



December 3, 2019

The Honorable Kate Gallego
200 W. Washington St., 13th Floor
Phoenix, AZ 85003

Subj: Proposed Rate Increase on Ride-Sharing Services to Sky Harbor Airport

SENT VIA E-MAIL & U.S. MAIL

Dear Mayor Gallego:

It is our understanding that the City Council intends to vote on a proposed 200% rate increase on ride-sharing services to and from Phoenix Sky Harbor Airport on December 18. Not only is the City's proposed rate increase on ride-sharing services to Sky Harbor bad policy that will harm Arizonans throughout the state and the many visitors to this state, it is also unconstitutional.

The City's substantial rate increase will impact Arizona's national standing as a tourist and business destination, harm passengers, including low to middle income passengers, and impact ride-sharing drivers who earn modest pay by providing a reliable and valued service.

The proposed increases also violate the Arizona Constitution, as was amended with resounding voter support with the passage of Proposition 126 ("Prop 126"), which prohibits municipalities from adding or increasing any tax or fee on services performed in Arizona.

On November 6th, 2018, Arizona voters overwhelmingly passed Prop 126, a ballot initiative that amended several sections of the Arizona Constitution, including adding article IX, § 25. That provision reads in relevant part:

The state, any county, *city*, town, municipal corporation, or other political subdivision of the state...with authority to impose any tax, fee, stamp requirement, or other assessment, shall not impose or *increase* any sales tax, transaction privilege tax, luxury tax, excise tax, use tax, or *any other transaction-based tax, fee*, stamp requirement or assessment on the

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privilege to engage in, or the gross receipts of sales or gross income derived from, *any service* performed in this state. Ariz. Const. art. IX, § 25 (emphasis added).

With the passage of Prop 126, the Arizona Constitution now prohibits the imposition or increase of any tax, fee, or assessment on any service in the state adopted after December 31, 2017.

The City's proposed rate increase for ride-sharing services that operate at Phoenix Sky Harbor Airport is substantial. Among other things, the City's measure seeks to: (1) increase the pick-up fee for TNCs from \$2.66 to \$4.00, increasing annually to \$5.00 in 2024 and then by CPI annually thereafter; (2) and impose a new drop-off fee along the same terms.¹ Currently, there is no drop-off fee. The text of the proposal reads: "The proposal seeks to increase trip *fees* for permitted [ground transportation] providers, establish drop-off trip *fees* for providers, and provide for predictable, administrative annual trip-*fee* rate increases." Phoenix City Council Report, 10/16/19, Item No. 65 at 171.

The plain language of Prop 126 shows that the City's proposed rate increase violates the Arizona Constitution as both an imposition of a new fee and an increase of an existing fee. The language of Prop 126 is plain and unambiguous. *See Knapp v. Martone*, 170 Ariz. 237, 239, 823 P.2d 685, 687 (1992) ("It is important to emphasize that Arizona courts must follow and apply the plain language of this new amendment to our constitution."). That provision prohibits any city in Arizona from "impos[ing] ... or *increase[ing]* any sales tax, transaction privilege tax, luxury tax, excise tax, use tax, or *any other transaction-based tax, fee*, stamp requirement or assessment on the privilege to engage in, or the gross receipts of sales or gross income derived from, any service performed in this state." Ariz. Const. art. IX, § 25 (emphasis added). In other words, the imposition or increase of "any...fee" on any service in this state is expressly prohibited, and the City Council is powerless to impose new fees or increase existing fees in violation of the Arizona Constitution. Ariz. Const. art. II, § 32 ("The provisions of this Constitution are mandatory, unless by express words they are declared to be otherwise.")

In this case, the drop-off fee on ride-sharing services to Sky Harbor is the imposition of a new fee that did not exist prior to December 31, 2017. Additionally, the pick-up fee of \$2.66 was in effect prior to December 31, 2017, but the annual increases of those fees were not. Thus, there has been both the imposition of a new fee and an increase of an existing fee under the City's proposal.

