Department: City Attorney's Office  
Staff Contact: Maria Garcia, Assistant City Attorney

Recommendations

Receive an update from staff on progress related to drafting a document codifying City policies and practices concerning immigrants, and direct staff as appropriate.

Executive Summary

At the November 12, 2019 City Commission Work Session, the City Commission considered public comment and presentations by staff related to City policies concerning immigrants. At the conclusion of the presentations, the consensus of the City Commission was for staff to continue working on draft policies and to ensure that those policies follow the rule of law. There was also interest in staff continuing to review recommendations made by Sanctuary Alliance and providing a final recommendation on which proposals to incorporate into City policies.

Staff has continued to meet with representatives from the Sanctuary Alliance and the overarching City document incorporates many of the Sanctuary Alliance’s suggestions. Ordinance 9736 is attached and reflects the overarching City policies.

Representatives from the Lawrence Police Department have also participated in the meetings with Sanctuary Alliance and have made several amendments to the Department’s draft policy in response to recommendations made during those meetings. A staff memo and draft Lawrence Police Department policy is attached.

After receiving input from the City Commission at the February 11, 2020 work session, staff anticipates returning Ordinance 9736 for a formal vote at a later date.

Strategic Plan Critical Success Factor

Safe, Healthy, and Welcoming Neighborhoods
Collaborative Solutions

Fiscal Impact

There is no fiscal impact to the City at this time.

Action Requested

Receive an update from staff on progress related to drafting a document codifying City policies and practices concerning immigrants, and direct staff as appropriate.
Previous Agenda Reports:

- November 12, 2019 Work Session No. 1
- October 8, 2019 Work Session No. 1

Attachments

- Draft Ordinance 9736
- Police Department Staff Memo and Draft Policy
ORDINANCE NO. 9736

AN ORDINANCE OF THE CITY OF LAWRENCE, KANSAS, ENACTING CHAPTER 1, ARTICLE 10 OF THE CODE OF THE CITY OF LAWRENCE, KANSAS, 2018 EDITION, AND AMENDMENTS THERETO, PERTAINING TO CITY SERVICES.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF LAWRENCE, KANSAS:

SECTION 1: The Code of the City of Lawrence, Kansas, 2018 Edition, and amendments thereto, is hereby amended by adding Chapter 1, Article 10, which reads as follows:

ARTICLE 10: CITY SERVICES

1-1001 FINDINGS OF THE GOVERNING BODY.

The Governing Body of the City of Lawrence, Kansas hereby finds that the City is an inclusive community that values immigrants and the diversity they bring to the City’s cultural fabric, economic growth, and global competitiveness. The City is committed to building a welcoming and neighborly atmosphere in our community, where all people, including immigrants, are accepted and able to access all City services regardless of their immigration status. It is the intent of the City to comply with local, state, and federal laws while strongly discouraging unlawful discrimination and fostering a welcoming and safe environment for all individuals.

1-1002 DEFINITIONS.

As used in this Chapter:

(A) *Alienage* means the state or condition of not being a citizen of the United States.

(B) *Immigration and Customs Enforcement* (ICE) means the federal law enforcement agency primarily responsible for the enforcement of federal immigration laws.

(C) *Immigration Status* means matters regarding questions of citizenship of the United States or any other country and the authority to reside in or otherwise be present in the United States.

(D) *Resident* means any person whose primary place of habitation falls within the geographic boundaries of the City of Lawrence, Kansas.

1-1003 PROVISION OF CITY SERVICES.
(A) No employee or department shall collect immigration-related information in the provision of City services, including policing, unless otherwise required by law, regulations, or federal or state policies. This directive shall not apply to the collection of immigration-related information for the purpose of assisting a crime victim or witness with a T visa or a U visa, or any similar programs that may benefit an immigrant, when such information is volunteered to the employee or department. (Whether a visa is granted is a matter of federal discretion).

(B) No employee shall discriminate on the basis of alienage or immigration status. City employees will serve all residents and City services will be accessible to all residents regardless of alienage or immigration status.

(C) Unless otherwise required by law, employees and departments that require individuals to provide identification shall accept any valid photo identification that provides the person’s name and photo. Such identification includes, but is not limited to, documents issued by the person’s nation of origin such as a Consular identification, student identifications, drivers’ licenses (including foreign), and passports. This policy shall not apply to the completion of the federally mandated I-9 forms or in the presentation of lawful authorization to operate a motor vehicle within the City.

(D) Any service, benefit, or opportunity provided by a City of Lawrence department shall be made available to all persons residing in the City, regardless of immigration status, unless otherwise required by law.

