STATE OF ARIZONA

OFFICE OF THE ATTORNEY GENERAL

<p>ATTORNEY GENERAL OPINION</p> <p>By</p> <p>KRIS MAYES ATTORNEY GENERAL</p> <p>July 11, 2024</p>	<p>No. I24-011 (R24-006)</p> <p>Re: Definition of “use and zoning ordinances” in A.R.S. § 11-269.17(B)(2)</p>
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To: The Honorable Wendy Rogers, Arizona State Senator (LD7)
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Question Presented

State law provides that counties may “adopt and enforce use and zoning ordinances” for vacation or short-term rentals so long as the ordinances are “applied in the same manner as other property classified under §§ 42-12003 and 42-12004.” A.R.S. § 11-269.17(B)(2). Does Gila County Ordinance No. 2023-08 conflict with this law by imposing regulations on vacation and short-term rentals that do not apply to other property classified under §§ 42-12003 and 42-12004?

Summary Answer

No. A.R.S. § 11-269.17(B)(2) requires that “use and zoning ordinances” be applied to vacation and short-term rentals in the same manner such ordinances are applied to other property classified under §§ 42-12003 and 42-12004. But the statute also permits counties to impose other types of regulations on vacation and short-term rentals without any requirement that they also

apply to other property, including regulations to protect public health and safety. *See id.* § 11-269.17(B)(1). Because Gila County Ordinance No. 2023-08 imposes regulations for public health and safety, rather than “use and zoning ordinances” specific to vacation and short-term rentals, the Ordinance does not conflict with A.R.S. § 11-269.17(B)(2).

Background

In 2016, the Arizona Legislature passed S.B. 1350, now codified as A.R.S. § 11-269.17. As enacted in 2016, the law gave counties the authority to regulate vacation and short-term rentals for three purposes: (1) protecting public health and safety, (2) adopting and enforcing use and zoning ordinances, and (3) restricting the use of vacation and short-term rentals for certain purposes including housing sex offenders, operating a sober living home, selling illegal drugs, or running an adult-oriented business. A.R.S. § 11-269.15 (2016) (subsequently renumbered). In 2019, the Arizona Legislature expanded the list of permissible regulatory purposes to include: (4) requiring the owner to provide the county with the contact information of someone who would be responsible for timely responding to complaints. A.R.S. § 11-269.17 (2019). In 2022, the Arizona Legislature added another four permissible regulatory purposes: (5) requiring owners to obtain and maintain local regulatory permits or licenses for their vacation and short-term rentals, (6) requiring owners to notify their neighbors of the rental use, (7) requiring owners to display their vacation or short-term rental permits or licenses on advertisements, and (8) requiring that vacation and short-term rentals be insured at a minimum of \$500,000 in the aggregate. A.R.S. § 11-269.17 (2022).

The Gila County Board of Supervisors adopted Gila County Ordinance No. 2023-08 in December 2023. The Ordinance imposes a number of regulations on vacation and short-term rentals within Gila County. Primary among these is that owners obtain a permit from the county

before operating a vacation or short-term rental. *See* Gila County Ordinance No. 2023-08 ch. 2. In addition to the permitting requirement, the Ordinance mandates that owners maintain aggregate insurance of at least \$500,000 (Chapter 3.4), display their permit numbers on advertisements (Chapter 3.5), and notify their neighbors that the property will be offered as a vacation or short-term rental (Chapter 4). Various provisions throughout the Ordinance require vacation and short-term rentals to comply with other generally applicable laws. *See, e.g.*, Gila County Ordinance No. 2023-08 Chs. 1.4.2, 3.6.6, 3.6.8, 3.6.9, 3.6.11.

Relevant here, Chapter 3.6 of Gila County Ordinance No. 2023-08 imposes a number of additional regulations. Titled “Additional health and public safety regulations,” Chapter 3.6 states that the “primary purpose” of the regulations therein is “protecting the health and safety of the public as vacation rentals and short-term rentals create unique public health and safety issues.” Gila County Ordinance No. 2023-08 Ch. 3.6.1. Among the requirements set forth in Chapter 3.6 are regulations addressing trash collection (3.6.2), smoke and carbon monoxide detectors (3.6.3), floor plan display (3.6.5), regular pest control treatments (3.6.7), and occupancy limits (3.6.10).

Analysis

You have asked this Office to consider whether Gila County Ordinance No. 2023-08 conflicts with A.R.S. § 11-269.17(B)(2) by imposing requirements unique to vacation and short-term rentals. We conclude that it does not.

A.R.S. § 11-269.17(B)(2) allows counties “[t]o adopt and enforce 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.” A.R.S. §§ 42-12003 and 42-12004 define class three and class four property, respectively. The answer to your question therefore depends on whether Gila County

Ordinance No. 2023-08 imposes “use and zoning ordinances” under A.R.S. § 11-269.17(B)(2) that must also apply to class three and class four property generally, or if instead the Ordinance’s regulations are otherwise authorized by A.R.S. § 11-269.17(B).

