

**Denver Sanctuary Ordinance of 2017**

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**DEFINITIONS**

As used herein:

- “Administrative warrant” means a non-criminal, civil warrant that is created by an administrative agency of the United States.
- “The City” means the City and County of Denver, Colorado.
- “City funds,” and expenditure thereof, includes all use of City resources, including but not limited to any use of money, personnel, or equipment, such as telephones, telephone lines or facsimiles, the use of computers or other information technologies and the use of other property, whether real, tangible, personal, intellectual (including but not limited to all information gained by city officials in the course of discharging their duties), or otherwise.
- “Civil arrest” means an arrest or detention based on a non-criminal violation of law, and includes all arrests or detentions not supported by either (1) a criminal warrant issued by a judge or other neutral magistrate, or (2) information that would support a criminal arrest without a warrant.
- “Community member” means a resident of the City or a person physically present in the City.
- “DHS” means the United States Department of Homeland Security.
- “Federal immigration enforcement” includes any and all efforts to investigate or enforce (including but not limited to efforts to arrest, interview, search, or conduct surveillance), or assist in the investigation or enforcement of any federal civil immigration law, and also includes any and all efforts to investigate, enforce, or assist in the investigation or enforcement of any federal criminal immigration law that penalizes a person's presence in, entry, or reentry to, or employment in, the United States including, but not limited to, violations of 8 U.S.Code §§ 1253, 1324c, 1325, or 1326.
- “ICE” means United States Immigration and Customs Enforcement.
- “ICE hold” or “Immigration detainer” means a detainer issued pursuant to 8 CFR § 287.7, including but not limited to detainers issued on DHS form I-247, I-247N, I-247D, I-247X, requesting either (1) the detention of a prisoner beyond the time he or she would otherwise be entitled to release; or (2) notification to DHS or ICE of the release or release date of a prisoner.
- “Noncitizens” means persons who are not United States citizens.
- “Protected group” means a group guaranteed equal protection or otherwise protected under the City’s ordinances, federal or state law, or this ordinance, and specifically includes but is not limited to older adults; racial, ethnic, and religious minorities; women; people who are lesbian, gay, bisexual, transgender, or queer; people with disabilities; and noncitizens.
- “Protected personal characteristic” means a personal characteristic on the basis of which persons are protected from discrimination or otherwise protected under the City’s ordinances, federal or state law, or this ordinance, on the basis of, and specifically includes

but is not limited to race, color, religion, national origin, gender, age, sexual orientation, gender variance, marital status, military status, physical or mental disability, and immigration or citizenship status.

- “Sensitive event” means an event held on City property that is a religious or secular service or ceremony (such as a wedding or funeral), an event held for any of the purposes to which a sensitive location is dedicated (such as a high school graduation), or an event which all or a substantial group of community members are entitled to attend (including but not limited to marches, rallies, demonstrations, or parades)
- “Sensitive information” means information that may be considered sensitive and personal by its nature, and includes but is not limited to information pertaining to a community member’s: (1) status as a member or perceived member of a protected group; (2) information related to such group membership; (3) protected personal characteristics; or (4) information related to such personal characteristics.
- “Sensitive location” means City property used as a school (including but not limited to a daycare; pre-school; primary, secondary, or post-secondary school (up to and including a college or university), and all educational institutions as defined in Code § 28-92) or other institution of learning such as a vocational or trade school; medical facility (including but not limited to health care facilities as defined in Code § 38-114, needle exchange and drug treatment facilities, and all facilities for the physical and mental health of community members); criminal justice facility (including but not limited to a courthouse, probation office, pretrial services office, public defender’s office, police department, jail, or juvenile detention or other detention facility); library; public benefits office; or place of public accommodation as defined in Code § 28-92.
- “Valid City purpose” means a purpose reasonably related to a legitimate governmental interest of the City, such as the public health, safety, or welfare of its community members.

