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SAMPLE LANGUAGE FOR POLICIES LIMITING THE ENFORCEMENT OF IMMIGRATION LAWS BY LOCAL AUTHORITIES

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This document provides sample language with discussions of the purpose of each section for local policies promulgated to protect immigrants' access to police protection and public services. **For a copy of sample language *without* the text explaining the purpose behind each section, please refer to Appendix A, which is attached.**

Note that the language suggested throughout this document is drafted in city ordinance format, but the suggestions can easily be adopted for other initiatives (including county- or state-wide policies) such as:

- Resolutions
- Police policies/directives
- Executive Orders
- Legal opinions or memoranda

All of these approaches have been taken in various locations. The decision whether to enact protections in an ordinance or in another form largely depends on the political situation in which the campaign is taking place.

For general advocacy guidelines on limiting local enforcement of federal immigration laws, *see*: <http://www.immigrationforum.org/documents/TheDebate/EnforcementLocalPolice/Advocacyideas.pdf>.

When drafting and advocating for a policy in your area, it is helpful to consult the text of other initiatives that have been passed around the country.

- For a list of localities that have passed such initiatives and links to many of their text, please see *Annotated Chart of Laws, Resolutions, and Policies Instituted Across the U.S. Limiting the Enforcement of Immigration Laws by Local Authorities* at: <http://www.nilc.org/immlawpolicy/LocalLaw/LocalLawEnforcementChartFINAL.pdf>
- You can also refer to *Trend: Local Efforts to Encourage Immigrants to Access Essential Social Services and Cooperate with the Police Without Fear of Immigration Consequences* at: <http://www.nelp.org/docUploads/confidbrief121103%2Epdf>.

The suggestions offered below represent samples from initiatives that have been promulgated. Since no single policy serves as a “model,” the purpose of this document is to provide language that advocates can use in drafting policies that would provide the most extensive protection for immigrants seeking access to police protection and public services.

What follows are sample language and key points of coverage for a city ordinance promulgated to limit local enforcement of federal immigration laws. The suggestions offered below are presented in the order of the different sections that would make up a standard ordinance.



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The Preamble

Regardless of what type of policy you are drafting, it is a good idea to begin with a statement of purpose, *i.e.* why it is important for your city, county, or state to enact such an initiative. A preamble serves two principal functions. The first is to be part of the “legislative history” of the initiative to help clarify the intent of the ordinance if in the future a court is asked to interpret certain provisions. The second function is to express its purpose to the community, so to help residents feel empowered to understand and utilize the protections it provides.

Preambles to ordinances and resolutions generally are written in “whereas” format – *i.e.* each sentence begins with “Whereas.” Police policies and legal memoranda typically begin with introductory paragraphs similar to a preamble. It is useful to refer to the text of initiatives that have already passed for ideas and language on what the preamble should address (*e.g.* by referring to the *Annotated Chart*). At the same time, this is the section of a policy where principles, statistics, and historic statements particular to your locality can and should be expressed. Some examples of areas that statements the preamble may cover are:

- Statements affirming the presence and contribution of immigrant populations, including number/percentage of foreign-born residents in your city, county, or state.¹
- 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 the 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

A section defining the terms used by the ordinance is very helpful. The advantages of including such a section are that you avoid having to spell out terms each time they appear in the text, and the section clarifies terms that are commonly used but that may not be fully familiar to everybody reading the ordinance. Some sample terms and definitions are:²

¹ Demographic data for specific metropolitan areas and their respective city and suburban portions based on the 2000 Census may be found at <<http://mumford.cas.albany.edu/census/index.asp>> ; information on immigrants in the U.S. is available at <http://www.urban.org/content/IssuesInFocus/AmericasImmigrants/Immigrants.htm>; and at <http://www.migrationinformation.org/>.

² Some terms that may be employed in this section may already be defined elsewhere in your locality’s governing laws (*e.g.* in your municipal code). Be sure to check any terms you choose to define against existing definitions of same or comparable terms.

