

#443-16(3)



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Dear City Councilors:

We have docketed a new version of the Welcoming City Ordinance today after several weeks of collaborative work on this new draft. All other items, drafts and documents linked to the other two docket items are being withdrawn and we will focus our committee work on Feb 8 on this version. We would expect an action of No Action Necessary on the prior two versions, and the draft foundational guidelines have been supplanted with this new draft.

We believe this collaborative proposed ordinance accomplishes the shared goals of affirming Newton as a safe and welcoming city for all regardless of immigration status as well as codifying our current community policing approach. Police Chief David MacDonald has reviewed this language and supports this document.

We look forward to the discussion and we hope we will have agreement on this proposed ordinance.

Sincerely,

Mayor Setti D. Warren
Former Mayor David Cohen
Chief David MacDonald
Council President Scott Lennon

Councilors:

Susan Albright
Jake Auchincloss
Richard Blazer
Barbara Brousal-Glaser
Deborah Crossley
Victoria Danburg
Ruthanne Fuller
Jay Harney

Ted Hess-Mahan
David Kalis
Marc Laredo
Alison Leary
Rick Lipof
Emily Norton
John Rice
Amy Sangiolo

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DEDICATED TO COMMUNITY EXCELLENCE

***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 4th 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.