## PURPOSES

The purposes of this Ordinance are:

- To establish Denver as a sanctuary City that offers, to the greatest extent possible, a safe place for all community members. A sanctuary City protects and promotes the rule of law and the principles of equality and nondiscrimination, and affirms the value of all community members to the City. A sanctuary City is a welcoming, inclusive, and compassionate City. A welcoming City eliminates barriers to entry into the community, and does not seek to expel members of the community. An inclusive City allows all community members to participate equally in the City’s economic, cultural, political, and social life, and does not seek to exclude community members from City life unless there is a compelling reason for doing so. A compassionate City promotes equality by assisting community members as needed for them to participate equally in City life;
- To protect and promote the rule of law by ensuring to all community members the rights guaranteed them by international law and by the laws and constitutions of the United States and the State of Colorado, and to provide additional rights under the Charter of the City of Denver to the extent expressed herein;

- To ensure the City is a place where all community members can enjoy their rights and liberties freely and without fear;
- To guarantee the equal treatment of all community members, and the equal provision of City services to all community members;
- To foster respect and trust between community members and City officials, to enhance cooperation and collaboration between community members and City officials;
- To ensure the political accountability of City officials, by ensuring that City officials act in furtherance of City policies developed to promote the health, safety, and well-being of all community members, by City officials elected by community members, rather than in furtherance of State or federal policies developed by officials not elected by community members; and
- To protect limited City funds and ensure that City funds are expended in the pursuit of City policies that promote the health, safety, and well-being of all community members.

### FINDINGS

The City Council makes the following findings:

WHEREAS, Denver is a City ready to turn challenges into opportunities for a brighter future, ready to jumpstart our economy, and ready to take our rightful place as one of the premier cities in the United States and around the globe;

WHEREAS, over 110,000 immigrants and refugees call Denver home, constituting 14.7% of the population and paying over \$200 million dollars in state and local taxes in 2014, and over 140 languages are spoken in our schools;

WHEREAS, over 29,000 undocumented young people are recipients of the Deferred Action for Childhood Arrivals (DACA) program in Colorado, and they deserve an opportunity to have a bright future and to contribute their time and talent to make Denver a city of innovation and growth;

WHEREAS, Denver recognizes that Denver is a city that welcomes our refugee and immigrant communities and protects their constitutional and lawful rights; and

WHEREAS, the level of anti-immigrant and xenophobic rhetoric during the 2016 presidential campaign as well as the Trump administration's recent Executive Orders 13767, 13768, 13769, and 13780 regarding immigration enforcement have caused fear, confusion, and concern in our communities; and

WHEREAS, City employees serve all residents and make city services accessible to all, and City agencies and law enforcement cannot withhold services based on ancestry, race, ethnicity, national origin, color, age, sex, sexual orientation, gender identity, marital status, physical or mental disability, immigration status or religion; and

WHEREAS, entanglement with immigration enforcement produces discrimination across multiple axes, including actual or perceived race, color, religion, ethnicity, and nation of origin,

that violates the public policy of the City of Denver and offends principles of equal protection under international law, the United States and Colorado constitutions, Title VI of the Civil Rights Act of 1964, 42 U.S. Code § 2000d *et seq.*, and other legal authorities;

WHEREAS, equal protection and nondiscrimination on the basis of race, color, religion, ethnicity, and national origin cannot and will not be attained where discrimination on the basis of immigration status is permitted;

WHEREAS, entangling local law enforcement with federal immigration enforcement harms community policing efforts and erodes community trust, because noncitizen residents who are victims of crime, witnesses to crime, or suspected of crime are less likely to cooperate with local law enforcement when contact with local law enforcement can result in deportation;

WHEREAS, courthouses serve as a vital forum for ensuring access to justice and protecting public safety, and are the main point of contact for the most vulnerable in times of anxiety, stress, and crises in their lives, including crime victims, victims of sexual abuse and domestic violence, witnesses to crimes who are aiding law enforcement, limited-English speakers, unrepresented litigants, and children and families, all should feel free to come to our courts seeking justice and due process of law without fear of arrest from federal immigration enforcement agents;

WHEREAS, City property is dedicated to be used for valid City purposes. To the extent City property is open to the public, it is in order to serve those valid City purposes to which the property is dedicated;

WHEREAS, there is no legal authority under which the federal government may compel an expenditure of state or local law enforcement agency resources to participate in immigration enforcement;

WHEREAS, in 2012, Denver spent up to \$1.5 million per year to arrest and detain suspected undocumented immigrants (roughly the same amount of general fund money allocated to the Denver District Attorney's Office for the Family Violence Unit, which screens and prosecutes cases of family violence ranging from spousal or intimate partner abuse to elder abuse and child sexual assault—a public safety service that provides an on-call staff that responds to child fatalities 24-hours a day, seven days a week) and people with a suspected immigration violation stayed in the county jail an average of 22 days longer than people without an ICE hold;