(E) In addition to the interpretation services specifically enumerated elsewhere in this policy, employees and departments shall generally provide language services whenever possible so that foreign language and/or non-English speakers are able to access City services, regardless of a person’s primary language.

(F) The enforcement of federal immigration laws is a matter that falls under federal jurisdiction and as such is outside the scope of duties of City employees, including Lawrence police officers. The Lawrence Police Department shall not enter into a Memorandum of Understanding with the United States under Section 287(g) of the Immigration and Nationality Act in order to enforce federal immigration law without the prior approval of the City Commission. See 8 U.S.C. § 1357(g).

1-1004

DEPARTMENT PRACTICES.

This section addresses department operations within the City. All City departments, including any not specifically listed herein, and all City employees, shall abide by all applicable sections, including the general provisions set out in Section 1-1003 herein (“Provision of City Services”).

(A) Lawrence Police Department
(1) Members of the Lawrence Police Department shall comply with the department's internal “Immigration Administrative Policy,” “Outside Agency Assist” Policy, and any other department policies applicable to immigration or immigrants.

(B) Lawrence-Douglas County Fire Medical Department

(1) The department’s core mission is to provide emergency services to individuals in need. Immigration status shall never be a factor when providing emergency services.

(C) Lawrence Municipal Court

(1) The Lawrence Municipal Court (Court) shall not inquire about the immigration status of any person charged with a crime except as otherwise required by law, to include, but not limited to, compliance with K.S.A. 21-2501 and K.S.A. 12-4517 which require the Court to ensure a fingerprint card is completed upon a conviction of a class A or class B misdemeanor.

(2) In the event the Court becomes aware of a person’s immigration status, the Court shall not initiate contact with federal immigration enforcement officials to report that information, except as otherwise required by law.

(3) The Court shall provide interpretation services for defendants who do not speak English, in compliance with the law. See K.S.A. 75-4351.

(4) When interpretation services are provided, no inquiry shall be made regarding the person’s immigration status.

(5) The City prosecutor shall not initiate the transfer of immigration information to ICE, unless otherwise required by law.

(6) The City prosecutor shall negotiate plea agreements in a just and appropriate manner. A person’s immigration status shall never be a bar to diversion programs.

(7) Public defenders under contract with the City shall be encouraged to affirmatively and competently advise defendants of the potential immigration consequences to criminal offenses, in compliance with applicable case law and any other applicable law addressing the duties of a criminal defense attorney in providing information regarding immigration. Public defenders under contract with the City should also advise such defendants to seek counsel from a trained immigration attorney. The City shall provide reference to a repository listing immigration attorneys that such defendants may contact, when appropriate.

(D) Finance
(1) City utility services, to include water, sewer, solid waste, and storm water, shall never be denied to any City resident on the basis of a person's immigration status.

(2) To set up a utilities account, a person must provide their:

   (a) Name
   (b) Social Security Number or federal tax identification. If neither are available, a passport is requested
   (c) Second form of identification
   (d) Date of birth
   (e) Phone number
   (f) Email address (optional)

(3) In an attempt to prevent loss to the City and to keep rates reasonable for all customers, an additional deposit may be required of any person who cannot provide the information requested above.

(4) Any person making payment to the City may be required to present a valid photo identification. A photo identification means any document containing the person’s name and picture on it and which is issued by a government, whether municipal, state, federal, or foreign.

(E) Parks and Recreation

(1) City facilities and services shall never be denied to any resident of the City on the basis of a person’s immigration status.

(2) A person may establish proof of residency by providing documentation that includes but is not limited to:

   (a) Driver’s License
   (b) State Issued ID
   (c) Current Homeowners Insurance Policy
   (d) Property Tax Statement
   (e) Vehicle Registration
   (f) Mortgage or lease document

(F) Transit

(1) Immigration status shall not be a factor in determining whether a person may utilize the City’s transit services.

(G) City Clerk’s Office

(1) A person’s immigration status shall not prohibit such person from applying for and being granted a license, permit, or registration through the City Clerk’s office, except as required by law.

(2) The City Clerk’s office shall provide language translation services to any person upon request.
(H) Human Resources

(1) The City’s Human Resources Department shall strive to recruit and hire a diverse workforce on behalf of the City of Lawrence. To meet this goal, the Department shall utilize diversity-focused job boards and minority associations in its recruitment activities, whenever possible.

(2) The department shall comply with federal and state laws regarding employment eligibility and employment records, such as the I-9 verification process, but shall not otherwise collect, inquire, or disseminate information about an applicant’s immigration status.

(3) The department shall conduct a periodic review of the City’s internal policies, training on diversity, the City’s “Statement of Individual Respect,” and shall recommend and assist in the implementation of any appropriate amendments.

