



## Programs & Services Committee Report

### City of Newton In City Council

**Wednesday, September 6, 2017**

Present: Councilors Rice (Chair), Auchincloss, Hess-Mahan, Kalis, Baker, Leary, Schwartz and Sangiolo

Also Present: Councilors Harney, Cote, Albright and Crossley

City Staff Present: James Freas (Deputy Director, Planning Dept.), David Olson (City Clerk), Jeff Hermann (Chair, Library Trustees), Karyn Dean (Committee Clerk)

**#275-17      Request to increase membership of Board of Library Trustees**

HIS HONOR THE MAYOR requesting an amendment to Section 16-1 to increase the membership of the board of Library Trustees from 5-7 members. [08/28/17 @ 4:47 PM]

**Action:      Programs & Services Approved 6-0 (Councilors Schwartz and Sangiolo not voting)**

**Note:** Jeff Hermann, President of the Board of Library Trustees joined the Committee. He explained that the Board of Library Trustees is currently made up of five members, by ordinance. The proposal is to see that increased to seven. He noted that there were two vacancies on the current Board and several extremely experienced candidates applied. They were finding it difficult to choose just two so they discussed increasing the membership to seven with the Mayor. The Mayor agreed that the Board could use the extra help as the Library will be taking on the upcoming renovation plan, along with their regular committee meetings and fundraising. This will provide the opportunity to delegate some duties and form some subcommittees as well. The Library is very successful but there are always ongoing demands that need attention.

A Committee member asked if Mr. Hermann felt it would be difficult to fill the seven seats going forward and if there might be quorum issues. Mr. Hermann said the Board saw that the interest was there and this year they were better with outreach to let people know there were vacancies. In the future, they would continue those recruitment efforts. He also did not see a problem with maintaining a quorum of four members.

Councilor Leary moved approval and the Committee voted in favor 6-0.

**Referred to Programs & Services and Zoning & Planning Committees**

**#276-17**      **Ordinance amendments to allow food trucks**  
THE ECONOMIC DEVELOPMENT COMMITTEE, COUNCILORS FULLER, HESS-MAHAN, KALIS, LENNON, LIPOF, NORTON, AND SANGIOLO requesting to amend Chapter 17, Sections 17-46 through 17-50 to allow Food Trucks to locate and operate on public streets in Newton subject to licensing by the Health Department and to location permitting requirements, initially restricted to Wells Avenue; to introduce new rules applicable to all Food Trucks operating in the City; and requesting to amend Chapter 30 to allow Food Trucks in the Public Use District subject to the same restrictions and requirements. [08/24/17 @ 4:17 PM]

**Action:**      **Programs & Services Held 7-0 (Councilor Sangiolo not voting)**

**Note:** Joyce Plotkin, Chair of the Economic Development Commission joined the Committee. She is also on the Steering Committee for N2. N2 sent out members of the Committee to interview CEOs in Newton as to why they are in Newton and what their biggest challenges have been. She interviewed two CEOs in Wells Office Park and heard that the first challenge was transportation, but surprisingly the second was food options. There is now a Wells Avenue Property Owners meeting with the City on a monthly basis and they are looking to update the park. The office park tenants believe food trucks could vitalize the street life there and they are wholeheartedly behind this proposal.

Needham Crossing, which is near the Wells Office Park, has had food trucks for quite some time. Adding food trucks to Wells Office Park would keep Newton competitive. The eleven members that were present at the last Economic Development Commission meeting voted unanimously to support the proposal.

Mr. Freas explained that many food truck ordinances across the country locate trucks in underserved areas and Wells Office Park qualifies for that in terms of food options. A Federal Reserve paper found that food trucks increase the market for dining out. Increasing the number of options encourages people to go out more so this will be beneficial to the restaurants in the area and will not detract from them. Mr. Freas is awaiting a final answer from the Department of Revenue but every indication is that Newton should be able to collect the meals tax from the food trucks that are in this program.

Mr. Freas explained that there are three basic parts of the ordinance. He provided a graphic, which is attached. The first part would involve pre-approving the number of trucks and a set of locations for them in the Wells Avenue Park only. There will be a public hearing so that public comment will be heard. After that, they would solicit food truck vendors to fill the spots. There will be an additional location permitting process through the Planning Department to ensure the trucks meet a set of standards and they are all permitted to be there. Licensing through the Health Department will not change.

The second part would be creating a new set of regulations for food trucks, city-wise. This would deal with noise, public safety, signage and other nuisance issues. There is language to encourage more environmentally sustainable practices from the food trucks as well.

The third part would involve the zoning ordinance. This would clarify that the food trucks would only be allowed in the Public Use District and for the first three years, only at Wells Office Park. The ordinance would then extend to the rest of the City with the same set of regulations, guidelines, review and licensing requirements.

#### Committee Questions/Comments

It was asked if there has been any feedback from restaurateurs in the area about the proposal. Ms. Plotkin said she spoke to Shawna Dunn-Gaherin, owner of Dunn-Gaherin's restaurant. She was also former Chair of the Newton Needham Chamber of Commerce and when in that role, was opposed to food trucks everywhere in the City. However, she has seen the proposal, and an earlier version as well, and her exact comment was "Looks good." Her initial response was that it was interesting for her that she could bring her food to her customers in addition to her customers coming to her. There is also a deli in the park, which is new, and they have not spoken to that owner. A Committee member suggested the deli be contacted.

A Councilor wondered if there might be more traffic created if people were driving from other locations to visit the food truck. Mr. Freas noted this could be discussed in the Planning Board's review, but traffic leaving the park in search of food elsewhere causes traffic as well. For many of the tenants and property owners, having food trucks is a critical issue for them to attract tenants and employees in the future.

A Committee member was concerned that a Public Use District includes every street in the City, creating an opportunity for the Planning Board to make a decision that food trucks could be in residential areas. Mr. Freas explained that the trucks will not be allowed in residential areas. There are criteria for the Planning Board to consider when making their decision. It has to be an underserved location, in a commercial area and they must address issues of safety, traffic etc.. The locations have to be approved on an annual basis through a public hearing.

It was also mentioned by a Committee member that marketing would be essential. The Chair suggested that the Economic Development Director would be doing quite a bit of work on this. Chuck Tanowitz has also been working with Needham on their food truck program and has actively been soliciting food trucks and interest is high. Many of the tenants do employee appreciation days on their own property with food trucks, which is allowed, but they cannot do that over and over without violating the zoning ordinance.

A Councilor mentioned that while the trucks will be required to provide their own trash receptacles, people will be walking with food, therefore, there needs to be some thoughtful placement of other trash receptacle in the park.

The Chair noted that all three Ward 8 Councilors are in favor of this. He said he and Councilor Sangiolo docketed an item a couple years ago for food trucks so he is in favor as well. It is a good idea to do this pilot in a place that is underserved. It is in the interest of the property owners to support this because it is a great amenity which preserves productivity and reduces traffic in and out of the park during lunch hours.

Some Committee members were not yet ready to approve the language and wanted more time for review. The item still needs to go to Zoning & Planning for the changes to Chapter 30, which will also require a public hearing. The Committee voted to hold the item.

**#208-17 Proposal to place a nonbinding advisory question on the ballot**

PETER HARRINGTON, ET AL., requesting that the following non-binding question be placed on the November 7, 2017 municipal ballot: “Do you support rezoning village centers to allow four- and five-story mixed-use buildings near public transit with retail on the first floor and apartments above, as the City is recommending to update Newton’s Zoning Ordinance for future growth?” [07/03/17 @ 2:59 PM]

**Action: Programs & Services voted No Action Necessary 7-0 (Councilor Sangiolo not voting)**

**Note:** The Petitioner of this item, Peter Harrington, addressed the Committee. He said that the City of Newton is on the cusp of significant changes in buildings and village centers. The Planning Department said it was inevitable. It appears the City Council is generally in favor of allowing four and five story mixed-use buildings in village centers, and the voters should have an opportunity to express their opinion about this development. There are projects on Needham Street, Maguire Court, Riverside and others as well. Hearing the conversations, it seems like a divisive issue.

There is no survey that goes out in January with the census anymore so there is no way for the people to communicate about issues. Putting a non-binding question on a ballot gives the City a good idea of what the people are thinking. A neighbor of his had this idea and so he helped phrase the ballot question. He felt a simple yes or no question would be best with the intent to not direct the voters’ attention in any particular way, but just find out their opinion. Mr. Harrington quoted John McCain saying it applied to the issues that divide the residents of Newton “We seemed convinced that majorities exist to impose their will with few concessions and that minorities exist to prevent the party in power from doing anything important. That is not how we were meant to govern. Our entire system of government with its checks and balances, bicameral congress, its protections of the rights of the minority was designed for compromise and seldom works smoothly or speedily, but it was never expected to.”

Mr. Harrington asked that the non-binding question be put on the ballot to allow the residents to vote. It is an important part of the public process to allow residents to speak out.

Committee Comments/Questions

A Committee member noted that he was distressed to hear that Mr. Harrington believes that there is not opportunity for public input. There is an extensive public hearing process on every zone

change and special permit application that comes through the City Council. He disagreed that a non-binding question would be superior to public hearings on specific sites or projects.

Mr. Harrington said many people do not follow local politics so this kind of opportunity would give them a chance to make their opinions known.

A Councilor said she receives quite a bit of feedback from constituents on a variety of issues. There is also an opportunity for residents to make a choice when they vote in November because it is very clear who supports which issues. Making policy via a referendum question is not a good idea. Councilor Crossley and Albright submitted a letter that is attached to this report.

A Committee member noted that the zoning process is a complicated one that is committed to the City Council to do. There is also a lot of issues on the ballot right now and he was concerned that this issue would be lost or magnetized in a direction that may not be wise. He did not believe this was a good forum for this kind of question.

Mr. Harrington felt that those who are in public office are surrounded with those who are also involved in public office and those who are connected to them. Something lacking is there is no outreach to the public at large for a voice. The failure of that outreach causes frustration and is evidenced by the last Presidential election.. Not being able to voice concerns, over time, causes damage to those who hold public office.

A Councilor said that comparison of the 2016 election and a development question in Newton is baseless. He agreed with Councilors Leary, Hess-Mahan and Baker, especially the point of not governing by referendum. People know the voting records of those seeking office and they may vote according to their beliefs. He also felt the Planning Department was doing an excellent job reaching out to the wider constituency about zoning redesign. In the past, there have been two questions on the ballot about the US Nuclear Policy but there has never been any citywide questions about local politics on a ballot.

A Councilor said that perhaps there could be a problem with reaching all residents in the City, however, this particular method is problematic. There is not much time between now and the election to educate the public on the complexities of the question. He was not opposed in principal to doing this, it just is not the right time and although worded in a simple way, is not a simple question. Mr. Harrington said he liked the spontaneity of the answer of this type of question. It can inform the process going forward and that is how surveys work.

The Chair noted that there was no sentiment in Committee to support this item. No Action Necessary was moved and the Committee voted in favor unanimously.

**#137-17 Citizens Petition to discuss and repeal Welcoming City ordinance**

SANDE YOUNG ET AL. requesting discussion and to repeal Ordinance A-102, the Welcoming City ordinance, or put the ordinance before the voters in the next municipal election. [04/28/17 @ 11:57 AM]

**Action: Hearing Closed; Programs & Services voted No Action Necessary 7-0 (Councilor Auchincloss not voting)**

**Note:** Chair, John Rice, opened the public hearing on this 50-person citizens petition requesting to repeal the Welcoming City Ordinance or place the question before the voters on the November ballot. David Olson, City Clerk, explained that while this issue was acted upon within the last 12 months, it required a majority vote to accept it to the docket and refer it to Committee, per City Council Rules. The item was accepted and assigned.

The item was presented by Sande Young and Jessica Vaughn:

*Sande Young, 18 Karen Road, Comments attached.*

*Jessica Vaughn, Center for Immigration Studies, a Washington based research institute. Ms. Vaughn lives in Chelmsford. She works with federal, state, local governments on immigration policies. Her research and reporting on Sanctuary and cooperation policies on immigration has been used by the Department of Justice (DOJ) in its determinations on which policies are acceptable and consistent with federal law. The Newton ordinance could subject the City to federal sanctions and cause a loss of opportunities to apply for certain discretionary law enforcement funding from the DOJ. Some lawsuits have been filed to block these federal laws from being enforced, but a federal judge agreed that the DOJ has authority to block these funds.*

The ordinance violates federal laws created under President Obama as well as President Trump, specifically Section 1373 of the US Code, which says that no jurisdiction can have a policy that in any way restricts local law enforcement agencies from communicating or exchanging information with federal immigration authorities. A Law Enforcement agency must also allow Immigration and Customs Enforcement (ICE) agents access to the jail or police station where a person is being detained and also must be able to notify federal immigration authorities in advance of a wanted individuals release. Newton's ordinance violates these. New conditions also require an authority of a city to attest that they are complying with these laws. If Newton will apply for these DOJ grants, it will be in violation because the ordinance makes it noncompliant. A statement in the ordinance states that the City is not in violation of federal law, but just stating that is not enough. The City must actually be in violation.

While Newton police get infrequent notices, they are lawful exercises of ICE's authority. DOJ is not asking local law enforcement agencies to enforce federal immigration laws, they are just asking that ICE is provided the cooperation that all other law enforcement agencies are provided. A City ordinance cannot trump that legitimate federal authority. The inevitable result is that someone gets released and re-offends. The goal of the ordinance may be to promote trust in the immigrant

community but it send ICE into the community, homes, public places and work sites rather than have that encounter take place in the secure environment of a police station.

Councilor Albright asked the Programs & Services Committee not to take any action on the ordinance. The City made a commitment after engaging in a very open process which involved the Mayor's office, the Police Chief, the Law Department, immigration lawyers, the ACLU, NERA and the City Council. There were public hearings and the City Council received hundreds if not thousands of emails. Differences were worked out between and among the groups and arrived at a sound ordinance with a nearly unanimous vote in the City Council and support from the Mayor and Chief of Police. Do not send a message to undocumented people who live or work in Newton that we question the wisdom of this decision. Undocumented people need to be offered safety and stability and not uncertainty. Newton needs to stand firm for its respect and kindness for all people.

### **Public Comment**

The following people spoke in favor of repealing the Welcoming City Ordinance or putting this question to the voters on the November ballot:

*Al Cecchinelli*

*David Spier*

*Nick Pasquarosa*

*Bill Heck*

*Alan Dechter*

*Janet Sterman*

*Charles Jacobs*

*Monica Ginberg*

*Tom Mountain*

*Barbara Bower*

Their concerns included: loss of discretionary federal funding to the City; loss of money due to legal fees; ordinance harbors criminals; ordinance is just a defiant response to the election of Donald Trump; City has always been welcoming; ordinance is an affront to Veterans; this is not an area for local government; ordinance is in violation of US legal code and makes anyone following it a criminal; refugees have anti-Semitic beliefs and want to bring Sharia law here; ordinance is unfair to immigrants who entered US legally; ordinance encourages more illegal immigrants; illegal immigrants use too many social resources; ICE agents will be forced to go into the community instead of dealing with issues at a police station; and ordinance makes City unsafe.

The following people spoke in opposition to repealing of the Welcoming City Ordinance or putting this question to the voters on the November ballot:

*Allison Sharma*

*Arthur Glasglow*

*Maria Arvelo*

*Stephanie Karger*

*Maria Carter*

*Nick Carter*

*Hannah Banks*

*Sue Parsons*

*Roberta Rosenberg*

*Nicole Castello*

*Shawn Fitzgibbons*

Their comments included: the ordinance is consistent with US Constitution as interpreted by the Supreme Court; sends a message that police can protect all people without fear, especially children; encourages discussions of race and empathy; there is nothing intrinsically criminal about being an immigrant; people need to live together in global society; this is a nation of immigrants; Center for Immigration Studies is listed as a Hate Group by the Southern Poverty Law Center; it is a misunderstood ordinance; ordinance makes people proud to live in an inclusive community supportive of immigrants; ordinance has been vetted by a number of legal organizations; there is currently not a fair immigrant system; it is supported by 6 of the 7 candidates for Mayor; and it is a well-supported ordinance.

All submitted statements are attached to this report.

Audio of the public hearing and Committee discussion may be found at:

<http://www.newtonma.gov/civicax/filebank/documents/84776/09-06-17%20P&S%20PH.MP3>

### **Committee Comments/Questions**

A Committee member noted that Ms. Vaughn explained that the three areas of compliance related to receipt of certain DOJ funds. However, these rules would only apply if the City wanted that funding. The City is not in contravention of federal law if they do not apply for those funds.

Ms. Vaughn said that federal law says that the City cannot restrict the exchange of information as she explained earlier. Loretta Lynch asked for an investigation into these types of policies. The report said that sanctuary city policies are in violation of 1373. The rules established by Congress say that to receive certain funds a city must be in compliance with all federal laws.

The Councilor stated that the City's Law Department advised the City Council that under the current precedents of the Supreme Court, the federal government cannot commandeer state or local police forces to enforce federal law. Also under advice of the Law Department, certain exemptions were included in the ordinance so that it did not run afoul of 1373. Ms. Vaughn disagreed with the opinion of the Law Department saying there is a case in the 9<sup>th</sup> circuit on federal funding. The judge stated in the ruling that while the President cannot block all federal funding, DOJ can block certain discretionary funding. The Councilor noted that the Supreme Court is the final word and an appellate court is not.



A Committee member noted that the City Council understood that the City's chances of getting certain federal grants under the DOJ would not be positive under to the ordinance. If this got to the point of commandeering, that would not be successful as it is unconstitutional under the 11<sup>th</sup> amendment.

The Attorney General of the state of New York sent out an advisory to every city and town in New York on how to comply with 1373. Newton followed that advice. Ms. Vaughn said that DOJ does not agree with the NY Attorney General.

Councilor Schwartz moved to close the public hearing and the Committee voted in favor.

Councilor Baker is not in favor of putting this on the ballot. There is some potential exposure for a loss of certain DOJ funding but even that is not certain due the constitutional limits of what the federal government can do to compel municipalities to act.

Councilor Kalis agreed and has not heard testimony to change his support for the ordinance.

Councilor Leary stated that she is convinced passing the ordinance was correct.

Councilor Schwartz said it was good to hear concerns. However, what he has heard does not change his understanding of the City's legal posture. The ordinance was carefully written to specify that those who are arrested by the police for crimes or with prior convictions or suspicion of terrorism or other safety issues unrelated to immigration have no legal bar to the communication and cooperation with ICE. That particular section is key in his ability to support the ordinance.

Councilor Hess-Mahan noted that four public hearings have been held and he has heard nothing new tonight that shakes his confidence that the right decision was made to pass the ordinance. The Supreme Judicial Court of Massachusetts has affirmed that law enforcement officials do not have authority to detain or arrest an immigrant or any other person absent probable cause, and cannot honor an ICE request for detention absent probable cause that someone has committed a crime. That ruling may be found at. <http://law.justia.com/cases/massachusetts/supreme-court/2017/sjc-12276.html>. This is a constitutional issue. His oath says he will support the constitution of the Commonwealth of Massachusetts.

Councilor Sangiolo also affirmed her commitment to the ordinance. At her request, reports of the other discussions of this matter are attached to this report.

Councilor Baker moved No Action Necessary and the Committee voted in favor unanimously.

**Clerk's Note:** All of the following re-appointments were held without discussion, as the hour was late and will be re-scheduled:

- #265-17**      **Mayor's re-appointment of Bethel Charkoudian to the Parks & Recreation Comm**  
BETHEL CHARKOUDIAN, 18 Maple Avenue, Newton, re-appointed as the Ward 1 member of the PARKS & RECREATION COMMISSION for a term to expire September 30, 2020. (60 DAYS 11/4/17) [08/09/17 @ 11:18 AM]  
**Programs & Services Held 7-0 (Auchincloss not voting)**
- #266-17**      **Mayor's re-appointment of Arthur Magni to the Parks & Recreation Commission**  
ARTHUR MAGNI, 107 Mount Vernon Street, Newton, re-appointed as the Ward 2 member of the PARKS & RECREATION COMMISSION for a term to expire September 30, 2020. (60 DAYS 11/4/17) [08/09/17 @ 11:18 AM]  
**Programs & Services Held 7-0 (Auchincloss not voting)**
- #267-17**      **Mayor's re-appointment of Peter Kastner to the Parks & Recreation Commission**  
PETER KASTNER, 49 Woodbine Street, Newton, re-appointed as the Ward 4 member of the PARKS & RECREATION COMMISSION for a term to expire October 31, 2020. (60 DAYS 11/4/17) [08/09/17 @ 11:18 AM]  
**Programs & Services Held 7-0 (Auchincloss not voting)**
- #268-17**      **Mayor's re-appointment of Byron Dunker to the Parks & Recreation Commission**  
BYRON DUNKER, 10 Southwick Road, Newton, re-appointed as the Ward 5 member of the PARKS & RECREATION COMMISSION for a term to expire September 30, 2020. (60 DAYS 11/4/17) [08/09/17 @ 11:18 AM]  
**Programs & Services Held 7-0 (Auchincloss not voting)**
- #269-17**      **Mayor's re-appointment of Andrew Stern to the Parks & Recreation Commission**  
ANDREW STERN, 56 Tyler Terrace, Newton, re-appointed as the Ward 6 member of the PARKS & RECREATION COMMISSION for a term to expire September 30, 2020. (60 DAYS 11/4/17) [08/09/17 @ 11:18 AM]  
**Programs & Services Held 7-0 (Auchincloss not voting)**
- #270-17**      **Mayor's re-appointment of Richard Tucker to the Parks & Recreation Commission**  
RICHARD TUCKER, 23 Woodman Road, Newton, re-appointed as the Ward 7 member of the PARKS & RECREATION COMMISSION for a term to expire September 30, 2020. (60 DAYS 11/4/17) [08/09/17 @ 11:18 AM]  
**Programs & Services Held 7-0 (Auchincloss not voting)**
- #271-17**      **Mayor's re-appointment of Patrick Palmer to the Parks & Recreation Commission**  
PATRICK PALMER, 37 Arapahoe Road, Newton, re-appointed as an alternate member of the PARKS & RECREATION COMMISSION for a term to expire October 31, 2019. (60 DAYS 11/4/17) [08/09/17 @ 11:18 AM]

**Programs & Services Held 7-0 (Auchincloss not voting)**

**#272-17 Mayor's re-appointment of Jack Neville to the Parks & Recreation Commission**  
JACK NEVILLE, 68 High Street, Newton, re-appointed as an alternate member of the PARKS & RECREATION COMMISSION for a term to expire September 30, 2020. (60 DAYS 11/4/17) [08/09/17 @ 11:18 AM]

**Programs & Services Held 7-0 (Auchincloss not voting)**

**#273-17 Mayor's re-appointment of Michael Clarke to the Parks & Recreation Commission**  
MICHAEL CLARKE, 1115 Beacon Street, #9, Newton, re-appointed as an alternate member of the PARKS & RECREATION COMMISSION for a term to expire September 30, 2019. (60 DAYS 11/4/17)[08/09/17 @ 11:18 AM]

**Programs & Services Held 7-0 (Auchincloss not voting)**

**#274-17 Mayor's re-appointment of Sam Figler to the Parks & Recreation Commission**  
SAM FIGLER, 63 Summer Street, Newton, re-appointed as an alternate member of the PARKS & RECREATION COMMISSION for a term to expire October 31, 2018. (60 DAYS 11/4/17) 08/09/17 @ 11:18 AM

**Programs & Services Held 7-0 (Auchincloss not voting)**

Respectfully Submitted,

John B. Rice, Chair

CITY OF NEWTON

IN CITY COUNCIL

ORDINANCE NO. A-102

February 21, 2017

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NEWTON AS FOLLOWS:

That the Revised Ordinances of Newton, Massachusetts, 2012, as amended, be and are hereby further amended with respect to Chapter 2 by inserting after Article VI the following new article:

**Article VII. Welcoming City**

**Sec 2-400. Purpose and Intent.**

The City of Newton has long derived strength from its diverse community, including those who identify as immigrants. Through the City's commitment to social justice and inclusion, one of the City's most important objectives is to enhance relationships with all residents, including immigrants, and to make all residents, workers and visitors feel safe and secure regardless of immigration status. We believe it is critical to reaffirm in this ordinance, the City's commitment to fair treatment for all.

**Sec 2-401. Definitions.**

"Administrative warrant" means an immigration warrant issued by ICE, or a successor or similar federal agency charged with enforcement of civil immigration laws, used as a non-criminal, civil warrant for immigration purposes.

"Agency" means the City Council, Executive Office and every City department, division, commission, council, committee, board, other body, or person established by authority of an ordinance, executive order, or City Council order.

"Agent" means any person employed by or acting on behalf of an agency in an official capacity, but shall not include independent sub-contractors of the City.

"Citizenship or immigration status" means all matters regarding questions of citizenship of the United States or any other country, the authority to reside in or otherwise be present in the United States.

"ICE" means the United States Immigration and Customs Enforcement Agency and shall include any successor agency charged with the enforcement of civil immigration laws.

"Immigration detainer" means an official request issued by ICE, or other federal agency charged with the enforcement of civil immigration laws, to another federal, state or local law enforcement agency to detain an individual based on a violation of a civil immigration law.

"Serious violent felony" means a felony crime as defined in M.G.L. c. 265, *Crimes Against the Person*.

#### **Sec 2-402. Prohibitions.**

No Agency or Agent shall:

- (a) identify, investigate, arrest, detain, or continue to detain a person solely on the belief that the person is not present legally in the United States or that the person has committed a civil immigration violation or that the person is otherwise deportable;
- (b) arrest, detain, or continue to detain a person based on any immigration detainer, federal administrative warrant, or any other such order or request in any form whatsoever or otherwise honor any such detainer, warrant or request to detain, interview or transfer a person to federal authorities, provided however, the police department may arrest, detain or continue to detain a person in accordance with Sec 2-403;
- (c) notify federal authorities about the release or pending release of any person for immigration purposes except in accordance with Sec 2-403;
- (d) provide federal authorities with information about the upcoming release of a person in custody or the person's home or work address for immigration purposes;
- (e) cooperate with or enforce any federal program requiring the registration of individuals on the basis of religious affiliation or ethnic or national origin.

#### **Sec 2-403. Exceptions to Prohibitions.**

The prohibitions in Sec 2-402 shall not apply where the individual to whom such information pertains provides his or her informed consent as to how the information might be used (or if such individual is a minor, the informed consent of that person's parent or guardian), where the information is necessary to provide a City service or where otherwise required by valid state or federal law. In addition, the Newton Police Department may detain or arrest an individual in cooperation with ICE only when an investigation conducted by or information received by any City Agency indicates that:

the individual has an outstanding criminal warrant, has a prior conviction for a serious violent felony, is being investigated for terrorism, or if there is a law enforcement or public safety purpose to do so that is not related to the enforcement of civil immigration law provided that the arrest or detention is based upon valid Massachusetts arrest authority and is consistent with the 4<sup>th</sup> Amendment to the United States Constitution and Article XIV of the Massachusetts Constitution.

