Scharf-Norton Center for Constitutional Litigation at the GOLDWATER INSTITUTE
Christina Sandefur (027983)
Jared Blanchard (031198)
500 E. Coronado Rd.
Phoenix, AZ 85004
(602) 462-5000
litigation@goldwaterinstitute.org

Law Offices of Stephen H. Schwartz, Esq. P.A.
Stephen H. Schwartz (020669)
P.O. Box 1524
Sedona, Arizona 86339-1524
(928) 282-5700
stephenschwartz@earthlink.net

Attorneys for Plaintiffs

IN THE SUPERIOR COURT OF ARIZONA
IN AND FOR THE COUNTY OF YAVAPAI

SEDONA GRAND, LLC, Plaintiff, vs. CITY OF SEDONA, Defendant.	**Case No.: CV 82008-0129** **PLAINTIFF'S RESPONSE TO DEFENDANT'S MOTION FOR PARTIAL SUMMARY JUDGMENT** *(Assigned to Hon. Mark M. Moore)*

Plaintiff Sedona Grand, L.L.C. ("Sedona Grand") hereby responds to Defendant City of Sedona's ("the City") Motion for Partial Summary Judgment.

I. Introduction

Even after years of litigation, the City still cannot muster sufficient evidence to show that it enacted Sedona City Code §§ 8-4-1 to 8-4-6 (2008) ("the 2008 Occupancy Ban") for the *principal purpose* of protecting the public's health and safety and thus is exempt from liability under the voter-enacted Private Property Rights Protection Act, A.R.S. § 12-1131 *et seq.* ("the PPRPA"). Instead, the

City continues to dodge responsibility, treating Sedona Grand's claim for just compensation like a land-use code enforcement action (City of Sedona's Motion for Partial Summary Judgment at 4 ("City's MSJ")), and even declaring that the City's own proclamation of immunity "is not subject to second-guessing by the courts/judicial review." (City's MSJ at 11.) Because the City has not established that a true nexus exists between the 2008 Occupancy Ban, which indisputably imposes "new restrictions on land use," and a concrete public health and safety threat, the City's Motion for Summary Judgment should be denied. *Sedona Grand, L.L.C. v. City of Sedona*, 229 Ariz. 37, 41, 270 P.3d 864, 868 (App. 2012), *review denied* (Aug. 28, 2012).

II. The City has not met its burden of proving that the 2008 Occupancy Ban's principal purpose is public health and safety.

Where, as here, a land-use law diminishes property rights, *the City* bears the burden of "establish[ing] by a preponderance of the evidence that the law was enacted for the principal purpose of protecting the public's health and safety before the exemption can apply"; otherwise, the City is liable to affected property owners for just compensation. *Id.* at 42, 270 P.3d at 869. In other words, the PPRPA requires the government to show a true nexus between the land-use law and a public health and safety concern to avoid liability for diminishing a property right. The City has failed to demonstrate a link between the purported health and safety problems and the sweeping prohibitions of the 2008 Occupancy Ban.

a. The City must demonstrate a substantial nexus between the 2008 Occupancy Ban and a public health and safety concern.

In order to satisfy its burden under the PPRPA, the City must show that a legitimate health and safety problem was the primary catalyst behind the enacted ordinance. Otherwise, governments would be free to devise regulations without regard to their burden on private property rights, no matter how tenuous a law's relationship to public health and safety. Such an outcome would be practically

indistinguishable from permitting cities to "do [no] more than incant the language of a statutory exception to demonstrate that it is grounded in actual fact," which both the Court of Appeals and the PPRPA itself reject. *Id.* at 43, 270 P.3d at 870.

When a land-use law clearly and directly protects public health and safety the City can meet its burden rather easily. *Id.* For example, outlawing refuse buildup bears an obvious relationship to health and safety because it prevents "insects, rodents, snakes and fire." *Id.* at 42-3, 270 P.3d at 869-70 (*citing State v. Watson*, 198 Ariz. 48, 6 P.3d 752 (App. 2000)). Likewise, a floodplain ordinance to mitigate "uncontrolled flood waters or improperly blocked waterways" had a "commonsense, self-evident nexus" to "death and destruction of property, and . . . disease and ill-health." *Id.* at 43, 270 P.3d at 870 (*citing Smith v. Beesley*, 226 Ariz. 313, 247 P.3d 548 (App. 2011)). But in cases where "the nexus between prohibition of short-term occupancy and public health is not self-evident," *id.*, the City must clearly demonstrate the regulation is related to the protection of health and safety both in nature and degree.