WHEREAS, federal court decisions clearly establish (1) that the federal government cannot compel local law enforcement officials to perform tasks for the federal government; (2) that the federal government cannot compel local law enforcement officials to detain prisoners for the federal government; and (3) that that prolonging the detention of a prisoner who would otherwise be entitled to release amounts to a new arrest, and local law enforcement officials must have legal authority for the new arrest sufficient to satisfy the Fourth Amendment;

WHEREAS, Federal court decisions also establish that immigration detainers have regularly exceeded even federal immigration officers' warrantless arrest authority, when

immigration officials issue a detainer without an administrative warrant or a particularized finding that the subject of the detainer is likely to escape before a warrant can be obtained;

WHEREAS, federal court decisions also establish that the word “detainer” as used in the Immigration and Nationality Act means a request for notification of a prisoner’s release, and does not mean a request or command for local officials to prolong the detention of a prisoner otherwise entitled to release;

WHEREAS, even if an immigration detainer is accompanied by an administrative warrant, there is no basis for local officials to prolong the detention of a prisoner on that basis, because the administrative warrant is not issued by a neutral magistrate, and because the United States Supreme Court, analyzing federal immigration law, has concluded that administrative warrants “are executed by federal officers who have received training in the enforcement of immigration law”;

WHEREAS, each layer of government – federal, state, and local – provides a portion of the fabric of our society that preserves law and order and protects the rights and freedoms of the people. The separation of powers and checks and balances at the various levels and branches of government ensure the harmonious existence of the rule of law;

WHEREAS, immigration enforcement policies that include stalking courthouses and arresting undocumented immigrants, the vast majority of whom pose no risk to public safety, are neither safe nor fair;

WHEREAS, Denver benefits tremendously from the large number of diverse immigrants and refugees who contribute to the development of a culturally and economically diverse and enriched community;

WHEREAS, fostering a relationship of trust, respect, and open communication between City employees and community members is essential to the City’s core mission of serving the needs of, and ensuring the public health, safety, and welfare, of all community members; and

WHEREAS, the City of Denver hereby enacts this policy to become a sanctuary City to all its residents and to continue building a City of inclusion and participation by all;

THE CITY NOW TAKES THE FOLLOWING ACTIONS:

## **ACTIONS**

### **I. CLARIFYING THAT NONCITIZENS ARE COMMUNITY MEMBERS ENTITLED TO EQUAL PROTECTION AND PROTECTION FROM DISCRIMINATION.**

- “Noncitizens” is added to the classes of people guaranteed equal protection of the law under the City’s ordinances, and the City Attorney is directed to draft appropriate amendments to the City ordinances to include “noncitizens” where reference is made to older adults;

racial, ethnic, and religious minorities; women; people who are lesbian, gay, bisexual, transgender, or queer; or people with disabilities.

- “Immigration or citizenship status” is added to the list of personal characteristics on the basis of which persons should not be subject to discrimination under the City’s ordinances, and the City Attorney is directed to draft appropriate amendments to the City ordinances to include “immigration or citizenship status” where reference is made to race, color, religion, national origin, gender, age, sexual orientation, gender variance, marital status, military status, or physical or mental disability.
- In order to guarantee equal protection of the law to noncitizens and to eliminate discrimination on the basis of immigration or citizenship status, the City Attorney is directed to draft appropriate amendments to the City ordinances to replace instances of the word “citizen” with the words “community member.”

### **Implementation.**

The City Attorney, within ninety (90) days following the effective date of this section, is directed to draft appropriate conforming amendments to the City ordinances as described above.

## **II. DISENTANGLING THE CITY FROM FEDERAL IMMIGRATION ENFORCEMENT.**

No City funds shall be used for federal immigration enforcement.

### **Examples of prohibited activities.**

No City funds shall be expended to respond to or comply with any request from federal immigration officials to detain a person or maintain custody of a person beyond the time when the person would otherwise have been released, unless the City is provided: (1) a criminal warrant issued by a judge or other neutral magistrate, or (2) information that would support a criminal arrest without a warrant.

Except where required by law, or where City law enforcement officials have a legitimate law enforcement purpose that is not related to federal immigration enforcement, no city funds shall be expended to: (1) allow federal immigration agents access to individuals or the use of city facilities or resources for investigative interviews or other federal immigration enforcement purposes; (2) provide any detainee, inmate, or booking lists to federal immigration officials; or (3) respond to inquiries or communicate with federal immigration officials regarding any person’s incarceration status or release date.

