



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):

SENATOR SONNY BORRELLI

*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: GREG JERNIGAN

*Email address: g.jernigan@azleg.gov

*Phone number: (602) 926-5418

*Mailing address: Arizona State Senate, Capitol Complex
 1700 W. Washington
 PHOENIX, AZ 85007-2890

*The specific question for the Attorney General to investigate is: 2. Does Mohave County's unwritten policy of requiring an Animal Control inspection of private residences where the person applying for a... (See Attached)

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

*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: County Zoning Ordinance, dtd October 19, 2016, Sec. 37.J in Part 2, the permit for "Limited Residential Animal Permit" lists six...

*The specific Arizona statute(s) and/or constitutional provision(s) with which the action conflicts: A.R.S. 11-1604 (A) & possibly (B). Complete text of Section on attachment.



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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):

People may apply for Administrative permit allowing possession of 10 dogs and 10 Cats via a "Limited Residential Animal Permit", issued by Planning and Zoning Division. Zoning Ordinance 37.J does not require an inspection by the Sheriff's Animal Control However, Planning & Zoning is directed to withhold issuance of a permit, pending the approval by Animal Control after an inspection of the property. That violates A.R.S. 11-1604 (A) which states, "A county shall not base a licensing..."

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

(See Separate sheet for List of Attachments)

*Any litigation involving this issue of which you are aware (include case name, number, and court where filed): NONE

Check this box if you are attaching supporting documentation. [checked]

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: SONNY *Last Name: BORRELLI

*Signature: [Signature] *Date: 1 FEB 2018

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

Request for SB1487 Investigation by State Senator Sonny Borrelli, LD5

***Specific question:** (Continued) "...'Limited Residential Animal Permit' Per County Zoning Ordinance for 10 dogs and 10 cats as personal pets violate A.R.S 11-1604?"

***Specific Ordinance or regulation:** (Continued) ...written prerequisites for obtaining an administrative permit. None of those six requirements list either an inspection of a residence or private building by the County Enforcement Agent (Animal Control), nor does it list a plot plan, which is required only for (per Part 1, Paragraph "F") "...kennels that require a Zoning Use permit (now called Special Use Permit) and for all kennels located on properties zoned commercial or industrial."

***All relevant facts of which you are aware:** (Continued) "...decision in whole or in part on a licensing requirement or condition that is not specifically authorized by statute, rule, ordinance or delegation agreement." Yet, that is exactly what Mohave County's unwritten policies require.

*** Specific State Statute with which the action conflicts:**

Arizona Revised Statutes 11-1604:

11-1604. Prohibited acts by county and employees; enforcement; notice

- A. A county shall not base a licensing decision in whole or in part on a licensing requirement or condition that is not specifically authorized by statute, rule, ordinance or delegation agreement. A general grant of authority does not constitute a basis for imposing a licensing requirement or condition unless the authority specifically authorizes the requirement or condition.
- B. Unless specifically authorized, a county shall avoid duplication of other laws that do not enhance regulatory clarity and shall avoid dual permitting to the maximum extent practicable.
- C. This section does not prohibit county flexibility to issue licenses or adopt ordinances or codes.
- D. A county shall not request or initiate discussions with a person about waiving that person's rights.
- E. This section may be enforced in a private civil action and relief may be awarded against a county. The court may award reasonable attorney fees, damages and all fees associated with the license application to a party that prevails in an action against a county for a violation of this section.
- F. A county employee may not intentionally or knowingly violate this section. A violation of this section is cause for disciplinary action or dismissal pursuant to the county's adopted personnel policy.
- G. This section does not abrogate the immunity provided by section 12-820.01 or 12-820.02.
- H. A county shall prominently print the provisions of subsections A, B, C, D, E, F and G of this section on all license applications.

