City of Phoenix

OFFICE OF THE CITY ATTORNEY

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OFFICE OF THE ARIZONA ATTORNEY GENERAL
SOLICITOR GENERAL'S OFFICE
2005 North Central Avenue
Phoenix, Arizona 85004-1592

Re: Response to Request for S.B. 1487 Investigation – Phoenix Administrative Regulation 5.32

Dear Ms. Curtin,

The City of Phoenix hereby responds to Representative Quang Nguyen's March 30, 2026, request for investigation of this narrow question: "Does Phoenix Administrative Regulation 5.32, which restricts the use of City-owned and City-controlled property for civil enforcement purposes unless approved by the City Manager, violate A.R.S. § 11-1051 and other applicable state and federal law?" Because Administrative Regulation 5.32 ("A.R. 5.32" or the "Regulation") is a matter of strictly local concern, namely the lawful exercise of the City's authority over its own property that does not "limit or restrict the enforcement of federal immigration laws to less than the full extent permitted by federal law," the City respectfully requests that the Attorney General find no violation here.

I. ANALYSIS

A. The City may regulate the use of City Property as a matter of purely local concern.

Under Arizona's Constitution, any city with a population over 3,500 "may frame a charter for its own government consistent with, and subject to, the Constitution and the laws of the state." Ariz. Const. art. XIII, § 2. A city's charter functions as "effectively, a local constitution," *State ex rel. Brnovich v. City of Tucson*, 251 Ariz. 45, 47 ¶ 11 (2021), and the

purpose of the charter home rule is to render charter cities "as nearly independent of state legislation as was possible." *State ex rel. Brnovich v. City of Tucson*, 242 Ariz. 588, 598 ¶ 40 (2017) (quoting *City of Tucson v. Walker*, 60 Ariz. 232 (1943)). Charter cities, therefore, possess the power to govern matters of purely local municipal concern free from state legislative override. *See City of Tucson v. State*, 229 Ariz. 172, 173–74, ¶¶ 1, 10 (2012); *Mayor & Common Council of City of Prescott v. Randall*, 67 Ariz. 369, 371 (1948) (collecting cases establishing "that a charter city is sovereign in all of its 'municipal affairs' where the power . . . to be exercised has been specifically or by implication granted in its charter").

The management of municipal real property has long been recognized under state law as a core function of local government. *See* A.R.S. § 9-240(A) ("The common council shall have control of the finances and property of the [municipal] corporation."); A.R.S. § 9-494(A) ("A city or town may establish and maintain public parks, and acquire, hold and improve real property for that purpose"); Phoenix City Charter, Ch. II, § 2 (granting the City power to "establish, maintain, equip, own and operate" parks, libraries, and "all other public buildings, places, works and institutions"); *see also Maricopa Cnty. v. Maricopa Cnty. Mun. Water Conservation Dist. No. 1*, 171 Ariz. 325, 329 (Ct. App. 1991) ("Because municipalities are permitted to establish, maintain and regulate parks and public grounds, . . . MWD may establish and maintain public parks and may assess the users of these parks."). The Arizona legislature has not expressly preempted municipalities from managing use of their parks and other city facilities. Furthermore, no Arizona law requires cities to make their property available for outside use.

A.R. 5.32 governs only how City departments and employees administer access to City properties and facilities pursuant to the City Manager's delegated operational authority under the City Charter. *See* Phoenix City Charter, Ch. III, § 2 (vesting the City Manager with authority over the City's administrative affairs). It follows from the principle that "the manner and method of disposal of real estate of a city is not a matter of state-wide concern," *City of Tucson v. Arizona Alpha of Sigma Alpha Epsilon*, 67 Ariz. 330, 336, (1948), that regulating access to a city's real estate is also not a matter of state-wide concern. Because A.R. 5.32 addresses only a matter of purely local concern–the management and use of City property–it is not preempted by state law and can operate independently of any provision of state law, including A.R.S. § 11-1051. On this basis alone, the Attorney General should find no violation.

B. <u>A.R. 5.32 does not "limit or restrict" federal immigration enforcement in violation of A.R.S. § 11-1051.</u>

Even if the management and control of City property is not a matter of purely local concern, the Attorney General should conclude that A.R. 5.32 does not violate A.R.S. § 11-1051. The prohibition in A.R.S. § 11-1051 contains two elements: the challenged action must (1) limit or restrict the enforcement of federal immigration laws, and (2) do so to less than the full extent permitted by federal law. A.R. 5.32 does neither.