**Sec 2-404. Requesting or Maintaining Information Prohibited.**

No Agency, or Agent shall request or maintain information about, or otherwise investigate or assist in the investigation of, the citizenship or immigration status of any person unless such inquiry is required by valid state or federal law.

**Sec 2-405. Use of City Resources Prohibited.**

No Agency or Agent shall use City funds, resources, facilities, property, equipment, or personnel to assist in the enforcement of federal civil immigration law or to gather information regarding the citizenship or immigration status of any person, unless permitted under section 2-403. Nothing in this section shall prevent an Agency or Agent from lawfully discharging duties in compliance with and in response to a lawfully issued judicial warrant, judicial subpoena or immigration detainer.

**Sec 2-406. Ordinance Not to Conflict with Federal Law.**

Nothing in this ordinance shall be construed or implemented to conflict with any otherwise valid and enforceable duty and obligation imposed by a court order or any valid federal or applicable law. Nothing in this subsection shall prohibit or restrain the Agency or Agent from sending to, or receiving from, any local, state, or federal agency, information regarding citizenship or immigration status, consistent with Section 1373 of Title 8 of the United States Code.

**Sec 2-407. No Private Right of Action.**

This ordinance does not create or form the basis of liability on the part of the City, its Agencies or Agents. It is not intended to create any new rights for breach of which the City is liable for money or any other damages to any person who claims that such breach proximately caused injury. The exclusive remedy for violation of this ordinance shall be through the City's disciplinary procedures for employees under applicable City regulations, unless the Agency or Agent is lawfully discharging duties as set forth in Sec 2-402 and Sec 2-403.

**Sec 2-408. Severability.**

If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council of the City of Newton hereby declares that it would have adopted this ordinance and each section, subsection, sentence, clause, phrase or portion thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, or portions were to be declared invalid or unconstitutional.

Approved as to legal form and character:



DONNA LYN LYNCH KAHN

*Oliver C. M. Young*

*Acting*  
City Solicitor

Under Suspension of Rules

Readings Waived and Adopted

16 yeas 1 nay (Councilor Ciccone) 7 absent (Councilors Baker, Brousal-Glaser, Gentile, Kalis, Lipof, Sangiolo, and Schwartz)



(SGD) DAVID A. OLSON

City Clerk

EXECUTIVE DEPARTMENT

Approved: 2.24.17

  
(SGD) SETTI D. WARREN

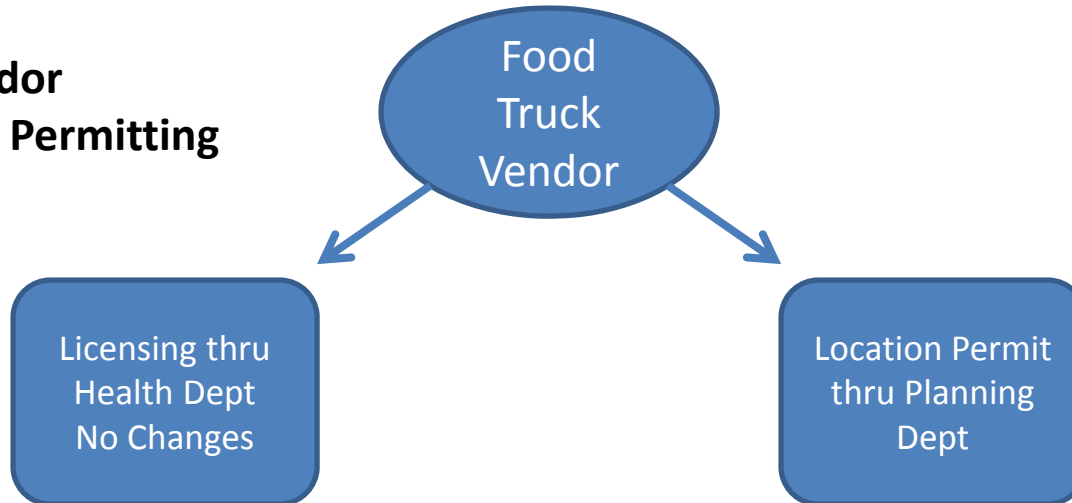
Mayor

## Proposed Food Truck Ordinance Flowchart

### Pre-Approve Locations



### Vendor Licensing & Permitting





**Karyn Dean**

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**From:** Susan Albright <susansophia.albright@gmail.com>  
**Sent:** Wednesday, September 06, 2017 5:39 PM  
**To:** John Rice; Alison M. Leary; Jake Auchincloss; Theodore M. Hess Mahan; Amy Sangiolo; Gregory R. Schwartz; R. Lisle Baker; David Kalis; Karyn Dean  
**Cc:** Deborah J. Crossley  
**Subject:** Let the Zoning Redesign Process work - No to #208-17

Dear Councilors Rice, Leary, Auchincloss, Sangiolo, Schwartz, Baker, and Kalis

Councilor Crossley and I write to address docket item 208-17 which seeks to put a referendum before the voters regarding MU4 zoning in village centers. We wish we could join you for this discussion but our obligations in the Public Facilities Committee to discuss the accelerated roads program will not permit our attendance. We hope that you will vote #208-17 down.

Creating a referendum on one part of our zoning code makes no sense as we are about to engage in a nine-month public process to discuss comprehensive zoning redesign. This process will draw upon numerous analyses recently drafted that define and propose strategies to address Newton's transportation, infrastructure, housing and economic needs. None of those studies ask for a particular number of stories in village centers, as the question as posed would suggest, nor is it anyone's intention to propose a one size fits all solution among our distinctly different villages.

The Planning Department has already published an orderly public engagement process to engage the public response on the many topics that will inform master planning for our neighborhoods, villages, commercial corridors, and which may result in zone changes for some villages. In fact, this process will begin this month.

It is wrong to try to subvert this process by a narrowly focused question, when the process we need is complex, requires a fully informed context and should result in master plans that everyone can see and respond to with intelligence. The proposed ballot question would be confusing at best and harmful to the integrity of the process at worst.

Please let's allow citizens to work together through the zoning redesign process to build consensus toward the city we want.

Thank your,

Susan Albright and Deb Crossley



--  
Susan Albright  
Councilor-at-Large Ward 2  
Newton City Council

CITY OF NEWTON

IN CITY COUNCIL

ORDINANCE NO. A-102

February 21, 2017

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NEWTON AS FOLLOWS:

That the Revised Ordinances of Newton, Massachusetts, 2012, as amended, be and are hereby further amended with respect to Chapter 2 by inserting after Article VI the following new article:

**Article VII. Welcoming City**

**Sec 2-400. Purpose and Intent.**

The City of Newton has long derived strength from its diverse community, including those who identify as immigrants. Through the City's commitment to social justice and inclusion, one of the City's most important objectives is to enhance relationships with all residents, including immigrants, and to make all residents, workers and visitors feel safe and secure regardless of immigration status. We believe it is critical to reaffirm in this ordinance, the City's commitment to fair treatment for all.

**Sec 2-401. Definitions.**

"Administrative warrant" means an immigration warrant issued by ICE, or a successor or similar federal agency charged with enforcement of civil immigration laws, used as a non-criminal, civil warrant for immigration purposes.

"Agency" means the City Council, Executive Office and every City department, division, commission, council, committee, board, other body, or person established by authority of an ordinance, executive order, or City Council order.

"Agent" means any person employed by or acting on behalf of an agency in an official capacity, but shall not include independent sub-contractors of the City.

"Citizenship or immigration status" means all matters regarding questions of citizenship of the United States or any other country, the authority to reside in or otherwise be present in the United States.

“ICE” means the United States Immigration and Customs Enforcement Agency and shall include any successor agency charged with the enforcement of civil immigration laws.

“Immigration detainer” means an official request issued by ICE, or other federal agency charged with the enforcement of civil immigration laws, to another federal, state or local law enforcement agency to detain an individual based on a violation of a civil immigration law.

“Serious violent felony” means a felony crime as defined in M.G.L. c. 265, *Crimes Against the Person*.

#### **Sec 2-402. Prohibitions.**

No Agency or Agent shall:

- (a) identify, investigate, arrest, detain, or continue to detain a person solely on the belief that the person is not present legally in the United States or that the person has committed a civil immigration violation or that the person is otherwise deportable;
- (b) arrest, detain, or continue to detain a person based on any immigration detainer, federal administrative warrant, or any other such order or request in any form whatsoever or otherwise honor any such detainer, warrant or request to detain, interview or transfer a person to federal authorities, provided however, the police department may arrest, detain or continue to detain a person in accordance with Sec 2-403;
- (c) notify federal authorities about the release or pending release of any person for immigration purposes except in accordance with Sec 2-403;
- (d) provide federal authorities with information about the upcoming release of a person in custody or the person’s home or work address for immigration purposes;
- (e) cooperate with or enforce any federal program requiring the registration of individuals on the basis of religious affiliation or ethnic or national origin.

#### **Sec 2-403. Exceptions to Prohibitions.**

The prohibitions in Sec 2-402 shall not apply where the individual to whom such information pertains provides his or her informed consent as to how the information might be used (or if such individual is a minor, the informed consent of that person’s parent or guardian), where the information is necessary to provide a City service or where otherwise required by valid state or federal law. In addition, the Newton Police Department may detain or arrest an individual in cooperation with ICE only when an investigation conducted by or information received by any City Agency indicates that:

the individual has an outstanding criminal warrant, has a prior conviction for a serious violent felony, is being investigated for terrorism, or if there is a law enforcement or public safety purpose to do so that is not related to the enforcement of civil immigration law provided that the arrest or detention is based upon valid Massachusetts arrest authority and is consistent with the 4<sup>th</sup> Amendment to the United States Constitution and Article XIV of the Massachusetts Constitution.

**Sec 2-404. Requesting or Maintaining Information Prohibited.**

No Agency, or Agent shall request or maintain information about, or otherwise investigate or assist in the investigation of, the citizenship or immigration status of any person unless such inquiry is required by valid state or federal law.

**Sec 2-405. Use of City Resources Prohibited.**

No Agency or Agent shall use City funds, resources, facilities, property, equipment, or personnel to assist in the enforcement of federal civil immigration law or to gather information regarding the citizenship or immigration status of any person, unless permitted under section 2-403. Nothing in this section shall prevent an Agency or Agent from lawfully discharging duties in compliance with and in response to a lawfully issued judicial warrant, judicial subpoena or immigration detainer.

**Sec 2-406. Ordinance Not to Conflict with Federal Law.**

Nothing in this ordinance shall be construed or implemented to conflict with any otherwise valid and enforceable duty and obligation imposed by a court order or any valid federal or applicable law. Nothing in this subsection shall prohibit or restrain the Agency or Agent from sending to, or receiving from, any local, state, or federal agency, information regarding citizenship or immigration status, consistent with Section 1373 of Title 8 of the United States Code.

**Sec 2-407. No Private Right of Action.**

This ordinance does not create or form the basis of liability on the part of the City, its Agencies or Agents. It is not intended to create any new rights for breach of which the City is liable for money or any other damages to any person who claims that such breach proximately caused injury. The exclusive remedy for violation of this ordinance shall be through the City's disciplinary procedures for employees under applicable City regulations, unless the Agency or Agent is lawfully discharging duties as set forth in Sec 2-402 and Sec 2-403.

**Sec 2-408. Severability.**

If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council of the City of Newton hereby declares that it would have adopted this ordinance and each section, subsection, sentence, clause, phrase or portion thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, or portions were to be declared invalid or unconstitutional.

Approved as to legal form and character:

DONNALYN LYNCH KAHN  
City Solicitor

Under Suspension of Rules  
Readings Waived and Adopted  
16 yeas 1 nay (Councilor Ciccone) 7 absent (Councilors Baker, Brousal-Glaser, Gentile, Kalis, Lipof, Sangiolo, and Schwartz)

EXECUTIVE DEPARTMENT

Approved: \_\_\_\_\_

(SGD) DAVID A. OLSON  
City Clerk

(SGD) SETTI D. WARREN  
Mayor

I want to thank this committee for allowing us to have our voices heard.

During this Hearing tonight, the proponents of Newton's Welcoming City Ordinance may label us Haters and Bigots.

We are not Haters and bigots. We do not dislike people who come to live in this country, who want to integrate into our society, who love this country.

So please don't misconstrue the points we are making here.

When the last peoples' petition was brought to you, some people accused you of having no business discussing national issues that had nothing to do with the City of Newton.

Your defense was that it was your most important duty as City Councilors to hear resident's concerns when a petition is brought forward.

I hope you will give us the same dignity and respect that you did with the last people's petition.

There are several reasons why we feel that the Welcoming City Ordinance ought to be repealed.

The reason why I was moved to start this initiative petition was the case of the illegal immigrant who was arrested for rape of a young Newton girl. The other was the case of the 2 young doctors who were murdered in their home in South Boston by an immigrant who should have been deported for committing 2 bank robberies previously.

Since the Newton case happened, I fear for my safety when I am out walking. Commonsense tells me that I should not walk alone even in broad-daylight. This is a real fear and should not be taken lightly.

The following is a summary of some of the subjects speakers will cover:

Costs to the city in legal fees and with-held funds

Ordinance breaks Federal laws

Ordinance is dangerous

Ordinance is selective enforcement of laws

Discussion of US Criminal Code #8 section 1324

City Councilors have an Oath of Office to uphold

Some of the very people you are protecting are taught from a very young age to hate Christians, Jews, Gays and Americans

Ordinance makes Policemen's jobs harder

In this time of increasing terrorist activity and the opioid epidemic killing more and more children, I believe it is so important to use all of the law-enforcement tools available.

When you make this a sanctuary City, unfortunately you make it known that you welcome and protect people who commit crimes, from being punished and turned over to proper authorities.

It is common sense that we should have as much communication and cooperation as possible between all law enforcement agencies.

That is the best way to keep our city safe and keep criminals off the streets.

So if you can't find it in your hearts to see it our way to do the right thing, then I am asking you to put this on the ballot in November and let the voters decide.

I will allot the rest of my time to the next speaker, Jessica Vaughn, Director of the Center of Immigration Studies in Washington DC.

## Repeal of Newton's City Ordinance

9-1-17

I stand before you today as a member of this city for over 60 continuous years as a long time resident, employee and coach. I am currently the Commander of the Sons of the American Legion in Newton, recognized as the premier Veterans organization in Massachusetts and I speak on behalf of over 600 members of the Nonantum Detachment. I know that to repeal this ordinance is an almost impossible task. So let's explore why you might have passed this ordinance.

We know that Newton has been an outstanding city for years where people have lived in peace and tranquility devoid of major upheaval, until now.

What has changed? The Election of President Trump perhaps? Despised by some because he is not part of any establishment, Democrat or Republican but in the view of voters, representing the people and not special interests.

The original Sanctuary City Proposal was made by far left liberals who in my opinion wanted to make a statement in defiance of this election.

The Ordinance was re-written as the Welcoming City Ordinance. To many it is written in a way that promotes the agenda of Sanctuary City practices.

During that re-write, not one of the dissenters to the proposal was asked to attend. A point of view not considered.

And what were they and you trying to fix??? We have had no problems in this city with illegals. The police were perfectly willing to arrest anyone who broke the law regardless of their immigration status. If needed and very rare, they would contact Ice as by law and oath of office they should.

So why did you the city council pass such an ordinance that has split this city? Were you resentful of the election? Were you intimidated by the vocal far left? Or were you pandering to the masses whom you believe would support such an ordinance? In any case you have put a target on this city



I am not against immigrants but I am against harboring criminals, any criminal and especially those who are here illegally that commit a crime. "Sanctuary City" harbors such criminals.

Your Welcoming City Ordinance has emboldened district court judge Mary Beth Heffernan to grant affordable bail and quick release to an alleged rapist who was here illegally and committed numerous other felonies. Prosecutors informed the judge that ICE has been contacted and in the process of coming to Newton. With that information Judge Heffernan expedited the quick release and this rapist has fled and is currently a fugitive and nowhere to be found. "Keep Newton safe"?

This action in my opinion was influenced by the convoluted writing of the Newton City Welcoming Ordinance. Further and very important to me, this is a personal affront to all Veterans, Military personnel, first responders and anyone who cares about the rule of law and the security and safety of our residents.

Our City is now divided and the Federal government is determining if Newton, by passing this ordinance is in fact a Sanctuary City.  
Judge Heffernan's actions would indicate that it is.

I urge you to do the right thing. I love this city that I grew up in and raised three children.

Please repeal the unnecessary and divisive ordinance A-102

Nick Pasquarosa  
Commander  
Squadron 440  
Newton

Monica Greenberg

Dear Committee, and esteemed Council head Rice,

Although you aren't cardiologists, I want to thank you for listening to my heart.

My background: I am a legal immigrant, born in Santiago, Chile. I have lived in Newton for 15 years.

I don't think Newton should be a sanctuary city for 7 reasons.

#1. **I don't think Newton should break the law.**

Immigration law is a Federal Government responsibility.

If all cities start breaking the law, it divides us as a nation, and as neighbors. We all want immigration, we are a country of immigrants, but let's do it without breaking the law.

When cities pick and choose the laws they like and don't like, that's what creates anarchy. That's why many of us immigrants fled our homelands in the first place...!

#2. **When we help illegal immigrants, it comes at the expense of legal immigrants.**

My neighbors in Newton are legal immigrants. Next door -from England, China and Germany. Across the street Greece, Russia and Korea. We came here legally. We waited our turn.

Bringing in illegal immigrants makes it harder for legal immigrants to come. Someone get's hurt in the process. When we help illegal immigrants, it comes at the expense of legal immigrants (some of those legal

immigrants waiting to come are poor, come from countries of war and desperation).

By getting illegal immigrants here, we put them in front of the line of people who follow orders and respect the system.

20% of the world's 8 billion would love to live in the US. That's 1 ½ billion people. Let's reform our immigration laws so we bring in people legally.

**#3. Allowing illegal immigration perpetuates the cycle of illegal immigration.** When illegal immigrants get away with coming in illegally, more people try to do the same.

**#4. Being a sanctuary city may hurt those whom we think we're helping.**

I've worked 20 years in public health community health clinics, helping the underserved, and mostly undocumented illegal immigrants.

In retrospect, most aren't happy they entered illegally, and over a lifetime, most think it wasn't worth it to leave "home" and family and friends and their culture and live knowing they are breaking the law.

Another example: I volunteered at NuDay Syria, a wonderful non-profit that helps Syrians by collecting, sorting and sending entire ships full of school supplies and clothing for Syrians.

With a group of Jewish women, we worked alongside Muslim women. The Muslims don't believe that sanctuary cities, or adopting refugees is a solution to the problem. They say it makes the problem worse since it is a Band-Aid, and people, like Newton residents think they are doing good, but they aren't.

The solution is to oust Assad, so they can reclaim their homeland.

**#5. Legal immigration vets legal immigrants. Illegal immigration does not vet the immigrants. This may create unsafe conditions.**

One of the reasons my family chose to live in Newton, is because it was voted one of the countries safest cities. Illegal immigrants are not vetted to see if they are criminals.

**#6. All the time, effort and money you're using in making Newton a sanctuary city, is time and resources our city could be using in making Newton a better place.**


I know that at least one of the Newton school children who committed suicide, came from a legal immigrant family. Are you doing everything you can to help Newton be a better place for the immigrants that are already here?

**#7. Newton is welcoming! Let's celebrate our welcoming Newton neighbors!**

15 years ago when we moved to Newton, we'd been living overseas and the day we arrived I went to the pharmacy to buy some medicines for my kids who were sick.

The next morning, someone rang my doorbell. Who was it? It was the pharmacist smiling and saying "Welcome to Newton", with a delicious homemade meal he and his wife had prepared for us.

Newton is welcoming! Let's honor some of our nice Newton neighbors... that would be good, and legal and safe.



As a recap, the reasons I don't think Newton should be a sanctuary city is

#1. We shouldn't break the law.

#2. Helping illegal immigrants, comes at the expense of helping legal immigrants (who might be in dire circumstances).

#3. Allowing illegal immigration perpetuates the cycle of illegal immigration.

#4. Being a sanctuary city may hurt those whom we think we are helping.

#5. Legal immigration vets legal immigrants. Illegal immigration does not vet the immigrants. This may compromise the safety of our city.

#6. Our cities time could be better spent on important issues that greatly affect the quality of life of our legal immigrants and citizens.

#7. Newton is welcoming! Let's celebrate our welcoming Newton neighbors!

**Karyn Dean**

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**From:** David A. Olson  
**Sent:** Monday, September 11, 2017 10:03 AM  
**To:** Karyn Dean  
**Subject:** FW: Public comments regarding "Welcoming City" ordinance

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**From:** David Spier [<mailto:davidms@mac.com>]  
**Sent:** Monday, September 11, 2017 9:39 AM  
**To:** David A. Olson  
**Cc:** Sande Young  
**Subject:** Public comments regarding "Welcoming City" ordinance

Good morning Mr. Olson.

I am forwarding the below comments I made during the recent public comments session regarding the sanctuary city ordinance. While the Council may record comments independently, I thought it might be helpful for you to have them for the record.

"I remain concerned over our ordinance as an abrogation of Federal immigration law. I continue to wonder whether our Sanctuary City ordinance is the beginning of a general pattern to selectively comply with Federal law for personal, rather than professional, reasons. From my point of view, the ordinance addresses emotional needs at the price of introducing irresponsible and avoidable risk to taxpayers.

I would like to be clear on how our Sanctuary City ordinance has introduced risk to our City.

Attorney General Sessions has finished studying the legal issues regarding sanctuary city ordinances, based in large part upon work published by the Obama Justice Department that found that such ordinances are illegal in a number of respects.

In April the AG sent a letter to the 10 largest sanctuary cities notifying them that certain 2018 grant funds will be withheld unless they repeal the legally offending statutes.

He did so planning on their objections, planning on resultant law suits that ultimately would establish the legal parameters for withholding Federal funds. Naturally he was not disappointed; several suits have been filed and they will end up joined before the Supreme Court.

As mentioned the \$118,000 Newton has at risk in Byrne Memorial Grant funds, which are the subject of the AG's notification. This is only the tip of the iceberg.

The AG will use the Supreme Court's eventual ruling to craft a much broader withholding of Federal police, security and safety funds. Texas Congressman John Culberson is simply waiting for AG Sessions' eventual guidance on how to finalize a new bill that will codify how to withhold far more significant funds.

I suppose that Newton benefits from the AG choosing to notify deep pocket cities like San Francisco and Chicago to pursue court guidance. Those folks will waste local taxpayer funds on legal efforts.

Nevertheless, Newton has exposed risk to its taxpayers that begins, but does not end, at \$118,000. Newton may yet lose funds along the way, and matters will get worse. This Council may be faced with ugly decisions regarding legal representation. In this context, I would consider any legal spending by the city to be illegitimate.

For all these reasons, I advocate moving toward repealing the offending ordinance. Instead I suggest the Council craft a thoughtful letter urging Congress to pass immigration legislation consistent with the perspective of the Council, and no doubt a good number of Newton residents. The Council also might offer educational guidance to residents so that we might better understand the Council's interest in addressing immigration matters.

I have no problem with the Council acting on its collective conscience, if that is what we are talking about. However abrogating Federal law and promoting financial risk to taxpayers is offensive, improper and ethically challenged."

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David Spier  
75 Rachel Rd, Newton MA 02459

**Karyn Dean**

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**From:** David A. Olson  
**Sent:** Monday, September 11, 2017 3:53 PM  
**To:** Karyn Dean  
**Subject:** FW: Public comments regarding "Welcoming City" ordinance, 9/6/17

**From:** [heckyesnewton@aol.com](mailto:heckyesnewton@aol.com) [<mailto:heckyesnewton@aol.com>]  
**Sent:** Monday, September 11, 2017 3:38 PM  
**To:** David A. Olson  
**Cc:** [Ssyspts33@aol.com](mailto:Ssyspts33@aol.com)  
**Subject:** Public comments regarding "Welcoming City" ordinance, 9/6/17

**Good afternoon Mr. Olson,**

I am forwarding the below comments I made during the 9/6/17 public comments session regarding the sanctuary city ordinance. While the Council may record comments independently, I thought it might be helpful for you to have them for the record.

**On Selective Enforcement of Laws**

The Sanctuary City discussion in Newton is a fraud, and an unforgivable waste of time.

From my perspective, if citizens don't like a law, they have representatives who can change the law.

But you are not doing that. And, I ask why?

Your congressional delegation consisting of Kennedy, Warren and Markey represent you and me.

Why do they have no appetite for doing the work that is necessary to change immigration laws that you do not like?

Instead of doing the work that we elected them to do, they get little minions, like Newton city councilors, to regurgitate the proscribed talking points and political narrative.

You councilors are using the Sanctuary City discussion as an opportunity to participate in the foolish political narrative surrounding immigration.

You select to be arbitrary in your enforcement of laws, you choose to ignore your oath of duty, and your actions serve to deconstruct society.

This all leads somewhere. It is called anarchy, lawlessness and chaos.

Let me present you with a symbol of where this leads – a banana – it leads to the banana republic for which it stands, and that you seek to make Newton.

I pray that you wake up, that you sober up, and that you start to act like adults.

Let me leave you with this: Instead of pretending that immigration is a matter for Newton government, let me remind you – councilors and the administration – that Newton's BILLION-plus-dollar-and-GROWING debt is the rightful matter for your focus.

William Heck  
30 Oldham Road, Newton, MA 02465  
[HeckYesNewton@aol.com](mailto:HeckYesNewton@aol.com)





# Programs & Services Committee Report

## City of Newton In City Council

Wednesday, January 18, 2017

Present: Councilors Rice (Chair), Leary, Auchincloss, Hess-Mahan, Sangiolo, Schwartz, Baker and Kalis

Also Present: Councilors Ciccone (Chair), Blazar, Fuller, Yates, Cote, Harney, Norton, Lennon, Gentile, Laredo, Albright, Lappin, Danberg, Crossley and Brousal-Glaser

City Staff: Chief David MacDonald (Newton Police Department), Dori Zaleznik (Chief Administrative Officer), Donnalyn Kahn (City Solicitor), Danielle Delaney (Committee Clerk)

### Referred to Programs & Services Public Safety & Transportation Committees

**#443-16** **Ord. amendment re immigration status and guidelines for community policing**  
HIS HONOR THE MAYOR, CHIEF OF POLICE, PRESIDENT LENNON, AND COUNCILOR KALIS proposing an amendment to the City of Newton Revised Ordinances Chapter 12, Article V; Human Rights Commission and Advisory Council, to add a new section (C) to §12-50 defining: 1) the Policy of the City of Newton regarding immigration status and 2) the final Foundational Guidelines for Community Policing. [12/16/16 @10:45 AM]

Public Facilities Held 8-0

**Action:** **Public Facilities & Transportation Held 6-0 (Councilor Cote not voting)**  
**Program & Services Held 7-0, Auchincloss not voting**

**Note:** Programs & Services and Public Safety & Transportation Committees met jointly on this item as well as #443-16(2). The public comment for these items may be found below. The Committee discussion of these items may be found on the January 18, 2017 Public Safety & Transportation Committee report.

