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REQUEST FOR LEGISLATION

DATE: January 10, 2017

FROM: John M. Barr, Ypsilanti City Attorney

SUBJECT: Solicitation of Immigration Information Ordinance

SUMMARY/BACKGROUND

The attached proposed ordinance to regulate and restrict the solicitation of immigration information is modeled on a similar ordinance in the City of Detroit. It is a companion ordinance to the additions to the anti-discrimination ordinance that Council recently approved. The proposed ordinance prohibits solicitation of immigration information unless it is required by law.

RECOMMENDED ACTION:

DATE RECEIVED: \_\_\_\_\_ AGENDA ITEM NO.

CITY MANAGER COMMENTS:

FOR AGENDA OF: \_\_\_\_\_ FINANCE DIR. APPROVAL

COUNCIL ACTION TAKEN:



RESOLUTION NO. 2017-016  
January 24, 2017

**RESOLUTION TO ADOPT AN ORDINANCE TO ADD A NEW ARTICLE V.  
TO CHAPTER 58 OF THE YPSILANTI CITY CODE, SOLICITATION OF IMMIGRANT  
STATUS**

**IT IS RESOLVED BY THE COUNCIL OF THE CITY OF YPSILANTI that:**

An ordinance titled an ordinance to add a new Article V. to Chapter 58 of the Ypsilanti City Code, Solicitation of Immigrant Status is hereby adopted, on first reading.

OFFERED BY: \_\_\_\_\_

SUPPORTED BY: \_\_\_\_\_

YES:            NO:            ABSENT:            VOTE:



**CITY OF YPSILANTI  
NOTICE OF ADOPTED ORDINANCE  
Ordinance No. 1281**

An ordinance to add a new Article V. to Chapter 58 of the Ypsilanti City Code, Solicitation of Immigrant Status

1. **THE CITY OF YPSILANTI HEREBY ORDAINS** That **the** Ypsilanti City Code is hereby amended by adding Article V. Solicitation of Immigration Status, to Chapter 58 Human Relations, to read as follows:

Chapter 58 HUMAN RELATIONS

ARTICLE V. SOLICITATION OF IMMIGRATION STATUS

Sec.58-200- Statement of purpose.

It is the policy of the City of Ypsilanti 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; to prevent bias-based policing; and to promote acceptance. In order to permit members of immigrant communities to access services that are provided by the City of Ypsilanti 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 Ypsilanti enacts this article 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 Ypsilanti community.

Sec.58-201- Definitions

- (a) *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 Ypsilanti City Charter or by this Code, and any appointee, any employee, or any individual who provides services to the City of Ypsilanti within or outside of its offices or facilities pursuant to a personal services contract

Sec.58-203. - Bias-based policing by public servants, who are police officers, on the basis of appearance, ethnicity, immigration status, manner of dress, national origin, physical characteristics, race, religious beliefs, sexual orientation, or gender identity or expression prohibited;

A public servant, who is a police officer, shall not exercise differential treatment of individuals in rendering police services based on a person's appearance, ethnicity, immigration status, manner of dress, national origin, physical characteristics, race, religious beliefs, or sexual orientation, or gender identity or expression. A public servant, who is a police officer, shall not base reasonable suspicion for an investigative detention, probable cause for an arrest, or any other police action, on a person's appearance, ethnicity, immigration status, manner of dress, national origin, physical characteristics, race, religious beliefs, sexual orientation, or gender identity or expression. A public servant, who is a police officer, may take into account the reported appearance, ethnicity, immigration status, manner of dress, national origin, physical characteristics, race, religious beliefs, sexual orientation, or gender identity or expression for the purpose of identifying a described individual.

Sec. 58-204. - Solicitation of immigration status by public servants, prohibited; exceptions.

(a) Prohibited

A public servant, while acting within the scope of public service employment and/or authority shall not:

- (1) solicit information concerning immigration status for the purpose of ascertaining a person's compliance with federal immigration law; or
- (2) 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
- (3) inquire into the immigration status of any person, or engage in activities for the purpose of ascertaining the immigration status of any person.

(b) 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:

(1)

Solicitation of information concerning immigration status when performing public safety functions while assisting federal law enforcement in the investigation of a criminal or civil offense; or

(2)

Solicitation of information concerning immigration status from the subject of an investigation only when relevant to the investigation or prosecution of a criminal offense, or when processing an arrested person; or

(3)

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

(4)

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

(5)

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.

Sec.58-205. - Violations and penalties.

Where a public servant is alleged to have violated this article, the matter shall be referred, as appropriate, to the city council or to the department director or agency head, for review, investigation, and disposition. Any disciplinary action shall be carried out in accordance with the provisions of the Ypsilanti City Charter and other laws, city personnel rules, civil service rules, union contracts, or other departmental or agency rules and regulations.

The City Manager shall provide an annual report to City Council of all violation complaints of this ordinance and their disposition.

**2. 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.

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

**4. Savings Clause.** The balance of the Code of Ordinances, City of Ypsilanti, 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.

**5. 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, [www.cityofypsilanti.com](http://www.cityofypsilanti.com).

**6. 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. This Ordinance shall become effective after publication at the expiration of 30 days after adoption.

MADE, PASSED AND ADOPTED BY THE YPSILANTI CITY COUNCIL THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2017.

\_\_\_\_\_  
Andrew Hellenga, Interim City Clerk

Attest

I do hereby confirm that the above Ordinance No. \_\_\_\_ was published in The Washtenaw Legal News on the \_\_\_\_\_ day of \_\_\_\_\_, 2017.

\_\_\_\_\_  
Andrew Hellenga, Interim City Clerk

CERTIFICATE OF ADOPTING

I hereby certify that the foregoing is a true copy of the Ordinance passed at the regular meeting of the City Council held on the \_\_\_\_\_ day of \_\_\_\_\_, 2017.

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Andrew Hellenga, Interim City Clerk

Notice Published: \_\_\_\_\_

First Reading: \_\_\_\_\_

Second Reading: \_\_\_\_\_

Published: \_\_\_\_\_

Effective Date: \_\_\_\_\_