While Arizona courts have not yet defined the precise relationship required between a public health problem and its legislative solution, the PPRPA's robust protections require meaningful review to ensure that a city's alleged principal purpose is not merely pretextual. Where, as here, the connection is not overt or obvious, the law governing land-use exactions and unconstitutional conditions can provide a judicially manageable framework to determine whether a regulation "amount[s] to a veiled . . . confiscation of private property behind the defense of police regulations." *Pioneer Trust & Sav. Bank v. Vill. of Mount Prospect*, 176 N.E.2d 799, 802 (1961) (invalidating ordinance requiring subdivider to dedicate a portion of land for public use without compensation); *see also* A.R.S. §§ 9-500.12(E) and 11-832(E) (codifying federal exactions analysis in Arizona). The PPRPA's standard of scrutiny must be *at least* as robust as well-established exactions law since voters enacted the PPRPA to tighten judicial enforcement of property rights protections. *See, e.g.,* A.R.S. Title 12, Ch. 8, art. 2.1 § 2(A)(4)(h) (2006)

(before PPRPA, courts were "allow[ing] state and local governments to impose significant prohibitions and restrictions on the use of private property without compensating the owner for the economic loss of value to that property"). In other words, the standard for determining whether the principal purpose of an ordinance is the protection of public health and safety – and whether the City may reduce Sedona Grand's property rights without providing just compensation – must be at least as searching as the standard in place when voters enacted the more protective PPRPA.

Applying the exactions nexus test in the PPRPA context, the City can prove a regulation's *principal* purpose is protecting public health by demonstrating (1) an "essential nexus" between the regulation and the protection of health and safety, and (2) that the regulation is "roughly proportional" to the identified problem. *See* A.R.S. §§ 9-500.12(E) and 11-832(E); *see also Nollan v. Cal. Coastal Comm'n*, 483 U.S. 825, 841 (1987); *Dolan v. City of Tigard*, 512 U.S. 374 (1994). In other words, the ordinance must actually address a public health issue and not impose an overbroad solution. To make this determination, courts ask, "(1) Does the record show a reasonable relationship between [the regulated activity] and [the]problem? (2) Does the record show a reasonable relationship between the problem and the [regulation]?" *Burton v. Clark Cnty.*, 958 P.2d 343, 356 (Wash. App. 1998). Here, the City has not demonstrated that the purported public problems are uniquely attributable to short-term occupancy, nor has it demonstrated that the breadth of the "expansive" 2008 Occupancy Ban is required to address that problem.

b. The City's legislative findings are not entitled to absolute deference and do not demonstrate a genuine health and safety problem.

Perhaps because it cannot meet its evidentiary burden, the City demands total deference to its legislative findings and the ordinance's "plain language." (*See* City's MSJ at 11 (the City's "legislative determination is not subject to second guessing by the courts/judicial review.")) But none of the cases the City relies upon involve the PPRPA. (City's MSJ at 11.) To the extent that those cases have *any*

relevance to this case, they illustrate the state of legislative deference that incited voters to limit such discretion. *See* A.R.S. Title 12, Ch. 8, art. 2.1, § 2(A)(4) (providing examples of regulatory takings abuses in Arizona as a basis for overriding legislative deference). The City cannot supplant the courts when judging its own authority under the PPRPA, especially when "the Act specifically provides that the body enacting the law bears the burden of demonstrating that an exemption applies." *Sedona Grand*, 229 Ariz. at 42, 270 P.3d at 869 (citing A.R.S. § 12-1134(C)). Voters enacted the PPRPA precisely because it "limits and tightens the government's ability to effectively 'take' your property." Arizona Secretary of State General Election Publicity Pamphlet, November 7, 2006, Ballot Propositions ("Publicity Pamphlet"), at 181, 184.[1] The PPRPA demands meaningful judicial review of legislative findings to oblige governments "to err on the side of protecting citizens' constitutional rights" when contemplating property rights restrictions. *Cf. Owen v. City of Independence, Mo.*, 445 U.S. 622, 652 (1980) (denying city deference or immunity from liability under the Civil Rights Act because strict enforcement of the Act serves as a deterrent against future abuse).