(I) Communications & Creative Resources

(1) Communication on behalf of the City shall endeavor to be accessible to the widest possible audience through its website and social media.

(2) A translation subscription service shall be implemented for the purpose of translating documents and allowing staff to speak with non-English speaking customers on the phone or in person.

(3) Any written materials posted on the City’s webpage and drafted by the City of Lawrence should have an option to translate the webpage into other languages. Such option to translate shall be clearly identified on the webpage.

(4) When appropriate, written materials distributed to the public should be translated into other languages.

1-1005

Retaliation Prohibited

(A) No person shall retaliate against another who:

(1) Files a complaint of an alleged violation of this Article;

(2) Cooperates in the investigation of a complaint alleging a violation of this Article; or

(3) Is the subject of a complaint alleging a violation of this Article.

(B) Retaliate, as used in this Section, shall mean engaging in any conduct that is adverse to another person because of such other person’s filing of a complaint alleging a violation of this Article, cooperation in the investigation of such complaint, or because such other person is the subject of a complaint under
this Article. Retaliation is prohibited in any form, including but not limited to making unwanted personal contact with such other person either directly or indirectly through a third person or via electronic format, when such contact is intended to harass or disturb such other person.

1-1006 Penalties.

Nothing herein shall be construed to create or form the basis for liability on the part of the City, its officials, employees, or agents. The exclusive remedy for violation of this Article shall be through the City’s disciplinary procedures for officers and employees, including but not limited to City personnel rules and any other department rules and/or regulations.

SECTION 2: If any section, sentence, clause, or phrase of this ordinance is found to be unconstitutional or is otherwise held invalid by any court of competent jurisdiction it shall not affect the validity of any remaining parts of this ordinance.

SECTION 3: This ordinance shall take effect and be in force from and after its adoption and publication as provided by law.

PASSED by the Governing Body of the City of Lawrence, Kansas, this ___ day of February 2020.

APPROVED:

___________________________________
Jennifer Ananda, JD, MSW
Mayor

ATTEST:

___________________________________
Sherri Riedemann
City Clerk

APPROVED AS TO FORM:

___________________________________
Toni R. Wheeler
City Attorney
Memorandum
City of Lawrence
Police Department

TO: Craig Owens, City Manager
FROM: Gregory C Burns Jr, Chief of Police
DATE: February 6, 2020
RE: Final Draft Immigration Policy

Since the Fall of 2019 members of the Lawrence Police Department, other city staff, and representatives from the Sanctuary Alliance have met to collaborate on Police Department policy pertaining to department member’s interactions with immigrants and related federal enforcement agencies.

The proposed department policy began with drafting local practices and responsibilities already in place as well as incorporating a “best practices” recommendation from Lexipol and other police agencies across the country. Lexipol, which is used by more than 3,000 agencies across the country, is a professional organization that provides up-to-date policy recommendations based on state law, federal law, and current relevant case law.

Department representatives engaged in a thoughtful review of the policy recommendations provided by the Sanctuary Alliance and incorporated many of its recommended changes. The resulting department policy seeks to balance the protections of our community members with the responsibilities of the agency.

[Signature]
Gregory C. Burns, Jr.
Chief of Police
414 Immigration Administrative Policy

414.1 PURPOSE AND SCOPE

The purpose of this policy is to provide guidelines for officer interactions with the United States Immigration and Customs Enforcement (ICE) with the members of the Lawrence Police Department.

414.2 POLICY

It is the policy of the Lawrence Police Department (LPD) that all members make personal and professional commitments to equal enforcement of the law and equal service to the public. Confidence in this commitment will increase the effectiveness of this department in protecting and serving the entire community and recognizing the dignity of all persons. No member shall stop, question, arrest, or detain any individual based solely upon actual or suspected citizenship or immigration status.

Immigration enforcement is not a local law enforcement matter. It falls under the jurisdiction of the United States Immigration and Customs Enforcement (ICE). Lawrence Police Department (LPD) officers lack the jurisdiction to enforce federal immigration law. However, there are situations where ICE may request the assistance of the LPD, and such request shall be addressed in department policy.