### Referred to Programs & Services Public Safety & Transportation Committees

**#443-16(2)** **Ordinance amendment to protect undocumented residents**  
COUNCILORS ALBRIGHT, AUCHINCLOSS, HESS-MAHAN, NORTON, CROSSLEY, BROUSAL-GLASER AND HARNEY proposing an amendment to the City of Newton Revised Ordinances to protect undocumented residents which at a minimum does the following:  
1) No city official will request or seek information regarding a person's immigration status.

- 2) No city official will report to, respond to or cooperate with Immigration Customs Enforcement with regard to status of any persons who has contact with a city official or employee except in the case where that person has been convicted of a felony, is on a terrorist watch list, poses a serious substantive threat to public safety, or is compelled to by operation of law except as required by law.  
[12/16/16 @ 9:11 AM]

**Action: Public Facilities & Transportation Held 6-0 (Councilor Cote not voting)  
Program & Services Held 7-0 (Councilor Auchincloss not voting)**

**Note:** Programs & Services and Public Safety & Transportation Committees met jointly on this item as well as #443-16(2). The public comment for these items may be found below. The Committee discussion of these items may be found on the January 18, 2017 Public Safety & Transportation Committee report.

**Public Comment - #443-16 and #443-16(2)**

**In Opposition**

*Samuel Bergman, 40 Rosalie Road* said that having a sanctuary city ordinance is unjustified and he is opposed. The legal system has always required people, like his parents who are Holocaust survivors, to get their citizenship legally. This would allow illegals coming into the City and doing as they please. He doesn't think public safety has enough resources to manage that. He owns a franchise of a company that does not allow anyone to be hired unless they are legal citizens.

*Susan Huffman, 27 Indiana Terrace* read a statement from, Dianna Ploss, the deputy state director of the Republican party. The statement said that Ms. Ploss lived in Cambridge and worked in Chelsea, both Sanctuary Cities, and that status leaves a city open to refugees, illegals, MS13 gang members and terrorists as well as to joblessness, idleness, welfare, section 8 housing, (and she asked if anyone was willing to turn their apartment houses over to section 8 housing), gang violence and gang initiations with knives, guns and machetes and terrorist activities with bombs. Ms. Ploss was a nurse at MGH and has seen a machete attack which is horrendous and painful and people should imagine what their arms would look like after a machete attack. Many refugees and illegals have high rates of TB and it takes 6-9 months to treat it which is costly and it is easy to contract it while sitting at Starbucks. The two marathon bombers were refugees and Ms. Ploss woke to the city being in lockdown. People without jobs tend to hang around convenience stores and parks and if they are involved in criminal activity, residents won't go into those stores anymore or sit in a park. Ms. Huffman continued to read that it was better for the City to stick its fingers into a bowl of Ebola and lick them than have Newton become a sanctuary city as it would be quicker and less painful death. Ms. Huffman said these were Ms. Ploss's views on the proposal and that she could not agree with her more. Ms. Huffman said she has lived in Newton for 30 years and can't imagine it contemplating this suicide mission just because the City Council is upset that Donald Trump won the election.

*David Spier, 75 Rachel Road* said he was not in favor of this ordinance. Government is supposed to uphold laws and not break them. There is a long tradition of advocating for citizens, but advocating for a government to protest by ordinance is problematic and inappropriate. Gambling with taxpayers funds is a serious matter. There may be funds removed from cities that follow this sort of statute, on the federal level. This ordinance places barriers before federal law and he believes the Council should be personally liable for any lost revenue as they need to take responsibility.

*Robert Cerra, 78 Auburn Street* said that after 30 years in the law enforcement community he has to stand before the Council to abide by the rule of law. This isn't a question of illegal immigration but whether politics should supersede sound public safety decisions. Individuals that proposed this amendment used politically charged language to justify abandoning accepted law enforcement practices. He feels the ordinance trivializes the importance of the exchange of information which is critical to the police dept and other law enforcement agencies. There is a lack of understanding how a police dept. functions. September 11 and the Marathon bombing have highlighted how important sharing information is. Newton police officers will be in violation of their oath of office if they have to follow the ordinance.

*Nick Pasquaros, 371 Washington St* said he is a longtime Newton resident and is the leader of Post 440. Veterans risk life and limb to protect citizens and the country. He finds this ordinance to be an affront to veterans and the Post's membership voted unanimously to oppose any change in practice or policy with respect to how police enforce laws and protect the residents. Newton is one of the best cities in America. This ordinance would violate the oath of office for Councilors and the police. There have been no problems with illegal immigrants so there is no need for this ordinance. He did not believe that the Trump administration would be changing things and immigrants would be at risk. He has heard the proponents of the bill say that the Trump administration is going to mass deport everybody and it is unbelievable that anyone would think that way. The police do their job without prejudice and without regard to their immigration status. He does not want Newton to become Cambridge or Somerville with a history of illegal immigrants and criminals migrating to their cities for safe haven. On behalf of all unsuspecting citizens, the American Legion does not support any changes as it relates to non-citizens.

*Andre Pasquarosa, 27 Edgewood Rd.,* stated that he served in the military to defend the greatest country on earth. Many of his family members served in the military as well. In Afghanistan, they were instructed that they could not engage with individuals until they demonstrated hostility and then often it was too late resulting in injury and even death for American soldiers. It is difficult to know here who the enemy is and the proposed changes would further advantage the faceless enemy that lurks among us. Refusing to work with other law enforcement agencies is aiding the enemy and any advantage relinquished to American's security and freedom is a slap in the face to his service to this country and all others currently standing guard of America. He would like to keep the current policy in place so as not to bind the hands of those trying to protect citizens of the United States.

*Suzanne Szescila, 7 Leewood Rd.* said she wants the police department to be happy with the final language in the ordinance and that is essential. She wanted to relieve some of the tension regarding the Trump administration. A “dreamer” asked Paul Ryan if he was going to deport him and Mr. Ryan said no and he hoped his future would be in the US, but he had to be brought under the law. Mr. Ryan said mass deportations would not happen. Mr. Ryan also wanted sanctuary cities to be under the law and federal monies would be an issue. Ms. Szecila said she is concerned about safety first and then the City’s finances.

*Virginia Gardner, no address given, Chair of Keep Newton Safe,* stands with the Mayor and Chief of Police. As someone who lived through 9/11 and the Marathon bombing she has serious fears. Two of the hijackers stayed in Newton the night before 9/11 and the Tsarnaev brothers were found ¼ mile from Newton’s city line. It is not the job of the City Council to fix immigration, but to keep the residents safe and obey the laws. These actions do not address the fears of residents and the pledge should be to keep residents safe. The reality is the residents don’t exist for the Councilors until they are up for re-election. . Newton is the safest City because she trusts the Mayor, City Councilors and Police Chief. The City will lose \$12.2 million and she’s tired of hearing they won’t. \$5.2million goes to education and she asked if people wanted to put their house in escrow to pay for that. This will force police officers to violate oaths of office and all employees will be held to this standard. When someone applies for a job that might allow them to access to putting chemicals in our water, the City will not be allowed to ask them their immigration status. She takes issue that immigrants should be in fear because they won’t as long as they don’t break the law.

*Dennis Galvin, 90 Concord Ave, Western Mass,* said the practical effect of becoming a sanctuary city puts the citizens and government at odds with the federal government in enforcing immigration law. There is a major problem with immigration but the City Council should not interfere with that particularly at a time when there are problems with terrorist organizations and drug cartels. By opposing the federal government in this manner, the City is violating the equal protection clause of the Constitution. He is a retired State Police major and has worked as the director of security for the executive office for transportation and has been heavily involved in these types of discussions. The belief that this status will foster better communication between immigrant groups and law enforcement is false. Many immigrants have mistrust of the police because they come from places where police are cruel and corrupt. They have a code of silence for self-preservation, which he understands. These folks live in communities and the majority are hard-working and honest people but there are some vicious criminals among them who prey upon these people daily. They will not turn them in out of fear. The best way to deal with the problems of immigration is to adhere to the rule of law. Police officers have wide discretion and Newton police have a great reputation for being professional judicious officers. Allow them to continue to do their job for citizens and immigrant residents alike.

*Walter Einstein, 55 Cross Hill Road,* said Newton has been voted many times one of the best communities in the country. If Newton becomes a sanctuary city, the safety of the city will disappear in a heartbeat and the school system will become overcrowded with major disruptions. The federal government will take away grants and the City will have to find ways to recoup that

money and that will come from the bank books of every Newton resident. Many can barely afford taxes and water bills and the City will be raising taxes to balance the budget. Maybe next time, the voters will realize what the Councilors have done to disrupt their way of life and they won't be elected. Adopting this proposal would be the biggest crime ever committed in the City. He asked the Council not to vote to commit this crime. Will these people be allowed to vote? The election is over and the results have to be accepted just as they were 8 years ago and not everyone was happy then. Not all citizens are ever happy with election results but we are lucky to live in a country where people can vote for whoever they want to. Sanctuary City is not the answer to the election. He does not think one person in the room wants to bring what has happened in European cities to this city. Do you want to have that blood on your hands because of some migrants with terrorist thoughts and bitterness blow up some of our institutions? Do you want to take a chance that our water supply might be poisoned, or buildings bombed or schools attacked or our children or grandchildren kidnapped and murdered? No one wants that to happen. Not one elected official should ever vote for a sanctuary city and if they do they should not be elected. He asked for God to give the Councilors guidance and wisdom.

*Charles Jacobs, 289 Highland Avenue* said this is Newton's culture war and it is not the first time it has broken out. A few years ago there was an invitation to a man who had been released from Guantanamo Bay to live here in Newton. The motivation was to stick a thumb in the eye of President George Bush and that Guantanamo was an American sin and the Aldermen tried to save our souls. We stopped them, just like now. There is no consideration for their constituents and the Councilors plan to do this as a crying, hysterical fit over the election they lost. This time the Blues are sticking it to the Reds. This is called "virtue signaling" that they are better than us because they care about strangers and they are for human rights, but that is a hoax. They don't care about the Christians in the middle east, or the sex slaves, or the women treated in the Arab Muslim world or gays that are thrown off roofs or stoned. It is not about human rights and that's the proof of it. It's about moral preening. They are only for people who could be our enemies, and never our friends, because we are not good. They can make us good, they think they are clergy men, not aldermen. Would they save strangers before their own family members if a house were on fire? We don't need a Marxian analysis here, but a Freudian analysis. This is simply moral narcissism by endangering our lives simply to preen. Stop it.

*Kevin McNamara, 82 Kingswood Road* said her daughter worked at the JCC on 9/11 and the police were all there to protect the JCC and the Temples. He was in a combat unit in Vietnam and saw refugees in the village he was in. These children want to come to this country and as compassionate as he is, it is not a right to come into the USA. He has a business and if he hires someone who is illegal he can have a lawsuit brought against him. No firefighter or police officer is in favor of this bill. He believes in the City and the flag. The police have to clean up after the liberal ways are put on over common sense. They come out and have to deal with the foolishness. He is at odds with his daughter all the time but he loves her and many people in the room. Leave it alone and if something is going to be done then use common sense. Come back to the table and let the people vote on it and don't just push it through.

*Margo Einstein, 53 Burdee Road* said she and about 100 other people were outside with signs that said "Keep Newton Safe, No Sanctuary City". The police were there to protect and God bless them. She would never want their hands tied and have them not cooperate or coordinate with ICE. As for all our ancestors, they came over as legal immigrants. No change of language will protect us from the bane of being an unconstitutional sanctuary city. The arguments are built on straw men. Raids in the middle of the night rounding up people who have done nothing wrong is nonsense. Do not make changes to the current law.

*Bill Heck, 32 Oldham Rd.* said that everyone there is a product of immigration and that is not new. He also knows that there are very few trying to get out of the US and that should be recognized, because we are a nation of laws which are not elective or arbitrary. It is important to embrace the spirit of law and if you don't like it try to repeal it, don't avoid that law. Nations that avoid laws are known as banana republics.

*Marty Samuels, Newtonville Avenue* thanked the men in blue and the firefighters for protecting lives and freedom. If there was an opinion about the legality of this bill, there are courts to handle this and he shouldn't try to judge the legality. He doesn't know where people get the numbers on immigrants. Most people are fine but that poor family who lost their daughter in California because of an illegal who found a gun on a park bench...That doesn't work in Chelsea with an Ecuadorian 14 year-old selling drugs or East Boston where they are finding bodies of young kids. People used to be civil and were nice to each other, but there has been more mud slung in here that this is about race and ethnicity. His parents were minorities as is he and he knows what it is like and he suffered but he's fine. An article in the paper said "Mexican charged with rape had routine deportations and removals". He was accused of raping a 13 year-old girl on a bus had been deported almost 20 times since 2003. Things are not working under Obama.

### **In Support**

*Shawn Fitzgibbons, 300 Homer Street,* said he serves as Chair of the Democratic Party in the City. He is in favor of Susan Albright's version of the ordinance and in strong support of a welcoming or sanctuary city provision. There is no question that all the City employees makes this one of the best places to live in the country, however, people are still terrified. It can be heard it in the room tonight. Our society of laws needs to go above and beyond the norm to protect those who are vulnerable. All in Newton want those who do not have US citizenship to feel safe and even though we know that they are now, with a fantastic police Chief, more needs to be done because the rhetoric is terrifying to some people. The national political scene is terrifying to some people and he urges the body to advance the policy put forth by the courageous councilors. On the idea that this is an emotional response to Trump's election, he would like to remind everyone, that the policy objective here is not new. Governor Deval Patrick enacted this during his 8 years by executive order in Massachusetts, which was ultimately overturned by Governor Charles Baker. Other cities in Mass have enacted this policy and the dangers being described by those speakers tonight have not befallen those communities. Newton's state senator and representatives have advocated on

this policy at the state level and it will come up again this year. This has been sought after for many years. Newton has an opportunity to lead on the local level and help effect change on the state level. He urged the rapid passage of this ordinance.

*Terrence Brown, 183 Oak Street* said he was a Newton public school and private school teacher as well as a principal and has been in real estate locally for about 30 years. He agreed with Mr. Fitzgibbons entirely. Even in this room, there is heckling for those who don't agree. Those who are in favor have not heckled those who are opposed. Newton has been set apart as a fabulous place to live and this ordinance would advance that. He admits that he is an Independent who is very disappointed in the outcome of the election, but he has never seen an election like this where a candidate asks a foreign government to hack another candidate. In response to the continued heckling he said he is more afraid of some of the people in the room than those who might come to this country.

*James Cohen, 103 Madison Avenue* said he grew up in Newton and left for college and moved back to raise his children. He came back here because of the safety and diversity here. He has heard tonight the thinly veiled and sometimes not so thinly veiled racism, these tired tropes about protecting children. Similar to most people in this room and this City, his grandfather came to the United States 106 years ago on a boat called the Martha Washington. He was welcomed, undocumented, into this Boston community where he was able to build his business and his family. The role of government and law, as he sees it and as the Supreme Court sees it, is not only to create laws but to protect the minority from the tyranny of the majority. What he is hearing in the room is virulent anti-immigrant rhetoric. He knows who votes in Newton and many in the room are not from Newton. His faith teaches him to love his neighbor and there is not distinction as to immigration status and he urges rapid passage of this bill.

*Jamie Stolper, 42 Windermere Road* said she has lived in Newton her entire life and is proud of her City Council. She is proud of how the police treat and interact with the public. These are extraordinary times and she agrees with Councilor Fuller and things can stay the way they are. She is in favor of the welcoming city ordinance language. She thinks there has been a lot of talk about finances and legal issues and she is not an expert in those areas, but the thing that worries her the most is that there are many people who are afraid for their lives and their children. For people, whether they are documented or undocumented who live in our city, who are peaceful, working, contributing residents need to be welcomed. The City should do anything it can to make them feel safe and welcomed. She urged quick passage of this ordinance.

*Susan Mirfsky, 68 Hyde Street* said she is speaking in favor of the ordinance for sanctuary city. She believes it behooves our City politic and for the city as a community to follow through on some decisions. Should the people go for fear or for hope and she hoped that the community could work together for hope. She has heard a lot of fear, fear mongering and hate against the ordinance. She understands fears about homes and families but she has heard what the ordinance is really about and it doesn't threaten anyone. It makes everyone bigger and she would like to dispel the fear mongering. Let's go for hope.

*Jennifer Huntington, 20 Berkshire Road* thanked the Newton police for their hard work and for keeping everyone safe. She speaks from personal experience as she was the principal of Newton North High School. She worked closely with many officers who displayed respect for differences which is one of the core values of this City. She is sorry to hear some of the people tonight who wants to conflate the evil that was done by a very small group of people onto all illegal immigrants. That is not respectful. She lost a brother-in-law in 9/11 and she knows those terrorists and the Boston Marathon bombers do not represent all. She is a first generation immigrant and while she came here legally she knows some who are not here legally but all wish to work and abide by the law. The concept of sanctuary goes back many hundreds years – in medieval England and if you were a fugitive from the law, a church was your sanctuary for 30 days. It did not mean you could evade the law, quite the contrary. At the end of 30 days you were given up to the law but at least you had some time to find representation. She hopes this would be a signal for that sort of sanctuary which is embodied in the Statue of Liberty and the words emblazoned on her.

*Arlene Louney, 424 Newtonville Ave.* said she has lived in Newton for 45 years. She grew up in an immigrant community and her grandfather was a stowaway orphan on a boat and was illegal. He went through Ellis Island and he went to Pennsylvania to get a job at a coal mine at 11 years old. She stood out because she was tall and blonde and a Russian. She was called a commie and people would hit her and fight her. She was able to turn to the police for protection. She has worked in hospitals and the police was help when called and no one ever asked for immigration status. She also was involved in the PTA and welcomed all children no matter their situation. She supports this ordinance that will allow Newton to be a safe, open, welcoming community that it has always been. She believes where there are cities where immigrants are picked up based on the color of their skin or country of origin. Many have fears about what has happened in America but also tremendous opportunity to be inclusive and allow this in Newton. She has great admiration for the administration, the council and the police.

*Ellen Lubell, 80 Temple Street,* said she does not feel welcome in this place listening to the hatred tonight and she does not feel safe, but she will speak nonetheless. She feels threatened. She is in support of the welcoming city ordinance. Newton has prided itself on taking moral stands on hatred and has welcomed immigrants from countless countries well aware of how much we are enriched by diversity. This is true in many other communities as well. However, alongside that is the rejection of some as well. The US has a sad history of nativism, supporting a favored status for certain established inhabitants as compared with the claims of new immigrants. Targeted groups have included Catholics, Jews, Irish, Southeastern Europeans, Chinese, Japanese and in so many of these instances, immigrants have been linked to criminality to justify discriminatory laws and practices against them. There is no natural link between immigrant status and criminality. You would think we had learned this that criminality is as likely to be found in established groups as in new immigrants. The OneNewton statement assumes that immigrants may be dangerous, not overtly but it is hard to come to any other conclusion as it is vague. Fear mongering will not be overcome by hoping everyone will do the right thing. We need mechanisms in place to insure this.



The welcoming city ordinance gives clear anti-discrimination directives and fully respects local laws and law enforcement.

*Barbara Allaire, 26 Lowell Ave.* said she has known many immigrants and is dear friends with many. She doesn't recognize them as people that speakers are describing tonight. She has taught hard working, devoted, eager to learn people who want to be part of this society. They may be undocumented but she did not want to them feel subject to being reported because of that. It creates an unsafe situation for Newton because those people are afraid to call police when they need help. The terrorist attacks within this country have not been perpetrated by any undocumented immigrants, she believes. They were all here legally. The fear should be for those with terrorist intentions and there are mechanisms in place to try to find out who those people are.

*Doris Tennant, 35 Churchill Terrace* said she has been a long time resident and both ordinances purport to maintain Newton as a city that cherishes diversity. The ordinance prohibits a city agency or agent for requesting documentation about immigrant status unless the inquiry is required by valid law. What if another Newton mayor decides to buckle to federal pressure to report law abiding immigrants. It would be a change in expectations and the mayo'r's administration could report law abiding immigrants without any approval by the City Council. With this ordinance, the prohibitions would have the force of law and could be used to resist federal encroachment on local government. The mayor's statement simply says the City will monitor any changes in federal directives and will be prepared to resist any efforts to change our approach to community policing. That means if the mayor decides to do that, the city council would have no say. These are policies and not laws and require no notice to anybody. She believes we care for people if we operate under clearly defined regulations and parameters. No immigrants in Newton should be detained or deported without the due process of law. The ordinance supports fair treatment to all.

*Holly Gunner, 49 Janet Road,* said this ordinance is about who we are as human beings, Newtonians and Americans. She was in the Brooklyn Naval Hospital when her father was in the Navy. It was recently the anniversary of her father's death. His military service was very important to him throughout his life. She felt he fought for being an American. The founding fathers had had it with King George who used the government to force them to do many things they didn't want to do. When they wrote the Constitution and the Bill of Rights, they tilted them to the individual. Some people have mentioned the Fourth and Fifth Amendment and she offered copies of them, written by James Madison. It says no warrant shall be issued without probable cause. They also wanted a nation of laws and not of men. The welcoming city ordinance makes clear that Newton is operating under the Bill of Rights and if we don't hang on to these principles we are going to lose this nation.

*Paul Glickman, 854 Chestnut Street* supported the welcoming city ordinance. Neither of these ordinances is designed in any way to be anti-police. They encourage law enforcement and nothing prohibits the police department from enforcing laws. Los Angeles has many immigrants and many are undocumented. The police chief there said with regard to the incoming Trump administration, he didn't plan on doing anything different. He was not going to work in conjunction with Homeland Security on deportation efforts. He said it was not their job nor would he make it their

job. The LA County Sheriff's department said they wanted people to come forward so they could have a better community. Immigration status did not matter, they wanted to be able to cooperate and work with anyone. Eight years ago during the Bush administration, it was not unusual for immigrants who had US citizen spouses or children and who did no wrong, to be taken at 5 or 6 in the morning and deported. Families were disrupted and we do not want that to happen again. During the Obama administration, that did not happen very much because of new regulations that were put in place. The welcoming city ordinance should be adopted.

**Clerk's Note:** A Speaker's List is attached as well as a signed petition which was submitted.

A Report addendum will be made available with the remainder of the public comments and posted on the Programs & Services Committee page.

**#426-16**      **Resolution to affirm Newton's commitment to tolerance and diversity**  
COUNCILORS SANGIOLO, KALIS, NORTON, HESS-MAHAN, BROUSAL-GLASER,  
HARNEY, AUCHINCLOSS, ALBRIGHT AND CROSSLEY offering a Resolution to affirm the City of Newton's commitment to inclusiveness, tolerance and diversity and will continue to welcome and protect all peoples into our community regardless of race, ethnicity, national origin, religious beliefs, age, sexual orientation, disabilities and gender. [12/5/2016 @ 9:13 AM]

**Action:**      **Approved 7-0 (Councilor Auchincloss not voting)**

**Note:** Councilor Sangiolo noted that this item was created prior to the docketing of the previous two items on the agenda and she has been trying to have it heard since November. She felt that it would assuage some of the fears in the community about a lack of inclusiveness, tolerance and diversity. There may be a long conversation that takes place within the Council and the community relative to items #443-16 and #443-16(2). This would be a statement that the City's leaders are committed to being a welcoming community while the other items are being discussed and an ordinance is approved. In that spirit, she asked that the Committee approve the resolution.

Some Committee members felt this item merited further discussion, but several others stated that they have read the resolution and that is a reasonable and good statement; they feel ready to vote on this now. This is not a policing issue and is just a resolution of openness which expresses the core ideals of the City.

Councilor Kalis moved to approve the resolution and the Committee voted in favor unanimously.

Meeting adjourned.

**Respectfully Submitted, John B. Rice**

Honorable Mayor Setti Warren, President Scott Lennon, and Councilor David Kalis:

We, the undersigned, support your amendment# 443-16ORD, which maintains Newton's status quo cooperation with State and Federal officials on illegal-immigrant issues. We share your goals of maintaining a safe, livable community, while working with those who hope to join our great country and city. Gratefully, we appreciate your approach.

Name Address Ward Precinct

Name	Address	Ward	Precinct
Robert F. Doherty	18 Elmhurst Rd	1	3
Patricia Quinn	25 Elmhurst Rd	1	3
Charles Quinn	25 ELMHURST RD	1	3
Mary Mauer	19 Elmhurst Road	1	3
RITA NAVICKAS	19 ELMHURST ROAD	1	3
Loris M. Roberts	16 Pentroke St	1	3
Genia M. McDonagh	18 Elmhurst Rd	1	3
A. Edward Anzures	Elmhurst	1	3
Dina Tector	7 Elmhurst Rd, Newton	1	3
Jean Soave	19 Simpson St.	1	3
Frank Soave	19 Simpson St	1	3
John	112 Rowlett PK	3	1
Catherine Silvestri	5 Crescent Sq.	1	2
Shirley	12 Elmhurst Rd	1	3
Florence T. Sullivan	15 Elmhurst Rd.	1	3
Angela Joly	26 Rose Drive		
Teresa Russo	50 Cook St 14	1	3
Virginia Gardner	48 William St	4	4
Geoyl Gardner	48 William St	4	4
Lois Charles	61 Northgate Park	3	
Aaron Goldman	11 Serpe Ave	3	

ORNA TEITELBAUM 132 HOMER ST

\* Jindi Ma j\_d\_ma@yahoo.com 144 Baldpate Hill Rd  
Newton

MACE GROBLADA 1055 MARSH RD  
Lebanonville 01588  
MGRUBLADA84@hotmail.com

Jane Snyder 1129 Beacon St

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Name	Address	Ward	Precinct
Cindy Spittel	74 Fenno Rd. Newton Ctr		
Debra Shapiro	67 Walnut Hill Rd.	6/2	6/3
Jami Strungro	38 Bowdoin St Newton Mass		
Mark Strungro	38 Bowdoin St Newton Mass		6/3
Bob CERRA	78 AUBORN ST. AUBURNDALE		
Karen McCormick	303 River St W Newton		
Patricia Papa	154 Auburndale Ave, <sup>West</sup> Newton, MA		3/3
Gene Malin	11 Howe Rd, Newton, MA		
Natalie Ginzburg	11 Howe rd Newton		
Alexander Albee	411 Parker St NEWTON		
Alex Shlyankevich	(37 LANBURY ROAD), NEWTON		
Levi Shlyankevich	" " "		
Jan Wolfe	410 Adams St		
Robert Nunez	41 West St Newton MA		
But Conley	1071 Beacon St.		