The 2008 Occupancy Ban's plain language and the City's legislative findings actually support Sedona Grand's position. On its face, the ordinance directly prohibits various forms of *occupancy*, not dangerous or unhealthful activities or behaviors. Sedona, Ariz., Code § 8-4-2 (2008). While the City offers a few vague blandishments about "the peace, safety and general welfare of the residents of Sedona," overall the ordinance's legislative findings "suggests that its purpose is to protect the character of neighborhoods." *Sedona Grand*, 229 Ariz. at 43, 270 P.3d at 870. The City expresses a "commit[ment] to maintaining its small-town character, scenic beauty and natural resources" and "the

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[1] *Available at* http://www.azsos.gov/election/2006/Info/PubPamphlet/english/Guide.pdf. "To determine the intent of the electorate, courts . . . look to the publicity pamphlet." *Heath v. Kiger*, 217 Ariz. 492, 496, 176 P.3d 690, 694 (2008). It is permissible for a court to take judicial notice of publicity pamphlets. *Pedersen v. Bennett*, 230 Ariz. 556, 559, 288 P.3d 760, 763 (2012).

integrity . . . of the city's residential neighborhood." Sedona, Ariz., Code § 8-4-2 (2008). But "neighborhood character and public health are entirely distinct concepts." *Sedona Grand*, 229 Ariz. at 43, 270 P.3d at 870. Indeed, the voters clearly understood that the "enactment of neighborhood preservation codes," "historic overlay zoning" and "neighborhood preservation measures" would trigger just compensation under the PPRPA. *See* Publicity Pamphlet at 185, 188.

Moreover, the City's legislative findings are replete with speculative language. *E.g.* Sedona, Ariz., Code § 8-4-2 (2008) ("temporary occupancy has . . . *the potential* for increased traffic, noise, high occupant turnover, and density," "*the potential* to exceed [occupancy] standards for the design capacity of such structures and to cause health and safety problems," and "*may* constitute threats to the health and safety of neighbors and nearby properties"). (DSOF ¶¶ 16-17.) Given the hypothetical nature of the identified health and safety problems, the City cannot show that the 2008 Occupancy Ban is properly tailored to address specific public health hazards.

c. The City cannot prove that the 2008 Occupancy Ban's principal purpose was to protect health and safety.

The City does not offer sufficient evidence to establish that the 2008 Occupancy Ban was passed for the primary purpose of protecting health and safety. Of the handful of "complaints" the City specifically identifies as "rais[ing] a number of health and safety concerns," many are simply letters supporting more expansive regulation and citing generalities about potential problems. (DSOF ¶ 5, exh. B at SEDONA00463-64, 939-41, 944, 945-47.) Others raise vague grievances about increases in roadside parking and traffic (DSOF ¶ 5, exh. B at SEDONA00507, 575, 937, 944), and generalized comments about noise issues (DSOF ¶ 5, exh. B at SEDONA00937, 944). Most merely speculate about the potential for public health issues, instead focusing their concerns on a proliferation of strangers in the neighborhood. (DSOF ¶ 5, exh. B at SEDONA00507, 937-38, 939-41, 944, 945-47.)

Some Sedonans may desire to "live in a community of home owners" (DSOF ¶ 5, exh. B at

SEDONA00507) with a "small town character" (*id.* at SEDONA00937) where "you know most everyone and can comfortably socialize with your neighbors." (*Id.* at SEDONA00944.) To them, "temporary people . . . coming and going without our knowing them," (*id.* at SEDONA00507), may be "objectionable" and "less desirable" (*id.* at SEDONA00947), but these are issues of "neighborhood preservation," not health and safety. Publicity Pamphlet at 185, 188; *Sedona Grand*, 229 Ariz. at 43, 270 P.3d at 870. Certainly the PPRPA does not forbid the City from attempting to create "a quiet, friendly, family" neighborhood where people "know most everyone." (DSOF ¶ 5, exh. B at SEDONA00944.) Nor does it prohibit the City from engineering a "small town atmosphere" where "artists, retirees, and a new young professional community" are "able to see the stars at night." (*Id.* at SEDONA00946.) The PPRPA simply ensures that the costs of achieving these community desires are not shouldered by a few property owners but borne by the public as a whole.[2] Publicity Pamphlet at p. 190 (Under the PPRPA, cities are "liable for damages…even where the majority of the affected land owners are in favor of the regulation").

