

ORDINANCE NO. ORD-17-02

First Reading: March 6, 2017
Public Hearing: April 3, 2017

Approved:
Published:
Effective:

SOLICITATION OF IMMIGRANT STATUS

AN ORDINANCE TO AMEND THE CODE OF THE CITY OF ANN ARBOR BY ADDING A NEW CHAPTER WHICH NEW CHAPTER SHALL BE DESIGNATED AS CHAPTER 120 OF TITLE IX OF SAID CODE

The City of Ann Arbor Ordains:

Section 1. That Title IX of the Code of the City of Ann Arbor be amended by adding a Chapter 120, Solicitation of Immigrant Status, which shall read as follows:

CHAPTER 120
SOLICITATION OF IMMIGRANT STATUS

9:400. Title

This chapter shall be known and may be cited and may be cited as the Solicitation of Immigrant Status Ordinance.

9:401. Statement of purpose.

It is the policy of the City of Ann Arbor to respect the rights of, and provide equal services to, all persons regardless of appearance, ethnicity, immigration status, manner of dress, national origin, physical characteristics, race, religious beliefs, sexual orientation, or gender identity or expression; to ensure the enforcement of rights under the United States Constitution, including due process and equal protection; to promote community safety; to encourage victims of crime and witnesses to cooperate with law enforcement authority without regard to immigration status; and to promote acceptance. In order to permit members of immigrant communities to access services that are provided by the City of Ann Arbor government to which they are entitled; and to ensure that city public servants are acting consistent with federal law regarding local governments cooperating with federal immigration authorities, the City of Ann Arbor enacts this ordinance as an effective way to guide city public servants in adhering to rights under the United States Constitution, including due process and equal protection, and under federal law, while protecting the safety and health of all members of the Ann Arbor community.

9:402. Definitions

The following definitions shall be used in the interpretation of this chapter:

- (1) "Public servant" means the mayor, members of the city council, the city clerk, any member of any city agency, board, commission, or other voting body that is established by the Ann Arbor City Charter or by this Code, and any appointee, any employee, or any individual who provides services to the City of Ann Arbor within or outside of its offices or facilities pursuant to a personal services contract
- (2) "Solicit" or "solicitation" means asking a person, or anyone associated with that person, questions about the person's immigration status. The taking of fingerprints, authorized use of LEIN, or questions concerning a person's birth country shall not be considered "solicitation".

9:403. Solicitation of immigration status by public servants, prohibited; exceptions.

- (1) **Prohibited.** A public servant, while acting within the scope of public service employment and/or authority shall not:
 - (a) solicit information concerning immigration status for the purpose of ascertaining a person's compliance with federal immigration law; or
 - (b) solicit information for the purpose of determining immigration status from a person who is seeking police services, or is a victim, or is a witness; or
 - (c) inquire into the immigration status of any person, or engage in activities for the purpose of ascertaining the immigration status of any person.
- (2) **Exceptions.** Notwithstanding the prohibitions set forth in subsection (a) of this section, public servants, are expressly permitted to engage in the following activities, which shall not constitute a violation of this article:
 - (a) Solicitation of information concerning immigration status from the subject of an investigation only when relevant to the investigation or prosecution of a criminal offense;
 - (b) Solicitation of information concerning immigration status when attempting to determine the identity of an individual ~~suspected~~ **arrested for or charged with** ~~of committing~~ a crime punishable by 93 days or more in jail. Such solicitation may be solely for the purposes of determining the identity of the individual or assessing the individual's flight risk;
 - (c) Determination if consular notification is required or should be offered under the Vienna Convention on Consular Relations for individuals detained or arrested by the Ann Arbor Police Department or who have deceased within the City of Ann Arbor;