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Name	Address	Ward	Precinct
Philip Jepsen	43 Anthony rd	3	
Jami Strangro	38 Bowdoin st	6	4
Mary Strangro	38 Bowdoin st	6	4
Helga LusTip	304 Greenwood Pt	8	4
Virginia Delicandro	299 Auburndale Ave		44
Walter Emdin	55 Cross Hill Rd		4/4
Cerrie Del Vecchio	17 Perry Rd		
Mitchell Lusterz	118 Melanthy Rd	8	4
Charles Jacobs	289 Highland Ave		5/1
Susan Hoffman	27 INDIANA TER		
Natalie Graybug	11 Howard rd		
Joshua Norman	36 Rowe St		4/4
KEVIN McNAMARA	81 KINGSWOOD	4/4	MOANDKEUMACI ©yphoo. cuz
Ann Foley	275 Waterbury st	1?	email? Catch276 @Comcast.net
Leah Jacobson	27 Westbourne Rd		

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Name	Address	Ward	Precinct
CHARLES GRILLO	1011 WASHINGTON STREET NEWTON	3	1
Sande Young	18 Karen Rd Newton	5	3
Jenny Young	18 Karen Rd Newton	5	3
Meethi Daria	122 Dune Hill Rd Newton		
Dad Ali	135 Berkeley St.		
Virginia Gardner	48 William St W Newton	4	4
George Gardner	48 William St W Newton	4	4
ORA Mountain	117 Truman Rd. Newton	8	
Maryel Carter	63 Burdean Rd. Newton 02459		
Barbara Lombardi	905 W tertown St W Newton 02445	3	1
Harlan Sanderling	95 Lincoln St, Newton 02461	6	3
John Hoffmann	27 Indiana Ter.	5	
Maura Sullivan	1012 Chestnut St. Newton, MA 02464		
Ms. Steman	120 Church St	1	2
Janet	224 Chapel St	1	1
Al Cacchumilli			
Jennifer Mountain	117 Truman Rd.	8	
Daniel Mountain	117 Truman Rd.	8	
William Heck	32 Olden Rd	3	2
Robert Bombara	32 Auburndale Ave	3	3
ANDREW BOMBARA	<del>32 AUBURNDALE AVE</del>		
Anil Adyanti (Anil Adyanthanga)	32 AUBURNDALE AVE	3	3 02467
Kathleen	11 TAMARAC RD, NEWTON UF		
	47 Brookline St	5	Chelst not Hill

Suzanne Salter	42 Stephen Pl	02461
Richard Salter	42 Stephen Pl	02461
Strossman	47 Brookline St.	02467
Mo Amador	942 Beacon St	02459
Nancy Devine	286 River St	02465
R D Devine	286 River St	02465



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Name	Address	Ward	Precinct
Patrice Wilson	11 Vaughn Ave	5	2
Sandra Kelly	175 Summer St B1	6	
Elizabeth Mearns	107 Cabot St	2	—
Alan Dechter	327 CABOT ST	2	2
Vanessa	359 LOW ST	2	2
Neal Gates	13 LAWN Ave		
Rita S. Bala	73 Elm rd.	2	
Sandra Males	57 Adams St	1	4
DAVID A DEVITO	227 CALIFORNIA ST		
LUISA M. DEVITO	" "		
Richard Carrington	683 Boylston Street		
Peter Gilson	137 HARVARD ST	2	
Mark McElroy	940 COMM AVE		
Jandraj Celis	CALVERT RD	2	2
BEN B. MURPHY	377 LOWELL AVE	2	
J. Robertson	15 Water st	4	
Don Kirklin	21 WEBSTER	3	
Ted Tsipouras	59 HIGHLAND AVE NEWTON		

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Name	Address	Ward	Precinct
Virginia Gardner	48 William	4	4
Phil Mastroianni Jr	11 Pine Meadow Dr	4	4
Michael Butera Jr	32 Elm St	4	4
Cedrone Family	215 Pearl St	1	1
Joanne Caruso	61 Shendean St	4	4
Amanda Caruso	67 Tolman St, <del>67</del>	3	?

epj



**Public Safety & Transportation Committee Report**  
**City of Newton**  
**In City Council**

**Wednesday, January 18, 2017**

Present: Councilors Ciccone (Chair), Blazar, Fuller, Yates, Cote, Harney and Norton

Absent: Councilor Lipof

Also Present: Councilors Rice (Chair), Leary, Auchincloss, Hess-Mahan, Sangiolo, Schwartz, Baker, Kalis, Lennon, Gentile, Laredo, Albright, Lappin, Danberg, Crossley and Brousal-Glaser

City Staff: Chief David MacDonald, Newton Police Department; Chief Operating Officer, Dori Zaleznik and City Solicitor, Donnaly Khan

Others Present: Attorney Laura Rótolo, American Civil Liberties Union (ACLU)

**REFERRED TO PROGRAM & SERVICES AND PUBLIC SAFETY COMMITTEES**

**#443-16** **Ord. amendment regarding immigration status and guidelines for community policing**  
**HIS HONOR THE MAYOR, CHIEF OF POLICE, PRESIDENT LENNON, AND COUNCILOR KALIS,**  
proposing an amendment to the City of Newton Revised Ordinances Chapter 12, Article V; Human Rights Commission and Advisory Council, to add a new section (C) to §12-50 defining: 1) the Policy of the City of Newton regarding immigration status and 2) the final Foundational Guidelines for Community Policing. [12/16/16 @ 10:45 AM]

**ACTION:** **Program & Services Held 7-0, Auchincloss not voting**  
**Public Safety & Transportation Held 6-0, Cote not voting**

**NOTE:** The Public Safety & Transportation and the Programs & Services Committees met jointly on this item as well as #443-16(2). The public comments on these items may be found on the Programs & Services Report, dated January 18, 2017.

Committee members were provided with a draft ordinance and *Foundational Guidelines For Community Policing To Promote Safety For All*, attached to this report.

Chief Operating Officer Zaleznik thanked the Councilors and thanked the public for their input. She stated that the input has assisted the docketers with focusing and sharpening the draft language before the Council tonight. At first, the docketers felt that an ordinance may not be necessary but have since changed their views and believe an ordinance is appropriate.

Chief Operating Officer Zaleznik explained the points set out in the document *Foundational Guidelines For Community Policing To Promote Safety For All* and why the docketers believe it is an important public policy perspective.

Chief Operating Officer Zaleznik stated the following:

- 1) Newton is and will continue to be a safe and welcoming city for all, regardless of immigration status.
- 2) The docketers are hopeful to be able to unify around this ordinance and the accompanying *Foundational Guidelines For Community Policing To Promote Safety For All*.
- 3) Our community policing practices are sound and accomplished a goal to keep everyone safe and welcome in Newton.
- 4) Data from January 1, 2011, supports that the City's practices are working. It is also important to continue collecting and monitoring data and evaluate when necessary. Building accountability and making data public, as the Police Department has committed to do is a critical element of the practices the City proposes to have in place.
- 5) If Federal Law directives change in a manner that conflict with our community policing approach, the City will be prepared to resist.

Chief MacDonald thanked the Councilors for discussing their concerns with him. He said that he feels that everyone agrees Newton is a great community and we are all trying to reach the same goal. As Chief of Police, his first priority is to keep residents, students, commuters, worshipers and all safe. The most important way to keep all everyone safe is through community engagement. He stated that he wants everyone to feel free to reach out to the Police Department if in need of any service.

Chief MacDonald stated that the Police Department does not ascertain ones immigration status. Individuals are not arrested or held by the Police Department due to their immigration status. Civil infractions do not lead to detention, regardless of immigration status. The Police Department may detain an individual in cooperation with the United States Immigration and Customs Enforcement Agency (ICE) if one or more of the following criteria are met: Suspected of terrorism, pose a danger to national security or convicted of a felony. The Newton Police Department has a law enforcement or public safety purpose that is not related to the enforcement of civil immigration law.

Chief MacDonald said that fingerprinting data depicted red flags on seven individual fingerprints by ICE since January 1, 2011. An earlier Police Department release stated that people are processed out of the system before this information is brought to the Police Department's awareness.

In closing, Chief MacDonald stated that the Newton Police Department has followed the same process for at least the past twenty-five years and most recently been outlined in the *Foundational Guidelines For Community Policing To Promote Safety For All* for community policing is a fair and compassionate statement allowing the Newton Police Department to carry out its mandate.

Councilor Lennon thanked his colleagues for discussing their concerns with him. He stated that the elected officials feel deeply compassionate for all residents and the community. The Newton Police

Department is First Class. The City wants to work together and collaborate to determine common ground, which is often hard to accomplish.

Councilor Lennon stated that he supports Mayor Warren and Chief MacDonald on the filing of the *Foundational Guidelines For Community Policing To Promote Safety For All* policing to promote safety for the following reasons: As part of the City leadership, Councilor Lennon wanted to support the fact that the City has citywide processes that are fair and compassionate. The City has a respectful and knowledgeable Police Department that conducts sound accredited policing protocol. These guidelines allow the Police Department discretion in matters of public safety for all and make a strong statement about Newton's definition of the word "community". The message is unified and shows strength for all that the city cares about the fabric, diversity and safety of the City of Newton, regardless of which side of the issue you choose. The City, residents and everyone all need to work together with the Mayor, Police Chief, Police Department and the City Council regardless of race, ethnicity, national origin, immigration status, religion, sex, age, disability, sexual orientation or gender identity to be "one".

Councilor Kalis said that it is important to feel welcome in one community. The Executive Department and Councilors have been working diligently to find common ground. Where are we with reaching common ground?

Councilor Albright answered that it is difficult to join two perspectives of thoughts. The Executive Department and City Councilors have made an excellent beginning. Chief Operating Officer Zaleznik answered that the original proposed documents have been changed from what Mayor Warren, Councilor Lennon, Chief MacDonald and you have introduced. Conversations will continue but she feels documents provided tonight will be their final document. The Executive Department believes that the ordinance should not be completely prescriptive. They prefer that the Police Department practices be delineated in some detail as they are in the *Foundational Guidelines For Community Policing To Promote Safety For All* document. The specific actions are well laid out in the guidelines. The ordinance establishes broad principles.

### **REFERRED TO PROGRAM & SERVICES AND PUBLIC SAFETY COMMITTEES**

**#443-16(2) Ordinance amendment to protect undocumented residents**  
COUNCILORS ALBRIGHT, AUCHINCLOSS, HESS-MAHAN, NORTON, CROSSLEY, BROUSAL-GLASER, HARNEY, FULLER, LEARY AND DANBERG, proposing an amendment to the City of Newton Revised Ordinances to protect undocumented residents which at a minimum does the following:

- 1) No city official will request or seek information regarding a person's immigration status.
- 2) No city official will report to, respond to or cooperate with Immigration Customs Enforcement with regard to status of any persons who has contact with a city official or employee except in the case where that person has been convicted of a felony, is on a terrorist watch list, poses a serious substantive threat to public safety, or is compelled to by operation of law except as required by law. [12/16/16 @ 9:11 AM]

**ACTION:**      **Program & Services Held 7-0, Auchincloss not voting**  
**Public Safety & Transportation Held 6-0, Cote not voting**

**NOTE:**          Committee members were provided with a draft ordinance and fact sheet on the welcoming City Ordinance, attached to this report.

Councilor Albright stated the following in her opening remarks: “Welcome and thanks to all for coming – no matter what side of this issue you are on. Only through listening and dialogue can we come to a mutual understanding.

The City of Newton has long derived strength from its diverse community, including those who identify as immigrants. Many of us chose to move to or stay in Newton because of its diversity. We are here to talk about a welcoming city ordinance that was distributed last week in the packet - a measure that will help those many recent immigrants who are leading peaceful productive lives among us to continue to do so.

Simultaneous with our work the Mayor began working on a welcoming policy built upon our community policing guidelines. – So all of us began walking down the same path – and our footsteps have perhaps been hastened by the context of the political times we are living in.

In one respect, this ordinance is routine because so much of what we prescribe is already being done. As the Police Chief writes in his foundation guidelines “...our current police practices are [already] in keeping with those of a number of surrounding communities that that have designated themselves as [sanctuary cities]. “So this ordinance is in line with police practices. And codified and clarifies them.

But in another respect the stakes couldn’t be higher including the threat of deportation of people who live and work, and contribute to our society and have done so for many many years.

Let me lay out the elements of the ordinance which are designed to create a sense of safety and well being for all our residents–

- 1) People will not be investigated, arrested, or detained solely on the basis of their immigration status.
- 2) No city employee will gather, maintain, or disclose information about city residents solely on the basis of their immigration status.
- 3) No city resources should be used in the enforcement of federal civil immigration law.
- 4) If residents have committed a felony, or are suspected of terrorism, or acted to endanger public safety then they may be detained by the police in cooperation with Immigration and Customs Enforcement – known as ICE.

The Mayor has created a separate proposal and in the last couple of days, we have been working together - the Council and the Mayor’s office - to craft an ordinance that meets our mutual goals. As one can imagine this is hard work and we have a way to go but I believe that our goals are the same and

based on a process that I hope these two committees will establish tonight we can continue to move forward together to craft one ordinance.

This is clearly an area where language matters, clarity of thought, purpose, and action matters. - While the Mayor's proposal gives a ringing affirmation of those dual values – affirming the commitment of “our city as a welcoming and inclusive community for all.” And affirming community policing as “an important component...” in fulfilling that commitment - it is only by creating and passing an ordinance with clear indications for actions that we can transform good thoughts and rhetoric into reality. And I know we can get this done.

I have heard from many citizens with varied concerns –

First -If we create such a welcoming ordinance, we will violate the oath of office. I want to assure all that we are in no way violating the constitution. There are lawyers who will speak tonight on that point perhaps referencing some important Supreme Court decision handed down by Roberts and Scalia on this point.

Second -It is important to dispel the fearful notion that all undocumented residents are criminals, as they are not – so many are living and working with us every day. But no ordinance or community policing policy will tie the hands of the police in dealing with criminals.

Finally- “We shouldn't help people who came here illegally when I and my ancestors didn't do that”. It's important to know that the pathways available to our ancestors are not currently available. And that so many – the so-called Dreamers – were brought here as children and have gone to school and grown with up with our families.

As the Foundation guidelines so clearly points out, “Trust, understanding of each other, and open two-way communication are essential elements of both community policing and maintaining Newton as a safe city for all.”

What we have proposed and what our work with the Mayor's office would seek to do, is make Newton a place where regardless of race, color, religion, creed, national origin, sex, age, disability, ancestry, sexual orientation or **immigration status**, all are a welcome part of the Newton community.

My grandparents came to this country in the late 1800's some through Ellis Island and some by train from Canada. I think that every single one of us in the room tonight – whether you are here to speak for or against our work – has the same history. Someone gave our ancestors a hand – a chance – and that is what we are trying to achieve.

We have work to do. I look forward to working with the Mayor, the Police Chief and my fellow Councilors to develop an important and welcoming ordinance. Today Newton is faced with a choice between hope and fear. I hope we will choose hope. I hope we will work together to create one ordinance that does just that. I hope this will be a great beginning”.

Attorney Laura Rótolo, American Civil Liberties Union of Massachusetts stated “For the past few years, I have consulted with over a dozen cities in Massachusetts to do what Newton is discussing tonight: protecting the immigrants in this city from and unfair and sometimes illegal immigration enforcement system”. A detailed presentation is attached to this report.

Councilor Fuller stated the following:

- 1) The safety of residents is key. The Police Department does a tremendous job in making Newton a safe community for all. *The Foundational Guidelines For Community Policing To Promote Safety For All*, is correct in stating to keep Newton safe while allowing the police to continue protecting the community. The channels of communication must be open to allow all to feel safe to report crimes and provide information when asked about a possible crime.
- 2) The City has been doing a great job, why change anything? Why right an ordinance? The Mayor deserves credit for recognizing the City needs an ordinance. President-Elect Trump has stated that he would like to change the federal policy and increase the number of deportations of people who have either over stayed their visas or are undocumented. These immigrants are scared and want to understand the role of local Police Departments and City officials. Let us clarify what the City of Newton will accomplish by creating an ordinance.
- 3) What parts of the draft ordinance and guidelines need to be clarified?
  - a)The oath of office matters. The ordinance must and will make clear that the police and elected officials will always uphold their Oath of Office and the law.
  - b)Detaining criminals matters. The ordinance must and will make clear that anyone with an outstanding criminal warrant, a prior conviction for a serious felony or terrorism suspect must be and will be detained.
  - c)The criminal system matters. The ordinance must and will make clear that the City will treat people who have overstayed their visas or are undocumented the same way as other criminal suspects.
  - d)The due process of the law matters.
  - e)The United States Constitution matters.
  - f)The Massachusetts Constitution matters.

The ordinance must and will make clear that the City cares that the Newton Police Department detain individuals based on proof of probable cause of a crime as required by both the 4<sup>th</sup> Amendment, the United States Constitution and Article 14 of the Massachusetts Constitution. The City believes in detention of probable cause and reasonable suspicion as stated in those amendments. Allow the police officers to focus on criminal behavior rather than civil infractions matters. The ordinance must and will make clear that the City understands that immigration court procedures are civil. The Police Department will focus on criminal behavior.

- 4) Does the Federal Government have the right to demand that City officials and the Newton Police Department administer Federal Law? NO! There are State and City rights. Councilor Fuller quoted the late U.S. Supreme Court Justice Antonin Scalia “In its more than 200-year history the U.S. Supreme Court



has never upheld any Federal Laws requiring State or Local Officials to play an involuntary role in administration a Federal program”.

In closing, Councilor Fuller stated that she looks forward to continue discussions with the Councilors and the Executive Department to ensure an ordinance is developed in making Newton “One Newton” a safe, inclusive and welcoming Newton for all.

The Public Comment period allowed residents to express their thoughts and concerns on the proposed ordinance amendments. Some residents spoke in favor, others were opposed. Residents were encouraged to email any additional comments to [ddelaney@newtonma.gov](mailto:ddelaney@newtonma.gov). Please refer to the Programs & Services Report, dated January 18, 2017 for public comments.

After the Public Comment period, Councilors determined it was best to hold these items for a future discussion within the Committees.

Without further discussion, Councilor Sangiolo made the motion to hold these items in Programs & Services Committee. Committee members agreed 7-0, Councilor Auchincloss not voting.

Councilor Harney made the motion to hold these items in Public Safety & Transportation Committee. Committee members agreed 6-0, Councilor Cote not voting.

**Respectfully submitted,**

**Allan Ciccone, Jr. Chair**

Fact Sheet on the  
**Welcoming City Ordinance**

Although the Mayor's One Newton Statement and the Councilors' Welcoming City Ordinance differ on how to best address Donald Trump's draconian agenda on immigration, on one crucial point there is resounding consensus. Trump's threat, to deport millions of immigrants living peaceful, productive lives among us, is a stab at the heart of Newton's vision of one welcoming community.

The differences between the Statement and the Ordinance are more in approach than objectives but these differences are substantial nonetheless, and critical to achieving the mutual ends both measures strive for. We believe that in each instance the clear enforceable provisions of the Ordinance are superior to the more general, changeable language of the Statement in achieving our common goals. For example:

A. In their most central parts both proposals look favorably on protecting peaceful, law-abiding immigrants from the Trump juggernaut, while frowning upon the Police Department becoming mired in the morass of enforcement of civil immigration law.

The three key sections of the Welcoming City Ordinance provide clear unequivocal protections to those people.

**Sec 2-402. Requesting or Maintaining Information Prohibited.** *No City Agency, or agent shall request or maintain information about, or otherwise investigate or assist in the investigation of, the citizenship or immigration status of any person unless such inquiry is required by valid state or federal law or judicial decision.*

**Sec 2-403. Disclosing information prohibited.** *Except as otherwise provided under valid federal law, no City agency or agent shall disclose information regarding the citizenship or immigration status of any person.*

**Sec 2-405. Use of City Resources Prohibited.** *No City Agency or agent shall use City funds, resources, facilities, property, equipment, or personnel to assist in the enforcement of federal civil immigration law or to gather or disseminate information regarding the citizenship or immigration status of any person, unless such assistance is required by valid federal or state law...*

These provisions, having the force of law, protect peaceful law-abiding immigrants living productive lives in our community from summary imprisonment or deportation or both.

These provisions also ensure that not just the Police Department, but every other city agency as well, can focus on the duties the City has assigned them - the challenging job of

providing Newton citizens the highest quality of services - without the additional unwanted, unnecessary, counterproductive burdens that may be imposed upon them by the federal INS.

Finally these provisions mean that this City will stand steadfast behind its vision of Newton as One Welcoming Community in the face of Trump's divisive agenda.

The ordinance connected to the One Newton Statement upon cursory inspection appears to protect immigrant status as well:

*“(1) Immigration status shall have no bearing on a person’s treatment by officials and employees of the city. There is no expectation that officials and employees of the city will report persons to federal immigration authorities based on immigration status.*

*(2) Interactions with federal immigration authorities by the Newton Police Department will be in accordance with the One Newton: Foundational Guidelines for Community Policing to Promote Safety for All.”*

But upon further examination these protections are less real than illusory.

First, the One Newton Proposal does not categorically prevent the City from reporting peaceful, law-abiding immigrants to the federal government. It merely says *“there is no expectation the City will report persons to federal immigration authorities based on immigration status”*.

This is no protection at all. Expectations change. If this or a subsequent administration decides to give in to federal pressure and start reporting law-abiding immigrants, it would merely be a change in “expectations” not a violation of the ordinance. They could do so without Council approval or even notice. The ordinance would be no protection at all.

Contrast this with the Welcoming City Ordinance’s clear prohibition:

***“Sec 2-402. Requesting or Maintaining Information Prohibited.*** *No City Agency, or agent shall request or maintain information about, or otherwise investigate or assist in the investigation of, the citizenship or immigration status of any person unless such inquiry is required by valid state or federal law or judicial decision.”*

Second, the One Newton proposal is further weakened by tying “Police Department interactions with the federal immigration authorities” to the One Newton Statement.

The Statement provides:

*“The Newton Police Department does not take action on civil immigration matters. In most cases, by the time that an undocumented alien is flagged by the fingerprint system, they have already been processed out of police custody to the Newton District Court.”*

But this falls short of providing real protection in four critical ways.

First, it’s policy not law. Therefore it is changeable at a moment’s notice. If a new administration, or a new Police Chief has a different view, or just changes his mind, that statement of policy could be changed or worse ignored, in an instant. Without any notice to the public or action by or notice to the City Council, Newton could become a participant in the wholesale imprisonment of peaceful, productive immigrants dwelling among us.

Second, it is vague. *“In most cases, by the time that an undocumented alien is flagged... they have already been processed out.”* What about those individuals who have not been “processed out”? Nothing in the statement prevents the City from handing over their information to the INS. What if the INS sent the Police Department a Civil Immigration Detainer Request? Again nothing in the Statement prevents the City from detaining an individual not for a crime but solely on the basis of an INS document.

Third, it is only a statement of present practice. For the future it holds no guarantees.

Fourth, it only covers the Police Department. None of the other agencies which might come upon sensitive information would receive any protection. The One Newton policy also proposes a change to Article V Sect 12-50 to say “There is no expectation that officials and employees of the city will report persons to federal immigration authorities based on immigration status.” This change is unclear and certainly does not mandate how city employees must behave in this regard.

The sponsors of the Welcoming City Ordinance urge the supporters of the One Newton Statement to make the protections that we both support explicit and enforceable so that the reality of our laws will match the rhetoric of our statements.

B. In a second critical way both the Statement and the Ordinance are steadfast in their determination to provide for protection against individuals who are a danger to society. Sec 405 (f) of the Ordinance provides: “This section shall not apply when an investigation conducted by or information received by any City Agency indicates that the subject of the investigation

1. Has an outstanding criminal warrant
2. Has been convicted of a serious felony in any court of competent jurisdiction;
3. Is being investigated for terrorism.”

While the Statement provides: “Police do reserve the right to cooperate with Immigration & Customs Enforcement (ICE) when terrorism is suspected or when a serious felony has been committed by an undocumented alien and the individual is considered to be a threat to the safety of others, consistent with the federal Priority Enforcement Program (PEP).”

It is the intent of both the Statement and the Ordinance to reflect the current Police practice.

C. What happens under the Ordinance and the Statement if the federal government requires the City to assist it in the enforcement of immigration laws? Don't city officials have to comply with the demands of federal officers to help with the administration of a federal law?

The more pertinent question is “Does the federal government have *the right* to demand that city officials do anything to administer federal law? The answer is a resounding “no”. As Justice Scalia wrote in *Printz v. United States* “The Federal Government’s power would be augmented immeasurably and impermissibly if it were able to impress into its service – and at no cost to itself – the police officers of the 50 states.” 922.

In fact in its more than two hundred year history the U.S. Supreme Court has never upheld any federal law requiring state or local officials to play an involuntary role in administering a federal program. The only danger is the Supreme Court has held that if a state or city was found to comply voluntarily, compliance was allowed.

Under the Welcoming City Ordinance, the prohibitions, having the force of law, would resist this federal encroachment upon local government autonomy.

With the One Newton Statement no one knows what would happen. *“The City will monitor any changes in federal directives and will be prepared to resist any efforts to change our approach to community policing.”*

This means whether the City succumbed to federal pressure would be solely up to the Mayor and Police Chief. With the Welcoming City Ordinance the City Council would need to approve any change in our commitment to Newton as One Welcoming Community.

What the Supreme Court is basically saying is that under our federal system of government, where states have a high degree of autonomy, the constitution protects us from what are essentially unfunded federal mandates, (and probably funded ones as well). Congress can't create a program and saddle local government with even a part of the cost of implementing it.

D. What is the difference between Ordinance and the Statement if the federal government tries to punish us by cutting off our federal funding for not helping in the administration of federal immigration law?

The fact is no one knows what the federal government will do or even if it has the right to cut off funding for our non-cooperation. After all, The Supreme Court has held these forced

cooperation laws unconstitutional. It seems unlikely they would uphold laws that would punish us for failure to obey an unconstitutional law.

What is certain is that we will be in a stronger position to oppose undue federal pressure with the Ordinance than the Statement. The Ordinance has a clear prohibition against forced cooperation.

The Statement is unclear on resisting federal encroachment and therefore any city cooperation could be taken to be voluntary.

Finally under the Statement this or subsequent Mayors or Police Chiefs could unilaterally and without notice agree to assist Trump and the INS in their draconian plans. Under the Ordinance the matter would be deliberated by the Council openly and any change in this important area of public policy would require Council approval.

E. Won't this Ordinance permit dangerous criminals to remain at large endangering public safety?

As we said in section B above both the Ordinance and the Statement make public safety the highest priority. But in one important respect the Ordinance is superior to the Statement in the area of public safety.