I've attached the following PDF (with highlights):

Mohave County Zoning Ord. 37.J "Establishment of a Kennel, Cattery, or Veterinary Clinic

Section 37.J ESTABLISHMENT OF A KENNEL, CATTERY, OR VETERINARY CLINIC

J. Establishment of a Kennel, Cattery, or Veterinary Clinic

1. General Provisions

- a. The residents of a residentially zoned property may keep up to four (4) dogs and four (4) cats as personal pets as an accessory residential use of the property.
- b. This Section does not replace, supersede or otherwise affect the requirements of other state, county, or local authorities including, but not limited to, the Mohave County Environmental Health Division and Mohave County Animal Control Division, and does not limit the applicability of the statutory or common law of nuisance.
- c. A kennel approval shall not be issued to an owner who has been convicted of a violation of A.R.S. §13-2910 (cruelty to animals) or (dog fighting), or any other state, county, or municipal animal welfare law, except violations of leash laws.
- d. The maximum number of animals on a property at any time, including personal pets of the owner, may not exceed the number allowed by permit or by the design capacity as indicated by the site plan, whichever is less.
- e. Except where specifically allowed by zoning, a Special Use Permit is required for all kennels or catteries housing more than ten (10) dogs or ten (10) cats, and may be approved for kennels or catteries housing fewer animals if requested by the owner.
- f. A Site Plan, conforming to Section 37.N, is required for all kennels that require a Zoning Use Permit and for all kennels located on properties zoned commercial or industrial. The Development Services Department may reduce the level of Site Plan requirements as provided in Section 37.N.5. A Site Plan may not include more pens or runs than the maximum number of animals allowed by the permit.
- g. In the event of a conflict between the provisions of this Ordinance and other County ordinances, the more restrictive shall apply.
- h. A summary is provided in Table 1 to further illustrate the type of permit required by this Section to comply with zoning based upon parcel size and the number of animals.

**Section 37.J ESTABLISHMENT OF A KENNEL, CATTERY, OR VETERINARY CLINIC
(continued)**

Table 1

	Zoning Ordinance, dogs/cats allowed by right	Zoning Ordinance, additional dogs/cats allowed by SUP [§] or Limited Permit [†]
Residential		
<0.5 acres	4/4	Not available
0.5-0.99 acres	4/4	5/5 LP [†] , SUP [§] not available
1.0-2.49 acres	4/4	10/10 LP [†] , SUP [§] not available
2.5 acres +	4/4	10/10 LP [†] , >10/10 SUP [§]
Non-residential		
<0.5 acres	4/4	Not available
0.5-0.99 acres	4/4	Not available
1.0-2.49 acres	4/4	6/6 LP [†] , SUP [§] not available
2.5 acres +	4/4	10/10 LP [†] , >10/10 SUP [§]

[†] A Limited Permit is an administratively issued permit that does not require approval by the Planning and Zoning Commission and Board of Supervisors.

[§] A Special Use Permit may be issued after hearing by the Board of Supervisors with a recommendation from the Planning and Zoning Commission. The number of animals allowed with a Special Use Permit is determined on a case-by-case basis.

2. Limited Kennels and Catteries

a. Limited Residential Animal Permit

- 1) The Development Services Department may issue a limited permit to allow more than four dogs and four cats on a property as an accessory residential use subject to the following:
 - a) The owner completes a Kennel Permit application.
 - b) All animals are owned and kept as personal pets.
 - c) Any required licenses and vaccinations shall be kept current at all times.

**Section 37.J ESTABLISHMENT OF A KENNEL, CATTERY, OR VETERINARY CLINIC
(continued)**

- d) The owner may not offer any animal boarding, breeding, adoption or long-term care services to others, with or without compensation.
 - e) The permit shall be renewed annually.
 - f) The use shall not become a nuisance to neighboring property owners.
- 2) Property Size
- a) 0.5 to 0.99 acre, up to 5 dogs and 5 cats.
 - b) 1.0 acre or more, up to 10 dogs and 10 cats.
- b. Limited Commercial Animal Permit
- 1) The Development Services Department may issue a limited permit to allow small boarding or breeding kennels on residential properties zoned A, A-R, RO-A or R-E subject to the following:
 - a) The owner completes a Kennel Permit application.
 - b) Any required licenses and vaccinations shall be kept current at all times.
 - c) The owner shall comply with permitting requirements of the Mohave County Environmental Health Division.
 - d) A Site Plan, conforming to Section 37.N, is required. The Development Services staff may reduce the level of Site Plan requirements as provided in Section 37.N.5.
 - e) The kennel may not offer grooming services except as incidental to the boarding or breeding. No more than ten percent (10%) of the enclosed portion of the kennel facility may be devoted to grooming services.
 - f) The permit shall be renewed annually.
 - g) The use shall not become a nuisance to neighboring property owners.