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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.
- **“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]*:
 - o Medical services, such as general medical care and emergency medical assistance, including labor and delivery.
 - o Mental health services such as crisis intervention.
 - o Public health services for immunization and for the testing and treatment of symptoms of communicable diseases.
 - o 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.)*
 - o Nutrition programs such as school lunch and breakfast programs.
 - o Children’s protective services.
 - o Programs for children with special needs.
 - o Programs for the disabled.
 - o Services involving real estate tax payments or water/sewer bills.
 - o Labor and employment enforcement.
 - o Access to information on financial aid/community development programs.
 - o Access to the courts.
 - o Access to the schools.
 - o Transportation services.
 - o Shelter services.
 - o 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.

The Body of the Ordinance

This is the heart of the initiative. The purpose of the remaining portion of this document is to provide sample language for different coverage areas for an ordinance intended to protect immigrants' access to police protection and public services.

Much like the determination of which type of initiative to pursue, the scope of an ordinance will depend upon the particular local situation. The ideal ordinance would cover each area presented here. The areas are listed below, with a brief explanation of the purpose underlying each area. The language in the text boxes beneath represent sample language that may be used as-is in the text of an ordinance. NOTE: The sample language is also presented, on its own (without the text explaining the purpose), in Appendix A.

- **Equal access to general and public safety services regardless of citizenship status.**
The purpose is to establish generally that all services for which non-U.S. citizens are eligible must be provided without discriminatory treatment and without threat of immigration enforcement. The exception is for inquiries pertaining to programs that contain explicit eligibility requirements based on an individual's immigration status.

CITY SERVICES

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.

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.

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 on 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.

- **Protection for foreign residents who show identification issued by their country of origin to access services.**
This section flows from the last, insofar as it establishes protection for residents who show identification when seeking services. It establishes that identification issued by a foreign country should be accepted and should not subject immigrants to higher scrutiny. Note that this topic as it pertains to undocumented immigrants may be particularly volatile depending on your locality, given the negative attention in many states directed toward immigrants' access to driver's licenses and other identification documents. The exception is for I-9 forms, which are required under federal law to establish work authorization; individuals filling out an I-9 must produce acceptable documents issued by or in the U.S.

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CITY SERVICES *[continued]*

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.

▪ **Limits on local enforcement of immigration laws.**

This section is similar to the first area concerning equal access to city services, except that it specifically emphasizes the enforcement of immigration laws, with particular attention to local police. The exception refers to certain criminal immigration violations (as opposed to mere lack of legal immigration status, which is a civil immigration violation), under the federal statutory provision 8 U.S.C. §1252(c). This provision gives state and local law enforcement officials, "to the extent permitted by relevant State and local law," the authority to arrest and detain individuals who are unlawfully present in the U.S. because they have been convicted of a felony in the U.S. and have been deported and have re-entered the U.S.

LAW ENFORCEMENT

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.

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.

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.

NOTE: There may be other, more restrictive, language limiting the local enforcement of immigration laws. For example, a locality may be able to enact a policy that prevents the local police from enforcing not only *all civil* immigration matters, but *most criminal* immigration matters as well. An alternative policy could also require police to get a warrant before arresting individuals under 8 U.S.C. §1252(c). The enactment of such policies, however, is complicated because their validity depends on court decisions in your area regarding the authority of local authorities to enforce federal immigration law. If you are contemplating pursuing language outside the language presented above, please feel free to contact NILC to discuss these alternative options in more detail.

▪ **Specific protection for immigrant victims and witnesses.**

This is a particularly important section to include both on its own terms and also for advocacy purposes. Specifically, speaking about immigrant crime victims (including immigrant survivors of domestic violence) and witnesses is a very useful way to illustrate why the local enforcement of immigration laws seriously compromises public safety interests for all community residents.

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VICTIM AND WITNESS PROTECTION

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.

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.

■ **Cooperation with federal authorities.**

This section directly relates to the previous sections concerning *equal access to city services* and *limits on local enforcement of immigration laws*. The preceding sections establish that city agents cannot ask about immigration status and cannot enforce immigration laws, *i.e.* city agents cannot act as immigration agents. This present section addresses the relationship between city agents and federal officials, including immigration agents from the Department of Homeland Security (DHS), either when city agents have immigration-related information to share (which they should not possess in the first place given the ordinance's prohibition on immigration-related inquiries), or when a federal agency contacts a city agent for information regarding an individual's immigration status.

