

Fair and Welcoming [MUNICIPALITY] Executive Order

WHEREAS, [MUNICIPALITY] values its ethnic, racial, linguistic, and socio-economic diversity. Our diversity is a source of our strength and [MUNICIPALITY] is committed to ensuring that all our residents can live and pursue their livelihoods in peace and prosperity; and

WHEREAS, [MUNICIPALITY] residents, like many Americans, are deeply concerned about how the new presidential administration will impact their lives and families, whether they will be forced to leave this country, and whether rights and protections afforded to them will suddenly be taken away; and

WHEREAS, local enforcement of immigration law makes everyone less safe. When local law enforcement voluntarily works on behalf of Immigration and Customs Enforcement (ICE) to facilitate deportations, significant gaps in trust and cooperation grow between immigrant communities and the police. Some of these practices could expose the city to liability for violations of individuals' Constitutional rights; and

WHEREAS, undue collaboration between local law enforcement and ICE will make immigrants less likely to report crimes, act as witnesses in criminal investigations and prosecutions, and provide intelligence to law enforcement. The cooperation of the [MUNICIPALITY]'s immigrant communities is essential to prevent and solve crimes and maintain public order, safety and security in the entire City. Community policing depends on trust with every community and facilitating deportations will harm our efforts at community policing; and

WHEREAS, a growing number of municipalities around the country are standing up to threats against privacy and liberties by taking meaningful steps to ensure that communities are safe, and that all residents' rights are respected so that their municipality may continue to thrive; and

WHEREAS, due to the City's limited resources; the clear need to foster the trust of and cooperation from the public, including members of vulnerable communities; and to effectuate the City's goals, [MUNICIPALITY] must clarify its role in protecting all city residents' privacy and rights.

THEREFORE BE IT ORDERED BY _____ MAYOR OF [MUNICIPALITY] THAT:

Pursuant to my authority as Mayor of [MUNICIPALITY] and by virtue of the authority vested in me by the Constitution and by the Statutes of the State of New Jersey, including but not limited to N.J.S.A. 40:48-2 and N.J.S.A. 40A:14-118, I declare that [MUNICIPALITY] is a fair and welcoming city. As such, [MUNICIPALITY] shall immediately take the following steps to protect all city residents' privacy and rights:

- 1. DEFINITIONS:** The following terms wherever used in this order shall have the following meanings unless a different meaning appears from the context:
- A. “Administrative warrant” means an immigration warrant of arrest, order to detain or release aliens, notice of custody determination, notice to appear, removal order, warrant of removal, or any other document, issued by ICE, CBP or USCIS that can form the basis for an individual’s arrest or detention for a civil immigration enforcement purpose. This definition does not include any criminal warrants issued upon a judicial determination of probable cause and in compliance with the requirements of the Fourth Amendment to the U.S. Constitution and Article I, Paragraph 7 of the New Jersey Constitution.
 - B. “Agency” means every City department, agency, division, commission, council, committee, board, other body, or person established by authority of an ordinance, executive order, or City Council order.
 - C. “Agent” means any person employed by or acting on behalf of an agency.
 - D. “CBP” shall refer to “Customs and Border Patrol” Customs and Border Patrol and shall include any successor agency charged with border enforcement.
 - E. “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, the time and manner of a person’s entry into the United States, or any other immigration matter enforced by the Department of Homeland Security or predecessor, successor or other federal agency charged with the enforcement of civil immigration laws.
 - F. “Civil immigration enforcement operation” means any operation that has as one of its objectives the identification or apprehension of a person or persons in order to investigate them for a violation of the immigration laws, subject them to civil immigration detention, removal proceedings and/or removal from the United States.
 - G. “Coerce” means to use express or implied threats towards a person or any family member of a person that attempts to put the person in immediate fear of the consequences in order to compel that person to act against his or her will.
 - H. “Contact information” means home address, work address, telephone number, electronic mail address, social media contact information, or any other means of contacting an individual.
 - I. “ICE” means the United States Immigration and Customs Enforcement Agency and shall include any successor agency charged with the enforcement of civil immigration laws.
 - J. “Immigration detainer” means a request by ICE to a federal, state, or local law enforcement agency that requests that the law enforcement agency provide notice of release or maintain custody of an individual based on an alleged violation of a civil immigration law, including detainers issued pursuant to sections 236 or 287 of the Immigration and Nationality Act or 287.7 or 236.1 of Title 8 of the Code of Federal Regulations. These detainers include but are not limited to DHS Form I-247D “Immigration Detainer – Request for Voluntary

Action”; DHS I-247X “Request for Voluntary Transfer”; or DHS Form I-247N “Request for Voluntary Notification of Release.”

