

1 BY AUTHORITY

2 ORDINANCE NO. _____
3 SERIES OF 2017

COUNCIL BILL NO. 17-0857
COMMITTEE OF REFERENCE:

4
5 A BILL
6

7 For an ordinance adopting a new Article VIII in Chapter 28 of the Denver Revised
8 Municipal Code, to be known as the Public Safety Enforcements Priorities Act
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10 WHEREAS, on November 21, 2016, the Denver City Council unanimously passed Council
11 Proclamation 16-1184 "Standing Together with Denver Moving Forward", declaring ourselves as a
12 city welcoming and inclusive of all people and committing to "evaluate our systems of government
13 with an inclusive lens and to foster and ensure equity, social justice, and freedom from fear of
14 persecution based on race, religious belief, country of origin, sexual orientation, gender, physical
15 ability, or age"; and
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17 WHEREAS, CP 16-1184 declares "that we must respect this diversity and assure that the
18 human rights of our citizens are protected," and that the City remains firmly committed to the
19 delivery of services to all of its residents"; and
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21 WHEREAS, the City and County of Denver recognizes and upholds the Fourth Amendment
22 of the United States Constitution, guaranteeing the right of all persons to due process and
23 protection against unreasonable searches and seizures, and will not honor U.S. Immigration and
24 Customs Enforcement (ICE) detainer requests, or jail holds without probable cause, or a judicial
25 warrant; and
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27 WHEREAS, the City and County of Denver recognizes and upholds the Tenth Amendment
28 of the United States Constitution, and the right of states and local governments to be free from
29 mandates or financial obligation to perform the duties of the federal government, or to be
30 threatened or coerced to do so by withholding federal funding; and
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32 WHEREAS, the City and County of Denver since its founding, has been, and continues to
33 be a city of immigrants whose calloused hands and culture of dedication and pride continue to build
34 a great city with one of the nation's strongest economies and lowest unemployment rates; and

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

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

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

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

WHEREAS, our courts serve as a vital forum for ensuring access to justice and are the main points of contact for the most vulnerable in times crises, 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, who seek justice and due process of law without fear of arrest from federal immigration enforcement agents; and

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

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

67 WHEREAS, the adoption of this Public Safety Enforcement Priorities Act is necessary to
68 further the preservation of the peace, health and safety of the City and County of Denver; and
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70 WHEREAS, in the interest of increased public safety, one purpose of this ordinance is to
71 ensure that members of the public and officers and employees of the city clearly understand
72 Denver's policies in regard to limited cooperation with federal immigration enforcement, prioritizing
73 public safety and cooperation over fear and uncertainty.
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76 **NOW, THEREFORE, BE IT ENACTED BY THE COUNCIL OF THE CITY AND COUNTY OF**
77 **DENVER:**

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79 **Section 1.** That Chapter 28 D.R.M.C. concerning Human Rights shall be amended by a
80 new Article VIII, to read as follows:
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83

83 **Article VIII**

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85 **Public Safety Enforcement Priorities Act**

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87 **Sec. 28-250. Use of City Funds and Resources limited; exceptions.**

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89 (a) Except as specifically authorized in this Article VIII, no department, agency, board,
90 commission, officer or employee of the city shall use any city funds or resources to
91 assist in the enforcement of federal immigration laws. The prohibition set forth in this
92 section shall include but not be limited to:
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94 (1) Assisting or cooperating in one's official capacity with any investigation,
95 detention, or arrest procedures relating to alleged violations of the civil provisions of
96 federal immigration laws.
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98 (2) Requesting information about the national origin, immigration or citizenship
99 status of any individual or engaging in activities designed to ascertain such

information, except to the extent required by any federal, state or city law or regulation, any international treaty to which the United States is a party, or as a condition of any contract entered into prior to the effective date of this ordinance concerning the receipt of any federal grant or reimbursement, including by way of example the State Criminal Alien Assistance Program (SCAAP).

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

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

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

(b) Nothing in subsection (a) of this section shall preclude any city officer or employee from cooperating or assisting federal immigration enforcement authorities in the execution of a warrant issued by a federal judge or magistrate or honoring any writ issued by any state or federal judge concerning the transfer of a prisoner to or from federal custody.

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

primary purpose of the coordinated action is enforcement of city, state or federal criminal law.

- (d) Nothing in this subsection (a) of this section or in section 28-215 shall restrict the authority of the city to enter into agreements concerning the transport of persons who are already in federal custody through Denver International Airport, to the extent such agreements are deemed necessary to ensure that city officials are made aware whenever federal prisoners are being transported through the airport by federal immigration authorities, and to make space available to federal immigration officials for the safe and secure transport of such prisoners within the airport.

Sec. 28-251. City contracts related to enforcement of federal immigration laws prohibited.

