

DRAFT
SALEM SANCTUARY FOR PEACE ORDINANCE

SECTION 1: Purpose and Intent

It is hereby affirmed that the City of Salem is a City and Sanctuary for Peace

The vitality of the City of Salem (the "City"), increasingly ethnically, racially and religiously diverse; has been built on the strength of its immigrant communities. The City Council finds that the cooperation of all persons, both documented citizens and those without documentation status, is essential to achieve the City's goals of protecting life and property, preventing crime and resolving problems.

The City Council further finds that assistance from a person, whether documented or not, who is a victim of, or a witness to, a crime is important to promoting the safety of all its residents. The cooperation of the City's immigrant communities is essential to prevent and solve crimes and maintain public order, safety and security in the entire City. One of the City's most important goals is to enhance the City's relationship with the immigrant communities.

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, the City Council finds that there is a need to clarify the communications and enforcement relationship between the City and the federal government. The purpose of this ordinance is to establish the City's procedures concerning immigration status and enforcement of federal civil immigration laws.

SECTION 2: Definitions

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

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

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

Agent. "Agent" means any person employed by or acting on behalf of an agency.

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

"ICE" means the United States Immigration and Customs Enforcement Agency and shall include any successor agency charged with the enforcement of federal civil immigration laws.

"Immigration detainer" means an official request issued by ICE, or other federal agency charged with the enforcement of civil immigration laws, to another federal, state or local law enforcement agency to detain an individual based on a violation of a civil immigration law.

SECTION 3: Use of City Funds Prohibited

No department, agency, commission, officer or employee of the City shall use any City funds or resources to assist in the enforcement of federal immigration law or to gather or disseminate information regarding the immigration status of individuals in the City unless such assistance is required by federal or State statute, regulation or court decision. The prohibition set forth in this Chapter shall include, but shall not be limited to:

(a) Assisting or cooperating, in one's official capacity, with any Immigration and Naturalization Service (INS) investigation, detention, or arrest procedures, public or clandestine, relating to alleged violations of the civil provisions of the federal immigration law.

(b) Assisting or cooperating, in one's official capacity, with any investigation, surveillance or gathering of information conducted by foreign governments, except for cooperation related to an alleged violation of City and County, State or federal criminal laws.

(c) Requesting information about, or disseminating information regarding, the immigration status of any individual, or conditioning the provision of services or benefits by the City upon immigration status, except as required by federal or State statute or regulation, City and County public assistance criteria, or court decision.

(d) Including on any application, questionnaire or interview form used in relation to benefits, services or

opportunities provided by the City question regarding immigration status other than those required by federal or State statute, regulation or court decision. Any such questions existing or being used by the City at the time this Chapter is adopted shall be deleted within sixty days of the adoption of this Chapter.

SECTION 4: Requesting Information Prohibited

No agent or agency shall request information about or otherwise investigate or assist in the investigation of the citizenship or immigration status of any person unless such inquiry or investigation is required by Massachusetts State Statute, federal regulation, or court decision. Notwithstanding this provision, the City Solicitor may investigate and inquire about immigration status when relevant to potential or actual litigation or an administrative proceeding in which the City is or may be a party.

SECTION 5: Conditioning benefits, services, or opportunities on immigrant status prohibited

No agent or agency shall condition the provision of City of Salem 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 Massachusetts 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 an Massachusetts driver's license or identification card.

SECTION 6: Civil Immigration Enforcement Actions – Federal Responsibility

Except for such reasonable time as is necessary to conduct the investigation specified in subsection (c) of this section, no agency or agent shall:

arrest, detain or continue to detain a person solely on the belief that the person is not present legally in the United States, or that the person has committed a civil immigration violation;

arrest, detain, or continue to detain a person based on an administrative warrant entered into the Federal Bureau of Investigation's National Crime Information Center database, or successor or similar database maintained by the United States, when the administrative warrant is based solely on a violation of a civil immigration law; or

detain, or continue to detain, a person based upon an immigration detainer, when such immigration detainer is based solely on a violation of a civil immigration law.

Unless an agency or agent is acting pursuant to a legitimate law enforcement purpose that is unrelated to the enforcement of a civil immigration law, no agency or agent shall:

permit ICE agents access to a person being detained by, or in the custody of, the agency or agent;

permit ICE agents use of agency facilities for investigative interviews or other investigative purpose; or

while on duty, expend their time responding to ICE inquiries or communicating with ICE regarding a person's custody status or release date.