- K. “USCIS” shall mean the United States Citizenship and Immigration Service and any successor agency charged with overseeing U.S. immigration laws.
- L. “Verbal abuse” means the use of a remark which is overtly insulting, mocking or belittling directed at a person based upon the actual or perceived: (1) race, color, sex, religion, national origin, English proficiency, sexual orientation, or gender identity of that person, or (2) citizenship or immigration status of that person or that person’s family member.

2. CIVIL IMMIGRATION ENFORCEMENT – FEDERAL RESPONSIBILITY

[MUNICIPALITY] and its agents shall not expend any time, funds, or resources on facilitating the civil enforcement of federal immigration law nor participating in civil immigration enforcement operations, except where legally required to do so by state or federal law or regulation or directive or court order. Specifically, the [MUNICIPALITY], its employees and agents and its law enforcement agents and employees shall not:

- A. Enter into any contract, agreement or arrangement that would grant federal immigration enforcement authority or power to the city or its agents or local law enforcement officers, including but not limited to agreements created under 8 U.S.C. § 1357(g).
- B. Enter into any contract, agreement, or arrangement to detain immigrants in deportation proceedings, including but not limited to Intergovernmental Service Agreements.

At least thirty (30) days before responding to an RFP, applying for or renewing any contracts, agreements or arrangements described in sections A and B of this Subsection, the municipality shall hold a meeting that is open to the public, in an accessible location, and with at least 30 days’ notice to provide information to the public about the proposed contract, agreement or arrangement and to receive and consider public comment. In addition to requirements provided for by New Jersey’s Open Meetings Act (N.J.S.A. 10:4-6-10:4-2), notice of the meeting shall be posted in local newspapers and on any public facing website in the five most commonly spoken languages in the municipality;

- C. Honor immigration detainer requests or Immigration and Customs Enforcement (“ICE”) or Customs and Border Patrol (“CPB”) or United States Citizenship and Immigration Services (“USCIS”) administrative warrants or hold any person upon receipt of a detainer request or ICE/CPB/USCIS administrative warrant unless such request or warrant is a valid and properly issued judicial criminal warrant;
- D. Participate jointly in or assist in any civil immigration enforcement operations, including but not limited to any immigration enforcement raids, investigations, interrogations, detections, apprehensions, detentions, or requests to establish traffic perimeters. Any such request for cooperation from ICE/CPB/USCIS officers should be referred to the [CHIEF OF POLICE/HEAD OF PUBLIC SAFETY] or appropriate agency chief who shall deny the request;

- E. Permit ICE/CBP/USCIS officers, agents, or representatives access to municipal facilities, property, equipment, or databases absent a valid and properly issued judicial criminal warrant specifying the information or individuals sought. Any attempts or requests for access to such facilities, property, equipment, or databases shall be immediately sent to the agency chief that controls the appropriate facility, property, database or equipment pertinent. No permission to access any such facility, property, equipment, or database shall be provided without the express, written approval of the appropriate agency chief. Should the appropriate agency chief approve access, such access shall be limited in scope and time to the parameters and targets prescribed in the valid and properly issued judicial criminal warrant. Any detention facilities, including jails, prisons, halfway houses, that the municipality contracts with or leases land to for the purposes of criminal or civil detention must include the above requirement in any contract with the municipality.

3. REQUESTING INFORMATION PROHIBITED

No municipal agent, employee or agency shall inquire about or request information about or otherwise investigate the citizenship or immigration status of any person unless such inquiry or investigation is required by state or federal law or regulation or directive or court order.