The City has failed to establish an essential nexus between community health concerns and the 2008 Occupancy Ban. Assuming that any of these complaints identify cognizable *health and safety* problems within the city, none demonstrate a causal relationship between these problems and the wide array of activities the 2008 Occupancy Ban now forecloses, such as contracting for home improvements,

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[2] Notably absent from the City's Motion are the overwhelming expressions of *opposition to* such broad and stringent regulations. (*See, e.g.,* DSOF exhs. D, E.) These include, among others, requests for clarification about the purported health and safety problems and the City's efforts to mitigate those problems (DSOF exh. D at SEDONA03824; DSOF exh. H at SEDONA03949), doubt over the existence or severity of the problem (DSOF exh. D at SEDONA03824), statements of experiencing "no significant problems" with short-term occupants (*id.*; *see also* DSOF exh. E at SEDONA03912), reports that homes in question "are well maintained" (*id.* at SEDONA03825), and calls for more narrowly tailored regulations that actually address the proffered concerns. (*Id.* at SEDONA03824.) Moreover, eleven of the fifteen citizens who spoke at the July 11, 2007 City Council meeting voiced support for *loosening* short-term rental restrictions, not broadening them. (Ex. D, SEDONA03805-03808.)

nanny services, babysitting, and entering into purchase option agreements with prospective homeowners. To the extent that the complaints suggest a causal relationship *at all*, they attribute the problems solely to the short-term rentals that were *already* prohibited under the 1995 Rental Ban and are not subject to this lawsuit. Publicity Pamphlet at p. 190. *Cf. Isla Verde Int'l Holdings, Inc. v. City of Camas*, 990 P.2d 429, 431, 437 (Wash. App. 1999) (although "[n]umerous local residents spoke in opposition to [a] subdivision, particularly complaining about traffic, runoff, and fire safety" and the "Fire Department also expressed concern about emergency access," the Washington Court of Appeals invalidated a city's open-space set-aside requirement because the record was "devoid of evidence of studies or formulas showing a reasonable relationship between the impact of [the subdivision] and the . . . set-aside requirement").

Moreover, the City has not shown that the 2008 Occupancy Ban is proportional to the purported public health problems. To be sure, many other cities simply directly regulate the health and safety issues put forth by the City, often holding the occupants liable. Such regulations establish a much closer nexus and would likely absolve the City of liability. *See, e.g.,* Goodyear, Ariz., Code § 10-4-4 (2014) (requiring all "person[s] with control of any property . . . to maintain such property . . . in a clean manner free from garbage, rubbish, refuse, trash, weeds, waste or other accumulation of filth" and requiring the same to maintain City sanitation service); Tempe, Ariz., Code § 21-3 (2008) (prohibiting all persons from "commit[ting] a nuisance," including "anything whatsoever that is or may become a hazard to public health and safety"); Tempe, Ariz., Code § 20 (1967) (extensively regulating "unnecessary, excessive and annoying noises from all sources"); Kingman, Ariz., Code §§ 7-165, 9-4-2 through 9-4-4 (2000) (regulating "public nuisances," including trash, litter, parking, and sales on residential property); Winslow, Ariz., Code §§ 8.20.020, 8.20.070 (2014) (regulating trash, litter, congestion, and anything that "interferes with, obstructs or renders dangerous the free passage or use, in

the customary manner, of [public places]"); Glendale, Ariz., Code §§ 18-7, 18-9, 24-54 through 24-66 (1999) (penalizing anyone who fails to properly house or dispose of trash or recyclable materials or causes "excessive, unnecessary and annoying noises" and imposing mandatory assessments on repeat offenders and imposing strict parking restrictions so as not to obstruct traffic); Chandler, Ariz., Code §§ 22-2.2, 11-10 *et seq.* (2007) (making tenants responsible for all "solid waste generated, accumulated, stored or otherwise deposited on their property" and prohibiting actions that "disturb the peace" including disruptive parties). Currently, Coconino County is contemplating regulating – without banning – the perceived effects of "vacation rental properties" by imposing occupancy limits of 10 adults, quiet hours from 9 p.m. to 7 a.m. and rules regarding noise, traffic, and parties. Emery Cowan, *County Looks to Regulate Vacation Rental Properties*, Ariz. Daily Sun, Sept. 17, 2014.[3]

