

BY AUTHORITY

ORDINANCE NO. _____
SERIES OF 2017

COUNCIL BILL NO. 17-0940
COMMITTEE OF REFERENCE:
Safety, Housing, Education & Homelessness

A BILL

For an ordinance adopting a new Article VIII in Chapter 28 of the Denver Revised Municipal Code, to be known as the Public Safety Enforcement Priorities Act.

WHEREAS, on November 21, 2016, the Denver City Council unanimously passed Council Proclamation 16-1184 “Standing Together with Denver Moving Forward”, declaring ourselves as a city welcoming and inclusive of all people and committing to "evaluate our systems of government with an inclusive lens and to foster and ensure equity, social justice, and freedom from fear of persecution based on race, religious belief, country of origin, sexual orientation, gender, physical ability, or age”; and

WHEREAS, CP 16-1184 declares "that we must respect this diversity and assure that the human rights of our citizens are protected,” and that the City remains firmly committed to the delivery of services to all of its residents”; and

WHEREAS, the City and County of Denver recognizes and upholds the Fourth Amendment of the United States Constitution, guaranteeing the right of all persons to due process and protection against unreasonable searches and seizures, and will not honor U.S. Immigration and Customs Enforcement (ICE) detainer requests, or jail holds without probable cause, or a judicial warrant; and

WHEREAS, the City and County of Denver recognizes and upholds the Tenth Amendment of the United States Constitution, and the right of states and local governments to be free from mandates or financial obligation to perform the duties of the federal government, or to be threatened or coerced to do so by withholding federal funding; and

WHEREAS, the City and County of Denver since its founding, has been, and continues to be a city of immigrants whose calloused hands and culture of dedication and pride continue to

1 build a great city with one of the nation’s strongest economies and lowest unemployment rates;
2 and

3
4 WHEREAS, today nearly one in seven Denver residents is foreign born, with an estimated
5 55,000 undocumented immigrants who proudly call Denver their home and live and work
6 peacefully as our neighbors, colleagues and friends; and

7
8 WHEREAS, Denver is healthier when all residents, including undocumented immigrants,
9 access public health and human service programs; and

10
11 WHEREAS, Denver is economically and socially stronger when all children, including
12 undocumented immigrants, attend school; and

13
14 WHEREAS, Denver is safer when all people, including undocumented immigrants, feel safe
15 reporting crime or themselves as victims of a crime, participate and assist local law enforcement in
16 identifying and preventing crime without fear of deportation and Denver has experienced a
17 concerning drop of 13% in the rate of Latinos reporting crimes compared to 2016, while reporting
18 by non-Latinos has been on the rise; and

19
20 WHEREAS, our courts serve as a vital forum for ensuring access to justice and are the
21 main points of contact for the most vulnerable in times of crises, including crime victims, victims of
22 sexual abuse and domestic violence, witnesses to crimes who are aiding law enforcement, limited-
23 English speakers, unrepresented litigants, and children and families, who seek justice and due
24 process of law without fear of arrest from federal immigration enforcement agents; and

25
26 WHEREAS, it is a common and well-established policy of Denver’s agencies, employees
27 and officers, not to conduct the work of federal immigration enforcement, with limited exceptions
28 where already required by state or federal law and in the interest of national security; and

29
30 WHEREAS, the Council of the City and County of Denver values the hard work and
31 dedication of the men and women of the Denver Police, Sheriff, and Fire Departments in keeping
32 our city safe by establishing a standard of community trust and collaboration which shall not be
33 eroded; and

34

1 WHEREAS, the adoption of this Public Safety Enforcement Priorities Act is necessary to
2 further the preservation of the peace, health and safety of the City and County of Denver; and

3
4 WHEREAS, in the interest of increased public safety, one purpose of this ordinance is to
5 ensure that members of the public and officers and employees of the city clearly understand
6 Denver's policies in regard to limited cooperation with federal immigration enforcement, prioritizing
7 public safety and cooperation over fear and uncertainty.

