



May 22, 2023

*Sent via E-mail & U.S. Mail*

The Honorable Scott Jablow  
City of Sedona  
102 Roadrunner Drive  
Sedona, Arizona 86336-3710  
sjablow@sedonaaz.gov

In re: Proposed Ordinance Relating to Off-Highway Vehicle Safety Equipment

Dear Mayor Jablow:

We were recently made aware of a proposed ordinance being considered by the Sedona City Council relating to the use of so-called off-highway vehicles (OHVs) in Sedona. We believe the proposed ordinance is likely preempted by state law, which allows OHVs to be legally driven on streets and highways so long as they are outfitted with equipment prescribed by state statute.

Chapters three, four, and five of Title 28 “are applicable and uniform throughout this state and in all political subdivisions in this state.” A.R.S. § 28-626(A). Further, local authorities cannot “enact or enforce an ordinance or regulation in conflict with [chapter 3] or chapter 4 or 5 of this title unless expressly authorized by [chapter 3] or chapter 4 or 5 of this title.” A.R.S. § 28-626(B)(1). While localities may adopt “regulations relating to the control and movement of traffic,” (A.R.S. § 28-626(B)(3)) this proposed ordinance does not deal with the control or movement of traffic but equipment necessary for an OHV to be considered safe enough to drive on the streets in Sedona.

There are two specific articles in chapter three that lay out the conditions necessary for an OHV to be legally driven on streets and highways in Arizona.

First, Article 16 of Chapter 3 lays out the equipment with which a vehicle must be outfitted to be driven on a highway in Arizona. A.R.S. § 28-921(A). The DOT symbol is not one of those requirements. A.R.S. § 28-958. Further, the chapter lays out specific equipment necessary for the operation of “all-terrain vehicle[s]” or OHVs on highways. *See* A.R.S. §§ 28-964, A.R.S. §§ 28-952, 28-953, 28-924, 28-1179. This statutory framework evinces a clear intent of the legislature that the policy of the state is that OHVs are safe enough to be driven on highways so long as they are outfitted with the equipment mandated by state statute.

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Second, Article 20 of chapter three is devoted entirely to OHVs. That article defines a “highway” as including “the entire width between the boundary lines of every way publicly maintained by the federal government, the department, *a city*, a town or a county if any part of the way is generally open to the use of the public for purposes of *conventional two-wheel drive vehicular travel*.” A.R.S. § 28-1171(3) (emphasis added). The chapter applies to all land in the state exempting only “private land and Indian land.” A.R.S. § 28-1172. The chapter allows an individual to obtain a motor vehicle registration “if the vehicle meets all equipment requirements to be operated on a highway” listed in Article 16. A.R.S. § 28-1177(C). A person can receive this registration by submitting an affidavit affirming that the OHV meets the equipment requirements for highway use and upon the receipt of the affidavit “the department *shall* register the vehicle for highway use.” *Id* (emphasis added). These provisions also show that the legislature intended to allow the use of OHVs on highways in Arizona so long as the OHVs are outfitted with safety equipment as set out in statute. The definition of highway used in Chapter 20 includes all streets in Sedona. Thus because state law has set out the equipment requirements to safely operate on highways, an ordinance that requires different equipment is preempted by state law.

In addition to these preemption concerns, there are other potential legal infirmities with the proposed ordinance. Primarily, there is a concern that the ordinance contains an unconstitutional delegation of government power by deferring the legality of OHVs being driven on the streets to a private manufacturer. The ordinance contains no definite standards to govern the exercise of government power or any procedural safeguards. It simply delegates government authority to a nongovernmental entity, which is unconstitutional. *See Emmett McLoughlin Realty, Inc. v. Pima Cnty.*, 203 Ariz. 557, 559 ¶ 7 (App. 2002); *Paulin v. Gallego*, No. CV 2023-000409, 2023 WL 1872272, at \*2 (Maricopa Cnty. Super. Feb. 03, 2023).

In order to prevent ongoing and future violations of law and the Arizona Constitution, we respectfully request that Sedona reject the proposed ordinance and continue to allow individuals to use OHVs on Sedona streets as long as they comply with applicable state law that allows such vehicles to be driven on streets.

Our staff is available at any time to discuss the legal issues raised by this proposed ordinance.

We appreciate your prompt and thoughtful consideration of these matters and look forward to receiving confirmation that Sedona has decided not to adopt this legally questionable ordinance.

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Should you have any questions regarding this matter, please do not hesitate to contact me directly at (602) 633-8996 or [ashelton@goldwaterinstitute.org](mailto:ashelton@goldwaterinstitute.org).

Regards,

A handwritten signature in cursive script that reads "Adam Shelton". The signature is written in black ink and has a long, sweeping horizontal stroke at the end.

Adam Shelton  
Staff Attorney  
Scharf-Norton Center for Constitutional Litigation  
at the Goldwater Institute

cc (via email only):

City Manager Karen Osburn, [kosburn@sedonaaz.gov](mailto:kosburn@sedonaaz.gov)

City Attorney Kurt Christianson, [kchristianson@sedonaaz.gov](mailto:kchristianson@sedonaaz.gov)