

ORDINANCE NO: \_\_\_\_\_

“KEEP BELLINGHAM FAMILIES WORKING ACT”

*Whereas the policy of Bellingham is that all people are valued, have an inherent interest in liberty, and should be afforded dignity and respect, regardless of status including identity information such as race, gender, sexual orientation, religion, immigration, national or ethnic origin.*

*Whereas the City of Bellingham has a History of Anti-Discrimination Resolutions.*

*Whereas...History of Welcoming Resolution in \_\_\_\_\_: “membership in the Welcoming Cities and Counties Initiative, which encourages communities to create more welcoming, immigrant-friendly environments that maximize opportunities for economic growth and cultural vitality.*

*WHEREAS, Washington's population grew by forty thousand (40,000) unauthorized residents between 2009 and 2014, making our state one of just six in the country with a growing unauthorized population; and*

*WHEREAS, Washington is the nation's eighth largest refugee-receiving state; and*

*WHEREAS, an estimated one hundred thousand (100,000) Muslim residents are proud to call Washington their home and live peacefully as our neighbors, colleagues and friends; and*

*WHEREAS, more than twenty-eight thousand (28,000) unauthorized youth in Washington received temporary status through the Deferred Action for Childhood Arrivals (DACA) program/ and they deserve an opportunity to have a bright future and to contribute their time and talent to make Bellingham a city of innovation and growth;*

CHAPTER 1:

A. CITY OF SANCTUARY/ REFUGE AND FREE FROM HATE:

It is hereby affirmed that the City of Bellingham is a City of Refuge and Free from Hate.

B. USE OF CITY FUNDS PROHIBITED.

No department, agency, commission, officer, contractor, or employee of the City of Bellingham 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 of Bellingham 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:

- 1) Assisting or cooperating, in one's official capacity, with any Immigration Customs Enforcement (ICE) investigation or federal immigrations officials, detention, or arrest procedures, public or clandestine, relating to alleged violations of the civil provisions of the federal immigration law.
- 2) 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, County or State criminal laws.

- 3) Requesting information about, or disseminating information regarding, the immigration status of any individual, or conditioning the provision of services or benefits by the City of Bellingham upon immigration status, except as required by State statute or regulation, or court decision.
- 4) Including any application, questionnaire or interview form used in relation to benefits, services or opportunities provided by the City of Bellingham any question regarding immigration status other than those required by 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 thirty days of the adoption of this Chapter.

C. The city by declaring itself to be a city of refuge and city free from hate, directs the mayor and city council to establish policies and procedures to:

- 1) Assure that public services are available to all residents and that public employees will serve all residents, without regard to the immigration or identity status of the person;
- 2) Require that in providing public services that a public employee may not request information or proof regarding a person's immigration or identity status;
- 3) Forbid registration of individuals based on immigration or identity characteristics or status, or religion;
- 4) Prohibit law enforcement officers, law enforcement staff, corrections officers, peace officers, and any other person or representative authorized to exercise or delegated to exercise peace officer duties, from stopping or arresting a person based on the person's immigration or identity status as provided herein;
- 5) Direct public employees to refuse any request from a federal agency that requires the identification of a person's immigration or identity status, leaving that determination to federal authorities;
- 6) Refuse any requests that are related to detaining, investigating, reporting, or arresting any person in regard to federal immigration or identity policy enforcement actions, leaving such actions to federal authorities;
- 7) Prohibit agreements to undertake or participate in, or otherwise carry out federal enforcement actions regarding any person and their federal immigration or identity status, leaving such actions to be carried out by federal authorities;
- 8) Deny access to other states and agencies in other states who are seeking to determine the immigration or identity status of any person within the state of Washington; and
- 9) Refuse federal authorities access to all state and local public facilities, including schools, libraries, hospitals, and courthouses, where the federal authority is directly or indirectly engaging in immigration enforcement.

CHAPTER 2: PROVISIONS INAPPLICABLE 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. In addition, nothing in this Chapter shall preclude any city and county department, agency, commission, officer or employee from 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 State of Washington, 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 of Bellingham and County of Whatcom shall stop, question, arrest or detain any individual to any degree because of the individual's actual or perceived national origin or immigration or citizenship status, race, color, ethnicity, religion, sex, gender identity or expression or language including pretextual stops, rather than any law enforcement action that relies on a specific suspect description-based notification, an individual's behavior or other trustworthy information or circumstances, relevant to the locality and timeframe, that links a person or persons to suspected unlawful activity. In addition, in deciding whether to report an individual to federal officials under the circumstances described in this Section, an officer, employee or law enforcement agency of the City of Bellingham and County of Whatcom shall not discriminate among individuals on the basis of their ability to speak English or perceived, religion or actual national origin.

