

CITY OF SALEM

2017 MAR -8 AM 8:33

**PUBLIC HEARING
OF THE SALEM CITY COUNCIL
AD-HOC COMMITTEE FOR SANCTUARY FOR PEACE:
A HUMAN RIGHTS DECLARATION**

**CITY CLERK
SALEM, MASS**

**Wednesday, March 29, 2017
at 6:00 P.M.**

**BENTLEY SCHOOL CAFETORIUM
25 MEMORIAL DRIVE, SALEM, MA**

The above City Council Ad-Hoc Committee, will hold a public hearing on March 29, 2017 at 6:00 PM in the Bentley School Cafetorium, for the purpose of discussing the proposed Salem Ordinance providing city services regardless of immigration status and the formation of an Inclusionary Advisory Committee.

ATTEST:

**CHERYL A. LAPOINTE
CITY CLERK**

This notice posted on "Official Bulletin Board"
City Hall, Salem, Mass. on *March 8, 2017*
at *8:33 AM* in accordance with MGL Chap. 30A,
Sections 18-25.

City of Salem

In the year Two Thousand and Seventeen

An Ordinance relative to providing city services regardless of immigration status and the formation of an Inclusionary Advisory Committee.

Be it ordained by the City Council of the City of Salem, as follows:

Section 1. Chapter 2- Administration is hereby amended by adding the following new Article:

“ARTICLE XVII. CITY SERVICES RELATED TO IMMIGRATION STATUS;
INCLUSIONARY ADVISORY COMMITTEE

Sec. 2-2060. Purpose.

To reaffirm existing policies and provide guidance to City employees on protecting all residents’ access to police protection and public services.

Sec. 2-2061. Preamble.

WHEREAS, Salem is a welcoming City that serves and protects its residents regardless of their immigration status and country of origin;

WHEREAS, in Salem, all people, including immigrants, are valued contributors and are vital to our shared prosperity;

WHEREAS, according to the latest United States Census Data, approximately 26% of Salem residents describe themselves as Hispanic/Latino, Black/African American, Asian, American Indian/Alaskan Native or Native American or are comprised of two or more races;

WHEREAS, 15% of Salem residents have a country of origin outside the United States and are proud to call Salem their home and live peacefully as our neighbors, colleagues, and friends;

WHEREAS, Salem Public Schools currently teach students who speak 33 different languages, reflecting the approximately 1,200 students within the Salem school district for whom English is not their first language;

WHEREAS, we know there are youth living in Salem and/ or attending Salem State University that have received temporary status through the Deferred Action for Childhood Arrivals (DACA) program and they deserve an opportunity to have a bright future and to

contribute their time and talent to make Salem a prosperous City of innovation and growth;

WHEREAS, the vitality of the City of Salem, increasingly ethnically, racially and religiously diverse and has been built on the strength of its immigrant communities;

WHEREAS, The City and its public safety personnel value and recognize that the cooperation of and communication with all persons, both documented citizens and those without documentation status, is essential to achieve the City's goals of ensuring the health, safety, and welfare of all, and the protection of life and property, the prevention of crime and the resolution of problems;

WHEREAS, Salem desires to maintain and foster a culture and environment where our immigrant and refugee residents can fully participate in and be integrated into the social, civic, and economic fabric of their adopted City;

WHEREAS, the City of Salem does not believe in the unwarranted identification, detention, and deportation of residents in good standing and/or the separation of families that may result;

WHEREAS, no person living, visiting or working in Salem should ever fear calling public safety personnel for assistance; and

Now therefore, be it Ordained by the City of Salem:

Sec. 2-2062. Policy.

(a) City employees shall serve all residents and City services shall be accessible to all residents, regardless of immigration status or identity, including ancestry, race, ethnicity, national origin, color, age, sex, sexual orientation, gender variance, marital status, physical or mental disability, or religion, unless providing such service is prohibited by State or Federal statute, regulation, or court decision.

(b) City employees shall not ask for information about immigration status in the performance of daily tasks unless required to do so by Federal or State statute, regulation or court decision. City employees, with the exception of police officers, shall continue the longstanding practice to refrain from inquiring about the immigration status of any person. Police officers shall abide by Police Department Policy #138.

