

CITY OF TUCSON, ARIZONA – INITIATIVE PETITION

TO THE HONORABLE MAYOR AND COUNCIL, AND THE CITY CLERK OF THE CITY OF TUCSON:

The undersigned residents and duly qualified electors of the City of Tucson, Arizona, do hereby submit and propose to you, for adoption, the following ordinance. We request that you take action relative to the adoption or rejection of such proposed ordinance as soon as possible, and that the same be forthwith submitted to a vote of the people, to-wit:

OFFICIAL TITLE

TUCSON FAMILIES FREE AND TOGETHER

AN INITIATIVE MEASURE

Be it enacted by the people of the City of Tucson:

The following amendments to the Tucson City Code to provide for the safety and security of all persons in Tucson and to ensure that no person is fearful to engage with local law enforcement or participate fully in the community, valid when approved by a majority of the qualified electors voting thereon:

AMEND TUCSON CITY CODE CHAPTER 17, RELATING TO HUMAN RELATIONS, TO PROVIDE FOR THE SAFETY AND SECURITY OF ALL PERSONS, AND PROVIDE FOR SEVERABILITY.

Section 1: Declaration of Policy

Section 1 of Chapter 17 (“Human Relations”) is hereby amended to eliminate the period at the end of the current section and to add the following at the end of the current section:

“and in local policing. It is the policy of the city that the city be a sanctuary and safe refuge for all persons, regardless of race, color, ethnicity, immigration status, ability to speak English, mode of dress, religion, national origin, sex, gender identity, sexual orientation, disability, economic status, and familial or marital status. Further, the city is committed to protecting and defending all people, and upholding the self-evident truths that all people are created equal and endowed with the unalienable rights of life, liberty and sanctuary.”

Section 2: Chapter 17 of the Tucson City Code is amended to read:

Chapter 17 (“Human Relations”) is hereby amended to add a new Article X, to read as follows:

Sec. 17-80. Title.

This article shall be known and may be cited as the “Tucson Families Free and Together Ordinance”.

Sec. 17-81. Definitions.

a. In this article, unless the context otherwise requires:

- (1) “Arrest” has the meaning given by A.R.S. § 13-3881, except that the term shall not include where an officer releases a person from custody pursuant to A.R.S. § 13-3903, or its successor statute.
- (2) “Consensual Contact” means a voluntary interaction between an officer and a person, where a reasonable person would clearly understand that he or she is free to leave. The term includes, but is not limited to, the following categories of persons: (1) an alleged crime victim as to whom there is no reasonable suspicion that he or she committed or is committing a crime; (2) a witness as to whom there is no reasonable suspicion that he or she committed or is committing a crime; (3) a vehicle passenger as to whom there is no reasonable suspicion that he or she committed or is committing a crime.
- (3) “Detainee” means a person who is subject to a detention.
- (4) “Detention” means the temporary restraint of a person’s movement by an officer, short of an arrest, where there exists reasonable suspicion or probable cause to believe the person has committed, is committing, or is about to commit a misdemeanor, a felony, a traffic offense pursuant to Title 28 of Arizona Revised Statutes, or an offense of the code. “Detention” and “stop” shall have the same meaning.
- (5) “Determine” has the meaning given by A.R.S. § 11-1051(B), or its successor statute.
- (6) “Federal Officer” means a sworn federal law enforcement officer or a federal peace officer who is employed by an agency of the United States and is certified as such under the rules and regulations of the officer’s federal agency.
- (7) “Immigration Status” means the civil immigration status of a person under federal law, and excludes criminal violations of Sections 1325 and 1326 of Title 8 of the United States Code.
- (8) “Intentionally” and “Knowingly” have the meanings found in A.R.S. § 13-105.
- (9) “Juvenile” means any person who is under the age of 18.
- (10) “Officer” means a person certified as an Arizona peace officer pursuant to A.R.S. § 41-1823, or its successor statute, and who is: (1) an employee of the city; or (2) is engaged as a reserve police officer; or (3) is performing law enforcement duties pursuant to a special duty police services agreement.
- (11) “Person” means a natural person.
- (12) “Reasonable Attempt” means an attempt by officers to obtain additional information from a detainee that does not prolong or add time to the underlying detention.
- (13) “School” includes any public, private, or charter school, kindergarten through grade twelve.

Sec. 17-82. Detentions and lawful stops; General.

- a. An officer shall not detain a person based on that person’s race, color, ethnicity, ability to speak English, mode of dress, religion, national origin, sex, gender identity, sexual orientation, disability, economic status, and familial or marital status, unless such factor is part of a specific suspect description linking that person to a particular crime.
- b. An officer shall not detain a person to determine such person’s immigration status.
- c. An officer shall not detain a person for violation of A.R.S. § 28-959.01, or its successor statute, unless, prior to the detention, the officer developed reasonable suspicion of such violation through the use an electronic device that the person is driving a vehicle in violation of A.R.S. § 28-959.01.

