

MUNICIPAL IMMIGRANT PROTECTION ORDINANCE
FOR RHODE ISLAND CITIES AND TOWNS

PREAMBLE

WHEREAS, [Municipality] is dedicated to providing all of its residents fair and equal access to services, opportunities and protections; and

WHEREAS, [Municipality] respects, upholds, and values equal protection and equal treatment for all of our residents, regardless of immigration status; and

WHEREAS, Fostering a relationship of trust, respect, and open communication between municipal employees and municipal residents is essential to [Municipality's] core mission; and

WHEREAS, Public safety in [Municipality] is best promoted when victims and witnesses of crime feel safe in cooperating with law enforcement officials; and

WHEREAS, The purpose of this Ordinance is to foster respect and trust between law enforcement and residents, to protect limited resources, to encourage cooperation between residents and city officials, especially law enforcement, and to ensure community security and due process for all,

IT IS HEREBY ENACTED AS FOLLOWS:

1. Limitation on activities solely for the purpose of enforcing federal immigration laws.

(a) [The LEA] shall not stop, question, interrogate, investigate, or arrest an individual based solely on any of the following:

(1) Actual or suspected immigration or citizenship status; or

(2) 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 that is unrelated to the enforcement of civil immigration law.

(c) Neither [the municipality] nor [the LEA] shall enter into any agreements to enforce, or otherwise voluntarily engage in the enforcement of, federal immigration law or to perform federal immigration functions pursuant to 8 U.S.C. § 1357g or any other federal law, regulation, or policy.

2. Conditions for honoring ICE or CBP detainer requests.

(a) Except as provided in subsection (b), [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 supported by a judicial warrant.

(b) Notwithstanding subsection (a), [the LEA] may detain a person for up to 48 hours on a civil immigration detainer in the absence of a judicial warrant if there are exigent circumstances preventing ICE or CBP from obtaining a warrant and there is probable cause to believe that the individual has or is engaged in terrorist activity as defined in 8 U.S.C. §1182(A)(3)(B).

3. Limitations on honoring ICE or CBP requests for certain non-public, sensitive information.

(a) Except as provided in subsection (b), [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 or a court order enforcing a subpoena.

(b) Notwithstanding subsection (a), nothing in this ordinance limits [the municipality or LEA] from:

(1) disclosing information about an individual's criminal arrests or convictions, where disclosure of such information about the individual is otherwise authorized by state law or required by court order; or

(2) disclosing information about an individual's juvenile arrests or

delinquency or youthful offender adjudications, where disclosure of such information about the individual is otherwise authorized by state law or required by court order.

(c) [The LEA] shall limit the information collected from individuals concerning immigration or citizenship status to that necessary to perform [the LEA's] agency duties.

4. Limitations on ICE or CBP access to individuals in custody for immigration enforcement questioning purposes.

[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 civil immigration law, unless such enforcement is pursuant to a federal judicial order.

5. Due process for persons about whom federal immigration enforcement requests have been made.

(a) [The LEA] shall not delay bail and/or release from custody upon posting of bail solely because of

- (1) an individual's immigration or citizenship status,
- (2) a civil immigration warrant, or
- (3) an ICE detainer request or any other ICE or CBP request for the

purposes of immigration enforcement, or 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. Ban on use of resources to facilitate a federal registry based on race, gender, sexual orientation, gender identity or expression, religion, ethnicity, or national origin.

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

7. Limitation on the collection of immigration-related information; provision of nondiscriminatory access to benefits and services.

(a) [Municipality] 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 is contingent by law upon verification of one's immigration or citizenship status or where inquiries are otherwise lawfully required by federal, state, or local laws.

(b) [Municipality and LEA] shall have a formal Language Assistance Policy for individuals with Limited English Proficiency and provide interpretation or translation services at no cost consistent with that policy.

8. Limits on Political Surveillance

[LEA] shall not collect or maintain information about the political, religious or social views, associations or activities of any individual, group, association, corporation, business or partnership or other entity unless such information directly relates to an investigation of criminal activities, and there are reasonable grounds to suspect that the particular subject of the information, whether an individual or other entity, is involved in criminal conduct.