Sedona ordinances already address some of the purported effects of short-term occupancy, including regulations pertaining to trash (Sedona, Ariz., Code § 8.05 (2006)), litter (Sedona, Ariz., Code § 8.10 (2006)), controlled substances (Sedona, Ariz., Code § 9.25 (2005)), traffic control (Sedona, Ariz., Code §10.15 (2006)), and parking (Sedona, Ariz., Code §§ 10.20, 10.30 (2006)), among others. To avoid compensating property owners, the City could have simply supplemented those direct regulations to address any lingering health and safety problems, such as setting maximum occupancy restrictions. (City's MSJ at 7.) Indeed, when considering the 2008 Occupancy Ban, City staff drafted an ordinance "designed to eliminate the negative effects associated with vacation rentals . . . includ[ing] parking, registering as a business and paying bed tax." (DSOF exh. E at SEDONA03908.) But the City chose to enact a sweeping prohibition on numerous types of short-term occupancy, attaching severe criminal penalties for violations. Sedona City Code §§ 8-4-6 (imposing fines of $2,500, imprisonment for six

[3] *Available at*: http://azdailysun.com/news/local/county-looks-to-regulate-vacation-rental-properties/article_d94afa9c-fdaf-5b14-80c6-96fbf87d690a.html.

months, or both, *per day*). If the City wishes to employ such broad restrictions rather than targeted solutions that actually and directly address issues of public health and safety, it may do so, but it must compensate property owners for the resulting diminution in rights.

III. Sedona Grand is entitled to just compensation because the 2008 Occupancy Ban reduced its rights to use its property for a broad range of previously permissible uses.

Determining whether the 2008 Occupancy Ban reduced Sedona Grand's property rights is a simple endeavor; indeed, the Court of Appeals already held that "the City did not merely reaffirm the existing ban" but rather added "expansive definitions . . . [that] differ from the plain meaning of the [1995 Rental Ban]" and "contain[ed] new restrictions on land use." *Sedona Grand*, 229 Ariz. at 40-41, 270 P.3d at 867-868. The *precise scope* of the new ordinance, and the extent to which it exceeds the 1995 Rental Ban, will determine whether and to what degree the 2008 Ordinance reduced the Property's fair market value, a question that will be resolved in a subsequent phase of this litigation. A.R.S. § 12-1134(A)(3). At this stage, the City clearly eliminated Sedona Grand's rights to enter into previously lawful purchase option agreements and use its property for a broad range of previously permissible uses.

a. Sedona Grand is entitled to recovery for its loss of the right to use option agreements as a sales tool.

Unable to garner sufficient evidence to evade PPRPA liability under the health and safety exception, the City represents Sedona Grand's option agreements as "nothing more than a ruse." (City's MSJ at 13.) But the City's depiction of Sedona Grand's option agreements is inaccurate and irrelevant to the question of whether the 2008 Occupancy Ban diminished Sedona Grand's property rights.

The City insists that Sedona Grand is not entitled to just compensation because the City *itself* "determined that [Sedona Grand's] use of option contracts violated the City's [pre-existing] short-term rental ban." (City's MSJ at 12.) But Arizona courts have a longstanding rule *against* deferring to government's interpretation of its own zoning ordinances. As a general rule, because land use

regulations are in "derogation of common law property rights", they are "strictly construed to favor the property owner. *Kubby v. Hammond*, 68 Ariz. 17, 22, 198 P.2d 134, 138 (1948). On its face, the "sparsely worded" 1995 Rental Ban solely forbade "*[r]entals* of single-family dwellings for periods of less than 30 consecutive days." *Sedona Grand,* 229 Ariz. at 41, 270 P.3d at 868; (PSOF ¶ 4) (emphasis added.) It did not prohibit the use of purchase option agreements that permit prospective purchasers to inspect coveted property. (PSOF ¶ 4.) For the first time, the 2008 Occupancy Ban added new definitions prohibiting, among other uses, "*option[s] to purchase* whereby a person is given a right to possess the property for a term of less than 30 consecutive days." (PSOF ¶ 20) (emphasis added.) Thus, before the 2008 Occupancy Ban, sellers of residential property in Sedona could use purchase option agreements to entice prospective buyers; after the ban, that sales option was foreclosed under threat of criminal penalty.

