



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, Donnalyn 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 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 an 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 overstayed 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 4th 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. 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

Draft immigration status ordinance language:
1/13/2017

Insert a new ARTICLE X in Chapter 12 of the Newton Revised Ordinances as follows:

ARTICLE X. IMMIGRATION STATUS

Sec. 12-72 City action regarding immigration status.

- (a) Newton is a welcoming and inclusive City for all. No official or employee of the City shall take any action with respect to any person based upon the immigration status of that person.
- (b) Officials and employees of the City, other than those covered in Section (c), will not gather, maintain or disseminate information or report persons to federal immigration authorities based on immigration status unless required by federal or state law.
- (c) Interactions with federal immigration authorities by the Newton Police Department will be in accordance with the detention, arrest and reporting criteria set forth in the *Foundational Guidelines for Community Policing to Promote Safety for All*.
- (d) Any proposed changes to the *Foundational Guidelines* will require amendment to this ordinance.
- (e) If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held to be invalid or unconstitutional by any decision of any court or competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance.

Foundational Guidelines for Community Policing to Promote Safety for All

The City of Newton affirms its policy as a welcoming and inclusive community for all. An important component to make that commitment a reality is through “community policing”. The Newton Police Department has and will continue to operate without consideration of race, ethnicity, national origin, immigration status, religion, sex, age, disability, sexual orientation, gender identity or expression in the decision to pursue a case. The decision to search, arrest or charge an individual rests on reasonable suspicion of unlawful behavior. 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. 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. While there is no clear legal definition of “Sanctuary City”, our current police practices are in keeping with those of a number of surrounding communities that have designated themselves as such.

The Newton Police Oath of Office that is taken upon a recruit officer’s entry into the ranks swears definitively three things:

1. That the new officer,”... *will bear true faith and allegiance to the Commonwealth of Massachusetts and will support the constitution thereof.*”
2. That the new officer will,”... *faithfully and impartially discharge and perform all the duties incumbent upon me as a Police Officer in the City of Newton, agreeably to the rules and regulations of the constitution and laws of this commonwealth.*”
3. That the new officer,”... *solemnly swear that I will support the constitution of the United States.*”

To that end, the Newton Police Department’s priority has always been to establish and maintain the peace as it serves its residents and guests by enforcing the laws of the Commonwealth of Massachusetts and upholding the rights of all as delineated in the United States Constitution. The Department reaffirms these principles in General Order #406 the subject of which is, *Commitment to Unbiased Policing*. The policy outlined in this order reads in part; *It is the policy of the Newton Police Department that all police-initiated actions, which includes all investigative detentions, traffic stops, arrests, seizures of persons and/or property, will be based on a standard of reasonable suspicion or probable cause as required by the Fourth Amendment of the U.S. Constitution, Article 14 of the Massachusetts Constitution and statutory authority. Officers must be able to articulate specific facts, circumstances and conclusions, which support probable cause or reasonable suspicion. Officers shall not consider race, ethnicity, national origin, religion, age, gender, gender identity or sexual orientation as the only criteria in establishing either reasonable suspicion, probable cause, or as a basis for requesting consent to search.*

Officers may take into account the reported race, ethnicity or national origin of a specific suspect or suspects in the same way they would use specific information regarding age, height, weight, etc. about specific suspects relating to specific unlawful incidents. Race/ethnicity can never be used as the sole basis for probable cause or reasonable suspicion.

DETENTION AND ARREST CRITERIA

Newton Police Department policy protects the safety of all residents in our community regardless of immigration status through sound policing. The decision to detain an individual is based on the nature of the suspected offense.

- Individuals are not stopped by the Newton Police Department to ask them about their immigration status.
- Individuals are not arrested or held by the Newton Police Department only because of their immigration status.
- Civil infractions do not lead to detention, regardless of an individual's immigration status.
- The Newton Police Department may detain an individual in cooperation with Immigration & Customs Enforcement (ICE) if one or more of the following criteria are met:
 1. Suspected of terrorism
 2. Poses a danger to national security
 3. Convicted of a felony
 4. The Newton Police Department has a law enforcement or public safety purpose that is not related to the enforcement of civil immigration law

REPORTING CRITERIA

To add additional transparency and accountability, the Police Department will produce a yearly report documenting:

1. A breakdown of the total number of federal detainer requests lodged with the city's law enforcement officials, organized by reason;
2. A breakdown of the total number of undocumented individuals that city law enforcement officials detained pursuant to federal detainer requests, organized by reason;
3. The total number of undocumented individuals transferred to ICE custody; and
4. A breakdown of the total cost reimbursements received from the federal government organized by individual case.

The City will monitor any changes in federal directives and will be prepared to resist any efforts to change our approach to community policing as it pertains to ICE requests, detainers, detention, or arrest criteria as listed above.

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

The Revised Ordinances of the City of Newton are hereby amended in Chapter 2 by adding at the end thereof the following new article:

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 its relationship with all its residents, including immigrants and to make all of our residents, workers and visitors feel safe and secure. Now, when the well-being of our hard working immigrants is again being jeopardized, we believe it is critical to reaffirm in this ordinance, our city's commitment to fair treatment for all. To accomplish this goal, we propose to join with cities and towns throughout the country in setting forth that our local officials and law enforcement will not be come partners with the US Immigration and Customs Enforcement ("ICE") to detain and deport immigrants, who have not committed a serious criminal offense, without the due process of law. This Ordinance seeks to clarify and codify the Newton Police's community policing policies presented by the police chief and the Mayor.

Sec 2-401. Definitions.

As used in this ordinance, the following words and phrases shall mean and include:

"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. "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.

Agent. "Agent" means any person employed by or acting on behalf of an agency.

Citizenship or immigration status. "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 violent felony for which there is no district court jurisdiction pursuant to M.G.L. ch. 218, § 26.

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 above in section 2-402, no City agency or agent shall disclose information regarding the citizenship or immigration status of any person.

Sec 2-404. Exceptions to Prohibitions. The prohibitions in Sec 2-402 and 2-403 shall not apply where the individual to whom such information pertains provides his or her consent (or if such individual is a minor, the 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 or where permitted under section 2-402.

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 permitted under section 4-402. Nothing in this section shall prevent the City, including any agency, department, officer, employee or agent of the City, from lawfully discharging his or her duties in compliance with and in response to a lawfully issued judicial warrant or judicial subpoena.

The prohibition in this Section shall include but not be limited to:

- (a) identifying, investigating, arresting, detaining, or continuing 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 deportable;
- (b) arresting, detaining, or continuing 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 honoring any such detainer,

- warrant or request to detain, interview or transfer to federal authorities without a judicial warrant any individual in City custody;
- (c) notifying federal authorities about the release or pending release of any person for immigration purposes;
 - (d) providing federal authorities with non-public information about any person for immigration purposes; and
 - (e) enforcing any federal program requiring the registration of individuals on the basis of religious affiliation or ethnic or national origin.
 - (f) 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 a prior conviction for a serious violent felony
 - 3. Is being investigated for terrorism.
 - (g) Notwithstanding this, Newton Police Department may request information from ICE relating to an individual in custody within the context of a criminal investigation, and may release to ICE the minimum amount of information required to effectuate the request.

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.

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, department, officer, employee or agent of the City is lawfully discharging his or her duties as set forth in Sec 2-406.

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 or 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.

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 todirect 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 10th amendment of the US constitution which forbids the commandeering of local resources for federal purposes.

2. The 4th 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 4th 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 10th 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.