¹ On October 16, 2019, the Phoenix City Council voted 7-2 to pass the fee increases. However, because the City improperly noticed the action, the vote was not valid, and the item has been added to the Council's agenda for another vote on December 18.

Indeed, the City itself characterizes the airport charges as “fees.”² As provided in the City Council’s report, “[t]he proposal seeks to *increase* trip *fees* for [ride-sharing services], establish drop-off trip *fees* for providers, and provide for predictable, administrative annual trip-*fee* rate increases.” Phoenix City Council Report, 10/16/19, Item No. 65 at 171 (emphasis added). What’s more, the City’s proposal seeks to amend Sec. 4-78 of the Phoenix City Code which is identified in the Code as a “Schedule of Fees” for, *inter alia*, ride-sharing services. Phoenix City Code § 4-78. Given the plain language of Prop 126’s prohibition on “any” new or increased “fees,” and the City’s own characterization of these charges as fees, the City’s proposed rate increases imposes and increases fees in violation of the plain and unambiguous language of the Arizona Constitution.

It is equally plain that both ride-sharing platforms and drivers utilizing ride-sharing platforms are providing a “service” within the meaning of the Arizona Constitution. Prop 126 prohibits the imposition or increase of fees or taxes on “the gross receipts of sales or gross income derived from, *any service* performed in this state.” Ariz. Const. art. IX, § 25 (emphasis added). “Service” means “labor performed in the interest or under the direction of others, usually for a fee,” and “service denotes an intangible commodity in the form of human efforts, such as labor, skill, or advice.” Service, *Black’s Law Dictionary* (11th ed. 2019). The provision and operation of a ride-sharing platform is plainly the application of labor and skill provided to platform users. Additionally, ride-sharing drivers are providing labor under the direction of riders for a fee. Both are services. Indeed, state statute governing the operation of ride-sharing platforms and ride-sharing drivers defines each as providing “services” within this state. *See* Ariz. Rev. Stat. Ann. § 28-9551(3)-(4).

With passage of Prop 126, Arizona voters resoundingly affirmed that local government are *prohibited* from imposing new fees or taxes and increasing existing fees or taxes on services in the state. *The Protect Arizona Taxpayers Act* at 1. Specifically, the intent of the act is “to protect Arizonans from these regressive and inequitable taxes, this initiative measure amends the Arizona Constitution to prohibit the state and its political subdivisions from imposing any new taxes on services.” *Id.* at § 2(d). The broad language of that measure, the voters’ intent in passing it, and the statutory language governing ride-sharing services in this state all demonstrate that the City’s proposal imposes and increases fees and taxes on services in this state in violation of the Arizona Constitution.

²

The proposed rate increases are also likely a tax because (1) the assessment is imposed by the City Council, the City’s legislative body; (2) a number of parties and a large portion of the population, including ride-sharing drivers and riders, are subject to the assessment; and (3) the stated purpose of the assessment is to impact a broad range of the public traversing Sky Harbor airport. *See May v. McNally*, 203 Ariz. 425, 430-31, ¶ 24, 55 P.3d 768, 773-74 (2002).

Consequently, should the City Council elect to pass the proposed rate increases on ride-sharing services to and from Sky Harbor, such an action would be highly susceptible to legal challenge from the many parties who would be harmed by it.

In order to prevent an action that is unlawful under a constitutional provision that was passed with overwhelming voter support, we respectfully request that the City withdraw the proposed rate increases.

Our staff is available at any time to discuss the constitutional issues raised by the proposed rate increase.

Should you have any questions regarding this matter, please do not hesitate to contact me directly.

Regards,

A handwritten signature in black ink, appearing to read "Jon Riches", with a long horizontal line extending to the right.

Jon Riches

cc. Phoenix City Council Members
Ed Zuercher, City Manager
Cris Meyer, City Attorney