- (d) Solicitation of immigration information to comply with any and all legal obligations of validly issued judicial warrants;
- (e) Solicitation of information concerning immigration status where specifically required by any federal, state, or city law or program as a condition of eligibility for the service sought; or
- (f) Solicitation of information concerning immigration status for the purpose of completing I-9 Forms, and, when relevant, in making hiring and payroll withholding decisions, including, but not limited to, completing I-9 Forms, questioning a person to complete the I-9 Form, obtaining documents that support the I-9 Form, and allowing federal authorities to audit an I-9 Form in accordance with law; or
- (g) Solicitation of information concerning immigration status for a subpoena issued in a criminal proceeding, civil litigation, or an administrative proceeding for the production of City documents or for testimony of a public servant, including where related to immigration issues or other security issues.
- (h) Nothing in this Chapter shall be construed to prohibit, or in any way restrict, any public servant from sending to, or receiving from, the Immigration and Naturalization Service information regarding the citizenship or immigration status, lawful or unlawful, of any individual as required by 8 U.S.C. Sec. 1373. **Nor shall this Chapter be construed or applied, in any manner, that causes a violation of any valid federal law or regulation that imposes a legal duty or restriction on the City or its public servants.**

9:404. Reporting and Enforcement

Where a public servant, other than an elected official, is alleged to have violated this chapter the matter shall be referred, as appropriate, to the city administrator, for review, investigation, and disposition. Allegations concerning an elected official shall be referred to the Mayor for disposition under the rules the Council has established concerning its members. Any disciplinary action shall be carried out in accordance with the provisions of the Ann Arbor City Charter and other laws, city personnel rules, civil service rules, union contracts, or other departmental or agency rules and regulations.

The City Administrator shall provide an annual report to City Council of all violation complaints of this ordinance and their disposition. The requirement for the annual report shall expire four years from the date of ordinance adoption unless extended by an act of Council.

9:405. Private Cause of Action; Liability of the City

Nothing in this ordinance is intended to create or form the basis for liability, against the City, or its officers, employees, or agents.

9:406. Indemnification Policy

It is the policy of the City, as previously set forth in Ann Arbor City Council Resolution R-407-7-89, adopted July 10, 1989, and codified here below, that the City will indemnify, defend and hold harmless city officers and employees regarding liability claims arising out of holding a city office or city employment. The City Council may, in its discretion, refuse to indemnify, defend or hold harmless an officer or employee in the following circumstances:

- (1) If the claim arises out of alleged criminal activity;
- (2) The claim arises out of activity where the officer or employee is charged with profiting or attempting to profit at the City's expense (other than through approved compensation);
- (3) The claim arises out of activity under which disciplinary action was imposed on an employee; and
- (4) The officer or employee fails or refuses to assist in the defense of the claim.

This provision shall not apply to employees covered by a collective bargaining agreement which provides for indemnification.

9:407. Severability.

If any clause, sentence, section, paragraph, or part of this ordinance, or the application thereof to any person, firm, corporation, legal entity, or circumstances, shall be for any reason adjudged by a court of competent jurisdiction to be unconstitutional or invalid, such judgment shall not effect, impair, or invalidate the remainder of this Ordinance and the application of such provision to other persons, firms, corporations, legal entities, or circumstances by such judgment shall be confined in its operation to the clause, sentence, section, paragraph, or part of this Ordinance thereof directly involved in the case or controversy in which such judgment shall have been rendered and to the person, firm, corporation, legal entity, or circumstances then and there involved. It is hereby declared to be the legislative intent of this body that the Ordinance would have been adopted had such invalid or unconstitutional provisions not have been included in this Ordinance.

9:408. Repeal.

All other Ordinances inconsistent with the provisions of this Ordinance are, to the extent of such inconsistencies, hereby repealed.

9:409. Savings Clause.

The balance of the Code of Ordinances, City of Ann Arbor, Michigan, except as herein or previously amended, shall remain in full force and effect. The repeal provided herein shall not abrogate or affect any offense or act committed or done, or any penalty or forfeiture incurred, or any pending fee, assessments, litigation, or prosecution of any right established, occurring prior to the effective date hereof.

9:410. Copies to be available.

Copies of the Ordinance are available at the office of the city clerk for inspection by, and distribution to, the public during normal office hours. A complete copy of the ordinance is also available for inspection on the City's website.

9.411. Publication and Effective Date.

The City Clerk shall cause this Ordinance, or a summary of this Ordinance, to be published by printing the same in the publication of record.

Section 2. This Ordinance shall take effect ten days after passage and legal publication.

As Amended by Ann Arbor City Council at First Reading on March 6, 2017