The issue of how city agents must act in these circumstances is a complicated one, and the answer partially involves an interpretation of a federal statutory provision, 8 U.S.C. §1373. This provision, enacted in 1996 [as Section 642 of IIRIRA, the Illegal Immigration Reform and Immigrant Responsibility Act] relates to communication between federal and local entities and officials regarding a person's immigration status. The provision establishes that "...[A] Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, the Immigration and Naturalization Service information regarding the citizenship or immigration status, lawful or unlawful, of any individual."

In this section, the way to most broadly protect immigrants who seek city services is to classify information regarding immigration status as among the sensitive information agencies cannot disclose or disseminate, absent specific circumstances. The sample language below is taken from New York City's Executive Order 41 and the Memorandum issued by Philadelphia's city solicitor, the two cities that have promulgated such a policy. This language was enacted following a decision by a New York federal court, which, citing 8 U.S.C. §1373, struck down a prior NYC order singling out immigration status as information that city agents could not disclose to immigration authorities.³ In its decision, the court suggested that if the policy instead limited the disclosure of confidential information *generally*, such a policy "might seem more integral to the operation of City government," and federal statutory provision prohibiting the maintenance of the confidentiality of immigration status specifically "might seem more intrusive."⁴ The language presented below is precisely this kind of policy—a general limitation on disclosing confidential information. NOTE: What constitutes "confidential information" is explained in the "Definitions" section of the sample ordinance (see *supra* page 3).

³ *City of New York v. Reno*, 179 F.3d 29 (2d Cir. 1999).

⁴ *Id.* at 37.

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CONFIDENTIALITY OF INFORMATION

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
- (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.

By enacting this confidentiality language, an ordinance will go further than protecting against immigration inquiries and enforcement; it will protect against the disclosure and dissemination of information, including immigration-related information, if and when city agents have such information.

If your particular local situation will not allow the enactment of language protecting against disclosure and dissemination of information including individuals' immigration status, there is another option. However, this alternative language, unlike the confidentiality language presented above, does *not* significantly add to the protections your ordinance would enact for non-U.S. citizens seeking city services. That said, its inclusion does serve a function, in that it limits cooperation with federal authorities to what is expressly required by federal law. The required cooperation set forth below merely reflects "a prohibition on a prohibition," *i.e.* city agents cannot be barred from cooperating with DHS or other federal agencies. This section still must be understood in the context of the entire ordinance. If city agents do not have information regarding individuals' immigration status in the first place (again, because of the prohibition on inquiring into status or in any other way enforcing immigration laws), then there is no information to send. 8 U.S.C. §1373 does not require city agents to collect immigration information, and city agents cannot provide to federal authorities immigration information they have not collected.

COOPERATION UNDER FEDERAL LAW NOT PROHIBITED

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

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- **Outlining a grievance procedure.**

This section establishes a procedure for filing a complaint when there is an alleged violation of the ordinance. It is an important section to advocate for inclusion in an ordinance, because otherwise the details of this procedure are entirely in the hands of the mayor after the ordinance is enacted. Note that one potential barrier in enacting the below procedure may be opposition to the handling of police complaints by any other entity other than an internal police oversight board.

COMPLAINTS AND DISCIPLINE

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.

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.

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.

- **Civil remedy for violation**

This is a particularly difficult section to have included in an ordinance. However, it is definitely worth proposing, because the possibility that a violation will result in money damages is a substantial incentive for compliance.

CIVIL REMEDY FOR VIOLATION

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.

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▪ **Mandating action after the ordinance is enacted and other language.**

These important provisions should appear at the end of the ordinance. They ensure actual implementation of the ordinance and establish checks on the implementation after enactment. The last two provisions should appear at the very end, and are useful (but not necessary) in the event that the ordinance is challenged in the courts.

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.

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

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.

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.

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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