



Arizona State Legislature

1700 West Washington

Phoenix, Arizona 85007

June 5, 2023

Via Email and U.S. Mail

Mayor Jablow & Sedona City Council
102 Roadrunner Dr.
Sedona, AZ 86336

Re: Proposed Ordinance Regulating Off-Highway Vehicle Equipment

Dear Mayor Jablow and City Council Members,

We are writing to you in our official capacities regarding your proposed ordinance that would regulate off-highway vehicles (“OHVs”) in Sedona.¹ After consulting with attorneys in the Legislature, we wanted to bring the following legal concerns to your attention.

The proposed OHV Ordinance purports to exercise police power, stating that “the City deems it necessary to adopt certain regulations regarding improper motor vehicle equipment to protect the health, safety, and welfare of the City residents in accordance with [Department of Transportation] regulations.” Arizona courts have long recognized that although “the state has broad police power”, municipalities have “no inherent police power”. *State ex rel. Brnovich v. City of Tucson*, 242 Ariz. 588, ¶ 47 (2017) (citing *Luhrs v. City of Phoenix*, 52 Ariz. 438, 444 (1938); see also *City of Scottsdale v. State*, 237 Ariz. 467, ¶ 17 (App. 2015) (“Arizona courts have rejected municipal ordinances that conflict with state statutes..., particularly when such ordinances involve the police powers of the state.”).

Accordingly, the proposed OHV ordinance must have statutory authorization to be a permissible exercise of the police power. See *id.*; see also A.R.S. § 28-626(B)(1) (prohibiting local authorities from enacting or enforcing any ordinance or regulation that conflicts with chapter 3, 4, or 5 of Title 28 “unless expressly authorized”).

Under A.R.S. § 28-627(A), a local authority may, “within the reasonable exercise of police power,” regulate certain statutorily-defined aspects of streets and highways that fall under the local authority’s jurisdiction. Notably, a local authority may “designat[e] routes on certain streets and highways for the purpose of allowing off-highway vehicle operators to gain access to or from a designated off-highway recreation facility as defined in § 28-1171, off-highway vehicle trail as defined in § 28-1171 or off-highway vehicle special event as defined in § 28-1171.” A.R.S. § 28-

¹ See Packet from City Council Meeting on May 23, 2023, at pages 59-61, available at: <https://www.sedonaaz.gov/home/showpublisheddocument/49238/638200158135930000> (text of proposed ordinance).



627(A)(13). But the proposed OHV Ordinance would outright ban OHVs that do not meet the OHV Ordinance's equipment specifications on all highways within the Sedona City limits.

The OHV Ordinance not only conflicts with A.R.S. § 28-627(A)(13), which allows OHVs on streets and highways; it also conflicts with A.R.S. § 28-1179, which prescribes equipment requirements for OHVs that operate in this state. Accordingly, the OHV Ordinance is not a valid exercise of the police power.

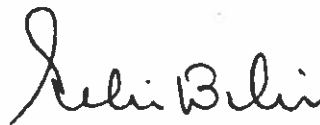
Please advise us if you still intend to consider the OHV Ordinance despite the legal concerns that have been identified above, and if so, provide us with a legal analysis explaining how the OHV Ordinance is authorized by state law.

We appreciate your prompt attention to this matter and look forward to hearing from you.

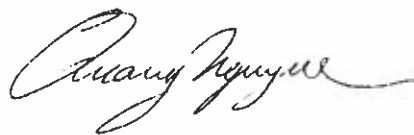
Respectfully,



Ken Bennett
Arizona State Senate



Selina Bliss
Arizona House of Representatives



Quang H. Nguyen
Arizona House of Representatives