4. BIAS-BASED PROFILING PROHIBITED

[MUNICIPALITY] and any employee, agent, or law enforcement agency of the [MUNICIPALITY] shall not rely to any degree on actual or perceived national origin, immigration or citizenship status, race, ethnicity, language proficiency, religion, sexual orientation, gender identity, disability, housing status, financial status, marital status, status as a victim of domestic violence, criminal history, or status as a veteran in deciding to initiate a stop, or in deciding to question, search, arrest, detain, or take any other law enforcement action against any individual, except when a specific suspect description includes information on the above protected categories and that information is taken in conjunction with information or circumstances that link a specific person to suspected criminal activity.

Nothing herein shall be construed or implemented so as to discourage any person, regardless of immigration status, from reporting criminal activity to law enforcement agencies.

5. NON-DISCRIMINATION IN MUNICIPAL SERVICES AND EQUAL APPLICATION OF THE LAW

- A. Municipal agents and employees are hereby prohibited from conditioning municipal services on immigration status, except where required under applicable federal or state law or regulation or directive or court order. Moreover, municipal agents and

employees are prohibited from coercing individuals or threatening or using verbal abuse to report them or their family members to ICE or take other immigration-related action against them or their family members.

- B. Where presentation of a driver's license is accepted as adequate evidence of identity, presentation of a photo identity document issued by the person's nation of origin, such as a driver's license, passport, or consular-issued document, shall be accepted and shall not subject the person to a higher level of scrutiny or different treatment, unless otherwise required by federal or state law, regulation or directive or court order.
- C. [MUNICIPALITY] shall continue to enforce any applicable local worker protections, such as Earned Sick Days and living wage laws, regardless of immigration status of the complainant or petitioner.

6. PRIVACY

Municipal agents and employees are not permitted to maintain and/or share confidential personal information, including but not limited to contact information, information about national origin, race, ethnicity, language proficiency, religion, sexual orientation, gender identity, disability, housing status, financial status, marital status, status as a victim of domestic violence, criminal history, release date from incarceration or confinement in a jail, or status as a veteran; except where otherwise required by state or federal law or regulation or directive or court order.

7. RECORD KEEPING AND TRANSPARENCY

[MUNICIPALITY] shall publish on its public-facing website on a quarterly basis:

- A. The number of requests from ICE/CBP/USCIS to participate in or assist in any civil immigration enforcement operations, including any raids, investigations, interrogations, detections, apprehensions, detentions, or requests to establish traffic perimeters;
- B. The number of immigration detainer requests or administrative warrants received from ICE/CBP/USCIS to detain or share information about any person wanted in relation to immigration enforcement activities or operations;
- C. The date on which any requests of the type enumerated in Sections A-B of this Subsection were received;
- D. The responses from [MUNICIPALITY] to any requests of the type enumerated in Sections A-B of this Subsection;
- E. The number of times [MUNICIPALITY] shared or reported information to ICE/CBP/USCIS with regard to information about any person in the [MUNICIPALITY]'s custody;
- F. The number of times [MUNICIPALITY] provided ICE/CBP/USCIS access to municipal facilities, property, equipment, information, databases, or to persons in [MUNICIPALITY]'s custody, including the location, nature and characteristics of such access and demographic information about the person(s) in municipal custody to whom ICE/CBP/USCIS was provided access;

G. The number of U visa certifications requested, how many certifications were granted, how many certifications were denied, and the average length in days between a request and certification or denial of certification;

H. [MUNICIPALITY] shall consider all records relating to ICE/CBP/USCIS access to facilities and information, including all communications with ICE, to be public records for purposes of the Open Public Records Act ("OPRA") (N.J.S.A. 47:1A-1 et seq.). The [MUNICIPALITY] shall provide all relevant records upon request and requests shall be handled under the usual procedures for receipt of OPRA requests.

8. PROTECTING IMMIGRANT VICTIMS OF CRIME AND ENHANCING TRUST IN LAW ENFORCEMENT

Each agency within [MUNICIPALITY] with responsibility for investigating, prosecuting, or sentencing the criminal activity listed in section (h) shall within thirty days, draft and take material steps to implement a policy governing the issuance of Forms I-918B ("U Visa Certifications") to immigrant crime victims.

