



Analysis of Citizen Petition

This report provides management's analysis of the petition submitted by Rick Robinson on Feb. 1, 2017 (Attachment 1). The Charter requires Council action on the petition in the regular course of business within 15 days. Staff recommends denial of the petition based on grounds set forth by the City Attorney (Attachment 2).

Summary

The main component of the petition asks the Council to undo Phoenix Police Department Operations Order 4.48. A second component asks the Council to declare that Phoenix is a "sanctuary city."

First, no longer following Ops Order 4.48 as suggested in the petition would mean that the Council would be acting to have employees act in contradiction to state law (a fuller discussion of the legal problems with this petition's requested action is contained in Attachment 2).

Second, "sanctuary city" is not a term that is defined in the law, and has no commonly understood meaning that would be useful to police officers or City employees fulfilling their duties.

For these reasons, City management recommends denying the petition.

Responsible Department

This report is submitted by City Manager Ed Zuercher and City Attorney Brad Holm.

To the Mayor and Council of the City of Phoenix, Arizona

WHEREAS, on January 25, 2017 the President of the United States issued an executive order entitled "Enhancing Public Safety in the Interior of the United States" (the "Executive Order").

WHEREAS, the Executive Order provides that "it is the policy of the executive branch to empower State and local law enforcement agencies across the country to perform the functions of an immigration officer in the interior of the United States."

WHEREAS, the Mayor of Phoenix has declared our City's opposition to the Executive Order and his support for protecting undocumented residents of Phoenix.

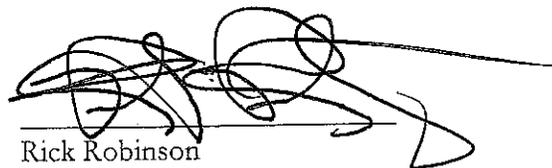
WHEREAS, lawmakers in California have set an important example for the rest of the country by introducing legislation that would make California a sanctuary state.

WHEREAS, City of Phoenix Police Department Operations Order 4.48 requires Phoenix police officers to assist in the enforcement of federal immigration laws, thereby deterring undocumented residents from reporting crimes and exposing them to the risk of deportation.

WHEREAS, as the capital of the State of Arizona, it is incumbent upon the City of Phoenix to demonstrate leadership in protecting the many productive and law abiding members of our community who happen to be undocumented immigrants.

Pursuant to Chapter IV, Section 22 of the Phoenix City Charter, I, Rick Robinson, a citizen and resident of the City of Phoenix, hereby petition the City Council to consider and enact within fifteen (15) days a resolution, ordinance or measure in response to the Executive Order that (1) provides that City of Phoenix Police Operations Order 4.48 will no longer be followed or enforced or otherwise given legal effect to the extent it requires Phoenix police personnel to assist or participate in the enforcement of federal immigration laws; and (2) declares Phoenix to be a sanctuary city.

Submitted this 1st day of February, 2017.


Rick Robinson



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

To: Ed Zuercher
City Manager

Date: February 9, 2017

From: Brad Holm
City Attorney

A handwritten signature in blue ink, appearing to read "Brad Holm".

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.