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

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

- (a) Unless federal immigration authorities present a warrant issued by a federal judge or magistrate, federal immigration authorities shall not be granted access or allowed to use the secure areas of any city or county jail or other city-owned law

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

(b) Nothing in subsection (a) or this section or in section 28-250 shall prevent city law enforcement officials from coordinating telephone or video interviews between federal immigration authorities and individuals incarcerated in any city or county jail to the same extent as telephone or video contact with such individuals is allowed by the general public; provided, however, that no such interview shall be allowed until the individual has been advised in writing in the individual’s language of choice that:

- (1) The interview is being sought by federal immigration authorities;
- (2) The individual has the right to decline the interview and remain silent;
- (3) The individual has the right to speak to an attorney before submitting to the interview; and
- (4) Anything the individual says may be used against him or her in a federal immigration court.

Sec. 28-253. Civil immigration detainers and requests for voluntary notification.

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

(b) Definitions.

- 197 (1) “*Eligible for release from custody*” means that the individual may be released from
198 custody because one of the following conditions has occurred:
199 a. All criminal charges against the individual have been dropped or dismissed.

- 1 b. The individual has been acquitted of all criminal charges filed against him
2 or her.
3 c. The individual has served all the time required for his or her sentence. 4
d. The individual has posted a bond or has been released on his or
5 her own
6 recognizance.
7 e. The individual has been referred to pre-trial division services.
8 f. The individual is otherwise eligible for release under state or city law.

9 (2) "*Civil immigration detainer*" means a non-mandatory request issued by
10 federal
11 immigration enforcement authorities under Section 287.7 of Title 8 of the Code
12 of Federal Regulations, to city law enforcement officers to maintain custody of
13 an individual for a period not to exceed 48 hours, including by way of example
14 any such request appearing on an I-247a form or any similar form 14
15 promulgated by federal immigration enforcement authorities.

16 (3) "*Convicted*" means having been proven guilty in a criminal proceeding, unless 17
18 the conviction has been expunged or vacated pursuant to applicable law.

19 (4) "*Notification request*" means a non-mandatory written request issued by
20 federal
21 immigration enforcement authorities to a city law enforcement officer asking
22 for notification to the federal immigration enforcement authorities of an
23 individual's release from city custody prior to such release, including by way of
24 example any such request appearing on an I-247a form or any similar form 24
25 promulgated by federal immigration enforcement authorities.

26 (5) "*Personal information*" means any confidential, identifying information about an 27
individual, including but not limited to home or work contact information, and

28 family or emergency contact information; but not including any information 29 about the
national origin, immigration or citizenship status of the individual if 30 known to a city law
enforcement officer.

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32 (c) *Detainers and other civil enforcement actions.* A city law enforcement officer 33
shall not detain an individual solely on the basis of a civil immigration detainer. City law

34 enforcement officers shall not arrest or detain an individual, or provide any individual's

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

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9 (d) *Requests for notification.* Notwithstanding the restrictions set forth in section
10 18250, city law enforcement officers may respond to a notification request and provide such
11 notification to the extent the city officers are reasonably capable of doing so, but only when
12 federal immigration officials present a warrant issued by a federal judge or magistrate for
13 the arrest of the individual for whom release notification is sought, or:

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15 (1) upon request by an official from the Homeland Security Investigations Division of the
16 United States Department of Homeland Security; or

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18 (2) when a federal immigration official provides public record documentation of any
19 applicable convictions that the individual has been convicted of an offense of which an
20 element was active participation in a criminal street gang, as defined in 18 U.S.C. §
21 521(a); or

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23 (3) when a federal immigration official provides public record documentation of any
24 applicable convictions that the individual has, within the prior seven years, been
25 released from incarceration after having been convicted of an offense classified as a
26 felony involving a crime of violence as defined in section 16-1104 (8.5), C.R.S. or a
27 comparable offense from another jurisdiction.

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29 COMMITTEE APPROVAL DATE: _____, 2017.

30 MAYOR-COUNCIL DATE: _____, 2017.

31 PASSED BY THE COUNCIL _____ 2017

32 _____ - PRESIDENT
33 APPROVED: _____ - MAYOR _____ 2017
34 ATTEST: _____ - CLERK AND RECORDER,
35 EX-OFFICIO CLERK OF THE
36 CITY AND COUNTY OF DENVER
37

38 NOTICE PUBLISHED IN THE DAILY JOURNAL _____ 2017; _____ 2017

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40 PREPARED BY: David W. Broadwell, Asst. City Attorney; DATE: _____
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42 Pursuant to section 13-12, D.R.M.C., this proposed ordinance has been reviewed by the office of
43 the City Attorney. We find no irregularity as to form, and have no legal objection to the proposed
44 ordinance. The proposed ordinance **is not** submitted to the City Council for approval pursuant to §
45 3.2.6 of the Charter.
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47 Kristin M. Bronson
48 City Attorney
49 BY: _____, _____ City Attorney
50 DATE: _____