(c) Salem public safety personnel, including police and fire fighters, recognize and value as their first priority, the safety, protection and security of all Salem residents, regardless of one's country of origin. No person living, visiting or working in Salem should ever fear calling public safety personnel for assistance. Further, local public safety personnel recognize that being able to have clear and open communication with any and all Salem residents is the most effective way to ensure the health, safety and welfare of the entire community.

(d) The Immigration Reform and Control Act of 1986 (IRCA) makes it illegal for the City, as an employer, to discriminate with respect to hiring, firing, or recruitment or referral for a fee, based on an individual's citizenship or immigration status. Consistent with Federal law, all persons hired by the City of Salem will be required to verify identity and eligibility to work in the United States and to complete an employment eligibility verification document form upon hire. The City affirms that employment eligibility verification will occur only after an offer to hire has been made, unless citizenship status is required of the position by law or regulation.

(e) City department heads shall use tools at their disposal, including meetings and trainings, to direct their staff to comply with the City's policies described above. A communication shall be issued by City department heads to their staff upon adoption of this Ordinance.

Sec. 2-2063. Policy Limitations; Severability.

- (a) No provision continued herein shall condition additional benefits to immigrant or refugee residents in the City of Salem.
- (b) No provision contained herein shall violate Federal or State statutes, regulations or case law nor impact Federal funding.
- (c) As provided in Sec. 1-9 of this Code, the sections, paragraphs, sentences, clauses and phrases of this Article are severable, and if any phrase, clause, sentence, paragraph or section of this Article shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Article.

Sec. 2-2064. Inclusion Advisory Committee; Creation.

- (a) The Mayor shall establish an Inclusion Advisory Committee to advise her and City department heads in their efforts to protect the civil liberties and civil rights of all Salem residents and provide supportive services and information as necessary to communities of color, people with disabilities, women, LGBTQ residents, people of low-income, persons of differing religious beliefs or practices, immigrants and refugees, particularly in light of potential changes in Federal government policy and operations.
- (b) The Committee shall provide advice on initiatives including, but not limited to, the following:
 - 1) Developing a comprehensive public awareness effort around anti-hate speech and hate crimes, and bias-based incidents;
 - 2) Collaborating with immigrant and refugee community stakeholders and community based organizations to identify priority needs and opportunities to partner within municipal activities; and

- 3) Strengthening efforts to ensure that Salem remains an inclusive and equitable City in support of immigrants and their civil rights and civil liberties.”

In City Council February 16, 2017

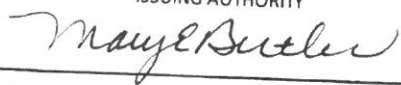
That the City Council create an Ad-Hoc Committee for Sanctuary for Peace and that a Public Hearing be held.

Adopted

ATTEST:

CHERYL A. LAPOINTE
CITY CLERK

SALEM POLICE

SUBJECT: IMMIGRATION LAWS AND THE ROLE OF THE SALEM POLICE DEPARTMENT		DEPARTMENT MANUAL	
		CHAPTER 138.0	
REFERENCE(S): CALEA 26.1.3		DATE OF ISSUE 02/02/17	EFFECTIVE DATE 02/02/17
		ISSUING AUTHORITY 	
PAGE 1 of 4		<input checked="" type="checkbox"/> NEW <input type="checkbox"/> AMENDS <input type="checkbox"/> RESCINDS	

I. PURPOSE**A. The Salem Police Department Mission and Policy**

"The primary purpose of the Salem Police Department is to provide a high level of safety, security and service for all members of the community. It is the police...who have the sworn duty to directly apply and execute the law fairly and objectively for the benefit of the entire community. This task has become one of the most difficult and most demanding responsibilities in the public service."(1)

"The delivery of police services to the community is a unique and complex undertaking. The reputation of the organization is fundamentally dependent upon the personal conduct and professional competence of its individual officers. It requires that police officers conduct themselves at all times within the limitations of their police authority. They cannot act outside of, above or beyond their lawful authority and any abuse of their police powers violates the authority entrusted to them."(2)

"The police are the most visible and most readily accessible representatives of local government. As such we are tasked with protection life and safeguarding property; preventing and controlling crime; providing immediate response to public emergencies; advancing a cooperative relationship with the general public; and creating a sense of safety and security for the entire community."(3)

These excerpts from the Salem Police Department Rules and Regulations provide the background for the expectations of fair and unbiased treatment of all residents regardless of race, religion, gender, age, ethnicity, sexual identity, and status in the United States. The policies and procedures and rules and regulations of the Salem Police Department do not provide for a differentiation in the application of services to anyone; all service is equal.