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.

#### CHAPTER 3: CLERK OF BOARD TO TRANSMIT COPIES OF THIS CHAPTER; INFORMING CITY EMPLOYEES.

The Clerk of the Board of Supervisors shall send copies of this Chapter, including any future amendments thereto that may be made, to every department, agency and commission of the City of Bellingham and County of Whatcom, the Washington Transit Authority, the Bellingham Police Department, the Whatcom County Sheriff's Department, Washington State's Senators, and the Washington State Congressional delegation, the Commissioner of the ICE, the United States Attorney General, and the Secretary of State and the President of the United States. Each appointing officer of the City of Bellingham and County of Whatcom shall inform all employees under her or his jurisdiction of the prohibitions in this ordinance, the duty of all of her or his employees to comply with the prohibitions in this ordinance, and that employees who fail to comply with the prohibitions of the ordinance shall be subject to appropriate disciplinary action. Each city and county employee shall be given a written directive with Instructions for implementing the provisions of this Chapter.

#### CHAPTER 4: CITY UNDERTAKING LIMITED TO PROMOTION OF GENERAL WELFARE.

In undertaking the adoption and enforcement of this Chapter, the city is assuming an undertaking only to promote the general welfare. This section shall not be construed to limit or proscribe any other existing rights or remedies possessed by such person.

## CHAPTER 5: DEFERRED ACTION FOR CHILDHOOD ARRIVALS

No city official, employee, staff, agency, department or contractor will share information or identification about current people with Deferred Action for Childhood Arrivals (DACA) status or applicants eligible for DACA will not be shared with federal officials. Any order from the federal government to cancel, deny or restrict DACA status or approval will not be acted upon by the city. This is in the interests of protecting all the people of Bellingham, healthy operation of the whole city, schools, and employment of people.

## CHAPTER 6: RESTRICTIONS ON LAW ENFORCEMENT OFFICIALS.

- A. Except as provided in Subsection B, a law enforcement official shall not detain an individual on the basis of a civil immigration detainer after that individual becomes eligible for release from custody.
- B. Law enforcement officials may continue to detain an individual in response to a civil immigration detainer for up to 48 hours after that individual becomes eligible for release if the continued detention is consistent with state law, and the individual meets both of the following criteria:

- (1) The individual has been convicted of a violent felony in the seven years immediately prior to the date of the civil immigration detainer; and
- (2) A magistrate has determined that there is probable cause to believe the individual is guilty of a violent felony and has ordered the individual to answer to the same.

In determining whether to continue to detain an individual based solely on a civil immigration detainer as permitted in this subsection B, law enforcement officials shall consider evidence of the individual's rehabilitation and evaluate whether the individual poses a public safety risk. Evidence of rehabilitation or other mitigating factors to consider includes, but is not limited to the individual's ties to the community, whether the individual has been a victim of any crime, the individual's contribution to the community, and the individual's participation in social service or rehabilitation programs.

- C. Law enforcement officials may respond to a federal immigration officer's notification request if the individual meets both of the following criteria:
  - (1) The individual either:
    - (a) has been convicted of a violent felony in the seven years immediately prior to the date of the notification request; or
    - (b) has been convicted of a serious felony in the five years immediately prior to the date of the notification request; or
    - (c) has been convicted of three felonies, other than domestic violence, arising out of three separate incidents in the five years immediately prior to the date of the notification request; and

(2) A magistrate has determined that there is probable cause to believe the individual is guilty of a felony, other than domestic violence, and has ordered the individual to answer to the same.

In determining whether to respond to a notification request as permitted by this Subsection C, law enforcement officials shall consider evidence of the individual's rehabilitation and evaluate whether the individual poses a public safety risk. Evidence of rehabilitation or other mitigating factors to consider includes, but is not limited to, the individual's ties to the community, whether the individual has been a victim of any crime, the individual's contribution to the community, and the individual's participation in social service or rehabilitation programs.