414.3 DEFINITIONS

Reasonable Suspicion – A particularized and objective basis, supported by specific and articulable facts, for suspecting a person of criminal activity. A police officer must have a reasonable suspicion to stop a person in a public place. See Black's Law Dictionary (11th ed. 2019)

Probable Cause – Reasonable ground to suspect that a person has committed or is committing a crime or that a place contains specific items connected with a crime. Under the Fourth Amendment, probable cause — which amounts to more than a bare suspicion but less than evidence that would justify a conviction — must be shown before an arrest, arrest warrant or search warrant may be issued. See Black's Law Dictionary (11th ed. 2019)
Emergency- (17c) 1. A sudden and serious event or an unforeseen change in circumstances that calls for immediate action to avert, control, or remedy harm. 2. An urgent need for relief or help. See Black’s Law Dictionary (11th ed. 2019)

Member- Any sworn employee of the Lawrence Police Department. This term may be used interchangeably with “LPD” and “officers” throughout this policy.

414.4 VICTIMS AND WITNESSES

The need for community trust and cooperation is an essential component of effective policing and public safety. In furtherance of this principle, victims and witnesses of crime should not be the focus of immigration inquiries and should be encouraged to cooperate in the reporting and investigation of crime. To encourage crime reporting and cooperation in the investigation of criminal activity, all individuals, regardless of their immigration status, must feel secure that contacting or being addressed by members of law enforcement will not automatically lead to immigration inquiry and/or deportation. While it may be necessary to determine the identity of a victim or witness, members shall treat all individuals equally and without regard to race, color, or national origin in any way that would violate the United States or Kansas Constitutions. All persons residing in the United States, documented or undocumented, are protected under the rights outlined in the U.S. Constitution, including the Fourth Amendment right against unnecessary search and seizure.

When identification is requested, Members shall accept presentation of a photo identity document issued by a non-government organization or a verbal statement of the person’s full name and date of birth. Members shall not require that a person produce a foreign passport or non-U.S. driver’s license as evidence of identity.

Although not required as evidence of identity or citizenship, a driver’s license is required for operation of a motor vehicle, regardless of a person’s immigration status. Members may request the driver of a motor vehicle to produce a driver’s license. The failure of a motor vehicle operator to produce a driver’s license upon request after a moving violation or traffic stop may subject the operator to the appropriate charge (i.e. driving without a license).

414.5 ARREST NOTIFICATION TO IMMIGRATION AND CUSTOMS ENFORCEMENT

Generally, a member will not need to notify ICE when booking arrestees at the jail. However, under certain circumstances, such as some felony investigations contact with ICE could be feasible.
When determining whether notification of immigration authorities is appropriate, the officer should, in consultation with a supervisor, consider the totality of circumstances of each case, including, but not limited to:

(a) Seriousness of the offense: The investigation of the following felony crimes, including but not limited to: murder, kidnapping, robbery, rape, aggravated assault, aggravated arson, aggravated burglary, aggravated battery, and abuse of a child. (See K.S.A. 21-5402(c) (listing “inherently dangerous felonies”)

(b) Community safety: the condition of being safe from undergoing or causing hurt, injury, or loss. (See 2019 Merriam-Webster Dictionary)

414.6 INTERVIEWS

The Lawrence Police Department does not conduct suspect interviews for civil immigration violations only. Any suspect that is in police custody and that is being interrogated regardless of immigration status will be provided with a Miranda warning prior to any questioning taking place by LPD. Miranda warnings are rooted in fundamental constitutional protections. Their purpose is to protect and preserve a suspect’s Fifth Amendment constitutional rights against self-incrimination.

Members will ensure that suspects are advised of which law enforcement agency that they are speaking with prior to the start of any interview and will advise a person in custody if ICE or DHS requests to talk to them for any reason. Translation services will be made available if needed for language clarification purposes or upon the request of any suspect.

414.7 ICE REQUEST FOR ASSISTANCE

Requests by ICE, or any other federal agency, for assistance from this department should be directed to a supervisor. Under no circumstances will an LPD member become involved in the service of civil detainers or administrative immigration matters with ICE, unless a listed policy exception has been met. If a listed policy exception has been met officers should respond as they would when addressing any other law enforcement matter.

Unless otherwise required by law, LPD members shall not engage in, assist, or support immigration enforcement except as follows:
A. In response to an articulated, direct threat to life or public safety.

B. To safely execute a criminal warrant or court order issued by a local, state, or federal judge.

C. To assist an officer in an emergency. In these situations, dispatch will immediately send officers to the location and notify an on-duty supervisor, who will immediately respond to the scene. The LPD will respond the same as they would for any other public safety agency during an emergency situation. Once on scene a determination will be made by an on-duty supervisor if the situation is one which LPD should legally be involved.

D. Traffic control for the benefit of the traveling public only.

- If a member receives a request directly from an ICE employee, he/she will immediately contact his/her on-duty supervisor for guidance prior to providing any assistance if practical.

- An on-duty supervisor will contact the requesting ICE employee and determine if the situation is one in which the LPD should be involved. If it is determined that the LPD will provide support in any way, an on-duty supervisor will respond to the scene prior to any assistance being rendered if practical.