Moreover, the sales options at issue here were not "end run[s] around the City's short-term rental ban" (Sedona's MSJ at 12) as the City claims, and the Court of Appeals was right to find that "there is no evidence in the record to indicate that the Options were sham attempts to rename transactions that were in substance 'rentals' under the [1995 Rental Ban]." *Sedona Grand*, 229 Ariz. at 39, 270 P.3d at 866 n.2. Sedona Grand's options are tools to assist Sedona Grand in selling its Property, which it felt compelled to do in light of the City's restrictive zoning regulations. (PSOF ¶¶ 6-9.) These arrangements granted prospective purchasers the right to become familiar with the Property by inspecting it for a short time period before deciding whether to exercise their option to purchase the Property. (PSOF ¶ 11.) The options were not rental arrangements in disguise, but binding contracts, obligating Sedona Grand to sell its Property – which had been listed for sale with a real estate broker (PSOF ¶ 6) – if the prospective purchaser exercised its option to purchase. (*See* PSOF ¶ 11, Exh. 8 (setting sales price and time period to exercise option to purchase.))

This case simply asks whether the 2008 Occupancy Ban eliminated Sedona Grand's right to enter into inspection purchase option agreements or limited in any way Sedona Grand's right to use its property. If so, the City owes just compensation. Whether Sedona Grand's activities were proper option agreements or actually short-term rentals might be relevant in a code enforcement action, but not as a defense to an action for just compensation. Indeed, the City's facts about purported code violations and criminal convictions (*see* DSOF ¶ 19, 26, 27, 28, 31, 33, 34, 35, 36, 37, 38, 40, 42, 43, 44, 45, 46; Sedona's MSJ at 4-8; 12-13), are red herrings. Recovery is not contingent upon whether Sedona Grand was *actually exercising* the eviscerated rights at the time of the ordinance's enactment, as the PPRPA only requires that a property owner show that his "existing rights to use" (i.e. what he was *permitted to do* with his property) are reduced in a way that diminishes the property's fair market value. A.R.S. § 12-1134(A).

b. Sedona Grand is also entitled to recovery for the elimination of its rights to use its property for a broad range of previously permissible uses.

Regardless of whether the 2008 Occupancy Ban eliminated a preexisting right to use sales option agreements, Sedona Grand is still entitled to recover for a reduction in property rights because the 2008 Occupancy Ban unquestionably reduced Sedona Grand's rights to use its property in a variety of *other* ways when it expanded occupancy restrictions beyond rentals. *Sedona Grand*, 229 Ariz. at 41, 270 P.3d at 868 (the 2008 Occupancy Ban prohibits a broad range of uses that were lawful under the 1995 Rental Ban including, but not limited to, "nanny services, in-home nursing, babysitting, pet-sitting, house-sitting, assistance with home improvements"); (PSOF 20-23).

The City argues that the 2008 Occupancy Ban "changed nothing." (City's MSJ at 16.) But the Court of Appeals explicitly held that "the City did not merely reaffirm the existing ban," and that the 2008 ordinance's expanded prohibitions "differ from the plain meaning of the [1995 Rental Ban]." *Sedona Grand,* 229 Ariz. at 40, 270 P.3d at 867. According to the court, "numerous arrangements that

would not commonly have been understood to be 'rentals,'" such as "nanny services, in-home nursing, babysitting, pet-sitting, house-sitting, [and] assistance with home improvements," would "now violate the [2008] Ordinance and subject property owners to criminal penalties." *Id.* at 41, 270 P.3d at 868. The 2008 Occupancy Ban goes so far as to restrict ownership activities where the 1995 Rental Ban did not. *Id.* (noting that the 2008 Ban prohibits certain time-share arrangements).

While the magnitude of the new prohibitions governs the amount of just compensation owed (to be resolved in a subsequent phase), this Court need not determine the full extent of those proscriptions now to find that property rights have been diminished. Clearly, activities that were legal before the 2008 Ban are now prohibited, and that is all that is necessary for a determination that Sedona Grand's "existing rights to use, divide, sell or possess private real property are reduced." A.R.S. § 12-1134(A).