The One Newton Statement recognizes that: *"In order for police to best protect the community, the channels of communication must be open so that individuals feel safe to report alleged crimes and to provide information when asked about a possible crime."*

If an otherwise law-abiding immigrant who does not have proper documentation is a victim to, or witness of a crime, we want that crime reported. Failure to do so not only endangers the victim, it endangers the public as a whole by allowing a criminal to remain at large.

But if a person is afraid to report the crime for fear of being imprisoned or deported, or if it is a domestic matter and there is fear that a family member might face the same fate, the whole community loses. That is why reporting law-abiding but undocumented immigrants to the federal government flies in the face of our objectives in community policing.

The strong prohibitions in the Welcoming City Ordinance ensure *"that individuals feel safe to report alleged crimes and to provide information when asked about a possible crime."*

The One Newton Statement does not provide that assurance.

F. How does that Newton case where the Appeals Court held the City couldn't restrict a police officer's discretion affect the Ordinance and the Statement?

The short answer is it doesn't affect either.

In that case, *Newton Police Association v Police Chief of Newton*, the chief wanted certain police officers to write more tickets in high accident zones. The officers argued that statute 90C section 3(A)(1) meant it was up to them and not the chief to decide whether to write a ticket. The City argued that it "that the police chief is vested with inherent authority to ...direct the members of the police force as to their respective ...duties." Otherwise there'd be chaos, and that therefore the chief could set up ticketing criteria and direct the officers to issue tickets under those circumstances.

The Appeals Court basically agreed with the City as a general rule that statutes like 90C 3(A)(1) didn't restrict the chief's inherent authority.

But they said there was a unique glitch in the history of this particular statute. It seems that back in the good old days, after an officer wrote a ticket, the chief had up to three days to issue the ticket or downgrade it to a warning.

The Court noted that that meant it was open season on the chief and anyone with ties to him could call him up and say something like "Please I was only going 5 miles over the speed limit and everyone was going faster so please rip up my ticket." The practice of "ticket fixing" became so pervasive that Gov. Volpe and the legislature put a stop to it by saying that issuance of a ticket was solely up to the officer not the chief.

But the Chief has the inherent power to do everything in the Welcoming Ordinance and the One Newton Statement.

In conclusion, both approaches have the same underlying goals. But it is the Welcoming City Ordinance that in each instance provides Newton the best chance of achieving those goals and maintaining our City as a place that welcomes, indeed cherishes diversity.



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**Remarks of Laura Rótolo before the Newton City Council**  
**with respect to ordinance 443-16(2)**  
**January 17, 2017**

My name is Laura Rótolo. I am an attorney with the American Civil Liberties Union of Massachusetts. We are an organization dedicated to protecting the civil rights of all people in the Commonwealth and in the United States.

For the past few years, I have consulted with over a dozen cities in Massachusetts to do what Newton is discussing tonight: protecting the immigrants in this city from an unfair and sometimes illegal immigration enforcement system.

I want to talk to you tonight about why this ordinance is so important in this new political context, and about some legal specifics in the language.

President-elect Trump has vowed to deport millions of people very quickly.

In order to do this, the incoming administration will need to do one or more of the following:

1. Obtain massive appropriations from Congress;
2. Perpetuate broad and systemic violations of due process rights in order to expedite deportations;
3. Or, most relevant to our discussion tonight, increase collaboration from cities and towns to help find and deport more people, more quickly.

In preparation, localities around the country are drawing a line in the sand and aligning themselves either on the side of increased deportations, or on the side of protecting immigrants in their cities.

We are seeing this play out in Massachusetts.

On the one hand, the sheriffs of Plymouth and Bristol county just today signed new agreements with ICE, which will provide ICE with the labor of county officials who will be trained and deputized as *federal* ICE agents.

On the other hand, cities such as Boston, Somerville, and Cambridge have reaffirmed their commitment to protect immigrants to the full extent of what the



law and public policy allow. And other cities are—just like Newton—currently considering similar policies.

This is the time for Newton to decide, and I am thrilled to see that so many people here tonight are choosing to protect the people of this city.

Now, I want to get technical for a moment and talk to you about how this ordinance would work.

First we must begin with two broad legal principles.

1. The enforcement of immigration laws is the sole responsibility of the federal government. Cities may not on their own enforce immigration law, and the federal government cannot force or coerce a city into helping it enforce federal immigration laws.

Any collaboration between the city and ICE must be voluntary, or it will run afoul of the 10<sup>th</sup> amendment of the US constitution which forbids the commandeering of local resources for federal purposes.

2. The 4<sup>th</sup> amendment to the US Constitution and Article 14 of the Massachusetts constitution protect all persons from unreasonable seizures. This means that in order for the state to take away your physical liberty—in this case, detain you or put you in jail—their action must be reasonable and the government must have probable cause to believe that you have committed a crime.

It's important to know that this right belongs to all people, not just U.S. citizens, and not just documented immigrants.

With those two principles in mind—that only the federal government may enforce immigration law, and that the 4<sup>th</sup> amendment protects everyone from unreasonable seizures—this ordinance lays out common-sense limitations on Newton agencies' voluntary collaboration with ICE.

One area I want to highlight is a process called the ICE detainer. The detainer is one of the most prevalent ways that ICE asks cities to collaborate in deportation efforts.

It begins at the point that a person is arrested. Any time any person is arrested in the US—whether U.S. citizen or not—they are fingerprinted and those prints go to the FBI for verification and then immediately to the Department of Homeland Security and ICE.

Now DHS runs those prints through its own database, and if the person is of

interest to ICE because they could be deportable, an ICE agent will often issue what is known as an ICE detainer request to the place where the person was arrested.

The request asks that once the person posts bail or is otherwise released, that the city hold him or her for up to 48 hours, so that ICE can have time to come and pick up the person for deportation.

This is a very important tool in ICE's toolbox.

But there are two problems with it.

First, it asks a city to do something that is actually illegal. Because ICE detainers don't provide the probable cause I talked about before, they don't meet the constitutional standard that is necessary to detain a person.

That's because a detainer is just a piece of paper that says that ICE believes this person may be deportable—not that they have committed a crime.

So, if Newton honors these detainers, it is violating the constitutional rights of the person in question. And this opens up Newton to financial liability. Cities around the country have been sued for doing just this and have had to pay tens of thousands of dollars to the persons they held on a detainer.

Second, honoring detainers creates a seamless pipeline between local arrest, possibly indefinite immigration detention, and eventual deportation. The existence of that pipeline breaks down community trust because when people believe that any contact with police could get them deported, they don't call for help, and they don't cooperate with police to solve crimes.

That is why over 400 cities around the country, including seven in Massachusetts, have passed policies similar to the one being discussed tonight. Boston, Somerville, Cambridge, Lawrence, Amherst, Northampton, and Holyoke all limit how their police honor detainers and otherwise collaborate with ICE.

Lastly, I want to address a concern that has come up. President-elect Trump has stated that he will withdraw funding from what he calls "Sanctuary Cities" – but what he probably means is any city that refuses to collaborate fully with deportation efforts.

Federal funding often helps the most vulnerable among us, so we are sensitive to this concern and would not like to see Newton lose any funding.

For legal reasons that are too complicated to get into tonight, I believe this ordinance does not put Newton in any danger. The language has been carefully

crafted to ensure that Newton is not in violation of any federal laws, and is acting wholly within its rights.

And remember that 10<sup>th</sup> amendment principle I mentioned earlier? That is just as relevant here. Withdrawing funding could amount to unconstitutional coercion. I can't say how the Trump administration will try to retaliate against Sanctuary Cities, but I can tell you that any such retaliation will face a legal challenge in court.

Friends, we are at a crossroads. Despite President Obama's record-breaking deportation numbers, it is possible that the Trump administration will turn again to the tactics we saw under the Bush administration: workplace raids such as the one on the Michael Bianco Factory in New Bedford in 2007, indiscriminate deportations, home raids at the crack of dawn, and other inhumane tactics.

We must protect the immigrants in our cities. But more than that, we must uphold our constitution and the laws that protect all of us.

A clear ordinance that has the support of city council, the mayor, and the community is the best way to ensure that the city of Newton remain a welcoming place, and that it not entangle itself with an unjust and broken immigration system.



## Public Safety & Transportation Committee Report

### City of Newton In City Council

**Wednesday, February 8, 2017**

Present: Councilors Ciccone (Chair), Blazar, Fuller, Yates, Cote, Harney, Norton and Lipof

Also Present: Councilors Rice (Chair), Lennon, Leary, Albright, Auchincloss, Hess-Mahan, Brousal-Glaser, Gentile, Crossley, Danberg, Schwartz, Laredo and Baker

Absent: Councilors Sangiolo, Kalis and Lappin

City Staff: Chief David MacDonald, Newton Police Department; Chief Operating Officer, Dori Zaleznik ; City Solicitor, Donnalyn Khan and David Olson, City Clerk

#### **REFERRED TO PROGRAM & SERVICES AND PUBLIC SAFETY COMMITTEES**

**#443-16** **Ord. amendment regarding immigration status and guidelines for community policing**  
**HIS HONOR THE MAYOR, CHIEF OF POLICE, PRESIDENT LENNON, AND COUNCILOR KALIS,**  
proposing an amendment to the City of Newton Revised Ordinances Chapter 12, Article V; Human Rights Commission and Advisory Council, to add a new section (C) to §12-50 defining: 1) the Policy of the City of Newton regarding immigration status and 2) the final Foundational Guidelines for Community Policing. [12/16/16 @ 10:45 AM]

**Action:** **Program & Services voted No Action Necessary 6-0**  
**Public Safety & Transportation voted No Action Necessary 8-0**

**Note:** The Public Safety & Transportation and the Programs & Services Committees met jointly on items #443-16 and #443-16(2).

Chair Ciccone stated that on January 18, 2017, the Public Safety & Transportation and the Programs & Services Committees met jointly on item #443-16 as well as #443-16(2) where both items were held for a future discussion within the Committees. Tonight, public comment will not be accepted as comments were received that evening.

Chair Ciccone then stated that he would expect an action of no action necessary on this version due to docket item #443-16(3) being docketed and being discussed this evening.

Without discussion, Councilor Cote made the motion for no action necessary in the Public Safety & Transportation Committee. Committee members agreed 8-0. A motion was made for no action necessary in the Programs & Services Committee. Committee members agreed 6-0.

**REFERRED TO PROGRAM & SERVICES AND PUBLIC SAFETY COMMITTEES**

**#443-16(2) Ordinance amendment to protect undocumented residents**  
COUNCILORS ALBRIGHT, AUCHINCLOSS, HESS-MAHAN, NORTON, CROSSLEY, BROUSAL-GLASER, HARNEY, FULLER, LEARY AND DANBERG, proposing an amendment to the City of Newton Revised Ordinances to protect undocumented residents which at a minimum does the following:

- 1) No city official will request or seek information regarding a person's immigration status.
- 2) No city official will report to, respond to or cooperate with Immigration Customs Enforcement with regard to status of any persons who has contact with a city official or employee except in the case where that person has been convicted of a felony, is on a terrorist watch list, poses a serious substantive threat to public safety, or is compelled to by operation of law except as required by law. [12/16/16 @ 9:11 AM]

**Action:** **Program & Services voted No Action Necessary 6-0**  
**Public Safety & Transportation voted No Action Necessary 8-0**

**Note:** The Public Safety & Transportation and the Programs & Services Committees met jointly on items #443-16 and #443-16(2).

Chair Ciccone stated that on January 18, 2017, the Public Safety & Transportation and the Programs & Services Committees met jointly on item #443-16 as well as #443-16(2) where both items were held for a future discussion within the Committees. Tonight, public comment will not be accepted as comments were received that evening.

Chair Ciccone then stated that he would expect an action of no action necessary on this version due to docket item #443-16(3) being docketed and being discussed this evening.

Without discussion, Councilor Yates made the motion for no action necessary in the Public Safety & Transportation Committee. Committee members agreed 8-0. Councilor Hess-Mahan made a motion for no action necessary in the Programs & Services Committee. Committee members agreed 6-0.

**Referred to Program & Services and Public Safety Committees**

**#443-16(3) Ordinance amendment to create a "Welcoming City" Ordinance**  
HIS HONOR THE MAYOR, CHIEF OF POLICE, PRESIDENT LENNON, COUNCILOR ALBRIGHT, AUCHINCLOSS, BLAZAR, BROUSAL-GLASER, CROSSLEY, DANBERG, FULLER, HARNEY, HESS-MAHAN, KALIS, LAREDO, LEARY, LIPOF, NORTON, RICE, SANGIOLO AND FORMER MAYOR COHEN requesting an ordinance amendment that reaffirms the City's commitment to fair treatment for all and codifies current community policing practices. One of the city's most important objectives is to enhance relationships with all residents and make all residents, workers and visitors feel safe and secure regardless of immigration status.

**Action:** **Program & Services Approved 6-0**  
**Public Safety & Transportation Approved 6-2-0, Ciccone and Cote opposed**

**Note:** At the City Council meeting on February 6, 2017, Councilor Schwartz requested to be added as a co-docketer to this item.

The Public Safety & Transportation and the Programs & Services Committees met jointly on this item. as well as #443-16 and #443-16(2).

Chief David MacDonald, Newton Police Department; Chief Operating Officer, Dori Zaleznik, City Solicitor, Donnalyn Khan and Former Mayor Cohen joined the Committees for discussion on this item.

Councilor Albright said that city staff and City Councilors have been working on this ordinance for some time. She stated that this has been a very fulfilling experience. City Councilors, city staff, Chief MacDonald and Former Mayor Cohen all came together working diligently to agree on ordinance language that she hopes all can support.

Former Mayor Cohen stated that the ordinance is designed to protect immigrants who are living peaceful and productive lives in the city. The ordinance is an amendment to the City of Newton Ordinances, revised 2012, Chapter 2, Article VII.

Former Mayor Cohen discussed the "Welcoming City" Ordinance and stated the following:

**Sec 2-400. Purpose and Intent.** A statement of purpose it is a general statement that does not contain any specific rights or duties or prohibitions but rather a statement of the intent of the drafters of the ordinance.

**Sec 2-401. Definitions.** A section of seven definitions. These definitions are straightforward.

**Sec 2-402. Prohibitions.** The City basically will not identify, investigate, arrest, detain or continue to detain a person solely on the belief that the person is not presently legal in the United States. There are certain exceptions, which will be discussed in Sec. 2-403. The idea of this section and Sec. 403 is to protect the rights and the ability of immigrants to live peacefully among us while at the same time ensuring the safety of the residents of the City of Newton and those who work or pass thru the city as well.

Section B. The City will not respond to or detain people based on federal Immigration detainers or administrative warrants or any other order or request in any form.

Section C. A safeguard about release. If a person is being released, then the city will not notify federal authorities about that release date.

Section D. Similarly provides another restriction on the release of information.

Section E. The City will not cooperate or enforce any federal program requiring the registration of individuals on the basis of religious affiliation or ethnic or national origin.

**Sec 2-403. Exceptions to Prohibitions.** In part.... In addition, the Newton Police Department may detain or arrest an individual in cooperation with ICE ... with the following four criteria. If any of those four criteria are available, they may cooperate with the Federal Officials. 1) the individual has an outstanding criminal warrant, 2) has a prior conviction for a serious violent felony, 3) is being investigated for terrorism and 4) if there is a law enforcement or public safety purpose that does not relate to the enforcement of civil immigration law. The sponsors of the ordinance believe that it protects public safety. Any action by our Police Department will be based on valid Massachusetts arrest authority and is consistent with the 4<sup>th</sup> Amendment to the United States Constitution and Article XIV of the Massachusetts Constitution.

**Sec 2-404. Requesting or Maintaining Information Prohibited.** The city will keep information, which is required by valid state, or federal law that is to take account of the United States Code, Title 8, Section 1373 of the Federal Code, Communication between government agencies and the Immigration and Naturalization Service, which requires certain actions regarding information.

**Sec 2-405. Use of City Resources Prohibited.** The city will not expend city resources in the pursuit of gathering citizen information except when it falls under the four criteria in section 2-403.

**Sec 2-406. Ordinance Not to Conflict with Federal Law.** This ordinance is not to conflict with federal law.

**Sec 2-407. No Private Right of Action.** There is no private right of action based on this. If an error is made by the city, by overreaching its authority, there is no cause of action under this ordinance to sue the city.

**Sec 2-408. Severability.** If any portion of this ordinance is found unconstitutional, it is the intent of the City Council that the remainder of the ordinance will go into effect.

Councilor Baker stated it is remarkable to see many residents who are here tonight and communications the City Councilors have received. He feels the outpouring represents the sense that it is very important that the city stand with the residents and those who are not who may be affected by a change of administration. An important opportunity for the city to preserve is that during the past week, residents are able to enter the City of Boston safely. It is also important to make sure that this "Welcoming City" draft ordinance work as successfully as possible.

Councilor Baker said that he has questions regarding the language, which he hopes will enhance the quality of the draft. He stated that Former Mayor Cohen indicated that the draft implied agency or agents; this is fairly broad.

Councilor Baker suggested the following ordinance changes. **His suggestions are in bold and underlined.**

Sec 2-401. Definitions

FROM: "Agency" means every City department, division, commission, council, committee, board, other body, or person established by authority of an ordinance, executive order, or City Council order.

TO: **This draft does not include the words City Council and does not include the word the Mayor. In addition, the Charter establishes the City Council.**

**Replace the word Council with City Council.** It says Council but goes on to talk about a Council established pursuant to an Ordinance, we are established by Charter. It would be pretty anomalous for the City Council to pass an ordinance that doesn't bind itself. I hope that there is an opportunity to make a scrivener's correction to clarify that it would be entertained as part to the drafting process.

**Add the word Mayor.** The ordinance does not apply to the Mayor. It applies to all the divisions and departments but not the Chief Executive and seems anomalous in passing an ordinance that binds every official in the City but not the Chief Executive. If this is not the intent, it would benefit from clarification and inclusion.

FROM: "Agent" means any person employed by or acting in behalf of an agency but shall not include independent sub-contractors of the City.

TO: "Agent" means any person employed by or acting **on behalf of an agency in their official capacity** but shall not include independent sub-contractors of the City.

**Boards and Commissions can include citizen appointees.** The ordinance is not just for city employees but some Boards and Commissions may be attorneys representing citizens who have to make inquiry about their status. He is hopeful that there is willingness to entertain a correction to indicate that **staff acting on behalf of a Board or Commission and their official capacity.**

**Sec 2-405. Use of City Resources Prohibited**

This section refers to section 2-403. **It is important that the exception also apply to section 2-406.**

Former Mayor Cohen noted Councilor Baker's ordinance suggestions correcting Agency and Agent definitions. **His responses are in bold and underlined.**

Agency - **to include the words City Council and Mayor.** The Executive is a city department but if you wish to point out the Mayor and City Council that is fine.

Agent – **change from in to on behalf of an agency in their official capacity.** The word Agent means an individual acting on behalf of an agency. This could be the member of the Commission or it could be staff.

Boards and Commissions – **on behalf of an agency in their official capacity.**

Councilor Baker provided Committee members with copies of the U.S. Department of Justice memorandum on the Department of Justice Referral of Allegations of Potential Violations of 8 U.S.C.



Section 1373 by Grant Recipients and the Federal Statute 8 U.S. Code, Section 1373 Communication between government agencies and the Immigration and Naturalization Service. Both documents are attached to this report.

Councilor Baker stated in reference to the United States Code, Title 8, Section 1373, Communication between government agencies and the Immigration and Naturalization Service states the following:

**A) IN GENERAL.** Notwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, the Immigration and Naturalization Service information regarding the citizenship or immigration status, lawful or unlawful, of any individual.

The draft ordinance states that those affiliated with the city cannot do this and that we have to also comply with valid federal law. Valid federal law states the city cannot restrict any communication that would relate to this.

An advisor from the Obama Administration Justice Department refers to grant recipients indicates that one of the values of solving this issue is that they advise that grant recipients be advised. The request from the INS had been voluntary in the sense that they do not require compliance when asking for specific assistance when requesting a detainer.

It is important that grant recipients understand the provisions of federal law. It is important that grant recipients clearly communicate to the public employees and officials cannot be prohibited or restricted from sending citizenship or immigration status information to ICE. The city must follow federal law otherwise; the city would be in a difficult situation. It is vital that the provisions of the Federal Statute 8 U.S. Code, Section 1373 be appended to and made part of the ordinance allowing any city official who is otherwise concerned about what he/she is allowed to do under federal law, without violating federal law.

Former Mayor Cohen stated that he would support appending the federal law to the ordinance.

City Solicitor Khan stated that the city ordinance references many different state and federal laws that are not appended. The city references the laws in the back of the ordinance allowing interested people the opportunity to look up the federal and state laws. If the ordinance is appended with the state and federal laws, she feels they would overburden the ordinance. She then suggested leaving the reference in the statute and as in all the City Ordinances if there is a particular statutory reference within it people are obliged to know what the ordinance states. It would be appropriate to distribute or train employees on the federal law. She then stated that she does not feel it is appropriate to append a federal law to an ordinance.

Councilor Baker said that it is important in this case, at this time to append the federal law to the City Ordinance. By the provisions of the ordinance, he does not want any community member to be misled that they are allowed to violate the Federal Statute 8 U.S. Code, Section 1373. It is necessary for all to understand and know what Section 1373 states. He reiterated the importance and requested that the

Federal Statute 8 U.S. Code, Section 1373 be appended to the ordinance. He then said that it is the City Council's decision if the Federal Statute be appended to the ordinance.

City Solicitor Khan provided an example of a section of this draft ordinance that would not be appended. She stated that under Sec 2-401. Definitions. "Serious violent felony" means a felony crime as defined in M.G.L. c. 265, *Crimes Against the Person*. This is a very long section of the Massachusetts General Law including many crimes. It would be the City Council's decision.

Councilor Hess-Mahan stated that when drafting this ordinance the city was very careful that the definitions of City Agent or City Agency would not be violating any federal law to the extent that they were specifically cited and briefly summarized the provisions of Federal Statute 8 U.S. Code, Section 1373 and what type of information is allowed to be shared which are citizenship and immigration status. He feels that appending the statute (which may be amended) to the ordinance may be difficult. A clear and simple ordinance is best.

Councilor Baker said that the U.S. Department of Justice memorandum on the Department of Justice Referral of Allegations of Potential Violations of 8 U.S.C. Section 1373 by Grant Recipients allows additional protection to the city, a very explicit document covering the rules at the federal level. It is important that the city not leave any uncertainty as to what the federal law requires by relying only upon a reference to the law, rather than making those involved aware of its contents.

Councilor Fuller said that the docketers of the original items always believed that the Newton Police Department has always focused on and should continue their focus on keeping Newton a safe city. The police department should not get involved in civil immigration policies. She then said that the City Councilors did not want a resident or a visitor to feel afraid to report any crime because of their immigration status. If people are afraid to speak, it makes the city feel unsafe. She feels that a "Welcoming City" Ordinance is necessary and is appropriate to accept.

Councilor Fuller asked Chief MacDonald his thoughts on the "Welcoming City" Ordinance and the department's ability and authority to handle any criminal behavior by an undocumented person. She is hopeful that all City Councilors will approve this "Welcoming City" Ordinance to continue keeping the City of Newton safe and allow undocumented immigrants the opportunity to interact with the police department. Federal, civil and immigration law is not being applied. People will only be detained if they have a criminal behavior.

Chief MacDonald stated that when the department received a detainer from Immigration & Customs Enforcement the person was perceived under the Newton Police Department by violating state law. The Newton Police Department is mandated in keeping all who travel in and throughout the city safe. The department does not ask an individual their immigration status. Individuals in the custody of the department are there due to violating Mass General Laws. Chief MacDonald provided examples and stated that the language in the "Welcoming City" Ordinance allows the department to continue acting and fulfilling their duties as they do.

Chief Operating Officer Dori Zaleznik stated when City Councilors, city staff, Chief MacDonald and Former Mayor Cohen were working on the ordinance, they asked if there was anything from keeping the Newton Police Department from acting as they currently do.

Councilor Norton referenced President Trump's Executive Order and actions that have been taken. She asked the Executive Department and Chief MacDonald if they feel the "Welcoming City" Ordinance prohibits all these types of actions? She then stated that she supports the "Welcoming City" Ordinance.

City Solicitor Khan answered yes; and stated that the Newton Police Department will not stop or detain individuals based on immigration status alone and this ordinance does not propose this.

Councilor Cote said that it is remarkable to see many residents here tonight. He explained the role of the City Councilor's who are responsible for City laws. The City Councilor's should not take up items that are partisan issues. The previous items were docketed hoping to compromise and looked for a solution that was not an issue in the municipal level of the City of Newton. The Newton Police Department and the City of Newton must follow federal laws. The Newton Police Department did not and does not have a problem with individuals. He said that it is concerning that at the previous discussion people felt like they had to choose a side and some expressed fear. Individuals should never feel fearful to contact the police.

Councilor Gentile said that tonight's discussion is important to members of the community. He stated that he did not request being a co-docketer to this item at the time due to the need for additional time to understand and review the proposed ordinance. His concerns are to ensure the City Council pass an ordinance that protects all residents of the City of Newton and allows the Police Department the ability to do their job and keep all people safe. Councilor Gentile referenced a resident's letter requesting that the City Council receive additional information before the ordinance is passed. The resident feels the City Council should particularly be cautious about passing this ordinance if the City is put in a position of opposing federal laws and regulations. Councilor Gentile wants to assure all residents that he feels this ordinance does not put the city in that position.

Councilor Gentile provided Committee members with a copy of the FY16 Federal Funds Receipts for the City of Newton, attached to this report.

Councilor Gentile stated that as Chair of the Finance Committee, he has been very concerned about possible ramifications on the final version of this ordinance. He will not request that this item be referred to the Finance Committee as the ordinance is written. He stated that he would not support something if he felt that that large sum of money was in jeopardy. The City receives between \$11 to \$12 million dollars per year from the Federal Government to provide grants for School Federal Grant Fund, Federal Community Development Grants, Federal HOME Grant Fund, Municipal Federal Grant Fund and School Food Service Meal Reimbursement.

Chair Ciccone expressed his concerns and stated that the city should assist in helping immigrants to become legal giving them the opportunity to reside legally.

On February 15, 2017, Councilor Albright provided a copy of the Guidance Concerning Local Authority Participation in Immigration Enforcement and Model Sanctuary Provisions from the State of New York, attached to this report.

Without further discussion, Councilor Fuller made the motion to approve the creation of a “Welcoming City” Ordinance in the Public Safety & Transportation Committee. Committee members agreed 6-2-0, Councilors Cote and Ciccone opposed.

Councilor Hess-Mahan made the same motion to approve the creation of a “Welcoming City” Ordinance in the Programs & Services Committee. Committee members agreed 6-0.