- If there is probable cause to believe that the individual may be armed, has a history of violence, or presents a danger to ICE agents or to other members of the public, the LPD may respond as backup. In those cases LPD members will assume non-contact positions, such as securing the perimeter or observational positions, unless a public safety situation occurs.

ICE may issue civil detainers or administrative warrants for people believed to be in violation of United States immigration laws.

- In order for members of the LPD to detain, arrest, or transport an individual, they must be wanted on a criminal warrant issued by a court or there must be underlying probable cause for criminal charges.

- Validity of warrants will be verified prior to a service attempt if practical.
• LPD members will not initiate contact with an individual for the sole purpose of assisting ICE in making a contact.

LPD members may not detain, arrest, or transport a person solely based on a civil immigration detainer or administrative warrant. The individual must have a criminal warrant issued by a court or underlying probable cause for criminal charges in order to be detained or arrested.

Through routine patrol, officers may also encounter individuals with immigration warrants. To verify if a warrant is civil, administrative, or criminal in nature, LPD officers will have Dispatch contact the ICE Law Enforcement Support Center at the phone number listed on the NCIC hit or by calling (802) 872-6050. The ICE Law Enforcement Support Center is available 24 hours a day, seven (7) days a week, and 365 days a year. If the immigration warrant is for a criminal violation and has been issued by a federal judge or magistrate, officers will honor this warrant and handle it in the same manner as any other criminal warrant.

The Lawrence Police Department does not enter immigration status information into the NCIC data base.

Members will notify a supervisor if they are not already on the scene and assistance has been rendered to ICE.

Incidents of assistance that are not documented in a crime report will be documented in the call notes or as directed by the on-duty supervisor.

SUPERVISOR RESPONSIBILITIES

The on-duty supervisor should respond to the scene, and is expected to:

a. Contact the requesting ICE or other federal agent, and determine if and what assistance the Lawrence Police Department may provide.

b. Ensure that members of this department are not providing assistance to ICE solely for the purpose of civil detainers or administrative immigration violations only. In situations where there is probable cause to believe the individual may be armed, has a history of violence, or presents a danger to others, officers may provide assistance, such as securing the perimeter or observational positions, unless a public safety situation occurs that requires additional action.
c. Ensure that officers do not assist in detaining, arresting, or transporting an individual based solely on a civil detainer or administrative warrant. Officers are authorized to assist in detaining, arresting, or transporting an individual if there is probable cause for a state or local violation, or if the individual has a criminal warrant issued for their arrest.

d. Ensure that notification is made to the Public Affairs Office when LPD has provided assistance to ICE, so that public notification may be made.

e. Ensure that officers properly document their assistance in call notes, or when applicable an incident report.

414.8 INFORMATION SHARING

Notwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, the Immigration and Naturalization Service information regarding the citizenship or immigration status, lawful or unlawful, of any individual (8 USC § 1373).

414.9 IMMIGRATION HOLDS

The Douglas County Jail does not fall under the authority of the Lawrence Police Department, and no member shall assist in holding any individual based solely on a federal immigration detainer.

414.10 U VISA AND T VISA NON-IMMIGRANT STATUS

Under certain circumstances, federal law allows temporary immigration benefits, known as a U visa, to victims and witnesses of certain qualifying crimes (8 USC § 1101(a)(15)(U)). A law enforcement certification for a U visa may be completed by an officer, victim, or victim’s attorney in order for a U visa to be issued. The following should be considered when deciding on providing a signature for a U visa:
1. Is a victim of a qualifying criminal activity; and
2. Was, is or is likely to be helpful in the investigation or prosecution of that activity.

Similar immigration protection, known as a T visa, is available for certain qualifying victims of human trafficking (8 USC § 1101(a)(15)(T)). A law enforcement declaration for a T visa may be completed by an officer, victim, or victim’s attorney in order for a T visa to be issued. The following should be considered when deciding on providing a signature for a T visa:

1. Is or has been a victim of a severe form of trafficking in person; and
2. Has complied with requests for assistance in an investigation or prosecution of the crime of trafficking.

The Chief of Police or designee shall make the final determination on whether to approve certification status of a U visa or T visa for signature based upon the evidentiary facts presented within the documentation presented along with any other supporting documentation.

The Chief of Police shall complete a memorandum to the City Manager containing the number of U and T visa’s received for signature and those approved for certification status each calendar year no later than January 31st of the following calendar year.

414.11 TRAINING

Officers will participate in annual review on this policy in order to demonstrate their knowledge and understanding of it.