



City of Sedona Community Development Department

102 Roadrunner Drive Sedona, AZ 86336

(928) 282-1154 • Fax: (928) 204-7124

NOTICE OF VIOLATION

January 7, 2015

Bryson Ranch LLC, dba Horsin' Around Sedona
C/O Tanner Bryson
PO Box 373
Sedona, AZ 86339

Dear Mr. Bryson,

City of Sedona staff conducted a visual inspection at 0 Airport Road on November 13, 2014 and contacted you directly on November 14, 2014. Based on the visual inspection and verbal conversation with you, it was determined that Horsin' Around Sedona is unlawfully operating at 0 Airport Road, parcel # 408-27-001. As a result of this determination, I left you a voice message requesting that you contact me about the City's concerns related to the operation of Horsin' Around Sedona at the Sedona Airport. In response, you came to City Hall and requested an impromptu meeting with me. During this meeting, I explained the City's position, its jurisdictional authority, zoning concerns and provided you with several options to seek City approvals that may allow you to continue to operate your business in the future.

At the conclusion of this meeting, we both agreed we did not want to go down the legal route of enforcement and rather voluntarily work together to address the concerns and comply with City Codes. You indicated that you would voluntarily cease business activities and asked that you be allowed to continue to conduct tours through December 31, 2014 as you had previously arranged tours scheduled. I agreed that this was a reasonable request. You further indicated that you would work with the Sedona Airport Authority and City staff to seek all necessary approvals.

On January 5, 2014, City of Sedona staff conducted a follow-up inspection to confirm that you had ceased your business activities as previously discussed. Unfortunately, based on this visual inspection, Horsin' Around Sedona continues to operate without proper City approvals to do so. It was also noted by staff that you have constructed a fence to contain your horses. This fence was constructed without the required building permit from the City of Sedona; this is a violation of the Sedona Code. As a result of the visual inspection, on this same date I contacted you by phone inquiring as to your status, at which time you indicated that you have no intentions of discontinuing operations.

Since we were not able to achieve voluntary compliance with City Codes and regulations, and you have instead chosen to continue to operate Horsin' Around Sedona without proper City approvals, the City has no other option but to begin enforcement actions. Therefore, this letter serves as official notice that the City of Sedona has determined that your business, Horsin' Around Sedona, is in violation of the Sedona Land Development Code and Sedona City Code.

It is the City's position that while the property is owned by Yavapai County and leased by the Sedona Airport Authority, any proprietary use or non-aeronautical activity on this property, such as Horsin' Around Sedona, is subject to the City's jurisdictional authority.



City of Sedona Community Development Department

102 Roadrunner Drive Sedona, AZ 86336

(928) 282-1154 • Fax: (928) 204-7124

This position is based on case law, in that if a municipality seeks to impose its land use regulations upon property owned by another political subdivision, the State's appellate courts hold that the governmental body whose property a municipality seeks to zone is not subject to a municipal land use ordinance if it is acting "in a governmental capacity" or performing a "governmental function," but is subject to such ordinances if it is acting in a "proprietary capacity." Book-Celler Inc. v. City of Phoenix, 150 Ariz. 42 (1986); Tovrea v. Trails End Improvement Association, 130 Ariz.108 (1962); City of Scottsdale v. Municipal Court of the City of Tempe, 90 Ariz. 303 (1962); Board of Regents of the Universities and State Colleges of Arizona v. City of Tempe, 88 Ariz. 299 (1960) and Pima County v. Clear Channel Outdoor, Inc., 212 Ariz 48 (2006).

Some of the tests articulated in these opinions to distinguish between a "governmental" and a "proprietary" function are as follows: Under the "legal powers" test set forth in the City of Tempe case, constitutional and statutory provisions are scrutinized to determine if the power to do an act is mandated or authorized. If it is mandated, the function is deemed to be governmental.

Under the "essence-of-government" test articulated in the Book-Celler decision, if the activity is not a "fundamentally inherent function or encompassed within the basic nature of government," then it is a proprietary function and is subject to the regulations of the municipality.

Similarly, with the City of Scottsdale decision, many decisions across the country have equated a "governmental" function with that which is done "for the common good of all" and have used that description to differentiate between governmental activity that is principally or exclusively public in nature as opposed to that which involved special corporate benefits or profits. One court held that "[g]overnmental functions are those which are performed for the general public with respect to the common welfare and for which no compensation or particular benefit is received, while proprietary functions are exercised when an enterprise is commercial in character or is usually carried on by private individuals or is for the profit, benefit, or advantage of the governmental unit conducting the activity," State ex rel. Schneider v. McAfee, 578 P.2d 281 (1978). Another Court has stated: "Activities performed as part of the police power of a municipal corporation in providing for the health, safety, and general welfare of the citizens fall clearly within the governmental functions of a city." Dallas v. Moreau, 718 S.W.2d 776, 779 (Tex. App. Corpus Christi 1986)

Therefore, because your business is not acting "in a governmental capacity" or performing a "governmental function," and is acting in a "proprietary capacity" your business is subject to any and all City ordinances and regulations.