9. Protecting Immigrant Victims of Crime

(a) On request from an individual whom a law enforcement officer or agent thereof reasonably believes is a victim who is or has been subjected to a qualifying criminal activity for a nonimmigrant T or U visa under 8 U.S.C. §1101(a)(15)(T) or 8 U.S.C. §1101(a)(15)(U), or for continued presence under 22 U.S.C. §7105(c)(3), the law enforcement officer, as soon as practicable after receiving the request, shall, subject to the presumption in subsection (b), provide to the individual a signed certification Form I-914B or Form I-918B.

(b) There shall be a rebuttable presumption that a victim is helpful, has been helpful, or is likely to be helpful to the detection, investigation, or prosecution of qualifying criminal activity if the victim has not unreasonably refused or failed to assist with the investigation as requested by [LEA].

(c) The [LEA] shall process the appropriate form under this section within 45 days of the request, unless the noncitizen is in removal proceedings, in which case the certification shall be processed within fourteen (14) days of the request.

(d) If [LEA] determines that an individual does not meet the requirements for the issuance of a certification under this section, the [LEA] shall inform the individual in writing of the specific reasons. The written denial shall also advise the individual that he or she may make another request under subsection (a) of this section by submitting additional evidence that he or she has been subjected to a qualifying criminal activity and/or that the presumption established by

subsection (b) has been satisfied or not properly rebutted. The denial shall also include a list of organizations that provide services to immigrants whom the individual may contact for additional assistance.

(e) [LEA] shall provide an annual report to the [Municipal Council] of how many requests were made to the [LEA] under subsection (a) and how many were denied.

10. Protecting the Rights of Students

In order to protect the rights of students, the school district shall, within 120 days of enactment of this ordinance, adopt a policy¹ establishing procedures for handling interactions with immigration officials seeking information about, or requesting to talk with any student about, their immigration status; providing for cooperating with such requests only to the extent required by law; and barring the collection and disclosure of students' citizenship status except to the extent required by federal law.

11. Collection of aggregate data regarding ICE and CBP requests

(a) [The LEA] shall record, solely to create the reports described in subsection

(b) below, the following for each immigration detainer, notification, transfer,

¹ In the alternative, if the Council does not have power over the school district, the first sentence can begin: "In order to protect the rights of students, the school district is requested to adopt..."

interview, or interrogation request received from ICE or CBP:

- (1) The subject individual's race, gender, and place of birth;
- (2) Date and time that the individual was taken into [LEA] custody, the location where the individual was held, and the arrest charges;
- (3) Date and time of [the LEA's] receipt of the request;
- (4) The requesting agency;
- (5) Immigration or criminal history indicated on the request form, if any;
- (6) Whether the request was accompanied by any documentation regarding immigration status or proceedings, e.g., a judicial warrant;
- (7) Whether a copy of the request was provided to the individual and, if yes, the date and time of notification;
- (8) Whether the individual consented to the request;
- (9) Whether the individual requested to confer with counsel regarding the request;
- (10) [The LEA's] response to the request, including a decision not to fulfill the request;
- (11) If applicable, the date and time that ICE or CBP took custody of, or was otherwise given access to, the individual; and
- (12) The date and time of the individual's release from [the LEA's] custody.

(b) [The LEA] shall provide semi-annual reports to the [Municipal Council] regarding the information collected in subsection (a) above in an aggregated form that is stripped of all personal identifiers. The reports shall be a public record.

12. Enforcement.

An aggrieved individual or an organization that is chartered for the purpose of combating discrimination, promoting the rights of immigrants, or safeguarding civil rights shall be entitled to seek and obtain injunctive and declaratory relief, damages and attorneys' fees for any violation of this ordinance.

13. Affirmation of Compliance with Federal Law.

Pursuant to 8 U.S.C. §1373 or 8 U.S.C. §1644, nothing in this ordinance is intended, or shall be construed, to prohibit or restrict in any way the [LEA] or [Municipality] from maintaining, exchanging, sending, or receiving information regarding the citizenship or immigration status, lawful or unlawful, of any individual with any federal, State or local government entity.

14. Definitions.

(a) "CBP" means United States Customs and Border Protection.

(b) "Civil immigration detainer" or "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 federal immigration law.

(c) "ICE" means United States Immigration and Customs Enforcement.

(d) "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.

15. Severability.

If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are declared to be severable.

3/23/17