

NATIONAL IMMIGRATION LAW CENTER

APPENDIX A: SAMPLE LANGUAGE FOR POLICIES LIMITING THE ENFORCEMENT OF IMMIGRATION LAW BY LOCAL AUTHORITIES

NOVEMBER 2004

PREAMBLE *or* PURPOSE AND POLICY STATEMENT

- Statements affirming the presence and contribution of immigrant populations, including number/percentage of foreign-born residents in your city, county, or state.
- The city's, county's, or state's tradition of diversity and respect for all residents.
- The need for such an initiative, including to provide guidance to city employees and to promote the safety and health of all community members.
- The fact that over 58 such initiatives have been promulgated in 21 states across the country.
- The importance of local governments' interest in maintaining the confidentiality of certain information, e.g. "Whereas preserving the confidentiality of certain information is integral to the operation of City government."
- Specific reference to erosion of immigrant rights and civil rights for all due to post 9/11 policies such as the USA PATRIOT Act.
- Opposition to the Clear Law Enforcement for Criminal Alien Removal (CLEAR) Act (H.R. 2671), Homeland Security Enhancement Act (HSEA) (S. 1906), and any other federal legislation that may be proposed to encourage local enforcement of federal civil immigration matters.
- The fact that the ordinance supercedes all conflicting policies, ordinances, rules, procedures and practices.

DEFINITIONS

- **"Citizenship, immigration, or residency status"**: All matters regarding questions of citizenship of the United States or any other country, questions of authority from the Department of Homeland Security to reside or otherwise be present in the United States, and the time or manner of a person's entry into the United States. The use in this ordinance of the term "residency" shall not mean street address or location of residence in *[city]* or elsewhere.
- **"City agency"**: Any and each entity directly controlled by the city.
- **"City agents"**: Any and each employee, including those who work in public safety, employed directly by the city.
- **"Confidential information"**: Any information obtained and maintained by a City agency relating to an individual's sexual orientation, status as a victim of domestic violence, status as a victim of sexual assault, status as a crime witness, receipt of public assistance, or immigration status, and shall include all information contained in any individual's income tax records.



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- **“General city services”**: All services except those specifically listed as public safety services. Includes, but is not limited to *[add or subtract as applicable in your locality]*:
 - Medical services, such as general medical care and emergency medical assistance, including labor and delivery.
 - Mental health services such as crisis intervention.
 - Public health services for immunization and for the testing and treatment of symptoms of communicable diseases.
 - Public benefits programs. *(i.e. state or federally funded public benefits that may be partially administered by a city such as Temporary Assistance for Needy Families (TANF), General Assistance, Medical Assistance, and Food Stamps.)*
 - Nutrition programs such as school lunch and breakfast programs.
 - Children’s protective services.
 - Programs for children with special needs.
 - Programs for the disabled.
 - Services involving real estate tax payments or water/sewer bills.
 - Labor and employment enforcement.
 - Access to information on financial aid/community development programs.
 - Access to the courts.
 - Access to the schools.
 - Transportation services.
 - Shelter services.
 - Emergency disaster relief.
- **“Illegal activity”**: Unlawful, criminal activity but shall not include mere status as an undocumented immigrant.
- **“Immigrant”**: Any person who is not a citizen or a national of the United States.
- **“Law enforcement entities”**: *[add or subtract as applicable to your locality]* Police, sheriff’s office, jails, juvenile department, and corrections department.
- **“Public safety services”**: Police and fire departments, Emergency Medical Service (EMS) authorities, City Attorney’s office.
- **“Undocumented immigrant”**: A noncitizen who does not have lawful immigration status, in violation of federal civil immigration laws.

Section 1. CITY SERVICES

(A) No general city service or public safety service shall be denied on the basis of citizenship. City agents shall not inquire into the immigration status of any individual, nor shall city agents enforce federal civil immigration laws.

(B) Exempting city services that require immigration information for eligibility purposes. City agents shall follow general city, state, and federal guidelines to assess eligibility for services. A city agent 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 agent is required by law to inquire about an individual’s immigration status.

(C) U.S. Citizen children of undocumented parents shall have the same rights to public benefits as all other U.S. citizens. Undocumented parents shall be permitted to apply oh

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behalf of their citizen children for any benefits for which their children are eligible, and such parents shall not be discriminated against or in any way treated differently by city agents.

(D) The presentation of a photo identity document issued by the person's country of origin, such as a foreign driver's license, passport, or matricula consular (consulate-issued document) shall be accepted and shall not subject the individual to a higher level of scrutiny or different treatment than if the person had provided a *[insert your state]* driver's license. This paragraph does not apply to I-9 forms.