As you are aware, the property is zoned Community Facilities (CF) and has a Sedona Community Plan designation of "Public/Semi Public". The CF zoning district is "intended primarily for the accommodation of public/semi-public uses"; further zoning regulations state that "the identification of public-accessible areas where all persons would have the opportunity to be involved in and enjoy civic, cultural and recreational pursuits." The CF zoning district also specifies that all uses in a CF zoning district are subject to a conditional use permit (CUP) and that "buildings, structures or premises shall be used and buildings and structures shall be erected, altered or enlarged only for the uses listed [section 624.02A]... All other uses not specifically listed or determined to be similar to those described [section 624.02A]...shall be prohibited and unlawful."

Your business, Horsin' Around Sedona, is a private commercial enterprise and is not listed as a conditionally allowable use. Additionally, a conditional use permit was not applied for prior to commencing your business activities.



City of Sedona Community Development Department

102 Roadrunner Drive Sedona, AZ 86336

(928) 282-1154 • Fax: (928) 204-7124

On a related note, Section 5.05.020 of the Sedona City Code requires that all businesses must be in compliance with any and all regulations specified in the Sedona City Code, Sedona Land Development Code, and Arizona Revised Statutes. Compliance includes but is not limited to compliance with any and all zoning ordinances and specified building uses. Per Section 5.05.040(A) of the Sedona City Code, a business license may be suspended, revoked or deemed invalid if it is determined that a business owner has violated or is not in compliance with either the City Code, Land Development Code or the Arizona Revised statutes, or that the business is delinquent in paying taxes or fees to the City. Since you are not currently in compliance with this section as a result of the below-referenced violations of the Sedona Land Development Code and Sedona City Code, your business license is subject to revocation and your right to continue to do business within the City can be lost if you do not come into complete compliance.

VIOLATIONS:

- Sedona Land Development Code, Article 6 (District Regulations). You are in violation of Sedona Land Development Code, Article 6 for operating a commercial business at 0 Airport Road which is not an allowable use in the Community Facilities (CF) zoning district.
- Sedona City Code (Building Code) Section 1505.020.C (Amendments to the International Building Code). You are in violation of Sedona City Code Section 15.05.020.C for constructing a fence at 0 Airport Road without a building permit.
- Title 5 (Business Licenses). You are in violation of Sedona City Code, Title 5, (Business Licenses and Regulations) by virtue of the fact that you are not complying with any and all regulations set forth in the Sedona City Code, Sedona Land Development Code and the Arizona Revised Statutes. Because of this fact, your business license may be suspended, revoked or deemed invalid.

CORRECTIVE ACTION NECESSARY:

Immediately cease all commercial activities at 0 Airport Road. If you wish to use these properties in the future for commercial purposes, please schedule a meeting with Community Development staff to discuss your options. You do have the option to file for a major amendment to the Sedona Community Plan and a rezoning of the Community Facilities zoning designation to general commercial. In accordance with Arizona State Law, major amendments to the Community Plan are considered once per year and our next application submittal is tentatively scheduled for April 2015. The Planning and Zoning Commission and City Council would consider the major amendment application in the summer and fall of 2015. Your zone change application could also be filed at the same time as the major amendment.

Regarding the unpermitted construction of the fence, the fence must be removed immediately.

PENALTIES:

Failure to voluntarily comply with this Notice of Violation may result in a citation or other enforcement action(s). Please note that any person found guilty of violating any provisions of the Sedona City Code or Sedona Land Development Code may be guilty of a Class I misdemeanor and, upon conviction, may be punished by a fine not to exceed \$2,500 or by imprisonment for a period not to exceed 6 months, or by both such fine and imprisonment.

APPEAL:

In accordance with the Code, you have the right to appeal the Director's Interpretation of the Code regulations pertaining to allowable and conditionally allowable uses to the City of Sedona Board of Adjustment based on Article 3 (Decision Making & Administrative Bodies) Section 304.01B, Duties (Board of



City of Sedona Community Development Department

102 Roadrunner Drive Sedona, AZ 86336

(928) 282-1154 • Fax: (928) 204-7124

Adjustment). The Board of Adjustment has the authority to conduct hearings, review and act on appeals of the decisions of the Director regarding an interpretation of the Sedona Land Development Code. You must submit in writing your appeal with the Community Development Department within 30 days after the date of this letter. The fee to submit an appeal is \$150, which is non-refundable. If you choose to appeal the Director's Interpretation, not later than 30 days after receipt of your appeal, the City shall schedule a time for the appeal to be heard by the City of Sedona Board of Adjustment.

Thank you in advance for your cooperation and prompt attention to this matter. If you require further information or have questions regarding this Notice, your appeal rights or methods of compliance, please contact me at (928) 204-7107.

Sincerely,

Audree Juhlin, Director
Community Development Department

cc: Nick Gioello, Development Services Manager
Glenn Sharshon, Senior Code Enforcement Officer
Ray Cota, Police Chief
Mike Goimarac, City Attorney
Tim Ernster, City Manager
Karen Daines, Assistant City Manager
Tabatha Miller, Finance Director
Sandy Moriarty, Mayor
Phil Bourdon, Yavapai County Administrator
Rod Propst, General Manager, Sedona Airport Authority