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ATTORNEYS AT LAW

NOTICE OF NEW CITY OF SCOTTSDALE ORDINANCE AFFECTING HOA'S LOCATED IN SCOTTSDALE

Planned communities located in the City of Scottsdale should be aware that on September 20, 2022, the City of Scottsdale adopted Ordinance No. 4567 that adds new Section 49-260 "Prohibition of Mandatory Turf Conditions by Owner's Associations" to the Scottsdale Revised Code that addresses turf over-seeding and related issues.

The Ordinance generally provides with respect to any *planned community association*¹ located in the City of Scottsdale (regardless of any provision in the association's governing documents), the association cannot require an owner to:

- Over-seed their turf between October 1 and March 1;
- Irrigate their turf between October 1 and March 1; or
- Maintain any minimum amount of turf on the owner's lot at any time;

Notwithstanding the above, the association can still enforce its maintenance standards, so long as doing so does not contradict the provisions of the Ordinance.

A copy of the Ordinance is attached for your records. A link to the Ordinance follows as well:

<https://www.scottsdaleaz.gov/Assets/ScottsdaleAZ/Clerk/pending-ordinances/ORDINANCE4567.PDF>

Planned communities located within the City of Scottsdale should consider comparing their CC&R's as well as Rules/Guidelines to the provisions of the Ordinance so as to determine whether any changes in the association's enforcement practices are needed.

Although the Ordinance is specific to planned communities within the City of Scottsdale, community associations in other jurisdictions should be on the lookout for comparable ordinances purporting to override the association's governing documents.

Additionally, some associations may decide to challenge the City's authority to implement the Ordinance given that it "overrides" an association's governing documents. Predicting the success of such a challenge at this time is difficult.

If you have any questions about the Ordinance or any other legal issue affecting your association, please reach out to any of our attorneys.

¹ The Ordinance appears to apply to planned communities only; however, the Ordinance is not entirely clear and the City could argue that it also applies to Condominiums.

ORDINANCE NO. 4567

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SCOTTSDALE, MARICOPA COUNTY, ARIZONA TO APPROVE AMENDMENTS TO CHAPTER 49, "WATER, SEWERS & SEWAGE DISPOSAL," TO PROHIBIT MANDATORY OVERSEEDING OF TURF OR OTHER MANDATORY TURF REQUIREMENTS BY PROPERTY OWNER'S ASSOCIATIONS

WHEREAS, as a water provider, the City is committed to comprehensive planning in order to secure an assured water supply for needs today and those of the future; and

WHEREAS, water waste hampers the City's ability to do so, especially in times of drought, and is a public nuisance; and

WHEREAS, droughts are unavoidable, but their impact can be lessened by implementing drought management plans, restrict the use of water in escalating degrees, as the severity of the situation dictates; and

WHEREAS, the City Council finds that the imposition of mandatory winter over-seeding or other turf requirements can be contrary to the drought management policies of the City;

BE IT ORDAINED by the Council of the City of Scottsdale that the following amendments to Chapter 49 of the Scottsdale Revised Code are hereby approved:

Section 1. Chapter 49, Article VII, Division 2 regarding Drought Management is hereby amended to add a new Section 49-260 as follows (with additions in highlighting and deletions in strikethrough):

Section 49-260. Prohibition of Mandatory Turf Conditions by Owner's Associations

A. No property owner's association, homeowner's association or association as defined in Arizona Revised Statutes Title 33, Section 1802 shall require as a condition of compliance with the governing documents that its unit owners or members over-seed or otherwise irrigate turf between the period of October 1 of each calendar year to March 1 of each successive year.

B. No such association shall require as a condition of compliance with the governing documents that its unit owners or members maintain any minimum amount of turf on such unit owner's or member's lot.

C. Provided, however, this section shall not be construed to prohibit such associations from enforcing minimum maintenance standards set forth in the applicable governing documents except as expressly limited herein.

D. Any requirement in the governing documents of such association in contravention of this section shall be deemed invalid and unenforceable.

Section 2. If any section, subsection, sentence, clause, phrase, or portion of this ordinance or any part of the Code adopted herein is for any reason held to be invalid

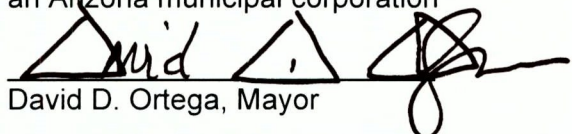
PASSED AND ADOPTED by the Council of the City of Scottsdale this 20 day of September, 2022.

ATTEST:



Ben Lane, City Clerk

CITY OF SCOTTSDALE
an Arizona municipal corporation



David D. Ortega, Mayor

APPROVED AS TO FORM:



Sherry R. Scott, City Attorney
By: Eric C. Anderson, Senior Assistant City Attorney