We are aware that, over the course of our City's history, many of our residents have emigrated to our community from other countries for a myriad of reasons and that many have become naturalized citizens of the United States and others have yet to attain permanent legal status. We have long recognized, valued and respected the diversity and cultural differences in the Salem community and as a police department we are committed to providing the best public service to all the City's residents regardless of any preconceived biases of others.

*Note: 1, 2, 3 –Salem Police Department Rules and Regulations, Forward and Section 1, pages 3 &4

In furtherance of our Community Policing philosophy, we seek to ensure all our residents understand the mission of and receive the encouragement of the Department to seek and to obtain police assistance when needed. Residents will receive fair and equitable treatment throughout any and all interactions from all members of the Department without exception. We recognize that some individuals may remain in the shadows and fear police due to prior experiences from their country of origin and a political climate that leads to concerns about anticipated treatment or outcome. We recognize unreported crimes will only increase the likelihood of continued victimization. We rely on the input and cooperation of all our residents, regardless of status in the United States, in order to ensure crimes are solved, offenders are held accountable, and victims and witnesses can feel safe and have access to the appropriate resources available to them. Therefore, consistent with past practice, the Salem Police Department has reduced to written form the policy that we have always undertaken with regard to treatment of all individuals regardless of immigration status.

I. POLICY

A. Federal Jurisdictional Authority vs. Local Law Enforcement Jurisdictional Authority

The Salem Police Department recognizes the "truism" of the 10th Amendment of the U.S. Bill of Rights that provides that powers delegated to the Federal Government are under their control. Federal Immigration Laws fall under the purview and the enforcement jurisdiction of the Federal Government, and, as such, there is no authority or power of a local law enforcement entity of any state to enforce said laws. This was affirmed in a ruling by the Supreme Court in *U.S. v. Arizona* which held that the federal government had the sole authority to enforce both border and immigration law. Therefore, in compliance with this decision and in fostering trust within the community, consistent with past practice and our authority, the Salem Police Department shall not undertake immigration-related investigations, nor shall they routinely inquire of any person their specific immigration status during normal police operations unless required by law.

This prohibition of enforcing federal law does not impede the ability of the Salem Police Department to cooperate with, provide information to, or receive from any local, state or federal agency information regarding citizenship or immigration status, consistent with 8 U.S.C. § 1373. As immigration enforcement falls under the direct authority of the federal government, Officers will communicate and cooperate with DHS-ICE when: (1) formally requested as part of an on-going investigation; (2) notifying federal officials of serious situations that may present a public safety threat to a group, community, state, or the nation; or (3) in any other instance required by law.

II. PROCEDURE:

A. Statement of Police Standards

Every resident or visitor shall be free to obtain the assistance of the Salem Police Department without regard to the individual's citizenship or documented or undocumented status in the United States. Therefore, Officers should employ unbiased standards, including:

- 1) Officers I, should not consider immigration status in exercising their discretionary authority to arrest, summons, issue a warrant, or to take no action;
- 2) Officers will not arrest or detain a person based solely on their immigration status;
- 3) Officers will not engage in the surveillance of an individual solely for the purpose of identifying or confirming their legal status. Immigration status will never be the primary reason to initiate an investigation;