- A. Such policy shall be consistent with the Department of Homeland Security's stated policy that implementing U Visa certification practices and policies will "strengthen the ability of law enforcement agencies to investigate and prosecute cases of domestic violence, sexual assault, trafficking of persons and other crimes while offering protection to victims of such crimes without the immediate risk of being removed from the country."
- B. Such policy shall require, upon request, that a certifying official from a certifying entity certify, as specified, "victim helpfulness" on the Form I-918 Supplement B, when the requester was a victim of a qualifying criminal activity and has been helpful, is being helpful, or is likely to be helpful to the detection, investigation, or prosecution of that qualifying criminal activity.
- C. Such policy shall define "certifying entity," "certifying official," and the qualifying criminal activity for those purposes.
- D. Such policy shall establish for purposes of determining helpfulness, a rebuttable presumption that a victim is helpful, has been helpful, or is likely to be helpful to the detection, investigation, or prosecution of that qualifying criminal activity, if the victim has not refused or failed to provide information and assistance reasonably requested by law enforcement.
- E. Such policy shall require the certifying entity to process a Form I-918B within 45 days of request, unless the noncitizen is in removal proceedings, in which case the certification is required to be processed within 14 days of request. If the request is denied, the certifying entity will also notify the applicant in writing of the basis for the denial and the process for appealing the denial. Within 90 days of receiving an applicant's letter appealing a denial, the certifying entity will send a letter to the applicant's designated return mailing address notifying the applicant that the appeal: (i) is rejected and the initial denial is upheld; or (ii) is granted and the certifying entity will issue a U certification.

- F. For purposes of the policy, a “certifying entity” shall mean the agencies within the municipality which include, but are not limited to, police departments, prosecutors’ offices, judicial officials, family protective services agencies, equal employment opportunity agencies, labor departments, and any other agency subject to this ordinance which has responsibility for investigating, prosecuting, or sentencing qualifying criminal activity.
- G. For purposes of the policy, “certifying official” is any of the following: The head of the certifying entity; A person in a supervisory role who has been specifically designated by the head of the certifying entity to issue Form I-918B certifications on behalf of that agency; a judge; Any other certifying official defined under Section 214.14 (a)(2) of Title 8 of the Code of Federal Regulations.
- H. For purposes of the policy, "qualifying criminal activity" means qualifying criminal activity pursuant to Section 101(a)(15)(U)(iii) of the Immigration and Nationality Act which includes, but is not limited to, the following crimes: Rape; Torture; Trafficking; Incest; Domestic Violence; Sexual Assault; Abusive Sexual Contact; Prostitution; Sexual Exploitation; Stalking; Female Genital Mutilation; Being Held Hostage; Peonage; Involuntary Servitude; Slave Trade; Kidnapping; Abduction; Unlawful Criminal Restraint; False Imprisonment; Blackmail; Extortion; Manslaughter; Murder; Felonious Assault; Witness Tampering; Obstruction of Justice; Perjury; or Fraud in Foreign Labor Contracting (as defined in Section 1351 of Title 18, United States Code).
- I. For purposes of the policy, a "qualifying crime" includes criminal offenses for which the nature and elements of the offenses are substantially similar to the criminal activity described in Section IX, and the attempt, conspiracy, or solicitation to commit any of those offenses.
- J. For purposes of the policy, there is no requirement that there be a current investigation, the filing of charges, a prosecution or conviction in order for a law enforcement officer to sign the law enforcement certification, and there is no statute of limitations on signing the law enforcement certification.
- K. Such policy shall require that, upon the request of the victim or victim's family member, a certifying official from a certifying entity shall certify victim helpfulness on the Form I-918 Supplement B certification, when the victim was a victim of a qualifying criminal activity and has been helpful, is being helpful, or is likely to be helpful to the detection or investigation or prosecution of that qualifying criminal activity.
- L. Such policy shall be made publicly available; Be disseminated annually to each agency employee; Require periodic training of all relevant agency employees on the policies and procedures involved in responding to requests for U Visa Certifications; Identify resources, such as the Department of Homeland Security’s U Visa Law Enforcement Certification Resource Guide, that agency employees should consult in responding to requests for U Visa Certifications.