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9
10 **NOW, THEREFORE, BE IT ENACTED BY THE COUNCIL OF THE CITY AND COUNTY OF**
11 **DENVER:**

12
13 **Section 1.** That Chapter 28 D.R.M.C. concerning Human Rights shall be amended by a new
14 Article VIII, to read as follows:

15
16 **Article VIII**

17
18 **PUBLIC SAFETY ENFORCEMENT PRIORITIES ACT**

19
20 **Sec. 28-250. Use of city funds and resources limited; exceptions.**

21
22 (a) Except as specifically authorized in this Article VIII, no department, agency, board,
23 commission, officer or employee of the city, including without limitation, Denver
24 County Court administrative and clerical employees, probation, pre-trial services and
25 community corrections, shall use any city funds or resources to assist in the
26 enforcement of federal immigration laws. The prohibition set forth in this section
27 shall include but not be limited to:

28
29 (1) Assisting or cooperating in one's official capacity with any investigation,
30 detention, or arrest procedures relating to alleged violations of the civil provisions of
31 federal immigration laws.

32
33 (2) Requesting information about the national origin, immigration or
34 citizenship status of any individual or engaging in activities designed to ascertain

1 such information, except to the extent required by any federal, state or city law or
2 regulation, or any international treaty to which the United States is a party.

3
4 (3) Including on the application for any city services or benefits any question
5 regarding national origin, immigration or citizenship status of the applicant, or
6 conditioning the provision of city services or benefits upon the national origin,
7 immigration or citizenship status of any individual, except to the extent required by
8 any federal, state or city law or regulation.

9
10 (4) Disseminating information about the national origin, immigration or
11 citizenship status of any individual except to the extent required by any federal, state
12 or city law or regulation, including by way of example 8 U.S.C. §1373 and 8 U.S.C.
13 §1644, or any international treaty to which the United States is a party.

14
15 (5) Initiating any law enforcement contact solely for purposes of determining
16 the person's national origin, immigration or citizenship status, or arresting or
17 detaining any individual solely on the basis of the individual's immigration or
18 citizenship status.

19
20 (b) Nothing in subsection (a) of this section shall preclude any city officer or employee
21 from cooperating or assisting federal immigration enforcement authorities in the
22 execution of a warrant issued by a federal judge or magistrate or honoring any writ
23 issued by any state or federal judge concerning the transfer of a prisoner to or from
24 federal custody. The time and resources expended by any city law enforcement
25 officer investigating and determining whether an immigration-related warrant listed in
26 any crime information database is judicial or administrative in nature shall not be
27 considered a violation of subsection (a) of this section.

28
29 (c) City law enforcement officers may respond to calls for assistance from federal
30 immigration enforcement authorities to the extent necessary to keep the peace,
31 protect public safety, or enforce any applicable state and city criminal laws beyond
32 the scope of effectuating an immigration arrest. Nothing in subsection (a) of this
33 section shall preclude city law enforcement officers from participating in coordinated
34 law enforcement actions with federal law enforcement agencies, as long as the

1 primary purpose of the coordinated action is the enforcement of city, state or federal
2 criminal laws.

3
4 (d) Nothing in subsection (a) of this section or in section 28-251 shall restrict the
5 authority of the city to enter into agreements concerning the transport of persons who
6 are already in federal custody through Denver International Airport, to the extent
7 such agreements are deemed necessary to ensure that city officials are made aware
8 whenever federal prisoners are being transported through the airport by federal
9 immigration authorities, and to make space available to federal immigration officials
10 for the safe and secure transport of such prisoners within the airport.

11
12 **Sec. 28-251. City contracts related to enforcement of federal immigration laws**
13 **prohibited.**

14
15 The city shall not enter into any contractual agreement that would commit or
16 require any city officer or employee to directly or indirectly assist in the enforcement
17 of federal immigration laws, including by example any agreement authorized by 8
18 U.S.C. §1357(g) (commonly known as “287(g) Agreements”) or any
19 intergovernmental services agreement entered into with the U.S. Department of
20 Homeland Security under the authority of 8 U.S.C. § 1103(a)(11)(B). The city shall
21 not enter into any contractual agreement requiring the collection or dissemination of
22 individually identifiable information about the national origin, immigration or
23 citizenship status of any person, over and above the extent to which the city is
24 required to collect or disseminate such information in accordance with any federal,
25 state or city law or regulation.