A.R. 5.32 does not limit or restrict enforcement of federal immigration laws. Instead, it simply regulates any external law enforcement agency's use of City property for civil law enforcement staging and operational purposes. There is an important distinction between restricting the enforcement of immigration laws and managing the use of municipal property. The Regulation accomplishes only the latter. Importantly, § 11-1051 does not impose any affirmative obligation to facilitate immigration enforcement or to provide resources, logistical support, or unfettered access to City property for immigration enforcement purposes. The statute prohibits *limiting or restricting* enforcement–it does not require *affirmatively enabling* it. *See United States v. California* , 921 F.3d 865, 888 (9th Cir. 2019) (agreeing with the district court that "refusing to help is not the same as impeding"). A.R. 5.32 falls outside the prohibition of § 11-1051 because it regulates property access; it does not limit or restrict immigration enforcement.

No federal law entitles federal agents to use municipal property as a staging area, processing location, or operations base for civil law enforcement purposes. Similarly, no federal law requires cities to make their properties available to federal agents to enforce federal immigration laws. Thus, even if A.R. 5.32 may have some indirect or ancillary impact on federal immigration enforcement, such impact does not limit or restrict immigration enforcement "to less than the full extent permitted by federal law."

In the specific context of immigration enforcement, courts have consistently drawn a line between active obstruction of federal enforcement (impermissible) and the decision not to affirmatively provide resources for federal purposes (permissible). *See*, e.g., *California*, 921 F.3d at 888-89 ("Federal law provides states and localities the option, not the requirement, of assisting federal immigration authorities[;]" and "[r]efusing to help is not the same as impeding[.]"). The Regulation declines to provide unfettered access to City property, but it does not obstruct, interfere with, or impede any federal enforcement action. It does not even shut off all access; it simply requires the City Manager's approval first.

C. A.R. 5.32 does not implicate federal preemption concerns.

The Regulation is a lawful exercise of the City's municipal authority over its own property, consistent with the Constitution's structure of federalism. It simply does not implicate the federal preemption concerns Representative Nguyen raises. To the contrary, it is the kind of local property-management decision the federal structure of our government is designed to protect. A.R. 5.32 governs only how City departments and employees manage access to City-owned and City-controlled property. It neither imposes obligations, penalties, or regulatory burdens on federal agencies or personnel nor dictates how federal law enforcement agencies may otherwise conduct enforcement operations. It does not "interfer[e] with or control[] the operations of the Federal Government. *See United States v. Washington*, 596 U.S. 832, 838 (2022).

Furthermore, A.R. 5.32 does not regulate the federal government's "decisions" or "activities"–it regulates only the City's use of its own property. *See California*, 921 F.3d at 880-81 (concluding that AB 450, a California law requiring employers to alert employees before federal immigration inspections, "is directed at the conduct of employers, not the United States or its agents, and no federal activity is regulated"); *see also United States v. California*, No. 2:25-CV-10999-CAS-AJRX, 2026 WL 363346 (C.D. Cal. Feb. 9, 2026) (holding United States unlikely to succeed on the merits of its claim that state laws prohibiting any law enforcement officer from wearing face coverings and requiring them to display visible identification "directly regulate" the federal government because the laws only incidentally affected the federal government and did not interfere with or control federal law enforcement functions).

Finally, the Regulation does not discriminate against federal law enforcement agencies that conduct immigration operations. Instead, it applies to all external law enforcement agencies–local, state, and federal–seeking to use City property for civil law enforcement staging, processing, or operational purposes. "A state law or regulation impermissibly discriminates against the federal government if it treats a state entity more favorably than it treats a comparable federal entity." *Geo Grp., Inc. v. Inslee*, 151 F.4th 1107, 1118 (9th Cir. 2025). The key consideration is whether the state has "singled out" the United States or its contractors for discriminatory treatment. *Id*. A.R. 5.32 does not single out the United States for discriminatory treatment; it is facially and operationally neutral.

D. <u>The City carefully drafted A.R. 5.32 to ensure compliance with state and federal law.</u>

Even though regulating the use of City property is purely a matter of local concern, the City nevertheless drafted the Regulation to operate within the boundaries of state and federal law, including A.R.S. § 11-1051 specifically. The Regulation states that it "shall be implemented in a manner consistent with state and federal laws," and that it shall not "be construed as limiting or restricting the enforcement of federal immigration laws to less than the full extent permitted by federal law." A.R. 5.32, Sec. VI. The result is a property-management directive that occupies the space that both Arizona and federal law leaves open to municipalities–nothing more.

II. CONCLUSION

For the foregoing reasons, A.R. 5.32 does not violate A.R.S. § 11-1051 or any other state or federal law. The Regulation is a lawful exercise of the City's authority over its own property. It does not limit or restrict the enforcement of federal immigration laws to less than what federal law permits, it does not regulate or discriminate against federal functions in violation of the U.S Constitution, and it was adopted with appropriate safeguards to ensure compliance with applicable laws.

The City respectfully requests that the Attorney General find no further action is warranted because A.R. 5.32 does not violate A.R.S. § 11-1051 or other applicable state and federal law.

Sincerely,

/s/ Julie M. Kriegh

Julie M. Kriegh
City Attorney

cc: Ed Zuercher, City Manager