- d. An officer shall not participate in any law enforcement activity, investigation, or enforcement action, the purpose of which is to determine a person's immigration status.
- e. An officer shall release a detainee immediately upon completing all tasks related to the original traffic or criminal investigation, regardless of whether the officer has determined such detainee's immigration status.
- f. An officer shall affirmatively notify a detainee when the detainee is no longer subject to detention, regardless of whether the officer is required to remain on scene to complete additional tasks, regardless of the status of the detainee's vehicle, and regardless of whether federal officers have been contacted to determine immigration status.
- g. An officer shall not detain a person at a checkpoint authorized by *United States v. Martinez-Fuerte*, 428 U.S. 543 (1976), unless such officer is called to such checkpoint to investigate a state or local crime alleged to have been committed by a specific person or persons.

Sec. 17-83. Officers' determination of immigration status; General.

- a. An officer may seek to determine the immigration status of a detainee or arrestee, and of no other person.
- b. An officer shall not inquire how a detainee or arrestee entered the United States, unless such inquiry is necessary to establish probable cause of a state or local crime.
- c. An officer shall not inquire how many times a detainee or arrestee has entered or otherwise traveled to the United States.
- d. During a consensual contact, an officer shall not inquire about how a person entered the United States, unless such person is a suspected victim of human trafficking.
- e. During a consensual contact, an officer shall not inquire about immigration status.
- f. An officer shall not inquire about the immigration status of a vehicle passenger, unless there is independent reasonable suspicion of a crime.
- g. An officer shall not seek to determine or otherwise inquire about the immigration status of a person in the following locations, even if such person is a detainee or arrestee:
 - (1) School;
 - (2) Hospital, medical clinic, and nursing home;
 - (3) Church or house of worship;
 - (4) State or local court building; and
- h. In developing reasonable suspicion that a detainee is an alien who is unlawfully present in the United States, an officer shall articulate at least two distinct factors leading to that suspicion.
- i. In developing reasonable suspicion that a detainee is an alien who is unlawfully present in the United States, an officer shall not consider the following factors:
 - (1) A detainee's race, color, or ethnicity;
 - (2) A detainee's mode of dress;
 - (3) A detainee's ability to speak English;
 - (4) A detainee's speech pattern, including a perceived accent;
 - (5) A detainee's inability to provide a permanent or local residential address;
 - (6) A detainee's presence where aliens who are unlawfully present are known to gather;
 - (7) A detainee's presence in a vehicle that is or appears to be overcrowded;
 - (8) A detainee's physical proximity to aliens who are unlawfully present in the United States; or
 - (9) A detainee's name.
- j. It is the policy of the city that a determination of a detainee's immigration status is not practicable, per A.R.S. § 11-1051(B), when the detention is a traffic stop and the vehicle has come to rest on the side or shoulder of a street, and during other circumstances established by the city.
- k. It is the policy of the city that the determination of a detainee's immigration status may hinder or obstruct an investigation, per A.R.S. § 11-1051(B), when the crime being investigated is a violation of:
 - (1) A.R.S. § 13-3551-3556;
 - (2) A.R.S. § 13-3601;
 - (3) A.R.S. § 13-3601.02;
 - (4) A.R.S. § 13-1404-1406;
 - (5) A.R.S. § 13-1410;
 - (6) A.R.S. § 13-1417-1418, or their successor statutes.

Sec. 17-84. Officers' determination of immigration status; Procedure.

- a. In seeking to determine whether a detainee or arrestee is an alien who is unlawfully present in the United States, an officer shall not initiate contact with a federal law enforcement agency by phone.
- b. Any contact initiated by an officer with a federal law enforcement agency for the purpose of determining the immigration status of a person shall be documented.

- c. Prior to initiating contact with a federal law enforcement agency to determine a detainee's or arrestee's immigration status, an officer shall record the factors that led such officer to develop reasonable suspicion that such detainee or arrestee is an alien who is unlawfully present in the United States.
- d. In addition to Subsections (a) & (b), the city shall document the following for any incident where the city has initiated contact with a federal law enforcement agency to determine a detainee's or arrestee's immigration status:
 - (1) The time that the city contacted the federal law enforcement agency;
 - (2) The time that the city received an immigration status determination from the federal law enforcement agency; and
 - (3) Whether the detainee or arrestee was transferred to the custody of the federal law enforcement agency, if applicable.
- e. Prior to questioning a detainee or arrestee about immigration status, an officer shall:
 - (1) read or recite the following statement:

"You have no obligation to speak with an officer about your immigration status. If you are not a U.S. citizen, anything you say may affect your ability to stay in this country. If you choose not to speak about your immigration status, that cannot be used against you in any way."
 - (2) Have the detainee or arrestee sign a written waiver, provided in both Spanish and English, stating he or she voluntarily consents to answering questions about immigration status.
- f. The city shall document all such instances resulting in a signed written waiver described in Subsection (d).