D. Law enforcement officials shall not arrest or detain an individual, or provide any individual's personal information to a federal immigration officer, on the basis of an administrative warrant, prior deportation order, or other civil immigration document based solely on alleged violations of the civil provisions of immigration laws.

E. Law enforcement officials shall make good faith efforts to seek federal reimbursement for all costs incurred in continuing to detain an individual, after that individual becomes eligible for release, in response to each civil immigration detainer.

F. The intent of this Chapter is to address requests for non-mandatory civil immigration detainees, voluntary notification of release of individuals, transmission of personal information, and civil immigration documents based solely on alleged violations of the civil provisions of immigration laws. Nothing in this Chapter shall be construed to apply to matters other than those relating to federal civil immigration detainees, notification of release of individuals, transmission of personal information, or civil immigration documents, based solely on alleged violations of the civil provisions of immigration laws. In other respects, local law enforcement agencies may continue to collaborate with federal authorities to protect public safety. This collaboration includes, but is not limited to, participation in joint criminal investigations that are permitted under local policy or applicable city or state law.

## CHAPTER 7: SEMI ANNUAL REPORTING.

By no later than July 1, 2017, the police chief shall provide to the Board of Supervisors and the mayor a written report stating the number of detentions that were solely based on civil immigration detainees during the first six months following the effective date of this Chapter, and detailing the rationale behind each of those civil immigration detainees. Thereafter, the police chief shall submit a written report to the Board of Supervisors and the mayor, by January 1st and July 1st of each year, addressing the following issues for the time period covered by the report:

- A. A description of all communications received from the federal agency charged with enforcement of the federal immigration law, including but not limited to the number of civil immigration detainees, notification requests, or other types of communications, and
- B. A description of any communications the police department made to the federal agency charged with enforcement of the federal immigration law, including but not limited to any department's responses to inquiries as described in Chapter 6, Sections B and C, and the department's determination of the applicability of Sections B and C.

NEW CHAPTER. 8. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the City of Bellingham and its existing municipal institutions, and takes effect immediately.

NEW CHAPTER. 9. So far the following policy of the Bellingham Police Department violates this Ordinance \_\_\_\_\_, it is repealed:

**Bellingham Police Department Policy 417. Immigration Violations.** Any other laws, regulations, policies, or procedures which violate or conflicts the Act shall be repealed, terminated, or immediately ended upon the passing of the Act.

CHAPTER 10. SEVERABILITY. If for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Section. The Board of Supervisors hereby declares that it would have passed this section and each and every section, subsection, sentence, clause, phrase, and word not declared invalid or unconstitutional without regard to whether any other portion of this section would be subsequently declared invalid or unconstitutional.

#### CHAPTER 11: CIVILIAN OVERSIGHT BOARD.

A civilian oversight board will be formed in order to review and enforcement the requirements of this Act by the time the Act is made effective. Five persons will be on this board. The mayor, Latino Advocacy, the Whatcom Peace and Justice Center, Community to Community, and Northwest Youth Services may each appoint one person to serve on the board. A civilian oversight board is a crucial component to give legitimacy and transparency to this Act and its enforcement.

#### CHAPTER 12: ENFORCEMENT.

- A. The Human Rights Commission and a civilian oversight board, when it exists shall review the compliance of the municipal departments, agencies, commissions and employees with the mandates of this ordinance in particular instances in which there is question of noncompliance or when a complaint alleging noncompliance has been lodged. The Human Rights Commission and civilian oversight board shall have subpoena power in order to enforce this ordinance.
- B. An individual may enforce this section in a civil action for any and all of the following remedies; compensatory and punitive damages, injunctive and declaratory relief; and other such relief as a court deems appropriate. An individual may seek this action with or without submission or a complaint as described in Section A. above.
- C. In an action brought under this section, relief may be obtained against;
  - 1) Any government body of the City of Bellingham that violated any of the provisions herein and;

- 2) Any law enforcement officer or employee of the City of Bellingham that violated any of the provisions herein and;
  - 3) Any person with supervisory authority over such law enforcement officer or city employee that violated any of the provisions herein.
- D. In any action or proceeding to enforce this section against any governmental body, the court may allow a prevailing plaintiff reasonable attorney's fees as part of the costs, and may include expert fees as part of the attorney's fees.