

WELCOMING LEBANON ORDINANCE

FINAL - as of 10/21/20

Proposed Purpose/Intent

The people of Lebanon voted by Citizens' Initiative Ballot measure to enact the Welcoming Lebanon Ordinance. The purpose of this Ordinance is to establish the City's procedures concerning its residents' immigration status and its responsibilities and powers regarding federal civil immigration enforcement.

This Ordinance gives substance to the sentiments in the City of Lebanon's "Resolution for Inclusiveness" proclaimed by the City Council on June 20, 2018 and commits the City to preserve the public trust, affirm human rights and constitutional rights, and promote community identity, civic pride, and quality of life for all people regardless of race, skin color, national or ethnic origin, cultural group, language, gender identity or expression, sexual orientation, mental or physical ability, age, religious or political opinion or activity, economic status, immigration status, or housing status. The City of Lebanon commits to protecting civil liberties, promoting tolerance, and providing equal protection under the law to all persons in the city. Such protections strengthen trust and collaboration among community members in keeping all residents and visitors safe.

Furthermore, the City recognizes that a person's presence in the United States without documents is not a crime and that the City presently lacks the legal authority to enforce noncriminal civil violations of federal immigration law.

Due to the City's limited resources; the complexity of immigration laws; the clear need to foster the trust of and cooperation from the public, including members of the immigrant communities; and to effectuate the City's goals, we find that there is a need to articulate guidelines regarding the relationship between the City and the federal government and to clarify the federal Constitutional protections Lebanon has against federal agencies commandeering its resources.

Definitions

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

Administrative warrant. "Administrative warrant" means an immigration warrant issued by a federal agency charged with the enforcement of civil immigration laws, used as a non-criminal, civil warrant for immigration purposes.

Agency. "Agency" means every department, agency, division, commission, council, committee, board, or other body of the City of Lebanon established by authority of state law, the Lebanon City Charter, or an ordinance, executive order, or order of the Lebanon City Council.

Agent. "Agent" means any person employed by or acting on behalf of an Agency, whenever any such person is acting within the scope of that person's employment or agency capacity, or when

utilizing or disclosing any information that may be learned in the course of that person's employment or agency capacity. The term includes any volunteer acting on behalf of an Agency, as well as any person with access to Agency information which is not available to the general public.

Citizenship or immigration status. "Citizenship or immigration status" means all matters regarding questions of citizenship of the United States or any other country or of the authority to reside in or otherwise be present in the United States.

Federal immigration authorities. "Federal immigration authorities" means federal agencies, departments, or employees tasked with enforcement of immigration law and border entry, including without limitation, the Department of Homeland Security (DHS), Immigration Control and Enforcement (ICE), and U.S. Customs and Border Patrol (CBP).

Immigration detainer. "Immigration detainer" means an official request issued by ICE, or another federal agency charged with the enforcement of civil immigration laws concerning the custody or detention of any individual based on a violation of a civil immigration law.

"Physical or mental ability." The term "physical or mental ability" includes, but is not limited to, "disability" as defined in RSA 354-A:2, IV.

Provision 1

No law enforcement agent or other agent or agency of the City of Lebanon, shall profile, target, detain, or otherwise discriminate against any person because of any of the following, whether actual or perceived: age, sex, gender identity, race, creed, color, marital status, familial status, physical or mental ability, national origin, sexual orientation, ethnicity or culture, language or religion, economic or housing status, or citizenship or immigration status.

Provision 2

No person shall be questioned in a manner which is biased or discriminatory, as described in Provision 1, and no personal information may be collected, retained, utilized, or disclosed in any discriminatory manner or to any discriminatory purpose or effect by any agent or agency of the City.

Provision 3

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 United States citizenship or immigration status of any person in the City of Lebanon.

Provision 4

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 5

Notwithstanding Provisions 1-4 above, agents of the City may question about, collect, retain, utilize, and disclose information concerning the criteria listed in Provisions 1-4 in the following circumstances, as long as that is done on an impartial basis and in a non-discriminatory manner and as long as no agent of the City provides or requests any of this information from federal immigration authorities.

A. Where collection, retention, utilization, or disclosure of the specific information is mandated in order to implement a municipal program, process, or function which is performed by the City unrelated to the enforcement of federal immigration law, 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 by statute or court order, or where the specific information constitutes an essential evidentiary element in an ongoing investigation or prosecution of a violation of law unrelated to civil immigration law or citizenship status.