IV. Sedona Grand's claim for compensation was timely.

As a last-ditch effort to avoid liability, the City resuscitates its argument that Sedona Grand's lawsuit is time-barred, ignoring both settled law that the general notice-of-claim procedures do not apply to the PPRPA and the target of Sedona Grand's claim. (*See* City's MSJ at 14-16.)

The City insists that Sedona Grand's claims are time-barred because it did not file its *PPRPA* claim notice within the *general* claim statute's shorter limitation periods. (City's MSJ at 14-15) (citing A.R.S. § 12-821 and § 12-821.01.) If the City were correct, filing a PPRPA claim would be *more* cumbersome than other claims for damages. To avoid this absurdity, the legislature enacted House Bill 2319, clarifying that the general claim statute does not apply to claims brought under the PPRPA, which has its own unique notice and limitations requirements. 2012 Ariz. Sess. Laws, ch. 110, § 2 (2012) (*codified at* A.R.S. § 12-1131 *et seq.)* ("H.B. 2319").[4] H.B. 2319 is applicable because newly enacted procedural laws apply to pending lawsuits. *See State Comp. Fund v. Fink*, 224 Ariz. 611, 614, 233 P.3d

[4] Available at http://www.azleg.gov/legtext/50leg/2r/laws/0110.pdf (*last visited* Oct. 9, 2014).

1190, 1193 (App. 2010) (a new law expanding the right to intervene in lawsuits allowed an intervention in an ongoing case filed prior to the new rule because it was a procedural statute).

Moreover, the City's position that a "ban on short-term rentals has been in place since 1995" is irrelevant to when the statute of limitations period runs. Sedona Grand does not seek just compensation under the 1995 Rental Ban; it seeks just compensation for the 2008 Occupancy Ban's "new restrictions on land use," *Sedona Grand*, 229 Ariz. at 41, 270 P.3d at 868, including "the use of certain Options." Compl. ¶ 26; (PSOF 28, Exh. 1.) The City's contention that the 2008 Occupancy Ban did not reduce Sedona Grand's existing property rights goes to the question of whether Sedona Grand suffered a compensable injury under the PPRPA. The statute of limitations merely governs whether Sedona Grand brought its claim within the required time after the alleged trigger event. It is unambiguous that Sedona Grand seeks compensation for injuries suffered under the 2008 Occupancy Ban (PSOF 25-28), so the statute of limitations began to run from the date that ordinance took effect. As such, Sedona Grand's notice of claim letter and subsequent lawsuit were filed within the PPRPA's three-year statute of limitations.[5]

V. Conclusion

The City's insistence that the 2008 Occupancy Ban "changed nothing" cannot overcome the Court of Appeals' own recognition that the City "did not merely reaffirm the existing [1995] ban" but instead enacted "new restrictions on land use." *Sedona Grand*, 229 Ariz. at 40-41, 270 P.3d at 867-868. Sedona Grand is entitled to recovery for the resulting reduction in fair market value. A.R.S. § 12-1134(A). If the City's thinly veiled, ad-hoc "health and safety" rationale were sufficient to relieve it of liability, the PPRPA's robust protections would be rendered toothless.

For the foregoing reasons, Sedona Grand respectfully requests that the City's Partial Motion for

[5] Sedona Grand sent its PPRPA Notice of Claim on February 25, 2008 (PSOF 25), and subsequently filed this lawsuit on May 27, 2008 (PSOF 28), both well within the statute of limitations.

Summary Judgment be DENIED and that the City be required to compensate Sedona Grand for the diminution in value its property has suffered as a result of the 2008 Occupancy Ban.

DATED: October 10, 2014

Respectfully submitted,

Christina Sandefur
Jared Blanchard
Scharf-Norton Center for Constitutional Litigation at the Goldwater Institute

Stephen H. Schwartz
Stephen H. Schwartz, P.A.
Attorneys for Plaintiffs

FILED this 10th day of October, 2014 with:

Clerk of Court
Yavapai County Superior Court
120 South Cortez Street
Prescott, AZ 86303

Copy of the foregoing MAILED and EMAILED this 10th day of October, 2014 to:

Jeffrey T. Murray
Kristin Mackin
SIMS MURRAY, LTD.
2020 N. Central Ave., Ste. 670
Phoenix, AZ 85004-4581
jtmurray@simsmurray.com
kmackin@simsmurray.com
Attorneys for Defendant