Sec. 17-85. Collaboration with federal law enforcement.

- a. No city employee, officer, or agent shall participate in, offer, teach, prepare, or otherwise provide training to federal officers, the effect of which is to confer or extend Arizona peace officer certification on a federal officer, pursuant to Title 41 of Arizona Revised Statutes.
- b. No city resources shall contribute to the training of federal officers, if such training confers or extends Arizona peace officer certification on a federal officer, pursuant Title 41 of Arizona Revised Statutes.
- c. No officer shall participate in a joint law enforcement taskforce, joint enforcement operation, or similar endeavor with a federal officer unless the city has in place a memorandum of understanding with the United States agency employing the federal officer, which includes the following provisions:
 - (1) A prohibition on the federal law enforcement agency from effectuating within the city warrantless arrests and detentions beyond that permitted by A.R.S. § 13-3884, or its successor statute;
 - (2) A prohibition on the federal law enforcement agency from effectuating within the city arrests and detentions pursuant to A.R.S. § 13-3871, or its successor statute;
 - (3) A prohibition on the federal law enforcement agency from effectuating within the city arrests and detentions on the basis of state arrest authority conferred pursuant to A.R.S. §13-3875, or its successor statute; and
 - (4) A prohibition stating that neither the purpose nor the effect of any joint taskforce or joint operation will be the enforcement of federal civil immigration law.

Sec. 17-86. City Employees.

- a. A city employee shall not coerce or threaten a person based on the actual or perceived immigration status of that person or of that person's family member.
- b. A city employee shall not forward to a federal law enforcement agency an emergency call made by someone other than an officer or federal officer, the sole purpose of which is to alert law enforcement to the existence or whereabouts of a person, other than a detainee or arrestee, who is suspected of being an alien who is unlawfully present in the United States.
- c. A city employee, other than an officer, shall not inquire about the immigration status of any person, unless such person is applying for a city service or grant program that has limited eligibility based, in part, on lawful immigration status.

Sec. 17-87. Certifications for crime victims.

- a. In response to a request from an alleged crime victim (or from the crime victim's legal representative) who is seeking law enforcement certification from the city pursuant to 8 U.S.C § 1184(p), 8 C.F.R. § 214.14, or 8 C.F.R. § 214.11, or their successor provisions, the city shall:
 - (1) Adjudicate requests for law enforcement certifications and issue to the alleged victim a determination and signed documentation within 90 days of receiving the request; and
 - (2) Specify in writing to the alleged victim why the city determined not to issue the certification, if the city made such determination.

Sec. 17-88. Cause of action.

- a. A person who is a resident of Tucson may bring an action in the City Court of the City of Tucson to challenge any employee, official, or agency of the city that adopts or implements a policy violative of this chapter. If there is a judicial finding that a city agency or city official has violated this chapter, the court shall order payment of a civil penalty of not less than five hundred dollars and not more than five thousand dollars for each day that the policy has remained in effect after the filing of an action pursuant to this subsection.
- b. A person who was harmed by a violation of this chapter or who is a resident of Tucson may bring an action in the City Court of the City of Tucson to challenge any employee, official, or agency of Tucson that intentionally or knowingly violates the provisions of this chapter. If there is a judicial finding that a city agency or city official has violated this chapter, the court shall order payment of a civil penalty of not less than five hundred dollars and not more than five thousand dollars.
- c. The court may award court costs and reasonable attorney fees to any person who prevails by an adjudication on the merits.
- d. Except in relation to matters in which an officer is adjudged to have acted intentionally or knowingly, an officer is indemnified by the city against reasonable costs and expenses, including attorney fees, incurred by the officer in connection with any action, suit or proceeding brought pursuant to this section in which the officer may be a defendant by reason of the officer being or having been a city employee.

- e. The City Court of the City of Tucson shall collect the civil penalties prescribed in sections (a) and (b) of this section and remit them in their entirety to the Community Food Bank, Inc (doing business as the Community Food Bank of Southern Arizona). If the Community Food Bank ceases to exist, then the civil penalties shall be paid to a successor organization, or to another organization recognized under Section 501(c)(3) of the Internal Revenue Code and that provides services within Tucson.

Sec. 17-89. Severability and Construction.

- a. If any word, clause, sentence, paragraph or section of this Chapter shall be declared invalid by the judgment or decree of any court of competent jurisdiction, such invalidity shall not affect any of the remaining words, clauses, sentences, paragraphs and sections of this Chapter. Such word, clause, sentence, paragraph or section shall be severable, whether such invalidity be due to its unconstitutionality, its violation of state or federal law, or some other cause.
- b. Nothing in this Article shall be construed to limit an officer's ability to establish reasonable suspicion or probable cause of a crime arising under the laws of Arizona or this code, or of reasonable suspicion of a civil traffic infraction.