- 4) Officers shall not question any individual about his or her specific citizenship or immigration status unless that individual is:
 - a. **Arrested** for any reason as consistent with the Booking Procedures. The Booking Officer will ascertain the country in which the individual is a citizen to ensure the arrested person is provided their due process rights to confer with the Consulate of their country contemporaneous to the arrest and in compliance with SPD P.P.# 111.0 Consulate Notification. Immigration status is not a relevant matter pertaining to the arrested person's due process rights by law;
 - b. **Arrested** for any reason as consistent with the Booking Procedures and requirements of the Fingerprint Procedures for the LiveScan data entry in compliance with SPD P.P.# 5.0 Fingerprinting and Photographing Prisoners. Officers will ascertain the country in which the individual is a citizen, immigration status is not a relevant matter;
 - c. A direct or indirect **Victim** (Affected Witness) of a qualifying crime who is cooperating with the investigation and is eligible for the Police Department or District Attorney's Office to make application for federal U-Visa protections in compliance with SPD P.P.# 132.0 U-Visa; or
 - d. Victim of a **civil rights violation or hate crime** based on ethnicity, race or ancestry or bias-motivated threats, intimidation, coercion and violence, consistent with M.G.L. c. 265, §39 and SPD P.P.# 72.0 Handling Civil Rights Violations and P.P.#78.0 Hate Crimes; and
- 5) Officers have no reason to ask any individual for his or her visa, resident alien card, or travel documents unless:
 - a. Identification is **required by law** and other standard forms of identification are unavailable or when proceeding under Section III (B), herein;
 - b. An operator of a lawfully stopped motor vehicle presents what appears to be a **valid Foreign Country's Driver's License** in which the license is valid in this state for only one (1) year and requires the operator to produce proof to the investigating officer of the most recent admission date to the United States in order to competently calculate the one year time period; and
 - c. Making application for a municipal license where verification of identification is required consistent with SPD P.P.# 5.5 Fingerprinting Municipal License Applicants and no other forms of identification are available.

B. Notification to Federal Immigration Authorities

In accordance with Salem Police Department's Policy and Procedure, 89.0 Identification and Prevention of Biased Based Profiling, the Salem Police *"Department is committed to protecting the constitutional and civil rights of all. Allegations of bias based profiling or discriminatory practices, real or perceived, are detrimental to the relationship between the police and the communities they serve, because they strike at the basic foundation of public trust. This trust is essential to effective community based policing,"*(4)

As a result of the aforementioned, in conjunction with the Salem Police Department's jurisdictional authority and restrictions not to *"act beyond their lawful authority,"* Salem Police Officers will communicate with DHS-ICE when:

- 1) The individual is determined to be a **public safety risk** to the community, the state or the nation, and the Salem Police Department, other City officials, or law enforcement personnel are in possession of information to support that contention;

- 2) The individual has been arrested for a violent felony by the Salem Police Department;
- 3) The individual has been arrested by the Salem Police Department and there is reliable information that the individual in custody has been **convicted of any violent felony or multiple felony convictions or has a violent felony case pending**;
- 4) The individual is arrested for **terrorism-related offenses** or is reasonably suspected of involvement in any terrorist activities;
- 5) The individual is arrested for **Human Trafficking** or arrested on other charges with reasonable suspicion that the individual is or has been involved in Human Trafficking of any kind;
- 6) The individual is reasonably suspected of **participating in criminal street gang activity** in furtherance of the gang's illegal activity;
- 7) The individual is arrested for **Drug Trafficking** or arrested on other charges but there is an open ongoing investigation reasonably suspecting, using the legal standard, that the individual is involved in Drug Trafficking;
- 8) The individual is arrested and **is a substantial threat** to any person, group, or the community; or
- 9) As otherwise required by law.

C. DHS-ICE Request the Assistance of Salem Police Department

1. The Department of Homeland Security – Immigration and Customs Enforcement (DHS-ICE) agency is responsible for the enforcement of all Border and Immigrations Laws.
2. DHS-ICE tactical operations for civil enforcement of federal immigrations laws falls solely under the jurisdictional enforcement authority of the federal government. Therefore, the assistance of the Salem Police Department is not needed unless:
 - a. A response from the Department is requested on a temporary basis for **Officer Safety or Public Safety** purposes only and officers are not actively engaged in the enforcement efforts;
 - b. To assist in the apprehension of any individual who has an active **Criminal Warrant** that can be found in the Massachusetts Criminal Warrant (WMS) which remains in full force and effect at the time of the request;
 - c. To provide requested support, not participation, for DHS-ICE to affect the arrest of an individual with an **administrative warrant** and there is a request for Officer Safety or Public Safety reasons;
 - d. The Salem Police Department requests the assistance of DHS-ICE to address or take into custody and individual that is believed to be a **public safety threat**; or
 - e. Any other action so directed by law.