



Office of Arizona Attorney General

# Mark Brnovich



Legislator Request for Attorney General Investigation of  
Alleged State-Law Violation by County, City, or Town (Continued)

\*Identify the member(s) of the Legislature submitting this request for investigation (attach additional sheet if necessary):

DARIN MITCHELL

\*Provide a contact person for communications from the Attorney General's Office regarding this request (may be a Legislator listed above or an employee of the Legislature).

\*Name: DARIN MITCHELL

\*Email address: DMITCHELL@AZLEG.GOV

\*Phone number: (C) 602-509-0553

\*Mailing address:

\*The specific question for the Attorney General to investigate is:

DID THE CITY OF SEDONA VIOLATE

A.R.S. 9-500.39

\*The name of the county, city, or town that is the subject of this request:

SEDONA

\*The specific ordinance, regulation, order, or other official action adopted or taken by the governing body of the county, city, or town and the date thereof:

SEDONA ORDINANCE 2016-06

AMENDING SEDONA CITY CODE CHAPTER 5.25 AND

\*The specific Arizona statute(s) and/or constitutional provision(s) with which the action conflicts:

ARS 9-500.39 (ENACTED AS S.B. 1350 IN 2016)



Office of Arizona Attorney General  
**Mark Brnovich**



Legislator Request for Attorney General Investigation of  
 Alleged State-Law Violation by County, City, or Town (Continued)

\*All relevant facts of which you are aware (attach separate sheet if necessary):

[Empty text box for facts]

\*All relevant legal authority, including federal and state case law, of which you are aware (attach separate sheet if necessary):

[Empty text box for legal authority]

\*Any litigation involving this issue of which you are aware (include case name, number, and court where filed) :

[Empty text box for litigation]

Check this box if you are attaching supporting documentation.

**NOTE: This form and other information submitted to the Attorney General's Office is subject to the public records law, A.R.S. § 39-121 et seq.**

I, a current member of the Legislature, verify that I and the other Legislators listed on the previous page (if any) are submitting this request for investigation under A.R.S. § 41-194.01.

\*First Name:  \*Last Name:

\*Signature:  \*Date:

Please submit the completed form to:  
 Arizona Attorney General's Office  
 Attn: Civil Litigation Division/A.R.S. § 41-194.01  
 2005 N Central Avenue  
 Phoenix, Arizona 85004  
[cldinvestigations@azag.gov](mailto:cldinvestigations@azag.gov)

**ATTACHMENT A**  
**1487 Complaint of Representative Darin Mitchell Regarding City of Sedona Home-Sharing Regulation**

In 2016, Governor Doug Ducey signed S.B. 1350, which prohibits local governments from “prohibit[ing] vacation rentals or short-term rentals,” A.R.S. § 9-500.39(A) or restricting or regulating vacation rentals or short-term rentals “based on their classification, use or occupancy.” A.R.S. § 9-500.39(B). In other words, cities may not impose on vacation rental properties or short-term rentals any rule that does not also apply to all other residential properties. The only exception is that local governments may impose rules if they can demonstrate that those rules are “for the primary purpose” of protecting public health and safety in ways the statute specifies. A.R.S. § 9-500.39(B)(1)-(3).

The City of Sedona’s Ordinance 2016-06 (codified at Sedona City Code 5.25.040) —which requires owners who offer their homes as short-term rentals to obtain a business license, but does not impose the same requirement on homeowners who offer their homes as long-term rentals—violates A.R.S. § 9-500.39. This requirement is not only discriminatory, in violation of the law, but it is also not tailored to protect public safety, as required by A.R.S. § 9-500.39(B).

Presumably in response to these concerns, the Sedona City Council adopted an amendment at its January 9, 2018, City Council Meeting. However, these changes do not cure this deficiency, and the City remains in violation of A.R.S. § 9-500.39. The current language reads:

Every transient lodging establishment located within the jurisdictional boundaries of the city of Sedona or which is obligated to remit transaction privilege taxes for the transient lodging activity in the city of Sedona shall obtain a city of Sedona business license as required pursuant to Chapter 5.05 SCC.

Sedona City Code 5.25.040.

Eliminating the requirement of a business license for short-term or vacation rentals (while clarifying that homeowners who offer their homes as short-term rentals must provide the City with a designated emergency point of contact) would have brought the Ordinance into accordance with A.R.S. § 9-500.39. But according to the City Council minutes, “the requirement of a business license for transient lodging establishments, which by definition would include residential properties used as short-term or vacation rentals, would remain in effect.” For this reason, the Ordinance remains in violation of A.R.S. § 9-500.39.

A.R.S. § 9-500.39 does not allow the City to impose any requirement—licensing or otherwise—on vacation rentals or short-term rentals that is not also imposed on long-term rentals. All residential rental property must be treated the same, without regard to duration, with the sole exceptions of public safety matters or providing an emergency point of contact, as governed by A.R.S. § 9-500.39(b). Short-term rentals or vacation rentals cannot be simply swept into the definition of “transient” rentals and then subjected to a licensing requirement.