26
27 **Sec. 28-252. Limitations on access to secure areas of city and county jails and**
28 **related facilities.**

29
30 (a) Unless federal immigration authorities present a warrant issued by a federal
31 judge or magistrate, federal immigration authorities shall not be granted access or
32 allowed to use the secure areas of any city or county jail or other city-owned law
33 enforcement facility for the purpose of conducting investigative interviews or any

1 other purpose related to the enforcement of federal immigration laws. For
2 purposes of this section the term “secure area” means any area of the facility that
3 is not generally open and accessible to the general public, but instead requires
4 special permission for admittance by a city officer or employee on an individual
5 basis.

6
7 (b) Nothing in subsection (a) of this section or in section 28-250 shall prevent city
8 law enforcement officials from coordinating telephone or video interviews
9 between federal immigration authorities and individuals incarcerated in any city or
10 county jail to the same extent as telephone or video contact with such individuals
11 is allowed by the general public; provided, however, that no such interview shall
12 be allowed until the individual has been advised of certain legal rights in writing in
13 the individual’s language of choice, including but not limited to:

- 14 (1) The interview is being sought by federal immigration authorities;
- 15 (2) The individual has the right to decline the interview and remain
16 silent;
- 17 (3) The individual has the right to speak to an attorney before
18 submitting to the interview; and
- 19 (4) Anything the individual says may be used against him or her in
20 subsequent proceedings, including in a federal immigration court.
21

22
23 **Sec. 28-253. Civil immigration detainees and requests for voluntary notification.**

24
25 (a) *Purpose.* The purpose of this section is to address requests for non-mandatory civil
26 immigration detainees, voluntary notification for release of individuals from custody, transmission of
27 personal information, and other civil immigration documents based solely on alleged violations of
28 the civil provisions of federal immigration laws. Nothing in this section shall be construed to apply
29 to the authority of city law enforcement officers to investigate or enforce any criminal law.
30

31 (b) *Definitions.*

- 32 (1) “*Eligible for release from custody*” means that the individual may be released
33 from custody because one of the following conditions has occurred:
34

- a. All criminal charges against the individual have been dropped or dismissed.
- b. The individual has been acquitted of all criminal charges filed against him or her.
- c. The individual has served all the time required for his or her sentence.
- d. The individual has posted a bond or has been released on his or her own recognizance.
- e. The individual has been referred to pre-trial division services.
- f. The individual is otherwise eligible for release under state or city law.

(2) “*Civil immigration detainer*” means a non-mandatory request issued by federal immigration enforcement authorities under Section 287.7 of Title 8 of the Code of Federal Regulations, to city law enforcement officers to maintain custody of an individual for a period not to exceed 48 hours, including by way of example any such request appearing on an I-247A form or any similar form promulgated by federal immigration enforcement authorities.

(3) “*Notification request*” means a non-mandatory written request issued by federal immigration enforcement authorities to a city law enforcement officer asking for notification to the federal immigration enforcement authorities of an individual’s release from city custody prior to such release, including by way of example any such request appearing on an I-247A form or any similar form promulgated by federal immigration enforcement authorities.

(4) “*Personal information*” means any confidential, identifying information about an individual, including but not limited to home or work contact information, and family or emergency contact information; but not including any information about the national origin, immigration or citizenship status of the individual if known to a city law enforcement officer.

(c) *Detainers and other civil enforcement actions.* A city law enforcement officer shall not detain an individual solely on the basis of a civil immigration detainer. City law enforcement officers shall not arrest or detain an individual, or provide any individual’s personal information to federal immigration enforcement authorities on the basis of an

1 administrative warrant regardless of whether or not the administrative warrant is
2 accompanied by a final order of removal or deportation, any prior deportation order, or any
3 other civil immigration document based solely on alleged violations of the civil provisions of
4 federal immigration laws. Nothing in subsection (c) of this section shall preclude any city
5 officer or employee from cooperating or assisting federal immigration enforcement
6 authorities in the execution of a warrant issued by a federal judge or magistrate.