At approximately 9:30 p.m., the Committees adjourned.

**Respectfully submitted,**

**Allan Ciccone, Jr. Chair**



Office of the Inspector General

The "Law Enforcement Sensitive" markings on this document were removed as a result of a sensitivity review and determination by the U.S. Department of Homeland Security, Immigration and Customs Enforcement.

~~LAW ENFORCEMENT SENSITIVE~~

May 31, 2016 [Re-posted to oig.justice.gov on September 23, 2016, due to a corrected entry in the Appendix, see page 12.]

MEMORANDUM FOR KAROL V. MASON

ASSISTANT ATTORNEY GENERAL

FOR THE OFFICE OF JUSTICE PROGRAMS

A handwritten signature in blue ink that reads "Michael E. Horowitz".

FROM:

MICHAEL E. HOROWITZ  
INSPECTOR GENERAL

SUBJECT:

Department of Justice Referral of Allegations of Potential Violations of 8 U.S.C. § 1373 by Grant Recipients

This is in response to your e-mail dated April 8, 2016, wherein you advised the Office of the Inspector General (OIG) that the Office of Justice Programs (OJP) had "received information that indicates that several jurisdictions [receiving OJP and Office of Violence Against Woman (OVW) grant funds] may be in violation of 8 U.S.C. § 1373." With the e-mail, you provided the OIG a spreadsheet detailing Department grants received by over 140 state and local jurisdictions and requested that the OIG "investigate the allegations that the jurisdictions reflected in the attached spreadsheet, who are recipients of funding from the Department of Justice, are in violation of 8 U.S.C. Section 1373." In addition to the spreadsheet, you provided the OIG with a letter, dated February 26, 2016, to Attorney General Loretta E. Lynch from Congressman John Culberson, Chairman of the House Appropriations Subcommittee on Commerce, Justice, Science, and Related Agencies, regarding whether Department grant recipients were complying with federal law, particularly 8 U.S.C. § 1373 (Section 1373). Attached to Chairman Culberson's letter to the Attorney General was a study conducted by the Center for Immigration Studies (CIS) in January 2016, which concluded that there are over 300 "sanctuary" jurisdictions that refuse to comply with U.S. Immigration and Customs Enforcement (ICE) detainers or otherwise impede information sharing with federal immigration officials.<sup>1</sup>

<sup>1</sup> Your e-mail also referenced and attached the OIG's January 2007 report, *Cooperation of SCAAP [State Criminal Alien Assistance Program] Recipients in the Removal of Criminal Aliens from the United States*. In that Congressionally-mandated report, the OIG was asked, among other things, to assess whether entities receiving SCAAP funds were "fully cooperating" with the Department of Homeland Security's efforts to remove undocumented criminal aliens from the United States, and whether SCAAP recipients had in effect policies that violated Section

~~LAW ENFORCEMENT SENSITIVE~~

**LAW ENFORCEMENT SENSITIVE**

The purpose of this memorandum is to update you on the steps we have undertaken to address your question and to provide you with the information we have developed regarding your request. Given our understanding that the Department's grant process is ongoing, we are available to discuss with you what, if any, further information you and the Department's leadership believe would be useful in addressing the concerns reflected in your e-mail.

**OIG Methodology**

At the outset, we determined it would be impractical for the OIG to promptly assess compliance with Section 1373 by the more than 140 jurisdictions that were listed on the spreadsheet accompanying your referral. Accordingly, we judgmentally selected a sample of state and local jurisdictions from the information you provided for further review. We started by comparing the specific jurisdictions cited in the CIS report you provided to us with the jurisdictions identified by ICE in its draft *Declined Detainer Outcome Report*, dated December 2, 2014.<sup>2</sup> Additionally, we compared these lists with a draft report prepared by ICE that identified 155 jurisdictions and stated that "all jurisdictions on this list contain policies that limit or restrict cooperation with ICE and, as of Q3 FY 2015, have declined detainers."<sup>3</sup> From this narrowed list of jurisdictions, we determined, using the spreadsheet provided with your e-mail, which jurisdictions had active OJP and OVW awards as of March 17, 2016, the date through which you provided award information, and received fiscal year (FY) 2015 State Criminal Alien Assistance Program (SCAAP) payments. Lastly, we considered, based on the spreadsheet, the total dollars awarded and the number of active grants and payments made as of March 17,

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1373. As we describe later in this memorandum, the information we have learned to date during our recent work about the present matter differs significantly from what OIG personnel found nearly 10 years ago during the earlier audit. Specifically, during the 2007 audit, ICE officials commented favorably to the OIG with respect to cooperation and information flow they received from the seven selected jurisdictions, except for the City and County of San Francisco. As noted in this memorandum, we heard a very different report from ICE officials about the cooperation it is currently receiving. Additionally, our 2007 report found that the SCAAP recipients we reviewed were notifying ICE in a timely manner of aliens in custody, accepting detainers from ICE, and promptly notifying ICE of impending releases from local custody. By contrast, as described in this memorandum, all of the jurisdictions we reviewed had ordinances or policies that placed limits on cooperation with ICE in connection with at least one of the three areas assessed in 2007.

<sup>2</sup> At the time of our sample selection we only had a draft version of this report. We later obtained an updated copy which was provided to Congress on April 16, 2016. Although it was provided to Congress, this report was also marked "Draft." The updated draft version of the report did not require us to alter our sample selection.

<sup>3</sup> This version of the declined detainer report covered declined detainers from January 1, 2014 through June 30, 2015.

**LAW ENFORCEMENT SENSITIVE**

2016, and sought to ensure that our list contained a mix of state and local jurisdictions.

Using this process, we judgmentally selected 10 state and local jurisdictions for further review: the States of Connecticut and California; City of Chicago, Illinois; Clark County, Nevada; Cook County, Illinois; Miami-Dade County, Florida; Milwaukee County, Wisconsin; Orleans Parish, Louisiana; New York, New York; and Philadelphia, Pennsylvania. These 10 jurisdictions represent 63 percent of the total value of the active OJP and OVW awards listed on the spreadsheet as of March 17, 2016, and FY 2015 SCAAP payments made by the Department.

Section 1373 states in relevant part:

- (a) **In General.** Notwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, the Immigration and Naturalization Service information regarding the citizenship or immigration status, lawful or unlawful, of any individual.
- (b) **Additional authority of government entities.** Notwithstanding any other provision of Federal, State, or local law, no person or agency may prohibit, or in any way restrict, a Federal, State, or local government entity from doing any of the following with respect to information regarding the immigration status, lawful or unlawful, of any individual:
- (1) Sending such information to, or requesting or receiving such information from, the Immigration and Naturalization Service.
  - (2) Maintaining such information.
  - (3) Exchanging such information with any other Federal, State, or local government entity.

According to the legislative history contained in the House of Representatives Report, Section 1373 was intended “to give State and local officials the authority to communicate with the Immigration and Naturalization Service (INS) regarding the presence, whereabouts, and activities of illegal aliens. This section is designed to prevent any State or local law, ordinance, executive order, policy, constitutional provision, or decision of any Federal or State court that prohibits or in any way restricts any communication between State and local officials and the INS.”<sup>4</sup>

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<sup>4</sup> House of Representatives Report, *Immigration in the National Interest Act of 1995*, (H.R. 2202), 1996, H. Rept. 104-469, <https://www.congress.gov/104/crpt/hrpt469/CRPT->

**LAW ENFORCEMENT SENSITIVE**

For the 10 selected jurisdictions, we researched the local laws and policies that govern their interactions with ICE – particularly those governing the ability of the jurisdictions’ officers to receive or share information with federal immigration officials. We then compared these local laws and policies to Section 1373 in order to try to determine whether they were in compliance with the federal statute. We also spoke with ICE officials in Washington, D.C., to gain their perspective on ICE’s relationship with the selected jurisdictions and their views on whether the application of these laws and policies was inconsistent with Section 1373 or any other federal immigration laws.

The sections that follow include our analysis of the selected state and local laws and policies.

**State and Local Cooperation with ICE**

A primary and frequently cited indicator of limitations placed on cooperation by state and local jurisdictions with ICE is how the particular state or local jurisdiction handles immigration detainer requests issued by ICE, although Section 1373 does not specifically address restrictions by state or local entities on cooperation with ICE regarding detainers.<sup>5</sup> A legal determination has been made by the Department of Homeland Security (DHS) that civil immigration detainers are voluntary requests.<sup>6</sup> The ICE officials with whom we spoke stated that since the detainers are considered to be voluntary, they are not enforceable against jurisdictions which do not comply, and these ICE officials stated further that state and local jurisdictions throughout the United States vary significantly on how they handle such requests.

In our selected sample of state and local jurisdictions, as detailed in the Appendix, each of the 10 jurisdictions had laws or policies directly related to how those jurisdictions could respond to ICE detainers, and each limited in some way the authority of the jurisdiction to take action with regard to ICE detainers. We found that while some honor a civil immigration detainer request when the subject meets certain conditions, such as prior felony

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104hrpt469-pt1.pdf (accessed May 24, 2016).

<sup>5</sup> A civil immigration detainer request serves to advise a law enforcement agency that ICE seeks custody of an alien presently in the custody of that agency, for the purpose of arresting and removing the alien. 8 C.F.R. § 287.7(a)

<sup>6</sup> Several courts have reached a similar conclusion about the voluntary nature of ICE detainers. See *Galarza v. Szalczyk et al*, 745 F.3d 634 (3<sup>rd</sup> Cir. 2014) (noting that all Courts of Appeals to have considered the character of ICE detainers refer to them as “requests,” and citing numerous such decisions); and *Miranda-Olivares v. Clackamas County*, 2014 1414305 (D. Or. 2014).



**~~LAW ENFORCEMENT SENSITIVE~~**

convictions, gang membership, or presence on a terrorist watch list, others will not honor a civil immigration detainer request, standing alone, under any circumstances. ICE officials told us that because the requests are voluntary, local officials may also consider budgetary and other considerations that would otherwise be moot if cooperation was required under federal law.

We also found that the laws and policies in several of the 10 jurisdictions go beyond regulating responses to ICE detainers and also address, in some way, the sharing of information with federal immigration authorities. For example, a local ordinance for the City of Chicago, which is entitled “Disclosing Information Prohibited,” states as follows:

Except as otherwise provided under applicable federal law, no agent or agency shall disclose information regarding the citizenship or immigration status of any person unless required to do so by legal process or such disclosure has been authorized in writing by the individual to whom such information pertains, or if such individual is a minor or is otherwise not legally competent, by such individual’s parent or guardian. *Chicago Code, Disclosing Information Prohibited § 2-173-030.*

The ordinance’s prohibition on a city employee providing immigration status information “unless required to do so by legal process” is inconsistent with the plain language of Section 1373 prohibiting a local government from restricting a local official from sending immigration status information to ICE. The “except as otherwise provided under applicable federal law” provision, often referred to as a “savings clause,” creates a potential ambiguity as to the proper construction of the Chicago ordinance and others like it because to be effective, this “savings clause” would render the ordinance null and void whenever ICE officials requested immigration status information from city employees. Given that the very purpose of the Chicago ordinance, based on our review of its history, was to restrict and largely prohibit the cooperation of city employees with ICE, we have significant questions regarding any actual effect of this “savings clause” and whether city officials consider the ordinance to be null and void in that circumstance.<sup>7</sup>

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<sup>7</sup> The New Orleans Police Department’s (NOPD) policy dated February 28, 2016, and entitled “Immigration Status” also seemingly has a “savings clause” provision, but its language likewise presents concerns. In your April 8 e-mail to me, you attached questions sent to the Attorney General by Sen. Vitter regarding whether the NOPD’s recent immigration policy was in compliance with Section 1373. Paragraph 12 of the NOPD policy is labeled “Disclosing Immigration Information” and provides that “Members shall not disclose information regarding the citizenship or immigration status of any person unless:

- (a) Required to do so by federal or state law; or
- (b) Such disclosure has been authorized in writing by the person who is the subject of the request for information; or

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In addition, whatever the technical implication of the clause generally referencing federal law, we have concerns that unless city employees were made explicitly aware that the local ordinance did not limit their legal authority to respond to such ICE requests, employees likely would be unaware of their legal authority to act inconsistently with the local ordinance. We noted that in connection with the introduction of this local ordinance the Mayor of Chicago stated, “[w]e’re not going to turn people over to ICE and we’re not going to check their immigration status, we’ll check for criminal background, but not for immigration status.”<sup>8</sup> We believe this stated reason for the ordinance, and its message to city employees, has the potential to affect the understanding of

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(c) The person is a minor or otherwise not legally competent, and disclosure is authorized in writing by the person's parent or guardian.

Sub-section (a) applies only when an NOPD employee has an affirmative obligation, i.e., is “required” by federal law, to disclose information regarding citizenship or immigration status. Section 1373, however, does not “require” the disclosure of immigration status information; rather, it provides that state and local entities shall not prohibit or restrict the sharing of immigration status information with ICE. Accordingly, in our view, sub-section (a) of the NOPD policy would not serve as a “savings clause” in addressing Section 1373. Thus, unless the understanding of NOPD’s employees is that they are not prohibited or restricted from sharing immigration status information with ICE, the policy would be inconsistent with Section 1373. We did not consider selecting the City of New Orleans to evaluate in this memorandum because it was not listed as a grant recipient on the spreadsheet you provided.

Similarly, the City and County of San Francisco, CA administrative code, Section 12H.2, is entitled “Immigration Status” and provides, “No department, agency, commission, officer or employee of the City and County of San Francisco shall use any City funds or resources to assist in the enforcement of federal immigration law or to gather or disseminate information regarding the immigration status of individuals in the City and County of San Francisco unless such assistance is required by federal or State statute, regulation or court decision.” As with the NOPD policy, a “savings clause” that only applies when a city employee is “required” by federal law to take some action would not seem to be effective in precluding the law from running afoul of Section 1373, which “requires” nothing, but instead mandates that state and local entities not prohibit, or in any way restrict, the sharing of immigration status information with ICE. Thus, as with the NOPD policy, unless the understanding of San Francisco employees is that they are permitted to share immigration status information with ICE, the policy would be inconsistent with Section 1373. According to news reports, last week the San Francisco Board of Supervisors reaffirmed its policy restricting local law enforcement’s authority to assist ICE, except in limited circumstances. Curtis Skinner, “San Francisco Lawmakers Vote to Uphold Sanctuary City Policy,” *Reuters*, May 24, 2016, <http://www.reuters.com/article/us-sanfrancisco-immigration-idUSKCN0YG065> (accessed May 26, 2016). We did not consider selecting the City and County of San Francisco to evaluate in this memorandum because it was not listed as a grant recipient on the spreadsheet you provided.

<sup>8</sup> Kristen Mack, “Emanuel Proposes Putting Nondetainer Policy On Books,” *Chicago Tribune*, July 11, 2012, <http://articles.chicagotribune.com/2012-07-11/news/ct-met-rahm-emanuel-immigrants-0711-2012> (accessed May 24, 2017).

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local officials regarding the performance of their duties, including the applicability of any restrictions on their interactions and cooperation with ICE.

Similarly, we have concerns that other local laws and policies, that by their terms apply to the handling of ICE detainer requests, may have a broader practical impact on the level of cooperation afforded to ICE by these jurisdictions and may, therefore, be inconsistent with at least the intent of Section 1373.<sup>9</sup> Specifically, local policies and ordinances that purport to be focused on civil immigration detainer requests, yet do not explicitly restrict the sharing of immigration status information with ICE, may nevertheless be affecting ICE's interactions with the local officials regarding ICE immigration status requests. We identified several jurisdictions with policies and ordinances that raised such concerns, including Cook County, Orleans Parish, Philadelphia, and New York City.

For example, the Cook County, Illinois, detainer policy states, "unless ICE agents have a criminal warrant, or County officials have a legitimate law enforcement purpose that is not related to the enforcement of immigration laws, ICE agents shall not be given access to individuals or allowed to use County facilities for investigative interviews or other purposes, and County personnel shall not expend their time responding to ICE inquiries or communicating with ICE regarding individuals' incarceration status or release dates while on duty." Although this policy falls under the heading "Section 46-37 - Policy for responding to ICE Detainers" and does not explicitly proscribe sharing immigration status information with ICE, the portion of the prohibition relating to personnel expending their time responding to ICE inquiries could easily be read by Cook County officials and officers as more broadly prohibiting them from expending time responding to ICE requests relating to immigration status. This possibility was corroborated by ICE officials who told us that Cook County officials "won't even talk to us [ICE]."

In Orleans Parish, Louisiana, Orleans Parish Sheriff's Office (OPSO) policy on "ICE Procedures" states that, "OPSO officials shall not initiate any immigration status investigation into individuals in their custody or affirmatively provide information on an inmate's release date or address to ICE." While the latter limitation applies by its terms to information related to release date or address, taken in conjunction with the prior ban on initiating immigration status investigations, the policy raises a similar concern as to the

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<sup>9</sup> A reasonable reading of Section 1373, based on its "in any way restrict" language, would be that it applies not only to the situation where a local law or policy specifically prohibits or restricts an employee from providing citizenship or immigration status information to ICE, but also where the actions of local officials result in prohibitions or restrictions on employees providing such information to ICE.

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limits it places on the authority of OPSO officials to share information on that topic with ICE.

In Philadelphia, Pennsylvania, the Mayor, on January 4, 2016, issued an executive order that states, in part, that notice of the pending release of the subject of an ICE immigration detainer shall not be provided to ICE “unless such person is being released after conviction for a first or second degree felony involving violence and the detainer is supported by a judicial warrant.” According to news reports, the purpose of the order was to bar almost all cooperation between city law enforcement and ICE.<sup>10</sup>

In New York City (NYC), a law enacted in November 2014 restricts NYC Department of Corrections personnel from communicating with ICE regarding an inmate’s release date, incarceration status, or upcoming court dates unless the inmate is the subject of a detainer request supported by a judicial warrant, in which case personnel may honor the request. The law resulted in ICE closing its office on Riker’s Island and ceasing operations on any other NYC Department of Corrections property.

Although the Cook County, Orleans Parish, Philadelphia, and New York City local policies and ordinances purport to be focused on civil immigration detainer requests, and none explicitly restricts the sharing of immigration status with ICE, based on our discussions with ICE officials about the impact these laws and policies were having on their ability to interact with local officials, as well as the information we have reviewed to date, we believe these policies and others like them may be causing local officials to believe and apply the policies in a manner that prohibits or restricts cooperation with ICE in all respects.<sup>11</sup> That, of course, would be inconsistent with and prohibited by Section 1373.<sup>12</sup>

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<sup>10</sup> Michael Matza, “Kenney restores ‘sanctuary city’ status,” *Philadelphia Inquirer*, January 6, 2016, [http://articles.philly.com/2016-01-06/news/69541175\\_1\\_south-philadelphia-secure-communities-ice](http://articles.philly.com/2016-01-06/news/69541175_1_south-philadelphia-secure-communities-ice) (accessed May 24, 2016) and “Kenney rejects U.S. request to reverse ‘sanctuary city’ status,” *Philadelphia Inquirer*, May 4, 2016, [http://www.philly.com/philly/news/20160504\\_Kenney\\_rejects\\_Homeland\\_Security\\_s\\_request\\_to\\_reverse\\_Philadelphia\\_s\\_sanctuary\\_city\\_status.html](http://www.philly.com/philly/news/20160504_Kenney_rejects_Homeland_Security_s_request_to_reverse_Philadelphia_s_sanctuary_city_status.html) (accessed May 24, 2016)

<sup>11</sup> For example, the Newark, NJ police department issued a “Detainer Policy” instructing all police personnel that “There shall be no expenditure of any departmental resources or effort by on-duty personnel to comply with an ICE detainer request.” More generally, Taos County, NM detention center policy states: “There being no legal authority upon which the United States may compel expenditure of country resources to cooperate and enforce its immigration laws, there shall be no expenditure of any county resources or effort by on-duty staff for this purpose except as expressly provided herein.”

<sup>12</sup> The ICE officials we spoke with noted that no one at DHS or ICE has made a formal legal determination whether certain state and local laws or policies violate Section 1373, and we are unaware of any Department of Justice decision in that regard. These ICE officials were

**~~LAW ENFORCEMENT SENSITIVE~~****Effect on Department of Justice 2016 Grant Funding**

We note that, in March 2016, OJP notified SCAAP and JAG applicants about the requirement to comply with Section 1373, and advised them that if OJP receives information that an applicant may be in violation of Section 1373 (or any other applicable federal law) that applicant may be referred to the OIG for investigation. The notification went on to state that if the applicant is found to be in violation of an applicable federal law by the OIG, the applicant may be subject to criminal and civil penalties, in addition to relevant OJP programmatic penalties, including cancellation of payments, return of funds, participation in the program during the period of ineligibility, or suspension and debarment.

In light of the Department's notification to grant applicants, and the information we are providing in this memorandum, to the extent the Department's focus is on ensuring that grant applicants comply with Section 1373, based on our work to date we believe there are several steps that the Department can consider taking:

- Provide clear guidance to grant recipients regarding whether Section 1373 is an "applicable federal law" that recipients would be expected to comply with in order to satisfy relevant grant rules and regulations;<sup>13</sup>
- Require grant applicants to provide certifications specifying the applicants' compliance with Section 1373, along with documentation sufficient to support the certification.
- Consult with the Department's law enforcement counterparts at ICE and other agencies, prior to a grant award, to determine whether, in their view, the applicants are prohibiting or restricting employees from sharing with ICE information regarding the citizenship or immigration status of individuals, and are therefore not in compliance with Section 1373.
- Ensure that grant recipients clearly communicate to their personnel the provisions of Section 1373, including those

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also unaware of any legal action taken by the federal government against a state or local jurisdiction to require cooperation.

<sup>13</sup> We note that AAG Kadzik's letter to Chairman Culberson dated March 18, 2016, states that Section 1373 "could" be an applicable federal law that with which grant recipients must comply in order to receive grant funds, not that it is, in fact, an applicable federal law.

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employees cannot be prohibited or restricted from sending citizenship or immigration status information to ICE.

These steps would not only provide the Department with assurances regarding compliance with Section 1373 prior to a grant award, but also would be helpful to the OIG if the Department were to later refer to the OIG for investigation a potential Section 1373 violation (as the Department recently warned grant applicants it might do in the future).

We would be pleased to meet with you and Department's leadership to discuss any additional audit or investigative efforts by the OIG that would further assist the Department with regard to its concerns regarding Section 1373 compliance by state and local jurisdictions. Such a meeting would allow us to better understand what information the Department's management would find useful so that the OIG could assess any request and consult with our counterparts at the Department of Homeland Security Office of the Inspector General, which would necessarily need to be involved in any efforts to evaluate the specific effect of local policies and ordinances on ICE's interactions with those jurisdictions and their compliance with Section 1373.

Thank you for referring this matter to the OIG. We look forward to hearing from you regarding a possible meeting.

**LAW ENFORCEMENT SENSITIVE****APPENDIX****OIG Approach**

At the outset, we determined it would be impractical for the OIG to promptly assess compliance with Section 1373 by the more than 140 jurisdictions that were listed on the spreadsheet accompanying your referral. Accordingly, we judgmentally selected a sample of state and local jurisdictions from the information you provided for further review. We started by comparing the specific jurisdictions cited in the CIS report you provided to us with the jurisdictions identified by ICE in its draft *Declined Detainer Outcome Report*, dated December 2, 2014.<sup>14</sup> Additionally, we compared these lists with a draft report prepared by ICE that identified 155 jurisdictions and stated that “all jurisdictions on this list contain policies that limit or restrict cooperation with ICE and, as of Q3 FY 2015, have declined detainers.”<sup>15</sup> From this narrowed list of jurisdictions, we determined, using the spreadsheet that you provided with your e-mail, which jurisdictions had active OJP and OVW awards as of March 17, 2016, the date through which you provided award information, and received fiscal year (FY) 2015 State Criminal Alien Assistance Program (SCAAP) payments. Lastly, we considered, based on the spreadsheet, the total dollars awarded and the number of active grants and payments made as of March 17, 2016, and sought to ensure that our list contained a mix of state and local jurisdictions. Using this process we selected the 10 jurisdictions listed in the following table for further review. The dollar figure represents 63 percent of the active OJP awards as of March 17, 2016, and FY 2015 SCAAP payments made by the Department.

<b>Jurisdiction</b>	<b>Total Award Amounts Reported by OJP</b>
State of Connecticut	\$69,305,444
State of California	\$132,409,635
Orleans Parish, Louisiana	\$4,737,964
New York, New York	\$60,091,942
Philadelphia, Pennsylvania	\$16,505,312
Cook County, Illinois	\$6,018,544
City of Chicago, Illinois	\$28,523,222
Miami-Dade County, Florida	\$10,778,815
Milwaukee, Wisconsin	\$7,539,572
Clark County, Nevada	\$6,257,951
<b>TOTAL</b>	<b>\$342,168,401</b>

Source: OJP

<sup>14</sup> At the time of our sample selection we only had a draft version of this report. We later obtained an updated copy which was provided to Congress on April 16, 2016. Although it was provided to Congress, this report was also marked “Draft.” The updated draft version of the report did not require us to alter our sample selection.

<sup>15</sup> This version of the declined detainer report covered declined detainers from January 1, 2014 through June 30, 2015.

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The following table lists each of the jurisdictions selected for review by the OIG and the key provisions of its laws or policies related to ICE civil immigration detainer requests and the sharing of certain information with ICE, if applicable.

Jurisdiction	Provisions of Key Local Laws or Policies Related to Civil Immigration Detainer Requests or Information Sharing with ICE <sup>16</sup>
<p>State of Connecticut</p> <p><b>The statement of Connecticut law has been corrected from a prior version of this memorandum. This correction does not affect the analysis or conclusions of this memorandum. We regret the error, and have notified those to whom we sent the memorandum of the correction.</b></p>	<p><i>Public Act No. 13-155, An Act Concerning Civil Immigration Detainers ...</i></p> <p>(b) No law enforcement officer who receives a civil immigration detainer with respect to an individual who is in the custody of the law enforcement officer shall detain such individual pursuant to such civil immigration detainer unless the law enforcement official determines that the individual:</p> <ol style="list-style-type: none"> <li>(1) Has been convicted of a felony;</li> <li>(2) Is subject to pending criminal charges in this state where bond has not been posted;</li> <li>(3) Has an outstanding arrest warrant in this state;</li> <li>(4) Is identified as a known gang member in the database of the National Crime Information Center or any similar database or is designated as a Security Risk Group member or a Security Risk Group Safety Threat member by the Department of Correction;</li> <li>(5) Is identified as a possible match in the federal Terrorist Screening Database or similar database;</li> <li>(6) Is subject to a final order of deportation or removal issued by a federal immigration authority; or</li> <li>(7) Presents an unacceptable risk to public safety, as determined by the law enforcement officer.</li> </ol> <p>(c) Upon determination by the law enforcement officer that such individual is to be detained or released, the law enforcement officer shall immediately notify United States Immigration and Customs Enforcement. If the individual is to be detained, the law enforcement officer shall inform United States Immigration and Customs Enforcement that the individual will be held for a maximum of forty-eight hours, excluding Saturdays, Sundays and federal holidays. If United States Immigration and Customs Enforcement fails to take custody of the individual within such forty-eight-hour period, the law enforcement officer shall release the individual. In no event shall an individual be detained for longer than such forty-eight-hour period solely on the basis of a civil immigration detainer.</p> <p><b>Approved June 25, 2013</b></p>

<sup>16</sup> Several specific citations to various state and local laws and policies were removed for brevity.