On the contrary, A.R.S. § 9-500.39—which supersedes previously existing statutes and preempts city ordinances—very clearly prohibits that. It states that—with the sole exceptions of public safety matters or providing an emergency point of contact, as governed by A.R.S. § 9-500.39(b)—cities “may not prohibit...restrict...or regulate vacation rentals or short-term rentals based solely on their classification,” and it defines “vacation rental” and “short term rental” as “any...single-family or one-to-four family house or dwelling unit or any unit or group of units...*that is also a transient public lodging establishment.*” A.R.S. § 9-500.39(C). In other words, the effort in the City’s January 9 amendment to erase the words “short term rental” and “vacation rental” from the ordinance, but still require these property owners to obtain a license because they qualify as “transient” rentals, is explicitly forbidden by the law.

The Ordinance’s deficiencies with regard to A.R.S. § 9-500.39 could have been cured by removing the requirement for short-term and vacation rentals to obtain a business license entirely, or by requiring a business license for *all* rentals (short-term, vacation, transient, and long-term), because the City may regulate all residential rentals in the same way, regardless of the duration of the rental. But the City simply may not discriminate between these types of rentals.<sup>1</sup>

To be sure, cities often require licensure for revenue-generating activities to facilitate tax payments, and it may be reasonable to require homeowners to provide their contact information to in case of emergency. But requiring *only* owners who offer homes as short-term and vacation rentals to obtain a business license goes beyond what is necessary for Sedona to achieve that objective. And because both A.R.S. § 9-500.39(B)(1) specifically allows the city to collect a “designation of an emergency point of contact” from owners who offer homes as short-term rentals, there is no need for the city to use a business-license requirement to accomplish that objective. If Sedona’s goal is to obtain emergency contact information, that goal can be achieved simply by requiring those homeowners to complete a designation of emergency contact form. Indeed, the City has *already* provided for this under Sedona City Code 5.25.050:

For every short-term rental, vacation rental, or transient lodging establishment within the city of Sedona, the owner shall provide to the city finance department the designation of an emergency point of contact on a form provided which shall include a current, valid telephone number at which an immediate, 24-hour response may be obtained to address an accident, medical emergency, natural disaster, law enforcement response, or other serious incident that requires immediate attention at the premises on which the short-term rental, vacation rental, or transient lodging activity is occurring. The emergency contact information shall be posted in a prominent and visible location inside the short-term rental, vacation rental, or transient lodging establishment.

Because Sedona may not impose on vacation rentals or short-term rentals any license or other legal obligation that is not equally applied to long-term residential rentals, and because Sedona

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<sup>1</sup> The Ordinance also appears to violate A.R.S. §§ 9-1301 and 9-1304, which expressly forbid cities from imposing a business license requirement on rental properties.

requires short-term rentals, but not long-term rentals, to obtain a business license in order to operate, Sedona Ordinance 2016-06 plainly violates state law.

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## Chapter 5.25 SHORT-TERM RENTAL REGULATION

### Sections:

<u>5.25.010</u>	Title.
<u>5.25.020</u>	Findings and purpose.
<u>5.25.030</u>	Definitions.
<u>5.25.040</u>	Business license requirement.
<u>5.25.050</u>	Emergency contact.
<u>5.25.060</u>	Use regulations.

#### **5.25.010 Title.**

This chapter shall be known as the city of Sedona short-term rental regulation chapter. [Ord. 2008-01, 1-22-08; Ord. 2016-06 § 1, 10-11-2016 (Res. 2016-29 Exh. A, 10-11-2016); Ord. 2016-12 § 1, 12-13-2016 (Res. 2016-37 (Exh. A), 12-13-2016); Ord. 2018-02 § 1, 1-9-2018 (Res. 2018-02 Exh. A, 1-9-2018), Code 2006 § 8-4-1].

#### **5.25.020 Findings and purpose.**

The city of Sedona is committed to maintaining its small-town character, scenic beauty, and natural resources that are the foundation of its economic strength and quality of life. (Sedona Community Plan, Section 9.2, Recommendations Goal 1.0.) The purpose of this chapter is to safeguard the public health and safety of the residents of Sedona and their visitors and guests while preserving the residential character of neighborhoods, minimizing nuisances, and providing equity with other residential and commercial uses. Therefore, in an attempt to further promote the aims and goals of the Sedona Community Plan, the city does hereby adopt the following provisions in an attempt to protect the public's health and safety in residential neighborhoods. [Ord. 2008-01, 1-22-08; Ord. 2016-06 § 1, 10-11-2016 (Res. 2016-29 Exh. A, 10-11-2016); Ord. 2016-12 § 1, 12-13-2016 (Res. 2016-37 (Exh. A), 12-13-2016); Ord. 2018-02 § 1, 1-9-2018 (Res. 2018-02 Exh. A, 1-9-2018), Code 2006 § 8-4-2].