An agency or agent is authorized to communicate with ICE in order to determine whether any matter involves enforcement based solely on a violation of a civil immigration law.

This section shall not apply when an investigation conducted by the agency or agent indicates that the subject of the investigation:

has an outstanding criminal warrant; has been convicted of a felony in any court of competent jurisdiction; is a defendant in a criminal case in any court of competent jurisdiction where a judgment has not been entered and a felony charge is pending; or has been identified as a known gang member either in a law enforcement agency's database or by his own admission.

SECTION 7: Chapter provisions applicable to persons convicted of certain crimes

Nothing in this Chapter shall prohibit, or be construed as prohibiting, a law enforcement officer from identifying and reporting any person pursuant to State or federal law or regulation who is in custody after being booked for the alleged commission of a felony and is suspected of violating the civil provisions of the immigration laws. In addition, nothing in this ordinance shall preclude any City department, agency,

commission, officer or employee from (a) reporting information to the ICE regarding an individual who has been booked at any City, county, or state jail facility, and who has previously been convicted of a felony committed in violation of the laws of the Commonwealth of Massachusetts, which is still considered a felony under state law; (b) cooperating with an ICE request for information regarding an individual who has been convicted of a felony committed in violation of the laws of the Commonwealth of Massachusetts, which is still considered a felony under state law; or (c) reporting information as required by federal or state statute, regulation or court decision, regarding an individual who has been convicted of a felony committed in violation of the laws of the Commonwealth of Massachusetts, which is still considered a felony under state law. For purposes of this Section, an individual has been "convicted" of a felony when: (a) there has been a conviction by a court of competent jurisdiction; and (b) all direct appeal rights have been exhausted or waived; or (c) the appeal period has lapsed.

However, no officer, employee or law enforcement agency of the City shall stop, question, arrest or detain any individual solely because of the individual's national origin or immigration status. In addition, in deciding whether to report an individual to the ICE under the circumstances described in this Section, an officer, employee or law enforcement agency of the City shall not discriminate among individuals on the basis of their ability to speak English or perceived or actual national origin.

This Section shall not apply in cases where an individual is arrested and/or convicted for failing to obey a lawful order of a police officer during a public assembly or for failing to disperse after a police officer has declared an assembly to be unlawful and has ordered dispersal.

Nothing herein shall be construed or implemented so as to discourage any person, regardless of immigration status, from reporting criminal activity to law enforcement agencies.

SECTION 8: No Private Cause of Action

This chapter does not create or form the basis for liability on the part of the City, its agents, or agencies. The exclusive remedy for violation of this chapter shall be through the City's disciplinary procedures for officers and employees under regulations including but not limited to this City personnel rules, union contracts, civil service commission rules, or any other agency rules and/or regulations. A person alleging a violation of this chapter shall forward a complaint to the City Solicitor who shall process it in accordance with the City complaint-processing procedures, except that if the complaint is against any member of the City Council or any employee or staff person of any City Council committee, the City Solicitor shall promptly transmit said complaint to the chairman of the City Council Ordinance, Licenses and Legal Affairs or Government Services Subcommittees (whichever relevant) for processing or such successor committee having jurisdiction over said matters and if the complaint is against any member of the Salem Police Department, the City Solicitor shall transmit it to the Salem Police Department for processing.

SECTION 9: Exchanging File Information

All applications, questionnaires, and interview forms used in relation to City of Salem benefits, opportunities, or services shall be promptly reviewed by the pertinent agencies and any questions regarding citizenship or immigration status, other than those required by statute, ordinance, federal regulation or court decision, shall be deleted within 60 days of the passage of this ordinance.

SECTION 10: City undertaking limited only to promotion of general welfare

In undertaking the adoption and enforcement of this ordinance, the City is assuming an undertaking only to promote the general welfare. This ordinance is not intended to create any new rights for breach of which the City is liable in money damages to any person who claims that such breach proximately caused injury. This section shall not be construed to limit or proscribe any other existing rights or remedies possessed by such person.

SECTION 11: 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 chapter would have been adopted had such invalid provision, clause, section, part or application not been included herein.

