



**City of Phoenix
Office of the City Attorney**

To: Ed Zuercher
City Manager

Date: February 9, 2017

From: Brad Holm
City Attorney

Subject: February 1, 2017 citizen petition to abrogate (in part) Phoenix Police Operations Order 4.48 and declare Phoenix a “sanctuary city”

Introduction

Section 1 of the February 1, 2017 petition (filed under the CHARTER, ch. IV, sec. 22) demands that the Council abrogate Phoenix Police Operations Order 4.48 “to the extent it requires Phoenix police personnel to assist or participate in the enforcement of federal immigration laws.” Operations Order 4.48 requires the department to “conduct all immigration enforcement activities in a manner consistent with federal and state laws regulating immigration and protecting the civil rights, privileges, and immunities of all persons.” *See* Ops. Order 4.48(1)(A). This immigration-enforcement requirement (in the operations order) is directly compelled by state statute.

Discussion

ARIZ. REV. STAT. § 11-1051(A) specifically dictates that “[n]o . . . city . . . may limit or restrict the enforcement of federal immigration law *to less than the full extent permitted by federal law*.” (Emphasis added.) Operations Order 4.48 incorporates this statutory requirement. *See* Ops. Order 4.48(A), (C). The statute compels police—if (1) they have lawfully stopped, detained, or arrested a person (suspect), and (2) “reasonable suspicion exists that the person is an alien and is unlawfully in the United States”—to attempt *if practicable* to determine the person’s immigration status with the federal government under 8 U.S.C. 1373—“except if the determination may hinder or obstruct an investigation.” *See* ARIZ. REV. STAT. § 11-1051(B).

The statute establishes a specific penalty that *must* be imposed on any city or town “that adopts or implements a policy that limits or restricts the enforcement of federal immigration laws, including 8 United States Code sections 1373 and 1644.” *See* ARIZ. REV. STAT. § 11-1051(H). Any state resident may sue *any* city that limits or restricts enforcement of immigration laws. If the court finds that the city has adopted a policy that

violates the statute, then the court must order the city to pay a civil penalty of \$500-\$5,000 *per day* for each day that the policy remains in effect.

Here, section 1 of the petition asks the Council to adopt a policy to (in effect) not fully enforce federal immigration laws—contrary to ARIZ. REV. STAT. § 11-1051(A). Operations Order 4.48 ensures that Phoenix police officers will comply with the statute. In short, the petition—if accepted—would cause the City, its employees, and officers *to break the law*. In turn, this could result in: (1) litigation in which the court may assess per diem civil penalties of up to \$5,000; and (2) action by the Attorney General under ARIZ. REV. STAT. § 41-194.01 (SB 1487).

Conclusion

Section 1 of the petition is legally impermissible. It demands that the Council break state law. If the petition were adopted, a court could fine the City for breaking the law, and the Attorney General could seek forfeiture of state-shared revenue. In effect, the petition demands that the Council violate their oaths of office and take action that they have no authority to take—willfully break the law. Section 2 of the petition is not severable from section 1. And it is defective for the same reasons. But if it were severable, section 2 is independently defective because it presupposes that the term “sanctuary city” has legal effect. It does not.