7
8 (d) *Notification requests.* Notwithstanding the restrictions set forth in section 28-250,
9 the Denver Sheriff Department may respond to a notification request and provide such
10 notifications to the extent the department is reasonably capable of doing so. In no event
11 shall a notification request be deemed to create any obligation on the part of the
12 department to detain the inmate who is the subject of the notification request beyond the
13 date and time the inmate is eligible for release from custody, unless the request is
14 accompanied by a warrant issued by a federal judge or magistrate. Upon receipt of any
15 notification request, the Denver Sheriff Department shall as promptly as practicable advise
16 the inmate who is the subject of the notification request that federal immigration
17 enforcement authorities have requested information concerning the date and time when the
18 inmate will be released. The advisement to the inmate shall be given in writing in the
19 inmate's language of choice, shall be accompanied by a copy of the notification request,
20 and shall also advise the inmate that he or she enjoys certain legal rights if contacted by
21 federal immigration enforcement authorities while in custody or after having been released
22 from custody, including but not limited to:

- 23
24 (1) The individual has the right to refuse to speak to federal immigration
25 enforcement authorities and remain silent;
26 (2) The individual has the right to speak to an attorney before speaking to federal
27 immigration enforcement authorities; and
28 (3) Anything the individual says may be used against him or her in subsequent
29 proceedings, including in a federal immigration court.

30
31 If the Denver Sheriff Department does give notice of an inmate's release to federal
32 immigration authorities pursuant to a notification request, the written advisement of rights to
33 the inmate shall be provided to the inmate again when the inmate is released.

1
2 (e) *Records related to notification requests.* In accordance with the city's record
3 retention policy, the Denver Sheriff Department shall maintain a record of all notification
4 requests received by the department, which shall include the following information for
5 each individual notification request:

6
7 (1) Date and time the notification request was received.

8
9 (2) Whether the department responded to the notification request, and if so, the date
10 and time upon which the response was given.

11
12 (3) The charges for which the inmate who was the subject of the notification request
13 was being held by the city prior to being released from custody.

14
15 (4) Whether the inmate who was the subject of the notification request was detained or
16 arrested by federal immigration authorities after being released from city custody, if
17 such information is made known to the department.

18
19 (f) *Reporting of notification request records.* The Denver Sheriff Department shall
20 prepare a report concerning notification requests and distribute the report quarterly to
21 both the City Council and the Mayor beginning on October 1, 2017. The report shall
22 contain a year-to-date summary of the total number of notifications received by the
23 department, along with the information for each notification request set forth in
24 subsection (e) of this section.

25
26 **Section 2.** This ordinance shall be effective as of October 13, 2017, except for the
27 requirements related to reporting of notification requests set forth in subsection 28-253 (f), which
28 shall be effective October 1, 2017.

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1 COMMITTEE APPROVAL DATE: N/A.

2 MAYOR-COUNCIL DATE: N/A

3 PASSED BY THE COUNCIL _____

4 _____ - PRESIDENT

5 APPROVED: _____ - MAYOR _____

6 ATTEST: _____ - CLERK AND RECORDER,
7 EX-OFFICIO CLERK OF THE
8 CITY AND COUNTY OF DENVER
9

10 NOTICE PUBLISHED IN THE DAILY JOURNAL _____ ; _____

11

12 PREPARED BY: David W. Broadwell, Asst. City Attorney DATE: August 17, 2017

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14 Pursuant to section 13-12, D.R.M.C., this proposed ordinance has been reviewed by the office of the
15 City Attorney. We find no irregularity as to form, and have no legal objection to the proposed
16 ordinance. The proposed ordinance **is not** submitted to the City Council for approval pursuant to §
17 3.2.6 of the Charter.
18

19 Kristin M. Bronson, Denver City Attorney

20 BY: _____, Assistant City Attorney DATE: _____