

April 2, 2013

Mr. John MacKinnon
Bisbee City Attorney
118 Arizona St.
Bisbee, AZ 85703

Mayer and Members of the City Council

Dear Mr. MacKinnon, Mayor, and Members of the City Council:

On behalf the State of Arizona, I would like to express our concern that the proposed Ordinance O-13-05 (“Ordinance”) as currently drafted, exceeds the municipal powers of the City’s legislative body. Cities and towns are municipal corporations created by the state and possess no greater powers than those delegated to them by the Constitution and general laws of the state. It is fundamental that a municipality has no inherent police power. *City of Scottsdale v Superior Court*, 103 Ariz. 204, 439 P.2d 290 (1968). They may not exercise powers that are inconsistent with the Arizona Constitution or the general state laws. *State v Jacobson*, 121 Ariz. 65, 588 P.2d 358 (App. 1978).

The proposed Ordinance adopts a municipal procedure that legally recognizes a ‘civil union’ between two parties, as defined by the Ordinance, and then confers on the parties to the ‘civil union’, all benefits and responsibilities relating to:

- Ownership and acquisition of community property, as prescribed by A.R.S. § 25-201, et seq;
- Inheritance of property, as provided by A.R.S. § 14-2102;
- Priority of appointment as a personal representative, as prescribed by A.R.S. § 14-3203;
- Priority of appointment as a guardian or conservator, pursuant to A.R.S. § 14-5311 and A.R.S. § 14-5410;
- Right to procure life insurance for the other partner, pursuant to A.R.S. § 20-1104;
- Right and obligation to provide for the disposition of the remains upon the death of one party, pursuant to A.R.S. § 36-831 and A.R.S. § 32-1365.02;
- Rights to adoption, as prescribed by A.R.S. § 8-103.

While it is our understanding that the City Council’s intent is that the impact of the Ordinance will be limited to the jurisdictional boundaries of the City of Bisbee, the impact goes beyond those boundaries. This is evidenced by constitutional and statutory provisions pertaining to marriage, community property, inheritance of

property, priority of appointment of personal representative, priority of appointment as a guardian, life insurance, disposition of remains, and rights of adoption. These are areas of state-wide concern and exceed the authority and powers of the City of Bisbee to regulate by ordinance.

Please consider these matters prior to any adoption of the proposed Ordinance. Depending on the action taken by the City Council, my Office may be required to take appropriate legal action to enforce existing State constitutional and statutory provisions.

Sincerely,

Attorney General Tom Horne