The City and its officials and employees shall not participate in agreements of any type, whether formal or informal, to partner with or serve the function of federal immigration officials, including but not limited to to agreements pursuant to 8 U.S.C. § 1357(g), joint task forces, cross-designation pursuant to Title 19 of the United States Code, and intergovernmental service agreements.

**Implementation.**

The City Attorney, within 90 days following the effective date of this section, and after consulting with the appropriate stakeholders, shall prepare model policies for disentangling City agencies from immigration enforcement. All City agencies must, within the 90 days following the City Attorney's issuance of model policies, review their policies and identify any changes necessary to ensure compliance. Any necessary changes to those policies must be made as expeditiously as possible, consistent with agency or department procedures.

**III. GUARANTEEING FULL AND EQUAL ACCESS TO PUBLIC CITY PROPERTY FOR THE PURPOSES TO WHICH SUCH CITY PROPERTY IS DEDICATED.**

Except where otherwise required by law, civil arrests and federal immigration enforcement shall not be permitted at sensitive locations, or at sensitive events, or in circumstances where civil arrests or federal immigration enforcement would interfere with the valid City purposes to which the City property is either permanently or temporarily dedicated.

**Exceptions.**

The following exceptions to the foregoing are to be construed narrowly.

Because public safety is a paramount concern of the City, civil arrest or federal immigration enforcement is permitted when:

- (1) the enforcement action is necessary because it involves a national security or terrorism matter;
- (2) the enforcement action is necessary to avoid an imminent and substantial risk of death or serious bodily injury as defined in Code § 34-61;
- (3) the enforcement action is necessary to avoid an imminent risk of destruction of evidence material to an ongoing criminal case.

Further, civil arrest or federal immigration enforcement is permitted when approved in advance by a City official with authority to administer the City property in question, if the City official determines that there is no possibility the enforcement action would interfere with the valid City purposes to which the City property is either permanently or temporarily dedicated.

**Implementation.**

The City Attorney, within 90 days following the effective date of this section, and after consulting with the appropriate stakeholders, shall (as part of the implementation plan set forth in Section II above) prepare model policies concerning access to City properties so that community members' ability to avail themselves of City services and exercise their rights with respect to access to City properties and services is not impaired, obstructed, or chilled by the fear of civil arrest or federal immigration enforcement. All City agencies must, within the 90 days following the City Attorney's issuance of model policies, review their policies and identify any changes necessary to ensure compliance. Any necessary changes to those policies must be made as expeditiously as possible, consistent with agency or department procedures.

**IV. GUARANTEEING EQUALITY OF COMMUNITY MEMBERS THROUGH BIAS-FREE PROVISION OF CITY SERVICES AND BY PROTECTING SENSITIVE INFORMATION.**

Except as provided herein, or where required by law, City funds shall not be expended to investigate, conduct surveillance, discover, request, register, maintain, or disclose sensitive information pertaining to any community member, or to detain, intern, or take action based upon sensitive information pertaining to any community member.

**Exceptions.** The following exceptions to the foregoing are to be construed narrowly. City personnel may investigate, discover, request, maintain, or disclose sensitive information pertaining to any community member, or take action based on sensitive information pertaining to any community member, if necessary to provide a City service, or if consent is provided by the community member (or the community member's parent or legal guardian, if the community member is a minor). City personnel shall not seek such consent except in the furtherance of activities consistent with City policy. Law enforcement personnel may investigate, discover, request, maintain, or disclose sensitive information pertaining to any community member, or take action based on sensitive information pertaining to any community member, if necessary to a criminal investigation.

**Implementation.** All City agencies must, within the ninety (90) days following the effective date of this section, review their confidentiality policies and identify any changes necessary to ensure compliance. Any necessary changes to those policies must be made as expeditiously as possible, consistent with agency or department procedures. These policies must make clear that public employees may not condition services or request information or proof regarding a person's sensitive information, except as required by law or authorized herein. The policies must also ensure that public services are available to, and public employees must serve, all City residents without regard to a community member's: (1) status as a member or perceived member of a protected group; or (2) protected personal characteristics.