A.R.S. § 11-801(10) defines “[z]oning ordinance” as “an ordinance that is adopted by the board of supervisors and that contains zoning regulations together with a map setting forth the precise boundaries of zoning districts within which the various zoning regulations are effective.” The statute further defines “[z]oning regulations” as “provisions that govern the use of land or buildings, or both, the height and location of buildings, the size of yards, courts and open spaces, the establishment of setback lines and such other matters as may otherwise be authorized under this chapter and that the board deems suitable and proper.” *Id.* § 11-801(11). Arizona courts have at various times analyzed whether a particular ordinance is properly understood to be a “zoning ordinance.” *See, e.g., Whiteco Outdoor Advert. v. City of Tucson*, 193 Ariz. 314, 317–318 ¶¶ 8–11 (App. 1998) (concluding that a billboard lighting regulation was not a zoning ordinance).

The regulations in Ordinance Chapter 3.6 here are clearly not zoning regulations. For the Ordinance to be a “zoning ordinance,” it would need to be accompanied by “a map setting forth the precise boundaries of zoning districts within which the various zoning regulations are effective.” A.R.S. § 11-801(10). And for the regulations contained within the Ordinance to be “zoning regulations,” they would need to govern things such as “the use of land or buildings, or both, the height and location of buildings, the size of yards, courts and open spaces, [or] the establishment of setback lines.” A.R.S. § 11-801(11). A land or building’s “use” in a zoning ordinance refers to its essential purpose, not how the property is used on a micro scale. *See Zoning Ordinance for Unincorporated Areas of Gila County Arizona § 102* (defining “use” as “[t]he purpose for which a building or lot is arranged, designed, occupied, or maintained”). The

regulations at issue here simply do not govern the sort of issues addressed by zoning regulations. Rather, as indicated by the Chapter's title and text, the regulations concern issues of public health and safety, which § 11-269.17(B)(1) explicitly permits.

From its inception, § 11-269.17(B) has allowed counties to regulate vacation and short-term rentals for the purpose of “protect[ing] the public’s health and safety . . . if the county demonstrates that the rule or regulation is for the primary purpose of protecting the public’s health and safety.” A.R.S. § 11-269.17(B)(1). The statute notes that these provisions may specifically “includ[e] rules and regulations related to fire and building codes, health and sanitation, transportation or traffic control and solid or hazardous waste and pollution control.” *Id.*

A number of the provisions in Gila County Ordinance No. 2023-08 use the precise language of portions of § 11-269.17(B). For instance, § 11-269.17(B)(3) allows counties “[t]o limit or prohibit the use of a vacation rental or short-term rental for the purposes of 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,” and Chapter 3.2 of Gila County Ordinance No. 2023-08 does just that. Similarly, Chapter 3.4 of the ordinance mirrors § 11-269.17(B)(8)’s authorization for counties “[t]o require the vacation rental or short-term rental to maintain liability insurance appropriate to cover the vacation rental or short-term rental in the aggregate of at least \$500,000 or to advertise and offer each vacation rental or short-term rental through an online lodging marketplace that provides equal or greater coverage.”

The portions of Gila County Ordinance No. 2023-08 about which you expressed particular concern in your letter are all contained within Chapter 3.6 of the Ordinance. As noted above, Chapter 3.6 is titled, “Additional health and public safety regulations,” and begins with the statement that these regulations are “for the primary purpose of protecting the health and safety of

the public” (3.6.1). Many of the regulations in Chapter 3.6 fit neatly into the types of health and safety regulations expressly authorized by § 11-269.17(B)(1). For example, regular pest control treatments (3.6.7) and trash collection container rules (3.6.2) are directly related to “health and sanitation”; prohibiting trash collection containers from being left out for extended periods of time may further not only health and sanitation but also “transportation or traffic control” and “pollution control.” A.R.S. § 11-269.17(B)(1). Likewise, displaying a floor plan marking the emergency exit route and fire extinguisher location (3.6.5) is directly related to “fire and building codes.” A.R.S. § 11-269.17(B)(1). And in Chapter 3.6.10, the Gila County Board of Supervisors explicitly tied the vacation and short-term rental occupancy limit to regulations relating to septic systems, which concern both “health and sanitation” and “solid or hazardous waste . . . control.” A.R.S. § 11-269.17(B)(1).

Given the close relationship between the Ordinance’s regulations and the statute’s expressly authorized categories of regulation, there is no reason to treat the regulations in Gila County Ordinance No. 2023-08 Chapter 3.6 as anything other than the sort of health and safety regulations that § 11-269.17(B)(1) authorizes counties to impose on vacation and short-term rentals without regard for how other property is regulated.

Conclusion

A.R.S. § 11-269.17(B) grants counties authority to regulate vacation and short-term rentals in a number of ways. The statute’s provision in A.R.S. § 11-269.17(B)(2) for “use and zoning ordinances” that also apply to other class three and class four property is only one of those ways. Because the regulations in Gila County Ordinance No. 2023-08 are appropriate subjects for regulation under other parts of A.R.S. § 11-269.17(B), the Ordinance does not conflict with A.R.S. § 11-269.17(B)(2).

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