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Jurisdiction	Provisions of Key Local Laws or Policies Related to Civil Immigration Detainer Requests or Information Sharing with ICE <sup>16</sup>
State of California	<p><i>An act to add Chapter 17.1 (commencing with Section 7282) to Division 7 of Title I of the Government Code, relating to state government...</i></p> <p>7282.5. (a) A law enforcement official shall have discretion to cooperate with federal immigration officials by detaining an individual on the basis of an immigration hold after that individual becomes eligible for release from custody only if the continued detention of the individual on the basis of the immigration hold would not violate any federal, state, or local law, or any local policy, and only under any of the following circumstances ...</p> <p><b>Effective Date: October 5, 2013.</b></p>
Orleans Parish, Louisiana	<p>The Orleans Parish Sheriff's Office (OPSO) shall decline all voluntary ICE detainer requests unless the individual's charge is for one or more of the following offenses: First Degree Murder; Second Degree Murder; Aggravated Rape; Aggravated Kidnapping; Treason; or Armed Robbery with Use of a Firearm. If a court later dismisses or reduces the individual's charge such that the individual is no longer charged with one of the above offenses or the court recommends declining the ICE hold request, OPSO will decline the ICE hold request on that individual.</p> <p><b>Orleans Parish Sheriff's Office Index No. 501.15, Updated June 21, 2013.</b></p>
New York, New York	<p><u>Title:</u> <i>A Local Law to amend the administrative code of the city of New York, in relation to persons not to be detained by the department of correction.</i></p> <p><u>Bill Summary:</u> ... The DOC would only be permitted to honor an immigration detainer if it was accompanied by a warrant from a federal judge, and also only if that person had not been convicted of a "violent or serious" crime during the last five years or was listed on a terrorist database. Further, the bill would prohibit DOC from allowing ICE to maintain an office on Rikers Island or any other DOC property and would restrict DOC personnel from communicating with ICE regarding an inmate's release date, incarceration status, or court dates, unless the inmate is the subject of a detainer request that DOC may honor pursuant to the law.</p> <p><b>Enacted Date: November 14, 2014, Law No. 2014/058.</b></p>

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Jurisdiction	Provisions of Key Local Laws or Policies Related to Civil Immigration Detainer Requests or Information Sharing with ICE <sup>16</sup>
Philadelphia, Pennsylvania	<p><i>Executive Order No. 5-16 - Policy Regarding U.S. Immigration and Customs Enforcement Agency Detainer Requests...</i></p> <p>NOW, THEREFORE, I, JAMES F. KENNEY, Mayor of the City of Philadelphia, by the powers vested in me by the Philadelphia Home Rule Charter, do hereby order as follows:</p> <p>SECTION 1. No person in the custody of the City who otherwise would be released from custody shall be detained pursuant to an ICE civil immigration detainer request pursuant to 8 C.F.R. § 287.7, nor shall notice of his or her pending release be provided, unless such person is being released after conviction for a first or second degree felony involving violence and the detainer is supported by a judicial warrant.</p> <p><b>Signed by Philadelphia Mayor, January 4, 2016.</b></p>
Cook County, Illinois	<p><i>Sec. 46-37- Policy for responding to ICE detainees ...</i></p> <p>(b) Unless ICE agents have a criminal warrant, or County officials have a legitimate law enforcement purpose that is not related to the enforcement of immigration laws, ICE agents shall not be given access to individuals or allowed to use County facilities for investigative interviews or other purposes, and County personnel shall not expend their time responding to ICE inquiries or communicating with ICE regarding individuals' incarceration status or release dates while on duty.</p> <p><b>Approved and adopted by the President of the Cook County Board of Commissioners on September 7, 2011.</b></p>
City of Chicago, Illinois	<p><i>Civil Immigration Enforcement Actions – Federal Responsibility §2-173-042 ...</i></p> <p>(b)(1) Unless an agent or agency is acting pursuant to a legitimate law enforcement purpose that is unrelated to the enforcement of a civil immigration law, no agency or agent shall:</p> <ul style="list-style-type: none"> <li>(A) permit ICE agents access to a person being detained by, or in the custody of, the agency or agent;</li> <li>(B) permit ICE agents use of agency facilities for investigative interviews or other investigative purpose; or</li> <li>(C) while on duty , expend their time responding to</li> </ul>

**LAW ENFORCEMENT SENSITIVE**

<b>Jurisdiction</b>	<b>Provisions of Key Local Laws or Policies Related to Civil Immigration Detainer Requests or Information Sharing with ICE <sup>16</sup></b>
	<p>ICE inquiries or communicating with ICE regarding a person’s custody status or release date ...</p> <p><i>Disclosing Information Prohibited § 2-173-030</i></p> <p>Except as otherwise provided under applicable federal law, no agent or agency shall disclose information regarding the citizenship or immigration status of any person unless required to do so by legal process or such disclosure has been authorized in writing by the individual to whom such information pertains, or if such individual is a minor or is otherwise not legally competent, by such individual’s parent or guardian.</p> <p><b>Updated November 8, 2012.</b></p>
Miami-Dade County, Florida	<p><i>Resolution No. R-1008-13: Resolution directing the mayor or mayor’s designee to implement policy on responding to detainer requests from the United States Department of Homeland Security Immigration and Customs Enforcement</i></p> <p>NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that the Mayor or Mayor's designee is directed to implement a policy whereby Miami-Dade Corrections and Rehabilitations Department may, in its discretion, honor detainer requests issued by United States Immigration and Customs Enforcement only if the federal government agrees in writing to reimburse Miami-Dade County for any and all costs relating to compliance with such detainer requests and the inmate that is the subject of such a request has a previous conviction for a Forcible Felony, as defined in Florida Statute section 776.08, or the inmate that is the subject of such a request has, at the time the Miami-Dade Corrections and Rehabilitations Department receives the detainer request, a pending charge of a non-bondable offense, as provided by Article I, Section 14 of the Florida Constitution, regardless of whether bond is eventually granted.</p> <p><b>Resolution passed and adopted by Miami-Dade Mayor, December 3, 2013.</b></p>
Milwaukee County, Wisconsin	<p>Amended Resolution - File No. 12-135</p> <p>BE IT RESOLVED, that the Milwaukee County Board of Supervisors hereby adopts the following policy with regard to detainer requests from the U.S. Department of</p>

**LAW ENFORCEMENT SENSITIVE**

<b>Jurisdiction</b>	<b>Provisions of Key Local Laws or Policies Related to Civil Immigration Detainer Requests or Information Sharing with ICE <sup>16</sup></b>
	<p>Homeland Security - Immigrations and Customs Enforcement:</p> <p>1. Immigration detainer requests from Immigrations and Customs Enforcement shall be honored only if the subject of the request:</p> <ul style="list-style-type: none"> <li>a) Has been convicted of at least one felony or two non-traffic misdemeanor offenses</li> <li>b) Has been convicted or charged with any domestic violence offense or any violation of a protective order</li> <li>c) Has been convicted or charged with intoxicated use of a vehicle</li> <li>d) Is a defendant in a pending criminal case, has an outstanding criminal warrant, or is an identified gang member</li> <li>e) Is a possible match on the US terrorist watch list</li> </ul> <p><b>Enacted: June 4, 2012</b></p>
Clark County, Nevada	<p>“Recent court decisions have raised Constitutional concerns regarding detention by local law enforcement agencies based solely on an immigration detainer request from the Immigration and Customs Enforcement (ICE). Until this areas of the law is further clarified by the courts, effective immediately the Las Vegas Metropolitan Police Department will no longer honor immigration detainer requests unless one of the following conditions are met:</p> <ul style="list-style-type: none"> <li>1. Judicial determination of Probable Cause for that detainer; or</li> <li>2. Warrant from a judicial officer.</li> </ul> <p>... The Las Vegas Metropolitan Police Department continues to work with our federal law enforcement partners and will continue to provide professional services to the Las Vegas community regardless of their immigration status in United States.</p> <p><b>Via Press Release on: July 14, 2014.</b></p>

**8 U.S. Code § 1373 - Communication between government agencies and the Immigration and Naturalization Service**

- (A) **IN GENERAL.** Notwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, the Immigration and Naturalization Service information regarding the citizenship or immigration status, lawful or unlawful, of any individual.
- (B) **ADDITIONAL AUTHORITY OF GOVERNMENT ENTITIES.** Notwithstanding any other provision of Federal, State, or local law, no person or agency may prohibit, or in any way restrict, a Federal, State, or local government entity from doing any of the following with respect to information regarding the immigration status, lawful or unlawful, of any individual:
- (1) Sending such information to, or requesting or receiving such information from, the Immigration and Naturalization Service.
  - (2) Maintaining such information.
  - (3) Exchanging such information with any other Federal, State, or local government entity.
- (C) **OBLIGATION TO RESPOND TO INQUIRIES.** The Immigration and Naturalization Service shall respond to an inquiry by a Federal, State, or local government agency, seeking to verify or ascertain the citizenship or immigration status of any individual within the jurisdiction of the agency for any purpose authorized by law, by providing the requested verification or status information.

(Pub. L. 104-208, div. C, title VI, § 642, Sept. 30, 1996, 110 Stat. 3009-707.)

FY16 Federal Funds Receipts for the City of Newton

School Federal Grant Fund	5,141,710	See list below (1)
Federal Community Development Grants	3,001,790	Community Development Block Grants
Federal HOME Grant Fund	1,420,767	Housing Assistance Programs
Municipal Federal Grant Fund	1,317,569	See list below (2)
School Food Service Meal Reimbursement	644,498	Per Meal Reimbursement based on paid, reduced and free meals
<b>Total FY16 Federal Funds Receipts</b>	<b>\$11,526,334</b>	

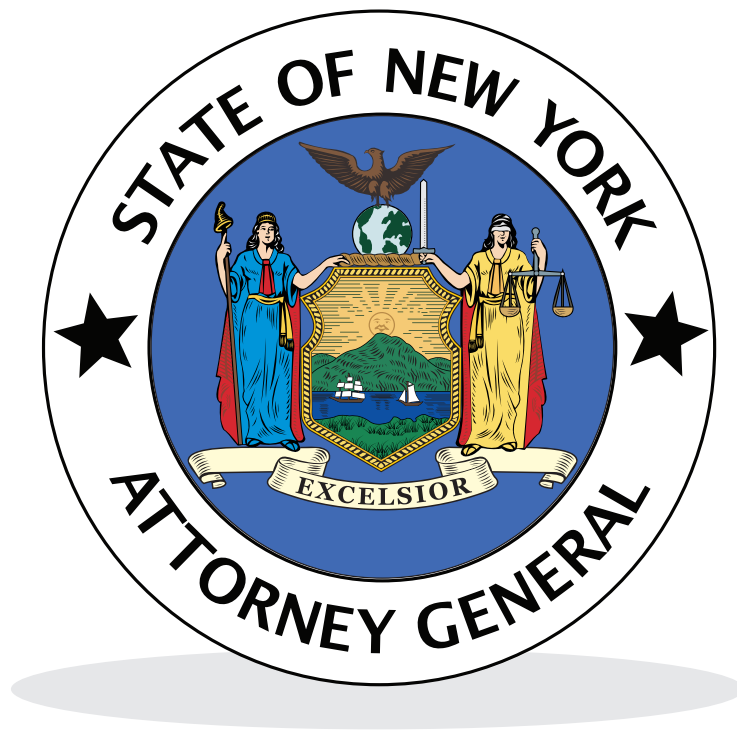
(1) School Federal Grants

Special Education SPED IDEA Title I	3,125,169
School Climate Transformation Educator Quality	783,851
LEP Support - NCLB Title III	419,110
SPED Induction Grant	223,042
Perkins Occupational Education	194,941
SPED Early Childhood	105,543
Project AWARE	99,260
Physical Education Grant	72,205
Race to the Top	59,881
McKinney-Vento Homeless Transportation	40,696
SPED Early Childhood Program Improvement	9,042
	4,970
<b>Total School Federal Grants</b>	<b>\$5,141,710</b>

(2) Municipal Federal Grants

FEMA Storm Assistance	939,987	Public Works
Emergency Solutions	127,108	Planning & development
Byrne Justice Assistance Jail Diversion	81,984	Police
FDA-Food Safety Inspection Grant	70,000	Health & Human Services
Byrne Justice Assistance Equipment	29,914	Police
HUD Continuum of Care	21,830	Planning & development
LSCA Robotics	16,709	Newton Public Library
CDC-Public Health Preparedness	16,579	Health & Human Services
Justice Dept Underage Alcohol	6,242	Police
FDA-Municipal Food System Grading Toolkit	3,976	Health & Human Services
CDC-Medical Reserve Corp	3,000	Health & Human Services
FEMA Homeland Security-Beverly Pass-Through	240	Fire
<b>Total Municipal Federal Grants</b>	<b>\$1,317,569</b>	

# Guidance Concerning Local Authority Participation In Immigration Enforcement And Model Sanctuary Provisions



New York State Attorney General  
**Eric T. Schneiderman**

January 2017



#443-16(3)

#137-17

Submitted 02-15-17 Councilor Albright

STATE OF NEW YORK  
OFFICE OF THE ATTORNEY GENERAL

ERIC T. SCHNEIDERMAN  
ATTORNEY GENERAL

EXECUTIVE OFFICE

January 19, 2017

Dear Colleague:

As the chief law enforcement officer in our state, I have heard from many New Yorkers who have questions about what this week's transfer of power in Washington, D.C. means for federal immigration enforcement. Local elected officials and law enforcement agencies rightly want to promote public safety while protecting vulnerable communities. I write today to set forth what the US Constitution and federal law currently require and describe concrete steps that local governments and law enforcement agencies can immediately take to achieve these important dual objectives.

The enclosed *Guidance Concerning Local Authority Participation In Immigration Enforcement and Model Sanctuary Provisions* first describes the legal landscape governing local jurisdictions' involvement in immigration investigation and enforcement, so that local officials understand the extent to which they may decline to participate in such activities. The *Guidance* follows the letter that I sent on December 2, 2014 to police chiefs and sheriffs throughout the state, but provides much greater detail and context for law enforcement officials and local policymakers. The *Guidance* also provides model language that localities can voluntarily enact—consistent with current federal law—to limit law enforcement and local agency participation in federal immigration activities. The model language is based on an extensive review of provisions from the numerous states, cities, and towns around the country—including many in New York State—that have already have acted to protect this vulnerable population.

The Attorney General's Office recognizes that by protecting the rights and well-being of immigrant families, we build trust in law enforcement and other public agencies, thus enhancing public safety for all. As you know, justice cannot be served when a victim of domestic violence or a witness to a shooting does not call the police because she fears that doing so will attract the attention of officials who wish to deport her family members. That's why standing together in this time of uncertainty is our most effective tool for keeping our communities safe.

Sincerely yours,

ERIC T. SCHNEIDERMAN



## GUIDANCE CONCERNING LOCAL AUTHORITY PARTICIPATION IN IMMIGRATION ENFORCEMENT AND MODEL SANCTUARY PROVISIONS

### PART I: PURPOSE AND PRINCIPLES

The purpose of this guidance is two-fold: (1) to describe for local governments in New York State the legal landscape governing the participation of local authorities in immigration enforcement; and (2) to assist local authorities that wish to become “sanctuary” jurisdictions by offering model language that can be used to enact local laws or policies that limit participation in immigration enforcement activities.<sup>1</sup>

As the United States Supreme Court recognized in *Arizona v. United States*, “[a]s a general rule, it is not a crime for a removable alien to remain present in the United States.”<sup>2</sup> In addition, undocumented aliens—like other New Yorkers—are afforded certain rights by the New York State and United States Constitutions. As explained in detail in Part II, local law enforcement agencies (“LEAs”) retain significant discretion regarding whether and how to participate in federal immigration enforcement. LEAs nonetheless must adhere to the requirements and prohibitions of the New York State and United States Constitutions and federal and state law in serving the public, regardless of whether an individual is lawfully present in the U.S.

In light of concerns expressed by many local governments about protecting immigrants’ rights while appropriately aiding federal authorities, Part III of this guidance offers model language that can be used to enact laws and policies on how localities can and should respond to federal requests for assistance with immigration enforcement. Several states and hundreds of municipalities—including New York City and other local governments throughout New York State—have enacted sanctuary laws and policies that prohibit or substantially restrict the involvement of state and local law enforcement agencies with federal immigration enforcement. See Appendix B. The Office of the Attorney General believes that effective implementation of the policies set forth in this guidance can help foster a relationship of trust between law enforcement officials and immigrants that will, in turn, promote public safety for all New Yorkers.

This guidance recommends eight basic measures:

1. LEAs should not engage in certain activities solely for the purpose of enforcing federal immigration laws.

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<sup>1</sup> “Sanctuary” is not a legal term and does not have any fixed or uniform legal definition, but it is often used to refer to jurisdictions that limit the role of local law enforcement agencies and officers in the enforcement of federal immigration laws.

<sup>2</sup> 132 S. Ct. 2492, 2505 (2012) (citation omitted).

2. Absent a judicial warrant, LEAs should honor U.S. Immigration and Customs Enforcement (“ICE”) or Customs and Border Protection (“CBP”) detainer requests only in limited, specified circumstances.
3. Absent a judicial warrant, LEAs should not honor ICE or CBP requests for certain non-public, sensitive information about an individual.
4. LEAs should not provide ICE or CBP with access to individuals in their custody for questioning solely for immigration enforcement purposes.
5. LEAs should protect the due process rights of persons as to whom federal immigration enforcement requests have been made, including providing those persons with appropriate notice.
6. Local agency resources should not be used to create a federal registry based on race, gender, sexual orientation, religion, ethnicity, or national origin.
7. Local agencies should limit collection of immigration-related information and ensure nondiscriminatory access to benefits and services.
8. LEAs should collect and report data to the public regarding detainer and notification requests from ICE or CBP in order to monitor their compliance with applicable laws.

As explained in Part II below, state and federal law permit localities to adopt these proposed measures.

**PART II: LAWS GOVERNING LOCAL AUTHORITY PARTICIPATION IN IMMIGRATION ENFORCEMENT**

**A. The Tenth Amendment to the U.S. Constitution**

The Tenth Amendment to the U. S. Constitution<sup>3</sup> limits the federal government’s ability to mandate particular action by states and localities, including in the area of federal immigration law enforcement and investigations. The federal government cannot “compel the States to enact or administer a federal regulatory program,”<sup>4</sup> or compel state employees to participate in the administration of a federally enacted regulatory scheme.<sup>5</sup> Importantly, these Tenth Amendment protections extend not only to states but to localities and their employees.<sup>6</sup> *Voluntary* cooperation with a federal scheme does not present Tenth Amendment issues.<sup>7</sup>

**B. The N.Y. Constitution and Home Rule Powers**

Under the home rule powers granted by the New York State Constitution,<sup>8</sup> as implemented by the Municipal Home Rule Law,<sup>9</sup> a local government may adopt a local law relating to the “government, protection, order, conduct, safety, health and well-being of persons” therein, as long as its provisions are not inconsistent with the state constitution or a general state law.<sup>10</sup>

The model provisions for localities outlined in Part III are consistent with both the state constitution and existing state law.

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<sup>3</sup> The Tenth Amendment to the United States Constitution provides that “powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.” U.S. Const., Am. X.

<sup>4</sup> *New York v. United States*, 505 U.S. 144, 188 (1992). The compelled conduct invalidated in *New York v. United States* was a federal statutory requirement that States enact legislation providing for the disposal of their radioactive waste or else take title to that waste. *See id.* at 152-54.

<sup>5</sup> *Printz v. United States*, 521 U.S. 898, 935 (1997). The compelled conduct invalidated in *Printz* was the Brady Handgun Violence Prevention Act’s requirement that state and local law enforcement officers perform background checks on prospective firearm purchasers. *See id.* at 903-04.

<sup>6</sup> *See id.* at 904-05 (allowing county-level law enforcement officials to raise Tenth Amendment claim); *see also Lomont v. O’Neill*, 285 F.3d 9, 13 (D.C. Cir. 2002) (same); *City of New York v. United States*, 179 F.3d 29, 34 (2d Cir. 1999) (city may raise a Tenth Amendment claim), *cert. denied*, 528 U.S. 1115 (2000).

<sup>7</sup> *See Lomont*, 285 F.3d at 14.

<sup>8</sup> N.Y. Const., Art. IX, § 2(c)(ii)(10).

<sup>9</sup> Municipal Home Rule Law § 10(1)(ii)(a)(12).

<sup>10</sup> *See, e.g., Eric M. Berman, P.C. v. City of New York*, 25 N.Y.3d 684, 690 (2015).

### C. Laws Governing Treatment of ICE and CBP Detainer Requests

ICE and CBP have a practice of issuing detainer or immigration-hold requests to LEAs, asking that the LEA keep an individual in its custody for up to 48 hours beyond that individual's normal release date (i.e., the date the individual is scheduled for release in whatever matter brought that person into the LEA's custody) while ICE determines whether to take custody of the individual to pursue immigration enforcement proceedings. LEAs have the authority to honor or decline an ICE or CBP request to detain, transfer, or allow access to any individual within their custody for immigration enforcement purposes. As the Attorney General's December 2, 2014 letter to police chiefs and sheriffs across New York State explained, an LEA's compliance with ICE detainers or requests for immigration holds is *voluntary*—not mandatory—and compliance with such requests remains at the discretion of the LEA.<sup>11</sup>

This guidance recommends that LEAs honor ICE or CBP detainers or requests for immigration holds only when (1) ICE or CBP presents a judicial warrant or (2) there is probable cause to believe that the individual committed a limited number of criminal offenses, including terrorism related offenses. *See infra* Part III, Objective 2. Such an approach promotes public safety in a manner that also respects the constitutional rights of individuals and protects LEAs from potential legal liability.

All LEAs in New York State must comply with the Fourth Amendment to the U.S. Constitution's prohibition on unreasonable searches and seizures, as well as with the similar provision in Article I, § 12 of the New York State Constitution.<sup>12</sup> This mandate does not change simply because ICE or CBP has issued a detainer request to an LEA. Should an LEA choose to comply with an ICE or CBP detainer request and hold an individual beyond his or her normal release date, this constitutes a new "seizure" under the Fourth Amendment. That new seizure must meet all requirements of the Fourth Amendment, including a showing of probable cause that the individual committed a criminal offense.<sup>13</sup>

A judicial warrant would fulfill the Fourth Amendment's requirements. Absent a judicial warrant, however, further detention is permissible only upon a showing of probable cause that

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<sup>11</sup> See Letter from New York Attorney General Eric T. Schneiderman to New York State Police Chiefs and Sheriffs (Dec. 2, 2014) (available at [https://ag.ny.gov/pdfs/AG\\_Letter\\_And\\_Memo\\_Secure\\_Communities\\_12\\_2.pdf](https://ag.ny.gov/pdfs/AG_Letter_And_Memo_Secure_Communities_12_2.pdf)).

<sup>12</sup> Article I, § 12 of the New York State Constitution provides: "The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

<sup>13</sup> *Cf. Illinois v. Caballes*, 543 U.S. 405, 407 (2005) (noting that a legitimate seizure "can become unlawful if it is prolonged beyond the time reasonably required" to achieve its purpose); *see also Dunaway v. New York*, 442 U.S. 200, 213 (1979) (noting general rule that "Fourth Amendment seizures are 'reasonable' only if based on probable cause").

the individual committed a crime or that an exception to the probable cause requirement applies.<sup>14</sup>

The mere fact that an individual is unlawfully in the U.S. is not a criminal offense.<sup>15</sup> Therefore, unlawful presence in the U.S., by itself, does not justify continued detention beyond that individual's normal release date. This applies even where ICE or CBP provide an LEA with administrative forms that use terms such as "probable cause" or "warrant."<sup>16</sup> A determination of whether the LEA had probable cause to further detain an individual will turn on all the facts and circumstances, not simply words that ICE or CBP places on its forms.

Accordingly, in several different lawsuits, federal courts have held that an LEA violated the Fourth Amendment rights of an individual whom the LEA held past his or her normal release date in response to an ICE detainer request.<sup>17</sup> The courts reasoned that the ICE detainer requests did not constitute probable cause to believe that the individual had committed a crime; therefore further detention was unconstitutional. Indeed, LEAs that detain individuals in the absence of a judicial warrant or probable cause may be liable for monetary damages.<sup>18</sup> For these reasons, this guidance recommends that LEAs respond to ICE or CBP detainer requests only when they are accompanied by a judicial warrant, or in other limited circumstances in which there is probable cause to believe a crime has been committed.

#### D. Laws Governing Information Sharing with Federal Authorities

In addition to issuing detainer requests, ICE and CBP have historically sought information about individuals in an LEA's custody. For example, ICE may request notification of an individual's release date, time, and location to enable ICE to take custody of the individual upon release.

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<sup>14</sup> See, e.g., *Gerstein v. Pugh*, 420 U.S. 103, 111-12 (1975).

<sup>15</sup> See *Arizona*, 132 S. Ct. at 2505.

<sup>16</sup> For example, a "Warrant of Removal" is issued by immigration officials, and not by a neutral fact-finder based on a finding of probable cause that the individual committed a crime. See 8 C.F.R. § 241.2. In addition, DHS Form I-247D ("Immigration Detainer—Request for Voluntary Action") (5/15), available at <https://www.ice.gov/sites/default/files/documents/Document/2016/I-247D.PDF>, includes a check-box for ICE to designate that "Probable Cause Exists that The Subject is a Removable Alien." It is not a crime to be in the U.S. unlawfully. See *supra* at 4. Thus, ICE's checking of a "probable cause" box on the I-247D does not constitute probable cause to believe that an individual has committed a crime, and cannot on its own justify continued detention.

<sup>17</sup> See, e.g., *Santos v. Frederick Cnty. Bd. of Comm'rs*, 725 F.3d 451, 464-65 (4th Cir. 2013); *Miranda-Olivares v. Clackamas Cnty.*, 12-CV-02317, 2014 U.S. Dist. LEXIS 50340, at \*32-33 (D. Or. April 11, 2014); see also *Gerstein*, 420 U.S. at 111-12 (discussing underlying basis of Fourth Amendment's probable cause requirement).