Section 2. LAW ENFORCEMENT

(A) Unless otherwise required by law or court order, city agents shall refrain from the enforcement of federal immigration laws. No city agents, including agents of law enforcement entities, shall use city monies, resources, or personnel solely for the purpose of detecting or apprehending persons whose only violation of law is or may be a civil immigration violation.

(B) Police officers are exempted from the above limitations, with respect to a person whom the officer has reasonable suspicion to believe: (1) has been convicted of a felony criminal law violation; (2) was deported or left the United States after the conviction; and (3) is again present in the United States.

(C) City agents shall not single out individuals for legal scrutiny or enforcement activity based solely on their country of origin, religion, ethnicity or immigration status.

Section 3. VICTIM AND WITNESS PROTECTION

(A) It shall be the policy of public safety services departments not to inquire about the immigration status of crime victims, witnesses, or others who call or approach city agents seeking assistance.

(B) A city agent who provides public safety services shall not request specific documents for the sole purpose of determining an individual's civil immigration status. However, if offered by the individual and not specifically requested by the agent, it is permissible to rely on immigration documents only to establish that individual's identity in response to a general request for identification.

**NOTE: THERE ARE TWO ALTERNATE MANDATES SET FORTH BELOW.*

Section 4. CONFIDENTIALITY OF INFORMATION

(A) No city officer or employee shall disclose confidential information, unless:

- (1) 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 legal guardian; or
- (2) Such disclosure is required by law; or
- (3) Such disclosure is to another city officer or employee and is necessary to fulfill the purpose or achieve the mission of any City agency; or

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(4) In the case of confidential information other than information relating to immigration status, such disclosure is necessary to fulfill the purpose or achieve the mission of any city agency; or

(5) In the case of information relating to immigration status, (a) the dissemination of such information is necessary to apprehend a person suspected of engaging in illegal activity, or (b) such disclosure is necessary in furtherance of an investigation.

--OR--

Section 4. COOPERATION UNDER FEDERAL LAW NOT PROHIBITED

(A) Nothing in this ordinance shall be construed to prohibit any city agent from cooperating with federal immigration authorities, when required under federal law.

Section 5. COMPLAINTS AND DISCIPLINE

(A) Complaints of a violation of this chapter shall be subject to disciplinary action under the City personnel rules, appropriate union contract, civil service commission rules, department work rules, or any other city or department rules and/or regulations.

(B) Complaints of a violation of this ordinance shall be received and investigated by [*City Human Rights Department, Human Rights Commission, Office of Civil Rights, etc., as applicable to your locality*]. The results of the investigation shall be provided to the Complainant in writing and in a timely manner. Complainants and witnesses shall not be asked to provide their immigration status at any point during the complaint process, and no investigation of the immigration status of the complainant and witnesses shall be made by any City agent in the investigation of such a complaint or thereafter.

(C) It shall not be a violation of this chapter to require the completion of I-9 forms or to inquire into or disclose the immigration status of the complainant or witnesses if necessary as part of the investigation of a complaint of a violation of this chapter, or if deemed necessary by the appointing authority in order to administer discipline for such violations.

Section 6. CIVIL REMEDY FOR VIOLATION

(A) A person who violates this chapter shall be liable in a civil action brought by the aggrieved party in the amount of \$1,000 per violation plus an amount to compensate for any damages incurred as a direct result of the violation and for any expenses incurred by the aggrieved party, including reasonable attorney fees and costs to pursue a successful action under this ordinance, as determined by the court. The court may award exemplary damages in an amount the court determines is necessary to ensure the violator's future compliance with this ordinance.

Section 7. Each City public service and safety department shall develop operational procedures consistent with this ordinance in a reasonably timely manner from the date of enactment.

Section 8. The mayor shall call a meeting with representatives of immigration communities to communicate content of initiative a reasonable period of time after

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enactment of this chapter. If feasible, the mayor's office should provide translated copies of the ordinance in the native languages of the significant immigrant populations represented in the city.

Section 9. The mayor shall report on the implementation of this ordinance to the city council in a public hearing one year after the date of enactment.

Section 10. If a court finds that a portion of the ordinance is invalid for any reason, the remaining parts of the ordinance shall continue in full force and effect.

Section 11. The provisions of the ordinance shall be given a liberal construction to effectuate the purposes for which the ordinance was enacted. The purposes shall be determined by the ordinance's legislative history, which consists of but is not limited to the Preamble and Council hearing testimony.

FOR MORE INFORMATION, CONTACT

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