

Date: 7/29/2020

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SM

***SECOND PROPOSED REVISION OF PROVISIONS 1-3: EXPAND THE DRAFT TO INCLUDE A NEW PROVISION 4 SO THAT PROVISIONS 1-4 READ AS FOLLOWS:***

**Provision 1.**

No law enforcement agent or other agent or agency of the City of Lebanon, or any volunteer assisting the efforts of such agent or agency, shall profile, target, detain, or otherwise discriminate against any person because of age, sex, gender identity, race, creed, color, marital status, familial status, physical or mental disability, national origin, sexual orientation, ethnicity or culture, language or religion, or because of United States citizenship or immigration status.

**Provision 2.**

No agent or agency of the City of Lebanon shall request, collect or retain information about, or otherwise investigate or assist in the investigation of the U.S. citizenship or immigration status of any person in the City of Lebanon.

**Provision 3.**

No agent or agency of the City shall disclose information regarding the U.S. citizenship or immigration status of any person, unless 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 the individual's parent or guardian.

**Provision 4.**

Notwithstanding Provisions 1-3 above, agents of the City may question about, collect, retain, utilize and disclose otherwise-restricted information in the following circumstances, as long as that is done on an impartial basis and in a non-discriminatory manner:

- A. Where collection, retention, utilization or disclosure of the specific information is mandated in order to implement a municipal program, process or function, unrelated to the enforcement of federal immigration law, which is performed by the City, but whose rules and parameters are imposed by state or federal law or authority, including but not limited to federal and state laws governing employment and elections.
- B. Where collection, retention, utilization or disclosure of the specific information is required or procedurally necessary as part of an ongoing investigation of a violation of law including but not limited to a violation of this ordinance itself, or as part of litigation or a quasi-judicial

administrative proceeding unrelated to the enforcement of federal immigration law, or by statute or court order.

- c. Where the information is being collected or retained solely for purposes of evaluating and improving the performance of the Police Department or other City agency with respect to its compliance with the impartiality and non-discrimination requirements of Paragraph 1 above.

**[Re-number remaining provisions of the Ordinance.]**

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**COMMENTS AND EXPLANATIONS CONCERNING THE ABOVE DRAFT:**

- a) I tried hard in a prior (now discarded) draft to retain the structure of Diane Root's 6/25/2020 draft. But it just created too many problems to try to retain the restrictions on questioning, collecting and retaining information in Provision 1. The reason is, there are many non-discrimination categories where the law *does* prohibit discrimination, but where information *is* routinely collected (for example age, gender and marital status). Rather than create a mile-long list of exceptions, my impression and understanding is that goal of this ordinance is not to upend those established practices, but rather to focus on citizenship and immigration status information. Hence I have separated the issues of questioning, collecting and retaining that information into Provision #2 rather than Provision #1, so that the prohibitions on collecting and retaining do not apply to categories other than citizenship and immigration.
- b) In addition, I believe the best way to assure that the exceptions apply the same to all three sections is to separate the exceptions into a separate section, and I have proposed doing that.
- c) I have also taken the liberty of proposing minor edits in language and punctuation for the sake of grammar and clarity.
- d) For the list of categories in Provision #1, I have listed first those found in RSA 354-A (down through "sexual orientation") and then put in the additional categories in the voter-passed ordinance. I am proposing leaving out some of the categories Diane Root had added. For example:
  - o The word "color" has a meaning which is well established in case law – the expansion to "skin color" is in my view unnecessary and could even dilute that well-established legal meaning.
  - o Adding "political opinion" as a category raises too many question marks (for example what about a lawbreaker who tries to justify a crime on the basis of differing political opinion).

- o I have omitted “housing” and “economic status” because in many instances the City is **required** to discriminate based on those – for example local welfare benefits under RSA Ch. 165 are legally required to vary, depending on an applicant’s economic need, and whether and what type of housing s/he has at the time of the application.
- e) I have left out “informants” in Provision #1. I do not understand how this ordinance could be binding on “informants” from a practical standpoint. And arguably that word would limit the types of persons the Police Dept. could use as informants.
- f) I have changed “citizenship status” to “United States Citizenship status.” My understanding is that US citizenship is the category intended to be addressed by this ordinance. The reason for the clarification is that several sections of the Lebanon City Charter – including for example the “Citizens Binding Initiative” section – use the term “citizen” when what is actually meant is legally registered voters. The City Clerk has compiled a very extensive list of charter and code provisions using the term “citizen” in that type of way.
- g) One paragraph I am proposing from “whole cloth” is Provision 4A. There are many municipal functions for which citizenship information is required by state and federal law to be collected and used – employment and election laws being prime examples.

I hope this draft is helpful.

Sincerely,  
Bernie Waugh

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