<sup>18</sup> See, e.g., *Santos*, 725 F.3d at 464-66, 470 (holding that municipality was not entitled to qualified immunity in § 1983 lawsuit seeking, *inter alia*, compensatory damages, where deputies violated arrestee's constitutional rights by detaining her solely on suspected civil violations of federal immigration law).

This guidance recommends that, unless presented with a judicial warrant, LEAs should not affirmatively respond to ICE or CBP requests for sensitive information that is not generally available to the public, such as information about an individual's release details or home address. *See infra* Part III, Objective 3. This approach enables LEAs to protect individual privacy rights and ensure positive relationships with the communities they serve, which in turn promotes public safety.

(1) 8 U.S.C. § 1373 and the Tenth Amendment

Federal law “does not require, in and of itself, any government agency or law enforcement official to communicate with [federal immigration authorities].”<sup>19</sup> Rather, federal law limits the ability of state and local governments to enact an outright ban on sharing certain types of information with federal immigration authorities. Specifically, 8 U.S.C. § 1373 provides that state and local governments *cannot prohibit* employees or entities “from sending to, or receiving from, [federal immigration authorities] information regarding *the citizenship or immigration status, lawful or unlawful, of any individual.*”<sup>20</sup> In addition, federal law bars restrictions on “exchanging” information regarding “*immigration status*” with “any other Federal, State, or local government entity” or on “maintaining” such information.<sup>21</sup> By their own language, these laws apply only to information regarding an individual’s “citizenship or immigration status.”

Section 1373 thus does not impose an affirmative mandate to share information—nor could it, for the reasons discussed below. Instead, this law simply provides that localities may not forbid or restrict their employees from sharing information regarding an individual’s “citizenship or immigration status.”<sup>22</sup> Nothing in Section 1373 restricts a locality from declining to share other information with ICE or CBP, such as non-public information about an individual’s release, her next court date, or her address.

In addition, Section 1373 places no affirmative obligation on local governments to *collect* information about an individual’s immigration status. Thus, local governments can adopt

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<sup>19</sup> H.R. Rep. No. 104-725, Subtitle B, § 6, at 383 (1996).

<sup>20</sup> 8 U.S.C. § 1373(a)-(b) (emphasis added).

<sup>21</sup> 8 U.S.C. § 1373(b) (emphasis added).

<sup>22</sup> It should be noted that the U.S. Department of Justice’s Office of the Inspector General, which monitors compliance with various federal grant programs, has interpreted Section 1373 to preclude not just express restrictions on information disclosure, but also “actions of local officials” that result in “restrictions on employees providing information to ICE.” *See* United States Department of Justice, Department of Justice Referral of Allegations of Potential Violations of 8 U.S.C. § 1373 by Grant Recipients (May 31, 2016), at 7 n.9 (available at <https://oig.justice.gov/reports/2016/1607.pdf>).

policies prohibiting their officers and employees from inquiring about a person's immigration status except where required by law.<sup>23</sup>

The Tenth Amendment may further limit Section 1373's reach. The Tenth Amendment's reservation of power to the states prohibits the federal government from "compel[ling] the States to enact or administer a federal regulatory program" or "commandeering" state government employees to participate in the administration of a federally enacted regulatory scheme.<sup>24</sup> As noted above, these Tenth Amendment protections extend to localities and their employees.

Although the United States Court of Appeals for the Second Circuit has rejected a facial Tenth Amendment challenge to Section 1373, that court has recognized that a city may be able to forbid voluntary information sharing where such information sharing interferes with the operations of state and local government.<sup>25</sup> As the Second Circuit has observed, "[t]he obtaining of pertinent information, which is essential to the performance of a wide variety of state and local governmental functions, may in some cases be difficult or impossible if some expectation of confidentiality is not preserved," and "[p]reserving confidentiality may in turn require that state and local governments regulate the use of such information by their employees."<sup>26</sup> Accordingly, the Tenth Amendment may be read to limit the reach of Section 1373 where a state or locality can show that the statute creates "an impermissible intrusion on state and local power to control information obtained in the course of official business or to regulate the duties and responsibilities of state and local governmental employees"—such as the impairment of the entity's ability to collect information necessary to its functioning—"if some expectation of confidentiality is not preserved."<sup>27</sup>

Some jurisdictions have adopted policies expressly restricting the disclosure of immigration-status information to any third parties, including federal authorities, on the grounds that confidentiality is necessary to gather this information and the information is crucial to various governmental functions. For these reasons, New York City, for example, prohibits its employees from "disclos[ing] confidential information"—including information relating to "immigration status"—except under certain circumstances (e.g., suspicion of illegal activity unrelated to

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<sup>23</sup> Under a New York City Executive Order, for example, officers and employees (other than law enforcement officers) are not permitted to inquire about a person's immigration status "unless: (1) Such person's immigration status is necessary for the determination of program, service or benefit eligibility or the provision of . . . services; or (2) Such officer or employee is required by law to inquire about such person's immigration status." N.Y.C. Exec. Order No. 41, § 3(a) (2003).

<sup>24</sup> *New York*, 505 U.S. at 188; *Printz*, 521 U.S. at 916.

<sup>25</sup> *City of New York*, 179 F.3d at 35-37.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.* at 36, 37.

undocumented status or the investigation of potential terrorist activity), or if “such disclosure is required by law.”<sup>28</sup>

(2) Freedom of Information Law

Disclosure of information held by the government is also governed by New York’s Freedom of Information Law (“FOIL”). While FOIL generally requires state agencies to make publicly available upon request all records not specifically exempt from disclosure by state or federal statute,<sup>29</sup> FOIL also mandates that an agency withhold such records where disclosure would “constitute an unwarranted invasion of personal privacy.”<sup>30</sup> Non-public information about an individual, such as home address, date and place of birth, or telephone number, would likely be exempt from disclosure on personal privacy grounds.<sup>31</sup>

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<sup>28</sup> N.Y.C. Exec. Order No. 41, Preamble, § 2 (2003).

<sup>29</sup> Public Officers Law § 87(2).

<sup>30</sup> *Id.* § 89(2)(b); *see also In re Massaro v. N.Y. State Thruway Auth.*, 111 A.D.3d 1001, 1003-04 (3d Dep’t 2013) (records containing employee names, addresses, and Social Security numbers subject to personal privacy exemption under FOIL).

<sup>31</sup> These examples are illustrative, not exhaustive.



**PART III: MODEL SANCTUARY PROVISIONS<sup>32</sup>**

This Part describes eight core objectives and proposes model language that jurisdictions can use to enact local laws and/or policies to achieve these objectives.

**1. Objective: LEAs should not engage in certain activities solely for the purpose of enforcing federal immigration laws.**

**Model Language:**

- (a) [The LEA] shall not stop, question, interrogate, investigate, or arrest an individual based solely on any of the following:
  - (i) Actual or suspected immigration or citizenship status; or
  - (ii) A “civil immigration warrant,” administrative warrant, or an immigration detainer in the individual’s name, including those identified in the National Crime Information Center (NCIC) database.
- (b) [The LEA] shall not inquire about the immigration status of an individual, including a crime victim, a witness, or a person who calls or approaches the police seeking assistance, unless necessary to investigate criminal activity by that individual.
- (c) [The LEA] shall not perform the functions of a federal immigration officer or otherwise engage in the enforcement of federal immigration law--whether pursuant to Section 1357(g) of Title 8 of the United States Code or under any other law, regulation, or policy.

**2. Objective: Absent a judicial warrant, LEAs should honor ICE or CBP detainer requests only in limited, specified circumstances.**

**Model Language:**

[The LEA] may respond affirmatively to a “civil immigration detainer” from ICE or CBP to detain or transfer an individual for immigration enforcement or investigation purposes for up to 48 hours ONLY IF the request is accompanied by a judicial warrant,

- (i) EXCEPT THAT local police may detain a person for up to 48 hours on a “civil immigration detainer” in the absence of a judicial warrant IF

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<sup>32</sup> See Appendix A for definitions of key terms used in this Part.

See Appendix B for a compilation of states and localities with similar provisions.

- (1) there is probable cause to believe that the individual has illegally re-entered the country after a previous removal or return as defined by 8 U.S.C. § 1326 and (2) the individual has been convicted at any time of (i) a specifically enumerated set of serious crimes under the New York Penal Law (e.g., Class A felony, attempt of a Class A felony, Class B violent felony, etc.)<sup>33</sup> or (ii) a federal crime or crime under the law of another state that would constitute a predicate felony conviction, as defined under the New York Penal Law, for any of the preceding felonies; or
- there is probable cause to believe that the individual has or is engaged in terrorist activity.

**3. Objective: Absent a judicial warrant, LEAs should not honor ICE or CBP requests for certain non-public, sensitive information about an individual.**

**Model Language:**

- (a) [The LEA] may respond affirmatively to an ICE or CBP request for non-public information about an individual—including but not limited to non-public information about an individual’s release, home address, or work address—**ONLY** IF the request is accompanied by a judicial warrant,
  - (i) EXCEPT THAT nothing in this law prohibits any local agency from:
    - sending to or receiving from any local, state, or federal agency—as per 8 U.S.C. § 1373—(i) information regarding an individual’s country of citizenship or (ii) a statement of the individual’s immigration status; or
    - disclosing information about an individual’s criminal arrests or convictions, where disclosure of such information about the individual is otherwise permitted by state law or required pursuant to subpoena or court order; or
    - disclosing information about an individual’s juvenile arrests or delinquency or youthful offender adjudications, where disclosure of such information about the individual is otherwise permitted by state law or required pursuant to subpoena or court order.
- (b) [The LEA] shall limit the information collected from individuals concerning immigration or citizenship status to that necessary to perform agency duties and

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<sup>33</sup> See, e.g., N.Y.C. Admin. Code § 14-154(a)(6) for a list of designated felonies in New York City’s law.

shall prohibit the use or disclosure of such information in any manner that violates federal, state, or local law.

4. **Objective: LEAs should not provide ICE or CBP with access to individuals in their custody for questioning solely for immigration enforcement purposes.**

**Model Language:**

[The LEA] shall not provide ICE or CBP with access to an individual in their custody or the use of agency facilities to question or interview such individual if ICE or CBP's sole purpose is enforcement of federal immigration law.

5. **Objective: LEAs should protect the due process rights of persons as to whom federal immigration enforcement requests have been made, including providing those persons with appropriate notice.**

**Model Language:**

- (a) [The LEA] shall not delay bail and/or release from custody upon posting of bail solely because of (i) an individual's immigration or citizenship status, (ii) a civil immigration warrant, or (iii) an ICE or CBP request—for the purposes of immigration enforcement—for notification about, transfer of, detention of, or interview or interrogation of that individual.
- (b) Upon receipt of an ICE or CBP detainer, transfer, notification, interview or interrogation request, [the LEA] shall provide a copy of that request to the individual named therein and inform the individual whether [the LEA] will comply with the request before communicating its response to the requesting agency.
- (c) Individuals in the custody of [the LEA] shall be subject to the same booking, processing, release, and transfer procedures, policies, and practices of that agency, regardless of actual or suspected citizenship or immigration status.

6. **Objective: Local agency resources should not be used to create a federal registry based on race, gender, sexual orientation, religion, ethnicity, or national origin.**

**Model Language:**

[Local agency] may not use agency or department monies, facilities, property, equipment, or personnel to investigate, enforce, or assist in the investigation or enforcement of any federal program requiring registration of individuals on the basis of race, gender, sexual orientation, religion, ethnicity, or national origin.

7. **Objective: Local agencies should limit collection of immigration-related information and ensure nondiscriminatory access to benefits and services.**

**Model Language:**

- (a) [Local agency] personnel shall not inquire about or request proof of immigration status or citizenship when providing services or benefits, except where the receipt of such services or benefits are contingent upon one's immigration or citizenship status or where inquiries are otherwise lawfully required by federal, state, or local laws.
- (b) [Local agencies] shall have a formal Language Assistance Policy for individuals with Limited English Proficiency and provide interpretation or translation services consistent with that policy.<sup>34</sup>

8. **Objective: LEAs should collect and report aggregate data containing no personal identifiers regarding their receipt of, and response to, ICE and CBP requests, for the sole purpose of monitoring the LEAs' compliance with all applicable laws.**

**Model Language:**

- (a) [The LEA] shall record, solely to create the reports described in subsection (b) below, the following for each immigration detainer, notification, transfer, interview, or interrogation request received from ICE or CBP:
- The subject individual's race, gender, and place of birth;
  - Date and time that the subject individual was taken into LEA custody, the location where the individual was held, and the arrest charges;
  - Date and time of [the LEA's] receipt of the request;
  - The requesting agency;
  - Immigration or criminal history indicated on the request form, if any;
  - Whether the request was accompanied any documentation regarding immigration status or proceedings, e.g., a judicial warrant;
  - Whether a copy of the request was provided to the individual and, if yes, the date and time of notification;
  - Whether the individual consented to the request;
  - Whether the individual requested to confer with counsel regarding the request;

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<sup>34</sup> Under Title VI of the Civil Rights Act of 1964, any agency that is a direct or indirect recipient of federal funds must ensure meaningful or equal access to its services or benefits, regardless of ability to speak English. See 42 U.S.C. § 2000d *et seq.*; *Lau v. Nichols*, 414 U.S. 563 (1974).

- [The LEA's] response to the request, including a decision not to fulfill the request;
  - If applicable, the date and time that ICE or CBP took custody of, or was otherwise given access to, the individual; and
  - The date and time of the individual's release from [the LEA's] custody.
- (b) [The LEA] shall provide semi-annual reports to the [designate one or more public oversight entity] regarding the information collected in subsection (a) above in an aggregated form that is stripped of all personal identifiers in order that [the LEA] and the community may monitor [the LEA's] compliance with all applicable law.

**APPENDIX A  
DEFINITION OF KEY TERMS**

- “Civil immigration detainer” (also called a “civil immigration warrant”) means a detainer issued pursuant to 8 C.F.R. § 287.7 or any similar request from ICE or CPB for detention of a person suspected of violating civil immigration law. See DHS Form I-247D (“Immigration Detainer—Request for Voluntary Action”) (5/15), available at <https://www.ice.gov/sites/default/files/documents/Document/2016/I-247D.PDF>.
- “Judicial warrant” means a warrant based on probable cause and issued by an Article III federal judge or a federal magistrate judge that authorizes federal immigration authorities to take into custody the person who is the subject of the warrant. A judicial warrant does not include a civil immigration warrant, administrative warrant, or other document signed only by ICE or CBP officials.
- “Probable cause” means more than mere suspicion or that something is at least more probable than not. “Probable cause” and “reasonable cause,” as that latter term is used in the New York State criminal procedure code, are equivalent standards.<sup>35</sup>
- “Local law enforcement agencies” or “LEAs” include, among others, local police personnel, sheriffs’ department personnel, local corrections and probation personnel, school safety or resource officers, and school police officers.

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<sup>35</sup> *People v. Valentine*, 17 N.Y.2d 128, 132 (1966).

**APPENDIX B**  
**COMPILATION OF SIMILAR PROVISIONS FROM OTHER STATES AND LOCALITIES**

**1. Objective: LEAs should not engage in certain activities that are solely for the purpose of enforcing federal immigration laws.**

N.Y.C. Exec. Order 41 (2003): “Law enforcement officers shall not inquire about a person’s immigration status unless investigating illegal activity other than mere status as an undocumented alien.”

N.Y.C. Exec. Order 41 (2003): It is the “policy of the Police Department not to inquire about the immigration status of crime victims, witnesses or others who call or approach the police seeking assistance.”

Illinois Executive Order 2 (2015): “No law enforcement official . . . shall stop, arrest, search, detain, or continue to detain a person solely based on an individual’s citizenship or immigration status or on an administrative immigration warrant entered into [NCIC or similar databases].”

Oregon State Law § 181A.820 (2015): “No [state or local] law enforcement agency shall use agency moneys, equipment or personnel for the purpose of detecting or apprehending persons whose only violation of law is that they are persons of foreign citizenship present in the United States in violation of federal immigration laws,” subject to certain exceptions including where a person is charged with criminal violation of federal immigration laws.

LAPD Special Order 40 (1979): “Officers shall not initiate police action with the objective of discovering the alien status of a person. Officers shall not arrest or book persons for violation of Title 8, Section 1325 of the United States Immigration Code (Illegal Entry).”

Washington D.C. Mayor’s Order 2011-174: Public safety agencies “shall not inquire about a person’s immigration status . . . for the purpose of initiating civil enforcement of immigration proceedings that have no nexus to a criminal investigation.”

Washington D.C. Mayor’s Order 2011-174: “It shall be the policy of Public Safety Agencies not to inquire about the immigration status of crime victims, witnesses, or others who call or approach the police seeking assistance.”

**2. Objective: Absent a judicial warrant, LEAs should honor ICE or CBP detainer requests only in limited, specified circumstances.**

Philadelphia, PA Executive Order No. 5-2016: “No person in the custody of the City who would otherwise be released from custody shall be detained pursuant to an ICE civil

immigration detainer request pursuant to 8 C.F.R. Sec. 287.7 . . . unless [a] such person is being released from conviction for a first or second degree felony involving violence and [b] the detainer is supported by a judicial warrant.”

**3. Objective: Absent a judicial warrant, LEAs should not honor ICE or CBP requests for certain non-public, sensitive information about an individual.**

Illinois Executive Order 2 (2015): LEAs may not “communicat[e] an individual’s release information or contact information” “solely on the basis of an immigration detainer or administrative immigration warrant.”

Philadelphia, PA Executive Order No. 5-2016: Notice of an individual’s “pending release” shall not be provided “unless [a] such person is being released from conviction for a first or second degree felony involving violence and [b] the detainer is supported by a judicial warrant.”

California Values Act, SB No. 54 (Proposed) (2016):

An LEA may not (a) “[r]espond[] to requests for nonpublicly available personal information about an individual,” including, but not limited to, information about the person’s release date, home address, or work address for immigration enforcement purposes,” or (b) “make agency or department databases available to anyone . . . for the purpose of immigration enforcement or investigation or enforcement of any federal program requiring registration of individuals on the basis of race, gender, sexual orientation, religion, immigration status, or national or ethnic origin.”

An LEA may (a) share information “regarding an individual’s citizenship or immigration status” and (b) respond to requests for “previous criminal arrests and convictions” as permitted under state law or when responding to a “lawful subpoena.”

**4. Objective: LEAs should not provide ICE or CBP with access to individuals in their custody for questioning for solely immigration enforcement purposes.**

Vermont Criminal Justice Training Council Policy: “Unless ICE or Customs and Border Patrol (CBP) agents have a criminal warrant, or [Agency members] have a legitimate law enforcement purpose exclusive to the enforcement of immigration laws, ICE or CBP agents shall not be given access to individuals in [Agency’s] custody.”

Santa Clara, CA Board of Supervisor Resolution No. 2011-504 (2011): ICE “shall not be given access to individuals or be allowed to use County facilities” for investigative interviews or other purposes unless ICE has a judicial warrant or officials have a “legitimate law enforcement purpose” not related to immigration enforcement.



California Values Act, SB No. 54 (Proposed) (2016): LEAs may not “[g]iv[e] federal immigration authorities access to interview individuals in agency or department custody for immigration enforcement purposes.”

5. **Objective: LEAs should protect the due process rights of persons as to whom federal immigration enforcement requests have been made, including providing those persons with appropriate notice.**

Connecticut Department of Correction, Administrative Directive 9.3 (2013): “If a determination has been made to detain the inmate, a copy of Immigration Detainer – Notice of Action DHS Form I-247, and the Notice of ICE Detainer form CN9309 shall be delivered to the inmate.”

6. **Objective: Local agency resources should not be used to create a federal registry based on race, gender, sexual orientation, religion, ethnicity, or national origin.**

California Values Act, SB No. 54 (Proposed) (2016): State and local law enforcement shall not “[u]se agency or department moneys, facilities, property, equipment, or personnel to investigate, enforce, or assist in the investigation or enforcement of any federal program requiring registration of individuals on the basis of race, gender, sexual orientation, religion, or national or ethnic origin.”

7. **Objective: Local agencies should limit collection of immigration-related information and ensure nondiscriminatory access to benefits and services.**

N.Y.C. Exec. Order 41 (2003): “Any service provided by a City agency shall be made available to all aliens who are otherwise eligible for such service to aliens. Every City agency shall encourage aliens to make use of those services provided by such agency for which aliens are not denied eligibility by law.”

N.Y.C. Exec. Order 41 (2003): “A City officer or employee, other than law enforcement officers, shall not inquire about a person’s immigration status unless: (1) Such person’s immigration status is necessary for the determination of program, service or benefit eligibility or the provision of City services; or (2) Such officer or employee is required by law to inquire about such person’s immigration status.”

8. **Objective: LEAs should collect and report aggregate data containing no personal identifiers regarding their receipt of, and response to, ICE and CBP requests, for the sole purpose of monitoring the LEAs’ compliance with all applicable laws.**

N.Y.C. Local Law Nos. 58-2014 and 59-2014 (N.Y.C. Admin Code § 9-131 and § 14-154) (2014): By October 15 each year, NYPD and NYC DOC “shall post a report on the department’s website” that includes, among other things, the number of detainer

requests received, the number of persons held or transferred pursuant to those requests, and the number of requests not honored.

King County (Seattle), WA, Ordinance 17706 (2013): The detention department “shall prepare and transmit to the [county] council a quarterly report showing the number of detainees received and descriptive data,” including the types of offenses of individuals being held, the date for release from custody, and the length of stay before the detainee was executed.

#443-16(3)

**\*Be it ordained by the City Council of the City of Newton as follows:**

That the Revised Ordinances of the City of Newton, 2012, as amended, are hereby further amended with respect to Chapter 2 by inserting after Article VI the following new article:

### **Article VII. Welcoming City**

**Sec 2-400. Purpose and Intent.** The City of Newton has long derived strength from its diverse community, including those who identify as immigrants. Through the City's commitment to social justice and inclusion, one of the City's most important objectives is to enhance relationships with all residents, including immigrants, and to make all residents, workers and visitors feel safe and secure regardless of immigration status. We believe it is critical to reaffirm in this ordinance, the City's commitment to fair treatment for all.

#### **Sec 2-401. Definitions.**

“Administrative warrant” means an immigration warrant issued by ICE, or a successor or similar federal agency charged with enforcement of civil immigration laws, used as a non-criminal, civil warrant for immigration purposes.

“Agency” means every City department, division, commission, council, committee, board, other body, or person established by authority of an ordinance, executive order, or City Council order.

“Agent” means any person employed by or acting in behalf of an agency but shall not include independent sub-contractors of the City.

“Citizenship or immigration status” means all matters regarding questions of citizenship of the United States or any other country, the authority to reside in or otherwise be present in the United States.

“ICE” means the United States Immigration and Customs Enforcement Agency and shall include any successor agency charged with the enforcement of civil immigration laws.

“Immigration detainer” means an official request issued by ICE, or other federal agency charged with the enforcement of civil immigration laws, to another federal, state or local law enforcement agency to detain an individual based on a violation of a civil immigration law.

“Serious violent felony” means a felony crime as defined in M.G.L. c. 265, *Crimes Against the Person*.

**Sec 2-402. Prohibitions.**

No Agency or Agent shall:

- (a) identify, investigate, arrest, detain, or continue to detain a person solely on the belief that the person is not present legally in the United States or that the person has committed a civil immigration violation or that the person is otherwise deportable;
- (b) arrest, detain, or continue to detain a person based on any immigration detainer, federal administrative warrant, or any other such order or request in any form whatsoever or otherwise honor any such detainer, warrant or request to detain, interview or transfer a person to federal authorities, provided however, the police department may arrest, detain or continue to detain a person in accordance with Sec 2-403;
- (c) notify federal authorities about the release or pending release of any person for immigration purposes except in accordance with Sec 2-403;
- (d) provide federal authorities with information about the upcoming release of a person in custody or the person’s home or work address for immigration purposes;
- (e) cooperate with or enforce any federal program requiring the registration of individuals on the basis of religious affiliation or ethnic or national origin.

**Sec 2-403. Exceptions to Prohibitions.** The prohibitions in Sec 2-402 shall not apply where the individual to whom such information pertains provides his or her informed consent as to how the information might be used (or if such individual is a minor, the informed consent of that person’s parent or guardian), where the information is necessary to provide a City service or where otherwise required by valid state or federal law. In addition, the Newton Police Department may detain or arrest an individual in cooperation with ICE only when an investigation conducted by or information received by any City Agency indicates that: the individual has an outstanding criminal warrant, has a prior conviction for a serious violent felony, is being investigated for terrorism, or if there is a law enforcement or public safety purpose to do so that is not related to the enforcement of civil immigration law provided that the arrest or detention is based upon valid Massachusetts arrest authority and is consistent with the 4<sup>th</sup> Amendment to the United States Constitution and Article XIV of the Massachusetts Constitution.

**Sec 2-404. Requesting or Maintaining Information Prohibited.** No Agency, or Agent shall request or maintain information about, or otherwise investigate or assist in the investigation of, the citizenship or immigration status of any person unless such inquiry is required by valid state or federal law.

**Sec 2-405. Use of City Resources Prohibited.** No Agency or Agent shall use City funds, resources, facilities, property, equipment, or personnel to assist in the enforcement of federal civil immigration law or to gather information regarding the citizenship or immigration status of any person, unless permitted under section 2-403. Nothing in this section shall prevent an Agency or Agent from lawfully discharging duties in compliance with and in response to a lawfully issued judicial warrant, judicial subpoena or immigration detainer.

**Sec 2-406. Ordinance Not to Conflict with Federal Law.** Nothing in this ordinance shall be construed or implemented to conflict with any otherwise valid and enforceable duty and obligation imposed by a court order or any valid federal or applicable law. Nothing in this subsection shall prohibit or restrain the Agency or Agent from sending to, or receiving from, any local, state, or federal agency, information regarding citizenship or immigration status, consistent with Section 1373 of Title 8 of the United States Code.

**Sec 2-407. No Private Right of Action.** This ordinance does not create or form the basis of liability on the part of the City, its Agencies or Agents. It is not intended to create any new rights for breach of which the City is liable for money or any other damages to any person who claims that such breach proximately caused injury. The exclusive remedy for violation of this ordinance shall be through the City's disciplinary procedures for employees under applicable City regulations, unless the Agency or Agent is lawfully discharging duties as set forth in Sec 2-402 and Sec 2-403.

**Sec 2-408. Severability.** If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council of the City of Newton hereby declares that it would have adopted this ordinance and each section, subsection, sentence, clause, phrase or portion thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, or portions were to be declared invalid or unconstitutional.

[#443-16\(3\)](#)

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- (c) notify federal authorities about the release or pending release of any person for immigration purposes except in accordance with Sec 2-403;
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