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 Provision 1 and 2 above.

D. Where relevant economic information is being collected, retained, or utilized in the course of administering a program of benefits based on financial need, including but not limited to general assistance under RSA Ch. 165.

Provision 6

No Agent or Agency shall condition the provision of City of Lebanon benefits, opportunities, or services on matters related to citizenship or immigration status unless required to do so by statute, federal regulation, or court decision. Where presentation of a New Hampshire driver's license or identification card is accepted as adequate evidence of identity, presentation of a photo identity document issued by the person's nation of origin, such as a driver's license, passport, or matricula consular (consulate-issued document), shall be accepted and shall not subject the person to a higher level of scrutiny or different treatment than if the person had provided a New Hampshire driver's license or identification card, except that this subsection shall not apply to the completion of the federally mandated 1-9 forms.

Provision 7

No Agent or Agency of the City of Lebanon, including Law Enforcement, shall aid or participate in immigration enforcement actions. An Agent or Agency is authorized to communicate with Federal immigration authorities in order to determine whether any matter involves enforcement based solely on a violation of a civil immigration law. No Agent or Agency shall:

A. arrest, detain, or continue to detain a person based solely on suspected or actual civil immigration violation.

B. arrest, detain, or continue to detain a person on an Administrative warrant or upon an Immigration detainer based solely on a violation of immigration law.

C. accept requests by Federal immigration authorities to support or assist in operations that are for civil immigration enforcement.

D. permit Federal immigration authority access to a person being detained by, or in the custody of, the Agent or Agency.

E. permit Federal immigration authorities use of agency facilities for investigative interviews or other investigative purpose.

F. respond to Federal immigration authorities' inquiries or share information about an individual with Federal immigration authorities. Such information includes but is not limited to the individual's custody status, release date/time, court dates, whereabouts, residence, employment, identification numbers, appearance, telephone number, and familial relations. For the purpose of aiding an individual who may qualify for a U, S, or T Visa, information may be shared if such disclosure has been authorized in writing by the individual to whom such information pertains. Nothing in this Section shall be construed as prohibiting participation in an inter-agency data bases such as the National Crime Information Center, so long as its utilization by City agents is not biased or discriminatory, and does not violate the prohibitions in Provisions 3 and 4 above.

Provision 8

In order to maintain public safety and the orderly processes for all persons traveling in and through the City of Lebanon, if the City Manager or someone acting on the City Manager's behalf learns of a delay or obstruction in the City of the normal flow of traffic including, for example, due to a Federal immigration authority checkpoint, the City Manager or someone acting on the City Manager's behalf shall make a reasonable effort to confirm that one exists and then cause the public to be promptly notified which may be done through the LebAlert system.

Section 9 - Implementation and Enforcement.

A. Failure by agents of the City to comply with the Welcoming Lebanon Ordinance shall be addressed under the terms of the City's policies.

B. Any person who believes that they have been subjected to a violation of this Ordinance by a City employee, or who otherwise has personal knowledge of such a violation, may submit a complaint in whatever form or manner the complainant chooses, to the employee or department involved, or to the City Manager, and may submit such a complaint anonymously. Reasonable efforts shall be made to accommodate any language or access barriers. Such complaints shall be handled in accord with applicable City complaints and investigations policies; provided, however, that at the discretion of the Manager, the complaint may be referred to the appropriate

law enforcement agency having jurisdiction, and any internal investigation may be delayed pending the outcome of the law enforcement agency's involvement.

C. Complaints alleging violations of this Ordinance by non-employee agents of the City, including appointed or elected officials, shall be filed with or forwarded to the City Manager, who may take such action as is appropriate in light of the nature of the complaint, including referral to the law enforcement agency having jurisdiction, and/or referral to the Council for such action as it deems justified.

D. This Ordinance shall not be construed to create any civil cause of action or any cause of action under the criminal code or to form any basis of liability on the part of the City or its agents. Nothing herein shall be deemed to pre-condition or restrict any person from pursuing a complaint in court or from seeking such alternative remedies as may be available under law.

Severability

If any provision, clause, section, part, or application of this chapter to any person or circumstance is declared invalid by any court of competent jurisdiction, such invalidity shall not affect, impair, or invalidate the remainder hereof or its application to any other person or circumstance. It is hereby declared that the legislative intent of the City Council that this Ordinance would have been adopted had such invalid provision, clause, section, part or application not been included herein.