**V. PROHIBITING THE CITY FROM PARTNERING WITH AGENCIES OR ENTITIES THAT DO NOT COMPLY WITH THE PROVISIONS OF THIS ORDINANCE.**

- It is against public policy for the City to enter into any contract that allows or requires any contracting party to engage in activities prohibited by this ordinance. This includes, but is not limited to, agreements pursuant to 8 U.S.C. § 1357(g), joint task forces, cross-designation under Title 19 of the United States Code, and intergovernmental service agreements. Contracts for the provision of property or services shall not allow such property or services to be used in federal immigration enforcement, just as City property and City employees' time may not be used in federal immigration enforcement.
- It is against public policy for the City to partner, whether formally or informally, with entities or individuals who engage in activities prohibited by this ordinance. The City shall not enter into mutual aid agreements or partnerships with other cities or entities that engage



in activities prohibited by this ordinance. The City shall not distribute City funds in a way that allows City funds to be expended in violation of this ordinance.

**Implementation.**

Within ninety (90) days following the effective date of this ordinance, the City Attorney shall review those contracts to which the City is a party, and shall take such action as is necessary to end the City's participation in such contracts as would violate this section.

**VI. PROVIDING SUPPORT FOR ALL COMMUNITY MEMBERS.**

To fully effectuate the policies pursued by this ordinance, the City will pursue the following initiatives:

1. The Office of Immigrant and Refugee Affairs (OIRA) will oversee the creation and administration of a Noncitizen Legal Defense Project to assist noncitizen community members and their families. The Noncitizen Legal Defense Project will be funded with \$\_\_\_\_,000,000 annually. OIRA will, in consultation with stakeholders, administer the Noncitizen Legal Defense Project by contracting with organizations to provide legal representation to community members in immigration removal proceedings.
2. To further establish Denver as an inclusive City, and to reduce the impact of code enforcement, which has historically fallen on community members who are members of protected groups, or who have protected personal characteristics:
  - (a) Denver Ordinance § 1-13(a) is amended to provide, where no definite fine or penalty is provided for an ordinance violation, that any person who shall be convicted of a violation of any such section shall, for each offense, be fined in a sum not more than nine hundred ninety-nine dollars (\$999.00) or imprisoned not to exceed one hundred eighty (180) days, or both so fined and imprisoned.
  - (b) The City Attorney shall, within the ninety (90) days following the effective date of this section, conduct a review of the Denver Code of Ordinances in consultation with stakeholders and shall, to the maximum extent possible while preserving public safety, recommend revisions to the Code that will:
    - de-criminalize code violations;
    - reduce incarceration and monetary punishment of community members, by assigning maximum penalties for code violations by grouping them according to severity, with the maximum fine and imprisonment for each class designated as follows:
      - Class A - \$999.00 or three hundred sixty (360) days
      - Class B - \$500.00 or one hundred eighty (180) days
      - Class C - \$250.00 or ninety (90) days
      - Class D - \$150.00 or sixty (60) days

- Class E - \$100.00 or thirty (30) days
  - Class F - \$100.00 and no imprisonment
  - Class G - \$50.00 and no imprisonment
  - Class H - \$25.00 and no imprisonment
- Reduce the number of code violations that authorize arrest and recommend revisions to Denver Ordinance § 42-19 and § 42-20 to implement that reduction;
  - Reduce incarceration of community members by establishing orderly procedures for community members to clear warrants without arrest or incarceration;
  - Reduce cost and inconvenience to community members by establishing orderly procedures for community members to resolve ordinance violations without appearing in court;
3. The City Attorney shall, in consultation with the Mayor and other stakeholders, where possible to advance the policies pursued by this ordinance, and to the maximum extent authorized by law, engage in legal or policy advocacy, for example by joining amicus briefs, partnering with other welcoming or inclusive cities or communities, or pursuing litigation.
  4. City law enforcement officials shall, in consultation with the City Attorney, where possible to advance the policies pursued by this ordinance, and to the maximum extent authorized by law, assist community members consistent with the policies pursued by this ordinance, for example by issuing the law enforcement certification necessary to obtain a U-visa.

### **CONSTRUCTION**

The provisions of this ordinance are to be construed where possible to be consistent with and in compliance with Federal and State law. But where federal and state law do not provide City community members with sufficient protection to justify the measures adopted here, it is the City's policy to provide, to the extent permitted by law, more protection for its community members, such as would justify the measures adopted here.

The provisions of this ordinance are severable and if one or more provisions of this ordinance are found to be in violation of law, it is the City's policy that the remaining provisions of this ordinance would remain in force.

### **EFFECTIVE DATE**

This ordinance is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

### **CITATION**

This ordinance may be cited as the "Denver Sanctuary Ordinance of 2017."