9. LANGUAGE ACCESS

[MUNICIPALITY] and all [MUNICIPAL] contractors shall provide free language assistance services as required by this order to Limited English Proficient individuals.

Municipal agencies shall employ sufficient bilingual employees to provide services in languages spoken by 5% of the municipal population or 10,000 residents. Municipal agencies shall provide translation of vital documents in languages spoken by 5% of the municipal population or 10,000 residents. All offices shall maintain recorded telephone messages in each language. Offices must submit a compliance plan to the Mayor's Office on an annual basis. Furthermore,

- A. When a Limited English Proficient (LEP) individual seeks or receives benefits or services from a municipal agency or contractor, the agency or contractor shall provide prompt language assistance services in all interactions with that individual, whether the interaction is by telephone or in person. The municipal agency or contractor shall meet its obligation to provide prompt language assistance services for purposes of this subdivision by ensuring that LEP individuals do not have to wait unreasonably longer to receive assistance than individuals who do not require language assistance services.
- B. Where an application or form administered by the municipality requires completion in English by LEP individual for submission to a state or federal authority, the municipal agency or contractor shall provide oral translation of such application or form as well as certification by the limited English proficient individual that the form was translated and completed by an interpreter.
- C. [MUNICIPALITY] shall make all reasonable efforts to provide language assistance services in person by bilingual personnel.

10. ACCESS TO REPRESENTATION IN IMMIGRATION PROCEEDINGS; ENGLISH CLASSES AND CITIZENSHIP SERVICES

- A. [MUNICIPALITY] shall establish a fund to provide legal representation for indigent immigrants in deportation proceedings that are residents of [MUNICIPALITY].
- B. [MUNICIPALITY] shall establish funding to support citizenship services and English for Speakers of Other Languages (ESOL) classes.

11. FAIR AND WELCOMING CITY COMMISSION ESTABLISHED

A Fair and Welcoming City Commission is hereby established. [CITY OFFICIAL] shall coordinate the Commission. The goal of the Fair and Welcoming City Commission shall be to ensure implementation of policies that preserve and protect our diverse and inclusive community, and will serve as a resource for immigrant community members with questions, comments, or concerns about safety or local government's role in defending vulnerable communities. It shall also coordinate efforts for greater access to translation and interpretation services, legal representation, citizenship services, and ESOL courses as outlined in this Executive Order.

The following municipal departments, and any others chosen by the coordinator [CITY OFFICIAL] shall form part of the Fair and Welcoming City Commission:

- Police Department
- Health Department
- Municipal Court

In addition, the local Board of Education and community stakeholders, including faith based organization, social service agencies and civil rights groups serving the [MUNICIPALITY] will be invited to participate in the Commission.

The Commission shall meet quarterly, beginning the second quarter of 2017, or the quarter after the Executive Order is signed into law.

12. CLERK OF [MUNICIPALITY] TO TRANSMIT COPIES OF THIS CHAPTER, INFORMING MUNICIPAL AGENCIES AND EMPLOYEES

Within 30 days, the Clerk of the [MUNICIPALITY] shall send copies of this Chapter, including any future amendments thereto that may be made, to every department, agency and commission of the [MUNICIPALITY]. Each appointing officer of the [MUNICIPALITY] shall inform all employees under her or his jurisdiction of the prohibitions in this Executive Order, the duty of all of her or his employees to comply with the prohibitions in this Executive Order, and that employees who fail to comply with the prohibitions of the Executive Order shall be subject to appropriate disciplinary action. Each agency will provide its employees with a written directive with instructions for implementing the provisions of this Executive Order within thirty days of notice.

13. SEVERABILITY

If any part of this ordinance, or the application thereof, is held to be invalid, the remainder of this ordinance shall not be affected thereby, and this ordinance shall otherwise continue in full force and effect. To this end, the provisions of this ordinance, and each of them, are severable.

14. All city agencies and employees shall fully cooperate with this Executive Order.

15. This Order shall take effect immediately and supersedes all inconsistent Executive Orders.

SIGNED: _____

DATE: _____

THIS EXECUTIVE ORDER SHALL REMAIN IN THE CUSTODY OF THE CITY CLERK. CERTIFIED COPIES WILL BE MADE AVAILABLE UPON REQUEST.