#### **5.25.030 Definitions.**

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning:

"Emergency point of contact" means the identity and a 24-hour telephone number for the person, enterprise, or agency who is the owner, proprietor, or representative of a short-term rental or transient lodging establishment.

"Transient" means any person who either at the person's own expense or at the expense of another obtains lodging space or the use of lodging space on a daily or weekly basis, or any other basis for less than 30 consecutive days.

"Transient lodging" means the business of operating for occupancy by transients a hotel or motel, including an inn, tourist home or house, dude ranch, resort, campground, studio or bachelor hotel, lodging house, rooming house, apartment house, dormitory, public or private club, mobile home or house trailer at a fixed location, or other similar structure, and also including a space, lot, or slab that is occupied or intended or designed for occupancy by transients in a mobile home or trailer furnished by them for such occupancy. Transient lodging does not include those exceptions identified in A.R.S. § 42-5070(B).

"Vacation rental" or "short-term rental" means any individually or collectively owned single-family or one- to four-family house or dwelling unit or any unit or group of units in a condominium, cooperative or timeshare, that is also a transient public lodging establishment or owner-occupied residential home offered for transient use if the accommodations are not classified for property taxation under A.R.S. § 42-12001. "Vacation rental" and "short-term rental" do not include a unit that is used for any nonresidential use, including retail, restaurant, banquet space, event center, or another similar use. [Ord. 2008-01, 1-22-08; Ord. 2016-06 § 1, 10-11-2016 (Res. 2016-29 Exh. A, 10-11-2016); Ord. 2016-12 § 1, 12-13-2016 (Res. 2016-37 (Exh. A), 12-13-2016); Ord. 2018-02 § 1, 1-9-2018 (Res. 2018-02 Exh. A, 1-9-2018), Code 2006 § 8-4-3].

#### **5.25.040 Business license requirement.**

Every transient lodging establishment located within the jurisdictional boundaries of the city of Sedona or which is obligated to remit transaction privilege taxes for the transient lodging activity in the city of Sedona shall obtain a city of Sedona business license as required pursuant to Chapter 5.05 SCC. [Ord. 2008-01, 1-22-08; Ord. 2016-06 § 1, 10-11-2016 (Res. 2016-29 Exh. A, 10-11-2016); Ord. 2016-12 § 1, 12-13-2016 (Res. 2016-37 (Exh. A), 12-13-2016); Ord. 2018-02 § 1, 1-9-2018 (Res. 2018-02 Exh. A, 1-9-2018), Code 2006 § 8-4-4].

#### **5.25.050 Emergency contact.**

For every short-term rental, vacation rental, or transient lodging establishment within the city of Sedona, the owner shall provide to the city finance department the designation of an emergency point of contact on a form provided which shall include a current, valid telephone number at which an immediate, 24-hour response may be obtained to address an accident, medical emergency, natural disaster, law enforcement response, or other serious incident that requires immediate attention at the premises on which the short-term rental, vacation rental, or transient lodging activity is occurring. The emergency contact information shall be posted in a prominent and visible location inside the short-term rental, vacation rental, or transient lodging establishment. [Ord. 2008-01, 1-22-08; Ord. 2016-06 § 1, 10-11-2016 (Res. 2016-29 Exh. A, 10-11-2016); Ord. 2016-12 § 1, 12-13-2016 (Res. 2016-37 (Exh. A), 12-13-2016); Ord. 2018-02 § 1, 1-9-2018 (Res. 2018-02 Exh. A, 1-9-2018), Code 2006 § 8-4-5].

#### **5.25.060 Use regulations.**

The Sedona Land Development Code district regulations shall be applied to a short-term rental, vacation rental, or transient lodging establishment in the same manner as other property classified under A.R.S. §§ 42-12003 and 42-12004. The use of any short-term rental, vacation rental, or transient lodging establishment in any single-family residential district shall be limited to the uses identified

in the Sedona Land Development Code for that particular single-family residential zoning district. [Ord. 2008-01, 1-22-08; Ord. 2015-09 § 1, 6-23-15; Ord. 2016-06 § 1, 10-11-2016 (Res. 2016-29 Exh. A, 10-11-2016); Ord. 2016-12 § 1, 12-13-2016 (Res. 2016-37 (Exh. A), 12-13-2016); Ord. 2018-02 § 1, 1-9-2018 (Res. 2018-02 Exh. A, 1-9-2018), Code 2006 § 8-4-6].

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**The Sedona City Code is current through Ordinance 2018-02, passed January 9, 2018, and Resolution 2018-02, passed January 9, 2018.**

Disclaimer: The City Clerk's Office has the official version of the Sedona City Code. Users should contact the City Clerk's Office for ordinances passed subsequent to the ordinance cited above.

City Website: <http://www.sedonaaz.gov/>  
(<http://www.sedonaaz.gov/>)

City Telephone: (928) 203-5032

Code Publishing Company (<http://www.codepublishing.com/>)